

KOSO HAMMEL DAHL

CONTROL VALVES

KOSO AMERICA, INC.

253 Pleasant Street
West Bridgewater, MA 02379

Telephone: 774.517.5300

www.hammeldahl.com

Terms & Conditions of Sale

1. **Coverage:** Any order received by Seller shall be construed as a written acceptance of Seller's offer to sell and shall be filled in accordance with the terms and conditions of sale set forth herein. No other terms and conditions shall apply unless specifically accepted by Seller in writing.

2. **Limitation of Liability:** Each order shall be subject to, and Seller shall be excused from, any prohibition, failure, interruption or delay in manufacture or delivery which may be occasioned by sabotage, fire, flood, explosion, labor dispute, strike, work stoppage, riot, insurrection, war, act of war, or priorities granted by request of or for the benefit, directly or indirectly, of any government body, authority or agency, shortage of raw materials or supplies, act of God or other cause beyond Seller's control. In the events of any such prohibition, failure, interruption or delay, Seller may, at its option extend the delivery time or cancel the order in whole or in part. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL DAMAGE OR CLAIMS FOR LABOR RESULTING FROM FAILURE OR DELAY IN DELIVERY OR LOSS OF PROFIT OF BUYER.

3. **Laws, Codes, Regulation, and Safety Devices:** Seller intends to comply with all Federal, States, and local laws or regulations applicable to the performance by Seller of each order, provided, however, that any failure of Seller to so comply shall not be a defense to, or excuse Buyer from, performance by Buyer of any order. Compliance with laws, codes and regulations relating to the goods and their use is the sole responsibility of Buyer, and Seller makes no warranty of representation with respect thereto. Buyer assumes the responsibility for providing and installing any and all devices for the protection of safety and health and shall indemnify and hold harmless Seller against any expense, loss or damage which Seller may incur or sustain as a result of Buyer's failure to do so.

4. **Warranty:** Seller will at its option, replace or without replacement, render credit for any material which, if properly selected, stored and used by the buyer, shall prove defective within one year from the date of shipment. No claim shall be allowed by any party other than the Buyer. In no event shall Seller's liability for defective material exceed the purchase price thereof. Seller shall not be liable for labor, or for any special, consequential, or incidental damages, or for any loss resulting from use of the material. EXCEPT AS SPECIFICALLY IN THE SELLER'S WARRANTY STATEMENT AND NOT WITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, SELLER NEITHER MAKES, NOR ASSUMES ANY LIABILITY UNDER ANY WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE AND NO REPRESENTATION OF WARRANTY EXPRESSED OR IMPLIED, MADE BY ANY SALES REPRESENTATIVE OF SELLER OR OTHER AGENT OR REPRESENTATIVE OF SELLER WHICH IS NOT SPECIFICALLY SET FORTH IN THIS PARAGRAPH SHALL BE BINDING UPON THE SELLER.

5. **Net Price:** The price of each product delivered as specified will be due and payable in accordance with the terms of payment as stated, free of expense to Seller for collection of other charges. Standard payment terms are Net 30 days unless explicitly stated otherwise by KOSO AMERICA.

6. **Taxes:** Any excise tax, levies, or taxes which Seller is required to pay or collect, under any existing or future law or regulation (domestic or foreign), upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered hereby, shall be for the account of the Buyer and Buyer agrees to pay this amount thereof to Seller upon request.

7. Title and Risk of Loss: Delivery shall occur, and risk of loss shall pass to Buyer, upon delivery of the material to a carrier at the point of shipment. Transportation shall be at Buyer's risk and expense and any claims for loss or damage in transit shall be against the carrier only.

8. Changes: This agreement constitutes the entire contract between Seller and Buyer. No modification hereof shall be of any force and effect unless in writing and signed by the party claimed to be bound thereby, and no modification shall be effected by an acknowledgement or acceptance by Seller of a purchase order from Buyer containing any different terms and conditions, which terms and conditions, to the extent inconsistent, shall be deemed superseded by the terms and conditions set forth herein and in other documents delivered by the Seller to Buyer. A waiver of any of the terms and conditions hereof shall not be deemed a continuing waiver but shall apply solely the instance to which the waiver is directed.

9. Patents: Buyer hereby indemnifies Seller against any liability whatsoever to patent, trademark or trade name infringement in any way arising out of the preparation or manufacture of any material in accordance with Buyer's specifications.

10. Subcontracting: Seller may subcontract any or all of the work to be performed by it under this order. The Seller shall retain responsibility for the work subcontracted.

11. Assignment: No right or interest in this contract shall be assigned by Buyer without prior written agreement by the Seller. No delegation of any obligation owed, or the performance of any obligation by the Buyer shall be made without prior written agreement by the Seller.

12. Termination: The Buyer must provide written or telegraphic notice to the Seller as to termination, cancellation or indefinite delay applying to this order. In the event of such termination, cancellation or indefinite delay by the Buyer for its own convenience for delivery of all or any part thereof of the goods or services specified and contracted for under this order, the Buyer shall be liable for the following costs incurred up to the receipt of official notice of Buyer as outlined: 1) restocking charges of 20% of invoice prices plus applicable shipping charges for all Seller's standard items; 2) Seller's cost plus 30% cancellation charges for all materials and services, including applicable tooling, jigs and fixtures contracted for on behalf of the Buyer; 3) all cancellation charges imposed upon the Seller by its subcontractors. Buyer shall be liable to Seller for all damages or losses, including loss of reasonable profit and for costs and expenses, including attorney's fees, sustained by Seller and arising from Buyer's default order, or breach of any of the terms and conditions of this contract. In the event, of any such default or breach, Seller may, without obligation or liability to Buyer, terminate this contract forthwith by written notice to Buyer and such action by Seller shall not be deemed a waiver of any right or remedy with respect to such default or breach.

13. General: No modification or waiver of any provision of this order will be accepted by Seller. Variances from this order in any Customer order will be of no effect. If any terms or provision of this order shall be held invalid or unenforceable, the remainder of this order shall not be affected thereby and each term and provision hereof shall be valid and enforced to the fullest extent permitted by law. Failure by Buyer to make any payment due hereunder, or on request to give proper shipping instructions, or to accept delivery at times stated, or to comply with all terms of any contract between Buyer and Seller shall give Seller, in addition to all other available remedies, the right at its option to deduct any undelivered quantities of material from the total quantity of material to be furnished whether under this or any other contract between Buyer and Seller. Seller retains title to all material as security until payment for same has been received. Seller may, at any time or times, suspend performance of: any order or require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.

14. Laws Governing: This agreement shall be governed by, and construed in accordance with the laws of the Commonwealth of Massachusetts.