

## KANAWHA SCALES AND SYSTEMS, INC. SALES PROPOSAL TERMS AND CONDITIONS

These Sales Proposal Terms and Conditions apply to the accompanying sales proposal and are incorporated therein as if stated therein in their entirety. As used herein, the term "Seller" shall mean Kanawha Scales & Systems, Inc. The term "Buyer" shall mean the party (and/or its successors and/or assigns) purchasing the merchandise, equipment, material, supplies (sometimes referred to herein as the "goods") and/or labor and/or services (sometimes referred to herein as "labor") from the Seller. All communications are to be mailed to the Seller at the address identified in the accompanying sales proposal.

1. **PRICES:** Unless accepted in writing by Buyer or withdrawn by Seller, verbal quotations expire the same day they are made. Unless withdrawn, written quotations automatically expire thirty (30) calendar days from the date issued unless otherwise specified in the accompanying sales proposal. The amounts of any and all increases in Seller's cost occurring after the accompanying sales proposal has been submitted to the Buyer shall be deemed added to the amounts quoted in the accompanying sales proposal. Unless specifically noted otherwise, all prices quoted in the accompanying sales proposal for goods do not include installation, set-up, or calibration.

2. **ACCEPTANCE:** All proposals of the Seller are merely offering to enter into a purchase contract for the goods described in the accompanying sales proposal and all proposals are subject to the Buyer's acceptance and the Seller's control. Any alteration of the Seller's proposal, conditions, or terms, no matter how slight, shall be considered as materially altering the Seller's proposal. The Seller's offer set forth in the accompanying sales proposal expressly limits acceptance to the exact terms of the Seller's written offer. All terms and conditions that are contained herein shall apply to any purchase order received from the Buyer and accepted by the Seller and all terms and conditions imprinted or written on the Buyer's purchase order that are nonconforming with, or are contrary to, the Seller's terms and conditions are null and void. Any additional terms and/or conditions proposed by the Buyer shall not become part of the agreement between the parties unless the Seller accepts such additional terms and/or conditions in writing.

3. **SPECIFICATION CHANGES:** Any changes from the original specifications on which an accepted order is based, will not be accepted unless requested in writing by the Buyer and accepted in writing by the Seller. Any such agreed changes will be subject to the following condition: If such change increases the cost of any product, including actual component costs and expenses incurred in modifying a partially or completely manufactured item, then such additional expenses shall be added to the original agreed upon price.

4. **DELIVERY:** Any delivery date quoted is the Seller's best estimate of the date goods will be shipped based on the manufacturer's production schedule in effect at time of proposal. The Seller shall not be liable for delays caused by fires, strikes, accidents, manufacturer's delay, or other causes beyond the Seller's reasonable control. The Seller shall not have any liability for loss, damages, or consequential damages due to delays.

5. **SHIPMENT:** All prices are F.O.B. at point of manufacture unless otherwise stated in the accompanying sales proposal.

6. DAMAGE OR LOSS IN SHIPMENT: The Seller is not responsible for damage or loss in transit and all claims must be made by the Buyer directly to the carrier. Claims for shortages or incorrect equipment must be made in writing within thirty (30) days after receipt of the shipment by the Buyer. Failure to give the Seller such written notice within such thirty (30) day period shall constitute an unqualified acceptance of the equipment and a waiver by the Buyer of any and all claims.

7. TITLE; SELLER'S SECURITY INTEREST: Title shall vest in the Buyer directly from the manufacturer when the goods are delivered by the manufacturer to a carrier or by the Seller to a carrier. It is expressly agreed that the Seller shall have a purchase money security interest and the Buyer hereby grants such a security interest to the Seller in and to all goods described in the accompanying sales proposal. The Seller shall have the right to retake possession of said goods at any time after delivery to the Buyer unless and until the Seller receives the full purchase price of all goods in accordance with the stated terms. The Buyer shall execute at any time any financing statement or further security agreement required by the Seller and failure to promptly execute such documents upon the Seller's request shall constitute a default. Upon the Buyer's default, the Seller shall be entitled to recover all costs and expenses of repossession including but not limited to attorney's fees of the Seller as provided herein.

8. CANCELLATION: After the good(s) and order are accepted, orders cannot be cancelled or modified, nor can the Buyer request that the shipment or release of an order be delayed, except with the Seller's consent and subject to conditions then to be agreed upon, which shall include, but not be limited to, protection of the Seller against any and all resulting losses.

9. TERMS OF PAYMENT: Unless otherwise noted in the accompanying sales proposal, terms are net cash thirty (30) days from date of invoice ("Due Date"). All orders are subject to credit check and approval by the Seller and subject to cancellation by the Seller if the Buyer's credit is found to be unsatisfactory. The Buyer shall pay all costs and expenses, including attorney's fees, incurred in collecting or attempting to collect any sums overdue according to the terms of the purchase contract. For purposes herein, costs and expenses also include, but are not limited to, attorneys' fees and all legal expenses whether or not there is a lawsuit filed; and attorneys' fees and legal expenses to pursue any claims in bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. If any check or other payment by the Buyer is dishonored by the Buyer's bank, Seller may charge a fee of \$30.00 to Buyer, or such amount Seller is charged on account of such dishonored item, whichever is higher, and this amount shall be added to the unpaid balance of the invoice. Acceptance of any payment by the Seller after breach of the terms and conditions of this agreement by Buyer shall not waive any rights or remedies accruing to the Seller as a result of such prior breach; and acceptance of any partial payment by the Seller shall not waive any right of the Seller to collect any remaining amounts due.

10. FINANCE CHARGE: A finance charge in the amount of 1.5% interest per month (18% per year) shall be charged on all unpaid invoices both before and after any judgment.

11. TRUST FUNDS: All funds owed to the Buyer or received by the Buyer resulting from labor and/or goods supplied by the Seller to the Buyer shall be held in trust for the benefit of the Seller until the Buyer has fully paid the Seller for such labor and/or goods. Even if the Buyer commingles such trust funds with other funds of the Buyer, Buyer does not have any right, title or interest in such trust funds and agrees to promptly account for and pay Seller such trust funds.

12. TAXES: All quoted prices are subject to the addition of any and all applicable sales, excise, manufacturer's, use, and/or other taxes levied by municipal, state, federal, and/or other authorities. The Seller will automatically add any and all applicable taxes unless the Buyer specifically and conspicuously includes its tax exemption number on and includes a copy of its tax exemption certificate with, its purchase order.

13. INSTALLATION SERVICES: Installation by the Seller's personnel, if included herein, is predicated on the availability and accessibility of the equipment and the area in which the installation is to take place. Delays and stand-by time caused by the Buyer are not included and if they occur during installation, will be billed to the Buyer at the Seller's prevailing service rate.

14. CLERICAL ERRORS: All clerical errors by the Seller are subject to correction.

15. ESCALATION: The prices set forth in the accompanying sales proposal are calculated on the basis of wage scale and material prices in effect on the proposal date and are subject to increase in accordance with any increases that may take place prior to shipment, subject to any government restrictions that may be imposed.

16. WARRANTY AND LIABILITY: The provisions in the specifications attached hereto are descriptive and not intended as warranties. The Seller hereby warrants the goods described in the accompanying sales proposal against defects in material and workmanship, under normal use and service, for a period of one (1) year as to parts only. Such warranty period shall commence on the date of shipment. The Seller's obligation under this warranty within the time stated above is limited to: (1) furnishing, repairing, or replacing, f.o.b. the Seller's location, any part proven to have been defective at the time of shipment, provided the Buyer has given the Seller immediate written notice upon discovery of the defect; (2) any component part or parts not of the Seller's own manufacture shall not exceed the warranty which is extended to the Seller by the supplier or manufacturer of such parts or goods. Notwithstanding the foregoing, any product specific warranty included in any written sales proposal from the Seller shall take precedence over, but shall not exceed, the scope of the warranty contained in this paragraph. The foregoing is the only warranty extended by the Seller covering the goods described in the accompanying sales proposal and SELLER HEREBY EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF WHATSOEVER KIND OR NATURE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS. Any tampering with or alterations of any goods manufactured or provided by the Seller, which alterations are made by any person other than an agent of the Seller, will void all warranties and release the Seller of all obligations and liability hereunder. Improper use of any goods including, without limitation, installation of goods into another product or use of the goods in a manner for which they were not manufactured and intended by the Seller will void all warranties and release the Seller of all obligations and liability hereunder. Seller does not warrant the goods against damage caused by misuse, abuse, negligence, or acts of God.

17. LIMITATION OF LIABILITY: The Seller shall not be responsible or liable for any consequential or contingent damages and its liability is limited solely to the remedies herein above set forth. The aggregate total liability of the Seller under this contract, WHETHER FOR BREACH OF WARRANTY, OR OTHERWISE, shall in no event exceed the contract price. The Buyer agrees to indemnify and hold the Seller harmless from all claims by third parties that extend beyond the foregoing limitations on the Seller's liability. The Buyer agrees the remedies set forth herein are exclusive. All claims, causes of action, lawsuits, and proceedings the Buyer may have arising from or in any way related to the proposal

or the goods subject thereof ("Claim") must be filed by the Buyer within one (1) year of the accrual of such Claim. Any Claim that is not filed within said one-year period is HEREBY FOREVER WAIVED, RELINQUISHED, AND BARRED.

18. TERMINATION: The Seller, by written notice, may terminate the accompanying sales proposal, in whole or in part. In the event of a termination that is a result of the Buyer's default, the Buyer shall be liable to the Seller for all damages allowed in law or equity.

19. GOVERNING LAW; VENUE: The accompanying sales proposal is made in the State of West Virginia and shall be governed and construed according to the laws of West Virginia. Any lawsuit arising out of or otherwise concerning the sales proposal shall be brought exclusively in an appropriate state court in Kanawha County, West Virginia and the Buyer acknowledges and agrees that such venue shall have exclusive personal jurisdiction.

20. SECTION HEADINGS: Section headings are included for reference purposes only and will not in any way affect the meaning or interpretation of any provision of this agreement.

21. COMMERCIAL PURPOSE: The Buyer warrants that the goods are being obtained for a business and commercial purpose and not for personal, family, or household or other consumer purposes.

22. WAIVER OF JURY TRIAL: The Buyer hereby waives the right to jury trial on all issues, including but not limited to, Claims asserted against the Seller, issues relating to nonpayment of monies owed to the Seller, defenses, affirmative defenses, and/or all counterclaims in any litigation related to the proposal or the goods subject thereof.

23. ENTIRE AGREEMENT: This agreement contains the entire agreement of the parties with respect to the goods described in the accompanying sales proposal, and it supersedes any and all other agreements and/or understandings, whether written or oral, with respect to the goods. The provisions of this agreement shall take precedence and control over all inconsistent provisions set forth in any prior, contemporaneous, or subsequent contract, purchase order, purchase memo, proposal, or other written instrument executed by the parties from time to time, unless the terms of this agreement are expressly superseded by express written intention of the parties in a subsequent written and signed document. If this agreement is generated following receipt of a purchase order, purchase memo or other document prepared by the Buyer, the terms and conditions of this agreement shall supersede and take precedence over any such document and shall be controlling. This agreement may be amended only by an instrument in writing signed by the Seller and the Buyer.

#### KANAWHA SCALES AND SYSTEMS, INC. PURCHASE ORDER TERMS AND CONDITIONS

As used herein, the term "Buyer" shall mean Kanawha Scales & Systems, Inc. The term "Seller" shall mean the party (and/or its successors and/or assigns) selling the merchandise, equipment, material, and/or supplies (sometimes referred to herein as the "goods") to the Buyer, and/or the party (and/or its successors and/or assigns) performing labor or services (sometimes referred to herein as the "services") for the Buyer. All communications, except invoices, are to be mailed to the Buyer at the address identified on the front of this Purchase Order.

1. ACCEPTANCE; ENTIRE AGREEMENT: This Purchase Order constitutes the Buyer's offer and may be accepted by the Seller only in accordance with the terms and conditions hereof and only upon the

Seller's acceptance of all terms and conditions hereof, exclusively. Any additional terms and/or conditions proposed by the Seller shall not become part of the agreement between the parties unless the Buyer accepts such additional terms and/or conditions in writing. Any acceptance herein of an offer of the Seller, or any confirmation herein of a prior agreement between the Buyer and Seller, is expressly made conditional on the Seller's assent to the additional or different terms contained herein. The Seller may accept this Purchase Order by shipment of goods, commencement of services, or furnishing of services hereunder. Dispatch of the Seller's acknowledgement form or other written document will also act as an acceptance if it agrees with this Purchase Order with respect to the description, amount, price, and time of delivery of the goods or services ordered. Notwithstanding any waiver in any instance, or any oral agreement, or any instructions, terms, and conditions that may be contained in any quotation, acknowledgement, invoice, or other written document of the Seller, no addition to, waiver for the future, or modification of, any of the provisions herein contained shall be of any force or effect unless made in writing and executed by the Buyer.

2. **CHANGES:** The Buyer shall have the right at any time to make changes in this Purchase Order by providing written notice to the Seller, and the Seller agrees to comply with such changes. If such changes cause a material increase or decrease in the Seller's costs or time of performance of this Purchase Order, the Seller shall notify the Buyer immediately and negotiate an adjustment.

3. **PRICE:** The price of the goods or services is the price as stated on the face of this Purchase Order. If this Purchase Order is not priced, it shall not be filled at prices higher than those last quoted and charged the Buyer for the same articles. Charges for boxing, packaging, and/or shipping will not be allowed or paid by the Buyer unless otherwise expressly stated on this Purchase Order. Goods are purchased on a delivered basis. An element of freight is included in the purchase price of the materials. All freight charges are to be paid by the Seller to the carrier without further liability to the Buyer, its divisions, subsidiaries, or affiliates, or, to the extent applicable, its customer and/or consignee. The Seller shall invoice the Buyer for the Purchase Order within thirty (30) days of date of delivery. Unless otherwise stated in the Purchase Order, the Buyer shall pay all properly invoiced amounts due to the Seller within sixty (60) days after receipt of such invoice, except for any amounts disputed by Buyer.

4. **SHIPPING:** The Seller shall ship all goods to the Buyer in a timely manner and with a reliable carrier and shall ensure delivery to the Buyer no later than the delivery date set forth on the face of this Purchase Order. Delays in shipment shall be reported immediately by the Seller to the Buyer. Every package or other shipping unit, bill of lading, shipping memorandum, and invoice must be marked with the Buyer's Purchase Order Number. The Seller's serial numbers must be shown on all shipping papers and invoices.

5. **TIME IS OF THE ESSENCE:** The times of shipment and other aspects of performance hereunder are of the essence of this agreement.

6. **DELIVERY/TITLE:** Unless otherwise agreed, delivery shall be f.o.b. point of destination and title shall pass to the Buyer upon acceptance at the final delivery point. Risk of damages or loss following shipment and prior to acceptance by the Buyer shall be the responsibility of the Seller.

7. **RIGHT OF INSPECTION AND REJECTION:** Payment for any goods or services delivered pursuant to this Purchase Order shall not constitute acceptance thereof. The Buyer shall have the right to inspect all goods for ninety (90) days after actual receipt at Buyer's place of business and to reject (including

revocation of its earlier acceptance of) any or all of such goods which are, in Buyer's sole judgment, nonconforming. Use of a portion of the goods for the purpose of testing shall not constitute an acceptance. The Buyer shall not be obligated, however, to test or reject any goods, and the Buyer's inspection of, or failure to inspect or reject, any goods shall not affect any rights of Buyer under this Purchase Order. Rejected goods may be held, and if the Seller so requests may be returned to the Seller, at the Seller's sole risk and expense and, in addition to its other rights, the Buyer may cancel this Purchase Order and (whether or not it has cancelled this Purchase Order) may recover so much of the price as has been paid and may charge the Seller for all expenses. The rights and remedies under this Purchase Order are cumulative and are in addition to any other rights and remedies available to the Buyer at law or in equity or otherwise.

8. ASSIGNMENT: Neither this Purchase Order nor any interest therein nor any claim arising hereunder shall be transferred or assigned by Seller without the prior written consent of the Buyer. The Buyer may transfer or assign the benefits of this Purchase Order, in whole or in part, including, without limitation, the Seller's warranty, without the express approval of the Seller.

9. LIMITATION ON LIABILITY: In no event shall the Buyer be liable for anticipated profits or for incidental or consequential damages. The Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with this Purchase Order or from the performance or breach thereof shall in no case exceed the price allocable to the product or service upon, or in connection with, which such claim is based. The Buyer shall not be liable for penalties of any kind.

10. GOVERNING LAW; VENUE: This Purchase Order is made in the State of West Virginia and shall be governed and construed according to the laws of West Virginia. Any lawsuit arising out of or otherwise concerning this Purchase Order shall be brought exclusively in an appropriate state court in Kanawha County, West Virginia and the Seller acknowledges and agrees that such venue shall have exclusive personal jurisdiction.

11. WARRANTY: The Seller warrants that all goods and/or services furnished pursuant to this Purchase Order will be free from defects in material or workmanship and will be in conformity with the requirements of this Purchase Order, including drawings and specifications, if any, and reasonably fit for the purpose disclosed in this Purchase Order or in such drawings and specifications. The Seller further warrants that such goods and/or services will be merchantable and fit for the purpose for which they are sold, and, where the design is the Seller's responsibility, will be free from defects in design. The Buyer's approval of the Seller's design or material shall not be construed to relieve the Seller of the warranties set forth herein. Without limitation of any rights that the Buyer may have at law by reason of any breach of warranty, goods that are not as warranted may at any time within twelve (12) months after delivery be returned at the Seller's expense. The Buyer, at its option, may require the Seller either to replace such goods at no increase in price (the Seller must pay all repacking, transportation, and handling charges both ways) or to refund the purchase price and any charges in connection therewith.

12. INVOICES: All invoices shall be mailed to the Buyer at the correspondence address indicated on the face of this Purchase Order and will state the Buyer's purchase order number clearly on the invoice. The invoice and duplicates shall be rendered for each order or for each shipment if more than one is made on an order. No invoice shall be delivered by the Seller to any employee of the Buyer. An itemized delivery ticket, bearing the Buyer's purchase order number as shown hereon, must be left with the goods to insure their receipt. If delivery is made by carrier, an itemized delivery ticket must be attached

to the package or other shipping unit. Any payment discount period will start from the date of receipt of the invoice and not from the date of the invoice. In case of errors on an invoice, the payment discount period will date from the receipt of corrected invoices.

13. INTELLECTUAL PROPERTY DEFENSE AND INDEMNITY: The Seller agrees to defend, indemnify, and save the Buyer harmless from and against any and all suits, claims, judgments, damages, costs, and attorney's fees based on or arising out of or in connection with any infringement or claimed infringement of any patent, trademark, service mark, copyright, or other intellectual property right in the manufacture, use, or sale of the goods and/or services furnished under this Purchase Order. In the event that the Buyer's use of the goods and/or services is enjoined, the Seller shall, at its own expense, either procure for the Buyer the right to continue using such goods and/or services, or, at the option of the Buyer, (a) replace the goods and/or services with equivalent, non-infringing goods and/or services, subject to the Buyer's approval; (b) modify the goods and/or services such that they become non-infringing, without impairing the nature and purpose of the goods and/or services; or (c) remove such goods and/or services and refund to the Buyer the purchase price, the installation costs, and all other expenses related to the purchase of the goods and/or services that the Buyer has paid to the Seller and any third party(ies).

14. INDEMNITY AND INSURANCE: The Seller shall defend, indemnify, and hold the Buyer harmless from and against any and all suits, claims, judgments, damages, costs, and attorney's fees based on or arising out of or in connection with the goods and/or services, and/or the resale or use of the goods and/or services purchased hereunder including, but not limited to, death, personal injury, or damage to property. If the Seller is to provide services and/or personal delivery of goods to the Buyer under this Purchase Order, the Seller shall procure and maintain the following insurance coverage: (a) Commercial General Liability insurance with broad form property damage endorsement, naming the Buyer as an additional insured, and written as primary coverage and not contributing with or in excess of any coverage that the Buyer may carry, with limits not less than \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations, \$1,000,000 Personal/Advertising; (b) Commercial Auto insuring all vehicles used by the Seller (including all owned, hired, and non-owned vehicles); and (c) Workers' Compensation with statutory limits and a waiver of subrogation in favor of the Buyer, and Employer's Liability with limits not less than \$500,000 for each accident and \$5,000,000 for disease for each employee. Upon request, the Seller shall furnish to the Buyer a current certificate of insurance for each of the policies required above. Insurance coverage(s) provided under this Purchase Order shall not limit or restrict in any way the liability of the Seller arising under or in connection with this Purchase Order. Such insurance shall not be canceled or terminated without ten (10) days prior written notice to the Buyer of any cancellation or termination.

15. COMPLIANCE WITH LAWS: In the performance of this Purchase Order, unless exempt, the Seller shall comply with all applicable federal, state, and/or local laws, regulations, rules, and ordinances.

16. CHEMICAL SUBSTANCE IDENTIFICATION: By acceptance of this Purchase Order, the Seller certifies that any chemical substance(s) furnished pursuant to this Purchase Order has been properly labeled, and that proper information on the substance(s), e.g., Material Safety Data Sheets, have been provided to the Buyer, pursuant to all federal, state, and/or local laws, regulations, rules, and ordinances.

17. TERMINATION: The Buyer, by written notice, may terminate this Purchase Order, in whole or in part. In the event that this Purchase Order is terminated as a result of the Seller's default, the Seller shall be

liable for all damages allowed in law or equity, including the Buyer's excess cost of procuring similar items. If this Purchase Order is terminated for the convenience of the Buyer, the Buyer shall compensate the Seller for those goods and/or services that the Buyer has accepted and actually received prior to the effective date of termination. Except as stated in the immediately preceding sentence, the Buyer shall not be liable to the Seller for any damages on account of its failure to accept all of the items ordered.

18. CONFIDENTIALITY/TRADE SECRETS: All specifications, data, and other information furnished by the Buyer or its agents to the Seller in connection with this order (collectively, "information") remain the exclusive intellectual property of the Buyer and shall be treated by the Seller as proprietary. The Seller shall not disclose or use such information outside the limitation of this Purchase Order without prior written approval of the Buyer. In addition, the purchase of the Seller's product does not authorize the Seller to use the name of or refer to the Buyer for any purpose in any releases for public or private dissemination, nor shall the Seller divulge or use in any advertisement or publication any information pertaining to or relating to this usage without prior written approval of the Buyer.