

Any purchase order ("Purchase Order") submitted by Kinetic Systems, Inc., Kinetics Process Systems Asia Pte. Ltd. (Singapore), Kinetic Systems Malaysia Sdn. Bhd. (Malaysia) and their subsidiaries (the applicable entity is referred to herein as "Kinetics") to Seller ("Seller") shall be governed by the terms and conditions set forth herein.

ARTICLE 1.0: TERMS OF ACCEPTANCE

1.1 The terms and conditions contained herein supersede all other terms and conditions and all other previous commitments, verbal or written. Seller's written acceptance, or the initiation of performance by Seller, shall constitute acceptance of this Purchase Order. Acceptance by Seller of any Purchase Order is expressly limited to the terms and conditions of this agreement ("Agreement"). No terms or conditions stated by Seller, either verbally or in any invoice or document acknowledging or otherwise accepting this Purchase Order shall be binding upon Kinetics unless specifically agreed to by Kinetics in writing.

ARTICLE 2.0: SHIPMENTS

2.1 Seller shall ship goods via the method specified by Kinetics. Seller acknowledges regardless of the method of shipment, Seller shall be responsible for the timely delivery of products and agrees to use all commercially reasonable efforts to avoid delays in shipment.

2.2 Seller shall be responsible for appropriate packing and protection of the goods to adequately assure safe transit to the destination, and further to assure safe unloading practices at the shipment destination. No charge for packing, loading, protecting or shipping will be allowed unless expressly agreed to by Kinetics. Further, Kinetics reserves the right to refuse any load being transported that does not, in Kinetics' sole opinion, meet standards of best practices for loading and unloading of material. Examples of refusal scenarios relating specifically to heavy and large bore pipe include, but are not limited to:

- No piping deliveries will be accepted on the project site if the dunnage is not notched to accommodate the size of the pipe AND chocked by wedges on BOTH sides of the piping;
- Lumber used to separate horizontal piping is required to be adequate in length to be securely attached to the dunnage the piping is being transported on;
- Larger diameter piping (24" diameter and larger) requiring two pipes to a tier will only be loaded two tiers high or the load will be refused;
- Pyramid any load by placing the bottom two pipes as far apart as possible and the top two as close together as possible to prevent dunnage from cantilevering;
- Each tier of piping is required to be bound separately to the trailer.
- Drivers of piping deliveries are not to loosen or remove the tie-down straps prior to the pipe being rigged for removal by a crew.

Seller guarantees that any shipment will be transported in accordance with local, state, federal and OSHA standards.

2.3 Kinetics has implemented certain procedures for procurement and acceptance of stainless steel for process piping installations. These procedures include having Mill Test Reports (MTRs) and Certificates of Compliance (Certs) included with all shipments at time of delivery. Additionally, all material must be properly cleaned, packaged and shipped according to Kinetics' purchase order instructions. All fittings shall be individually capped and bagged. Pipe and tube shall also be capped and bagged or sleeved. Pipe and tube sent via common carrier must be enclosed in wooden crates. Cardboard boxes for pipe and tube shall only be accepted when delivered by Seller's own fleet. All material must have markings indicating the type of stainless steel (316, 316L, etc.) along with the heat numbers either stamped or etched. Sulfur content for all tube, fittings and valves must be between .005% - .017%, excluding tri-clamp ends. Any material that does not adhere to the above criteria will be returned to the Seller at Seller's expense.

ARTICLE 3.0: PAYMENT

3.1 Seller shall submit properly documented invoices for payment. To the fullest extent permitted by law, payment terms shall be sixty (60) calendar days after Kinetics' receipt of a properly documented invoice or seven (7) days after receipt of payment from Owner or General Contractor for Seller's products or services, whichever occurs later. Where Owner or General Contractor has withheld or failed to make any payment(s), a portion of which arose from or was based on compensation for Seller's products or services, Kinetics' obligation to make payment to Seller shall be temporarily suspended while Kinetics undertakes reasonable efforts to collect such payment(s). Such collection efforts shall include negotiation, mediation, arbitration and/or litigation, appeal and enforcement of judgment, and no funds relating to Seller's portion of payment shall be due or payable until all such collection efforts have been exhausted. Kinetics shall not pay or be liable for any late charges of any sort or kind.

3.2 All invoices must be itemized and identified with the Purchase Order number and with specific Purchase Order item numbers, freight, taxes, and other similar charges. Failure to reference Purchase Order number on all invoices and correspondence will delay payment.

3.3 Payment will be made by Kinetics only for goods accepted and that conform to the requirements of the Purchase Order.

3.4 If required by Kinetics, an amount of up to ten percent (10%) of the total value of the goods or services furnished may be held as retention until Kinetics and Kinetics' customers are reasonably satisfied that all conditions and obligations of the Purchase Order have been met. Kinetics, in accordance with Article 3.4 hereof, will make payment in the amount of ninety percent (90%) of the value established under this purchase order to Seller as set forth otherwise herein less a ten percent (10%) rate of retention. At any time following fifty percent (50%) of the overall completion of the project, a reduction in retention from ten percent (10%) to five percent (5%) may be allowed under this Agreement at the sole discretion of Kinetics. In no event will any retention reduction be considered if 1) in the sole or joint opinion of Kinetics and/or Owner, there is adequate cause or reason, based on default or the likely potential therefore of Seller hereunder or 2) Kinetics is not allowed the identical rate of reduction under the agreement with its client.

3.5 All Seller invoices shall be subject to adjustment for errors, shortages, defects in the goods, or other failure of the Seller to meet the requirements of the Purchase Order. Kinetics may withhold from future payment such amounts that are proper to affect such adjustments.

3.6 If requested by Kinetics, Seller agrees to furnish lien waivers and acceptable proof of payment for all labor and material as a condition of Kinetics' payment obligation.

ARTICLE 4.0: CHANGES

4.1 Kinetics shall have the right to make changes to specifications, drawings, or other documents defining the scope of this Purchase Order. If any such change shall cause an increase or decrease in the price set forth in the Purchase Order, or in the time required for performance, or to any other provision of this Purchase Order, an equitable adjustment will be negotiated in good faith. Seller shall continue to proceed with the Purchase Order as changed while any adjustments to price or other provisions are being negotiated.

4.2 Seller's claim for adjustment under this provision must be submitted to Kinetics in writing no later than ten (10) days from the date of receipt by the Seller of the change notification and failure on the part of the Seller to do so shall constitute a waiver of such claim.

ARTICLE 5.0: SHIPPING DELAYS

5.1 Time is of the essence in this Agreement and every provision term and condition hereof. Seller agrees to furnish prompt written notice to Kinetics of all projected or actual shipping delays. Said notice shall state the reason or reasons for the delay and the actions, if any, undertaken by Seller to avoid and/or limit or contain such projected or actual delay. Acceptance by Kinetics of late performance hereunder shall not constitute a waiver of this provision. Seller shall be liable to Kinetics for any damages incurred by Kinetics due to Seller delays, including liquidated and other damages that may be assessed by the General Contractor or Owner against Kinetics due to Seller delays.

ARTICLE 6.0: TITLE AND RISK OF LOSS

6.1 Title to the goods shall pass to Kinetics upon Seller's delivery of the goods to the shipment destination.

6.2 Notwithstanding the foregoing, risk of loss or damage to items covered by this Purchase Order shall remain with Seller until Kinetics acceptance of the goods at the destination specified by Kinetics. The risk of loss or damage to goods which fail to conform to the Purchase Order shall remain with Seller until cured.

ARTICLE 7.0: TERMINATION FOR CONVENIENCE

7.1 Kinetics may terminate any Purchase Order in whole or in part at any time for convenience and will reimburse the Seller for only those reasonable, substantiated, and necessary costs incurred directly in the performance of this Purchase Order to the date of termination. Kinetics shall not be liable for any consequential or indirect damages arising out of cancellation by Kinetics.

7.2 All finished goods, raw materials, design, plans and work in process that relates to this Purchase Order shall become the property of Kinetics upon payment following a termination for convenience.

7.3 Kinetics shall have the right to return any or all materials under this Purchase Order to Seller as a whole or partial termination for convenience of this Agreement. Kinetics sole liability resulting from such return shall be the cost of shipping or delivering such goods, materials and or equipment to Seller unless such materials are rejected for non-conformance or for late delivery, which will result in Seller being responsible for shipping or delivery costs. Seller hereby agrees to waive any and all restocking fees related to return of any goods, materials or equipment under this Agreement and specifically agrees that this paragraph cannot be modified unless done so in writing and signed by both parties affirmatively modifying this paragraph.

7.4 In no event shall Kinetics' obligations to Seller, as a consequence of termination under this Article 7.0, exceed the aggregate purchase price of the items so terminated. Upon payment, Kinetics shall have no further obligation to Seller for the applicable Purchase Order. Further, Kinetics shall not be liable for restocking fees under this Agreement no matter how the same was caused.

ARTICLE 8.0: TERMINATION FOR CAUSE

8.1 If Seller delays shipment of the goods covered by this Purchase Order or fails to satisfactorily respond to Kinetics' request for delivery assurances, repudiates this Purchase Order or otherwise materially breaches any other provision of this agreement, or in the event of any proceeding by or against Seller in bankruptcy or insolvency or for appointment of a receiver or trustee or an assignment for the benefit of creditors, Kinetics may, in addition to any other right or remedy provided herein or by law, terminate all or any part of this Purchase Order without incurring any liability on account of such termination.

8.2 In the event that Kinetics terminates this Purchase Order in whole or in part as provided in this Article 8.0, Kinetics may purchase from others, upon such terms and in such manner as Kinetics may deem appropriate, similar goods to those so terminated. Seller shall be liable to Kinetics for any excess costs incurred by Kinetics in procuring substitute goods.

8.3 Any unearned progress payments made to Seller by Kinetics shall be returned to Kinetics promptly following Seller's receipt of notice of termination pursuant to this Article 8.0.

ARTICLE 9.0: REGULATORY COMPLIANCE AND RECALLS

9.1 Seller represents that all goods delivered to Kinetics shall be manufactured and sold in compliance with all applicable federal, state and municipal laws, rules, codes and regulations.

9.2 In the event the product sold does not conform to the standards, codes and/or regulations of any applicable law or Kinetics' specifications, Kinetics may return the product for either correction or replacement at Seller's expense. Any penalties assessed against Kinetics resulting from an alleged violation of Seller's failure to comply with the applicable laws and regulations shall be Seller's sole responsibility and Seller shall indemnify Kinetics from the same.

9.3 Seller shall promptly notify Buyer in writing of (i) any defects in the materials provided by Seller that Seller becomes aware of; (ii) any product recall suggested or required by any governmental authority, (iii) any voluntary product recall, and (iv) any notices from any governmental authority relating to product recalls and/or defects concerning safety. The notice shall be sent to Seller's Procurement Manager via email and via regular mail to 48400 Fremont Blvd., Fremont, CA 94538. Seller shall correct as soon as possible problems or other issues which result in recalls or defects. Seller shall be responsible for the costs of making any changes to products required in connection therewith. This provision shall survive the cancellation, termination or completion of this Purchase Order.

ARTICLE 10.0: EXPEDITING – CORRESPONDENCE

10.1 Kinetics has the right and option to expedite this Purchase Order. Seller agrees to fully cooperate with Kinetics' expediting effort and to keep Kinetics informed of its progress, including projected shipment status and the costs of expediting, if any. Seller's claim for price adjustment related to expediting must be submitted to Kinetics in writing no later than ten (10) days from the date Kinetics requests the Purchase Order be expedited and failure on the part of the Seller to do so shall constitute a waiver of such claim.

ARTICLE 11.0: KINETICS' RIGHT TO INSPECT – ACCEPTANCE

11.1 Kinetics shall have the right to inspect and test all goods or work to the extent practicable and at all times and places, including the Seller's premises, subject to Kinetics giving reasonable advance notice to Seller. Kinetics' right to inspect and test the goods or work shall extend through the manufacturing process, the time of shipment, and for a time period of not less than sixty (60) calendar days after arrival at the destination.

11.2 Kinetics' inspection or participation in any tests (or the failure of Kinetics to inspect or test) and payment by Kinetics shall not act to relieve Seller of any of its obligations to conform to all of the requirements under this Purchase Order or impair Kinetics' right to reject or revoke acceptance of non-conforming goods.

11.3 Final acceptance of the goods by the Kinetics shall take place upon the successful start-up and operation of the equipment at the site of installation.

ARTICLE 12.0: GUARANTEES AND WARRANTIES

- 12.1 In addition to warranties provided by law, Seller expressly guarantees and warrants all goods to be free from defects in materials and workmanship and all goods to conform strictly to specifications, drawings and approved samples, if any, and to be new and of the most suitable grade and to meet or exceed all performance criteria set forth in the Purchase Order and related documents. Seller further guarantees and warrants that Seller has good title to all goods furnished under this Purchase Order, free and clear of all liens, claims, security interests or encumbrances. All guarantees and warranties shall run to Kinetics, its successors, assigns and customers. All guarantees and warranties shall survive inspection, test, acceptance, and payment by Kinetics. In the event of a breach of this section, Kinetics may either return for credit or require prompt correction, repair, or replacement of the defective or nonconforming goods. All costs, including shipping, travel, removal and installation costs incurred in connection with the goods to be replaced or repaired shall be borne by Seller.
- 12.2 All Seller inspections, service, repairs or corrective work resulting from Seller-furnished defective or nonconforming goods or the replacement thereof shall be performed by Seller promptly and at the Seller's expense and at the convenience of the Kinetics and/or the Kinetics' customers.
- 12.3 Kinetics may, at Seller's expense, repair defects in Seller's equipment or procure replacement goods if Seller fails to promptly proceed with repair, correction or replacement of defective goods. Kinetics shall be entitled to deduct all cost for the foregoing repairs, corrections, or replacement from any amounts owed to Seller. If the amount to repair such defects exceeds the remaining balance or amount owed to Seller under the purchase order, Seller shall promptly pay Kinetics for the difference. Seller shall not be relieved of any obligations it may have to Kinetics due to Kinetics' actions under this Paragraph 12.3.
- 12.4 Kinetics' inspection and/or approval of Seller's drawings and/or inspection of goods by Kinetics shall not relieve Seller of any of its responsibilities under this Purchase Order nor shall same relieve Seller of its obligation to repair, correct or replace defective goods as set forth in this Article 12.0.

ARTICLE 13.0: DURATION OF GUARANTEES WARRANTIES

- 13.1 Any guarantee or warranty provided by Seller for orders placed in the United States shall be valid for a period of not less than the later of: eighteen (18) months from date of shipment of the goods or twelve (12) months from date of installation of the goods at the relevant facility. For orders placed in Asia, unless otherwise agreed, the warranty shall be valid for a period of not less than twenty four (24) months from the manufacturing date code of the products or the date of delivery, whichever is later.
- 13.2 All goods repaired, corrected, or replaced under the provisions of Article 12.0 shall be subject to the same guarantee and warranty provisions for the remainder of the original guarantee and warranty period or for a minimum period of twelve (12) months from the date of Kinetics' or Kinetics' customers' acceptance of the repaired, corrected, or replaced goods, whichever period is longer.

ARTICLE 14.0: PATENT INFRINGEMENT

- 14.1 Seller agrees to indemnify Kinetics and Kinetics' customers and hold them harmless from and against all liability, loss, damage and expense, including actual counsel fees, resulting from any actual or claimed trademark, patent or copyright infringement with respect to any part of the goods covered by this Purchase Order or their use, and such obligation shall survive acceptance of the goods and payment therefore by the Kinetics.
- 14.2 In addition to any indemnification as provided herein, if by virtue of a patent infringement suit, an injunction is issued against Seller, Kinetics, or Kinetics' customers that prohibits or limits the use of any items provided by Seller, Seller shall, at Kinetics' request, either a) immediately supply Kinetics and/or Kinetics' customers with non-infringing replacement goods of similar kind and quality at no additional cost or b) procure for Kinetics and/or Kinetics' customers a license to use infringing goods at no additional cost to Kinetics and/or Kinetics' customers, or c) modify the infringing goods to make them substantially equal but non-infringing, all at no additional cost to Kinetics and/or Kinetics' customers.

ARTICLE 15.0: USE OF KINETICS' DATA

- 15.1 Without Kinetics' written consent, Seller shall not disclose any drawings, plans, specifications, confidential information, know-how, discoveries, production methods and the like ("Technical Information") furnished to Seller by Kinetics, or on Kinetics' behalf, to any person other than personnel of Seller directly concerned with the manufacture of said articles and suppliers of goods required by Seller in the performance of this Purchase Order. Seller shall take reasonable precautions against any such Technical Information being acquired by unauthorized persons and shall not employ any such Technical Information for its own use or any purpose whatsoever except in the performance of this Purchase Order. Kinetics shall retain title to all such Technical Information and Seller shall, at Kinetics' request or upon completion of this Purchase Order, return or deliver all such Technical Information to Kinetics. Technical Information shall not include information that is generally published or lawfully available to Seller from other sources or which was known to Seller prior to disclosure to Seller by Kinetics or on Kinetics' behalf. Seller may not use Kinetics' name or trademark without Kinetics' approval in writing.

ARTICLE 16.0: INDEMNIFICATION

- 16.1 To the fullest extent permitted by law, Seller agrees to defend, indemnify and hold harmless Owner, General Contractor and Kinetics, and their agents, employees, successors and assigns, from and against any and all claims, actions, suits, orders, costs, fines, penalties, injuries, damages, losses, attorney and consulting fees, expenses and liabilities of any kind, arising out of or alleged to arise out of or related to the goods provided or the services performed by Seller under this Purchase Order, including, but not limited to, all losses, claims, expenses and damages, either to person or property or from death of any persons, which result from or arise out of any act or omission on the part of the Seller, its agents, employees, or subcontractors. Seller shall at all times maintain sufficient liability, property damage, and employee liability insurance to protect Kinetics and Kinetics' customers and shall supply, upon request of Kinetics, certificates satisfactory to Kinetics evidencing such coverage.
- 16.2 Seller shall promptly pay all its wages and bills for labor and materials used in, or specifically fabricated for, the prosecution of this Purchase Order. Seller agrees to indemnify and hold Kinetics and Kinetics' customers harmless from any and all claims, liens, judgments, damages, expenses and costs (including court costs and attorney's fees) incurred as a result of Seller's failure to pay such wages and bills.

ARTICLE 17.0: LIEN WAIVER AND LIABILITY LIMITATION

- 17.1 If requested by Kinetics, Seller shall promptly deliver to Kinetics a satisfactory release of all liens.

17.2 Under no circumstances shall Kinetics be liable to Seller for consequential or indirect damages of any kind under this Purchase Order.

ARTICLE 18.0: AUDIT RIGHTS

- 18.1 Kinetics may inspect and review any and all books, records and information of Seller relating to the goods or services provided hereunder. Seller shall maintain the books, records and information relating this Purchase Order for a period of three (3) years after delivery of the goods.

ARTICLE 19.0: DISPUTES

- 19.1 Any controversy or claim between the parties hereto shall be noticed in writing by the complaining party and such controversy or claims shall not cause the Seller to interrupt or slow its fulfillment of obligations related to this Purchase Order. Such controversy or claim shall subsequently be reviewed and discussed between Seller and Kinetics as a condition precedent to the initiation of any legal proceeding. In the event litigation or an alternative dispute resolution process is necessary to enforce a provision or provisions of this Agreement, the prevailing party shall be entitled to recover all costs, expenses and attorney's fees reasonably expended in enforcing such provision or provisions.

ARTICLE 20.0: ASSIGNMENT

- 20.1 Seller shall not assign this Purchase Order or any part thereof, without the prior written consent of Kinetics. Seller shall require that no assignee divulge any information concerning this Purchase Order except to those persons necessarily concerned with the transaction.

ARTICLE 21.0 SPARE PARTS

- 21.1 Unless otherwise agreed, Seller is obliged to deliver spare parts for the period of the prospective service life, but at least 5 years after delivery at appropriate conditions. Should the production of spare parts be terminated, Seller is obliged to provide Kinetics with the opportunity to place a final order and/or to hand over all equipment and documents free of charge necessary to produce the spare parts.

ARTICLE 22.0 EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER; CODE OF CONDUCT

- 22.1 Kinetics is an equal opportunity employer and federal contractor. Consequently, the parties agree that, to the extent applicable, they will comply with the following, which are incorporated herein by reference: 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), 41 CFR 60-741.5(a), and Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws. **Kinetics and Seller shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and protected veterans.**

- 22.2 Seller acknowledges that Kinetics has a Code of Conduct that may be viewed at www.Kinetics.net. A copy will be made available to Seller upon request. The Seller shall comply with the requirements of Kinetics' Code of Conduct and maintain a consistently high standard of integrity in all its business relationships with Kinetics as well as foster the highest possible standards of professional competence in all its activities. To this end, in supplying goods to Kinetics and/or in performing any services, Seller shall not take any action that violates Kinetics' Code of Conduct. Further, Seller acknowledges that no employee of Kinetics is authorized to propose to Seller or approve conduct which is inconsistent with Kinetics' Code of Conduct. Without prejudice to other rights Kinetics may have, Kinetics may terminate this Purchase Order without any liability whatsoever if Seller is in material breach of Kinetics' Code of Conduct or fails to remedy any breach after written notification of breach by Kinetics.

ARTICLE 23.0: WAIVER

- 23.1 Failure of Kinetics to insist upon strict performance of any of the terms and conditions of this Purchase Order, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Purchase Order shall not be construed as thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred. All rights and remedies reserved under the terms and conditions hereof shall be cumulative and in addition to any further rights and remedies provided in law or equity.

ARTICLE 24.0. FAILURE TO PERFORM.

- 24.1 If Seller is guilty of material breach of any provision of this Purchase Order, Seller shall be deemed in default. If Seller fails to commence and continue satisfactory correction of such default with diligence and promptness within three (3) working days after written notification, then Kinetics, without prejudice to any rights or remedies, shall have the right to correct the default or breach, including the right to obtain the goods or services from another vendor, at Seller's expense. In the case of an emergency, Kinetics may immediately proceed to cure any default by Seller.
- 24.2 Seller shall be liable to Kinetics for all costs, damages and expenses, including reasonable overhead, profit and attorney's fees, related to Seller's failure to perform and/or Contractor's corrective measures related thereto.

- 24.3 Kinetics may deduct or set off from any amounts due or to become due Seller, any sum owing by Seller to Contractor under this or any other agreement. Seller shall be liable for the payment of any amount due Kinetics that exceeds any deduct or set off available to Kinetics under this Agreement.

ARTICLE 25.0: GOVERNING LAW AND SEVERABILITY

- 25.1 This Agreement shall be governed by the law of the jurisdiction where the goods are delivered. If any provision herein, or the application thereof to any person or circumstance, is invalid, the invalidity shall not affect any other provision or application of this Purchase Order which can be given effect without the invalid provision or application, and to this end, the provisions of this Purchase Order are severable.

ARTICLE 26.0: COMPLETE AGREEMENT

- 26.1 This Purchase Order contains the complete and entire Agreement between the parties hereto and supersedes any previous communications, representations or agreements, whether verbal or written, with respect to the subject matter hereof. **NO CHANGE, ADDITION, OR MODIFICATION OF ANY OF THE TERMS OR CONDITIONS HEREOF SHALL BE VALID OR BINDING ON EITHER PARTY UNLESS IN WRITING SIGNED BY AN OFFICER OR DESIGNATED REPRESENTATIVE OF KINETICS.**