# Terms & Conditions of Sale

**1. Definitions**

1.1 These Terms and Conditions of Sale shall be subject to the following definitions:

- "KERS" or "Seller" shall refer to KERS INNOVATION UK LTD., a company registered in the United Kingdom, with Company number 12968039.
- "Buyer" shall refer to any entity who enters into a contract for the manufacture, sale or supply of Products or Services from the Seller, or who receives an invoice for the manufacture or sale of Products or the provision of Services by the Seller.
- "Confidential Information" shall mean any information regarding the business or affairs of a party, including but not limited to information relating to a party's operations, finances, plans, product information, intellectual property rights, trade secrets and customers.
- "Product" shall refer to any products supplied to the Buyer by KERS.
- "Service" shall refer to any services supplied to the Buyer by KERS.
- "PO" shall refer to any purchase order between KERS and the Buyer for the sale and purchase of Products or Services.
- "Terms and Conditions of Sale" shall refer to this document.

**2. Validity**

2.1 Unless otherwise agreed, the Terms and Conditions of Sale shall apply to all POs, order confirmations, sales and deliveries of Products or Services from KERS. In the event of any conflict between the documents, then they shall have priority as listed below.

- the order confirmation, then,
- the Terms and Conditions of Sale, and then,
- the PO

2.2 Notwithstanding that the Buyer has referred to general terms and conditions of purchase or other standard terms used by the Buyer, the Buyer's general terms and conditions of purchase or other standard terms shall not apply to Buyer's purchases of Products or Services from KERS.

2.3 KERS reserves the right to amend these Terms and Conditions of Sale.

**3. Quotations, POs and Acceptance**

3.1 All quotations by KERS shall signify only an invitation to the Buyer to place a PO with KERS.

3.2 KERS only accepts POs from the Buyer when these are in writing, and all POs once placed are binding for the Buyer. KERS reserves the right to deliver the PO in whole or in part or to reject delivery.

3.3 A binding agreement shall be deemed to have been signed once the Buyer has received an order confirmation in writing from KERS. Where the order confirmation deviates from the PO, a binding agreement shall not be deemed to have been signed if the Buyer rejects the order confirmation in accordance with clause 3.5.

3.4 If KERS submits a quotation that does not contain an acceptance deadline, the quotation is valid for 60 days from date of issue.

3.5 Where an order confirmation from KERS deviates from the Buyer's PO and the Buyer does not accept the deviation, the Buyer shall, within 5 working days of the date of the order confirmation, give KERS notice in writing thereof. In the absence of such notice, the order confirmation shall apply.

3.6 Where an order confirmation is issued, the quoted prices remain valid for 6 months from the date of issue.

3.7 Amendments or supplements to the original PO are binding for KERS only if the parties have agreed to such amendment or supplement, and KERS has given the Buyer a written confirmation.

3.8 The Buyer may cancel a binding PO by providing written notice to KERS. The Buyer shall be liable to pay KERS for the full price of the Products and any costs incurred by KERS unless KERS is able to mitigate its losses. KERS will only have to make a reasonable commercial effort to mitigate its losses by selling the Products to another buyer where this is a standard Product.

**4. Product Information**

4.1 Product information, including prices, drawings, specifications etc., as well as other details in catalogues, promotional materials or elsewhere, including information on the KERS website, is not legally binding and shall be regarded as being indicative only.

4.2 KERS retains the rights to all specification drawings/schematics and product information. These are confidential between KERS and the buyer, who shall not, without prior consent from KERS, share these documents with 3rd parties.

4.3 Where KERS has followed a design / instruction given by the Buyer, the Buyer shall indemnify KERS against all direct and indirect loss, damages, costs, and expenses to which it may become liable due to such designs or instructions being an infringement of any intellectual property right.

4.4 Both Buyer and Seller undertake that they shall not at any time during the term of the agreement and for a period of five (5) years after termination of the agreement disclose to any person any Confidential Information disclosed to it by the other party, except as permitted by this clause 4.

4.5 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under the agreement.

**5. Prices and Payment Terms**

5.1 Prices in quotations, order confirmations and other references are stated exclusive of VAT and any other applicable taxes.

5.2 KERS reserves the right to amend our product price list with notice of 60 days being given to the customer.

5.3 KERS reserves the right to implement price changes 30 days after provision of notice to Buyer. If Buyer cancels a PO within that 30-day period, then Buyer shall only be liable to pay any unpaid balance due to KERS for work already performed or delivered.

5.4 Payments shall be claimed by invoices and made within the due date specified in the respective invoice. Standard payment terms from invoice date 30 days; Full Pre-payment 14 days; Deposits/Pre-delivery 7 days (as agreed between both parties).

5.5 Deposit payments will be assigned to the full Order – Each time a Call Off is processed, an invoice is issued for the number of units/G3 Safety Kits delivered, and the percentage from your deposit payment is credited against each invoice raised.

5.6 If payment is made after the due date specified in the invoice, the Buyer shall pay interest on the amount due at the rate of 3% per full or partial month of delay, in addition to a 15% surcharge of the invoice value to cover the costs of third-party debt collectors. KERS will advise 7 days in advance before it is passed to third-party collectors.

5.7 All payments due to KERS shall be made in full, and free of set off, counterclaim or deduction on any other ground whatsoever.

5.8 KERS retains ownership of the Product until the purchase price, including any expenses, has been paid in full. The Buyer cannot enter into transactions that compromise KERS's title to the goods.

**6. Delivery Terms**

6.1 Deliveries shall be made in accordance with EXW Incoterms 2020 rule, or the latest available edition.

6.2 The delivery may be agreed for a specific date or within a specific time. KERS reserves the right to make changes to the delivery time if the Buyer fails to provide all necessary information for the execution of the PO.

6.3 For projects greater than 10 systems, KERS requires an agreed programme of works, in writing, at least 100 days before the first expected delivery. Smaller projects require at least 30 days' written notice. All programme of works will be confirmed in writing by KERS, within 5 working days of submission of the programme of works by the client. KERS will not be held responsible for not meeting a delivery schedule that is not agreed in writing.

6.4 All goods are made to order and will be made in accordance with the agreed dates per the agreed programme of works.

6.5 If the customer does not take the goods within 14 days of each batch of the agreed programme of works, then KERS reserves the right to charge for storage charges at the rate of £10 per system per week for each product that is not taken in line with the programme. In addition to this, KERS will charge £2.50 per pallet per movement, for each pallet that KERS needs to move to third-party storage if required. KERS will also charge (at cost) additional insurance, transportation, or other third-party costs required to store the goods at a third-party location. KERS will confirm that it intends to ship the goods to an alternate location, with the customer, 7 days before moving any goods.

6.6 If KERS has undertaken in addition to arrange for shipping according to an explicit written request from the Buyer, the Buyer becomes liable for the Product in accordance with the terms of a sale made. EX-Works. KERS shall not be liable for any damage caused to the Product during transport.

6.7 KERS shall arrange for insurance only if expressly agreed with the Buyer. A standard insurance policy will be the only insurance secured unless other coverage is specified in the agreement.

**7. Delay**

7.1 Buyer delays. KERS will logistically manage the products and delivery schedules as agreed in the pre-start project pack.

7.2 If the delivery is not made by the agreed delivery time, the Buyer may claim delivery by notice in writing to KERS and define a reasonable delivery deadline that may not be shorter than 4 weeks. Where KERS does not complete the delivery within this extended deadline and such failure is unrelated to conditions that are the responsibility of the Buyer, the Buyer may cancel the portion of the PO that is delayed.

7.3 Under no circumstances may KERS be held liable for operating losses, loss of time, loss of profit or any other indirect losses and repercussions as a result of a delayed delivery of Products or Services by KERS.

**8. Failure to Receive Delivery/Collect Goods**

8.1 Failed Delivery. The buyer shall contact KERS to confirm delivery of products no less than 7 days before the delivery has been booked. KERS will act as contractually obliged and ship the agreed quantity of products to the site on the provided date. If the delivery is rejected by site the buyer will be liable for the costs of return transportation, unloading, storage and following deliveries.

8.2 Where the Buyer, after the delivery deadline, fails to collect the Product or provide instructions about shipping, KERS is entitled to arrange for the storage and insurance of the Product at the Buyer's expense.

8.3 Where the Buyer fails to collect the Product despite a request in writing, KERS is entitled to sell the Product on the Buyer's behalf at the best possible price. This applies also to parts that are custom made in accordance with the Buyer's instructions.

8.4 Where KERS incurs losses due to the Buyer's failure to collect the delivery, KERS is entitled to compensation and the Buyer is liable to pay such compensation.

**9. Complaints and Duty of Inspection**

9.1 The Buyer shall examine products upon delivery. Defects that are discovered should be reported to KERS within 24 hours of the goods being delivered. Photographs should be attached showing model, serial number, time and date.

9.2 The Buyer may issue a complaint about the Products or Services within 12 months of the delivery date.

**10. Product Returns**

10.1 Product returns are accepted only for marketable standard products and subject to prior written consent from KERS. The right of return applies for one month from the delivery date.

10.2 The expenses arising from returns shall be covered by the Buyer.

10.3 Returned Products shall be refunded to the client within 30 days of receipt and acceptance back to stock. Upon arrival the product will be inspected and assessed for resale based on the product's condition when it left KERS. The minimum restocking charge is 30% of the sales price.

**11. Set to works programme known also as Commissioning.**

11.1 Each KERS product requires a detailed set to work programme. This is done by KERS engineers or approved installers. The set to works is required to correctly balance the system ensuring optimum performance and efficiency.

**12. Warranty**

12.1 The product warranty will commence from the date of delivery unless otherwise agreed with KERS. The standard warranty on KERS products is 12 months covering parts and labour. A further 4-year warranty is available on all products subject to the product being serviced by KERS or an approved engineer of KERS.

12.2 An extended 4-year Warranty is available, please refer to KERS office if required.

12.3 KERS products must be installed by qualified installers for all disciplines, Pipework, Electrics and Ducting.

12.4 All installation companies must attend a KERS installation training course, provided free of charge, prior to delivery of products (training held at KERS R & D facility in Bolton or online via a Teams meeting). No training will nullify the Warranty.

12.5 We recommend that commissioning is carried out by KERS Innovation UK Ltd, but if a client wants to carry it out with others, then again, we confirm commissioning training will be required or the Warranty will not stand.

**13. Product Liability**

13.1 To the fullest extent permitted by law KERS shall not be liable for any indirect or consequential loss in connection with the contract or any breach thereof.

13.2 The Buyer shall defend, indemnify, and hold harmless the Seller against all claims, actions, proceedings, losses, damages, expenses, and costs arising out of any claim made against the Seller by any third party.

13.3 Under no conditions shall KERS be liable for any operating losses, loss of time, loss of profit or other indirect losses and repercussions caused by the delivery by KERS of a defective Product to the Buyer.

13.4 Buyer guarantees that if the Products are sold by Buyer to consumers, that Buyer will uphold all relevant laws applicable to such sale ("Consumer Laws") in the relevant jurisdiction. KERS shall, to the extent allowed by mandatory provisions of the law, not be held liable for any losses suffered by consumers due to Buyer's breach of applicable Consumer Laws.

**14. Force Majeure**

14.1 KERS disclaims any liability for the non-fulfilment of a PO arising from force majeure circumstances such as natural disasters, war and mobilization, rebellion, riots, strike, lockout, any other form of industrial action, intervention by a public authority/government, import or export restrictions, fire, damage to the KERS production plant, missing or incomplete deliveries by subcontractors, etc. or from any other condition that is beyond the control of KERS.

14.2 Where delivery of Products according to the PO is prevented temporarily because of one or more of the above circumstances, the delivery time shall be extended by a period that corresponds to the duration of the respective obstacle. Missing or delayed deliveries of materials from subcontractors shall be regarded as a force majeure event.

**15. Partial Invalidity**

15.1 Should one or more of the provisions of these Terms and Conditions of Sale be declared invalid or illegal or prove inapplicable, there shall be no impact on the validity, legality, and applicability of the remaining provisions.

**16. Limitation of Liability**

16.1 To the extent allowed by mandatory provisions of the law, KERS's total liability for breach of contract shall be limited to 100% of the relevant PO purchase price.

**17. Governing Law and Jurisdiction**

17.1 All disputes between KERS and the Buyer that may arise in connection with these Terms and Conditions of Sale, including disputes related to the existence or validity of an agreement or the interpretation of these Terms and Conditions of Sale, shall be settled according to the laws of England and Wales.

17.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation.

**18. Communications**

18.1 Questions or formal notices may be directed to:

KERS INNOVATION UK LTD.
Units 5 – Park 17
Moss Lane
Whitefield
Manchester
M45 8FJ

Telephone: 0161 567 8770

Email: info@KERS.co.uk

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