

## 2018 Terms and Conditions of Sale – Revision C

### 1. ACCEPTANCE

Orders or other requests, whether oral or written, for machinery or equipment (Equipment), or the supply or sale of spare or replacement parts (Parts) or for services (Services) to be provided by Elgin Separation Solutions (d.b.a. as noted in Section 13) on behalf of itself and its divisions and subsidiaries (Seller) to its customers (each a Buyer) are subject to Seller written acceptance by an authorized representative of Seller and any orders so accepted will be governed by (i) the terms and conditions stated in these Terms and Conditions for provision of Equipment, Parts or Services (Terms and Conditions), (ii) the written proposal submitted by Seller to Buyer (Proposal), if any, (iii) the written order acknowledgment issued by Seller to Buyer (Acknowledgment), if any (iv) any change orders identified as such and agreed to in writing by Seller (the Order, Terms and Conditions, Proposal, Acknowledgment, and any such change order, and any such additional terms as agreed to in writing by an authorized representative of Seller collectively referred to herein as Agreement. Buyers submission of a purchase order (or other similar document) shall be deemed to be an express acceptance of these Terms and Conditions notwithstanding language in Buyers purchase order (or other similar document) inconsistent herewith, and any inconsistent language in Buyers purchase order (or other similar document) is hereby rejected. Buyers purchase order (or other similar document) is incorporated in this Agreement, only to the extent of specifying the nature and description of the Equipment, Parts or Services and then only to the extent consistent with the Proposal or Acknowledgment. In the event of any conflict between a Proposal and an Acknowledgment, the Acknowledgment shall prevail.

### 2. PRICES

Prices of Equipment, Parts or Services shall be as stated in the Proposal or Acknowledgment, or if there is no Proposal or Acknowledgment, as otherwise agreed to in writing by Seller. All price quotations are Ex-works (INCOTERMS 2000) Seller's premises or as agreed per quote and are subject to change without notice. All sales, use, import, excise and like taxes, whether foreign or domestic, shall be charged to and borne by Buyer. Seller bears no responsibility for any consular fees for legalizing invoices, certificates of origin, stamping bills of lading, or other charges required by the laws of any country of destination, or any fines imposed due to incorrect declarations. Charges will be added for factory preparation and packaging for shipment. Minimum freight and invoice charges apply, as in effect at the time of order. If by reason of any act of government, the cost to Seller of performing its obligations hereunder is increased, such increase shall be added to the quoted price.

### 3. PAYMENT TERMS

Unless alternate payment terms are specified or approved by Seller's credit department, all charges, including applicable packing and transportation costs, billed by Seller are payable prior to delivery. Seller reserves the right to modify or withdraw credit terms at any time without notice. Unless otherwise specified all payments are due in the currency specified in Seller's Proposal, Acknowledgment and/or invoice. Interest shall be due from Buyer to Seller on overdue accounts at the maximum rate allowed by law. When partial shipments are made, the goods will be invoiced as shipped and each month's invoices will be treated as a separate account and be payable accordingly. Payment for goods is due, whether or not technical documentation and/or any third-party certifications are complete at the time of shipment. Seller shall be entitled to recover all reasonable attorney's fees and other costs incurred in the collection of overdue accounts. Seller reserves the right where genuine doubts arise as to Buyers financial position or if Buyer is in default of any payment, to suspend delivery or performance of any order or any part thereof without liability or without prejudice to and without limitation of any other remedy until Buyer cures the default and payment or satisfactory security for payment has been provided. Seller shall have the option to extend the delivery date by a time at least equal to the period of suspension. Down payments received are non-refundable.

### 4. DELIVERY

Unless otherwise specified on the face hereof, all US and international sales shall be Ex-works Sellers premises (INCOTERMS 2000), as modified by these Terms and Conditions. Where goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery. Partial shipments may be made, as agreed, by Buyer and Seller. Stated delivery dates are approximate only and cannot be guaranteed. Seller shall have no liability for damages arising out of the failure to keep a projected delivery date, irrespective of the length of the delay. In the event Buyer is unable to accept delivery of goods when tendered, Seller may, at its option, arrange storage of the goods and Buyer shall be liable to Seller for the reasonable cost of such storage. This provision is without prejudice to any other rights, which Seller may have with respect to Buyer's failure to take delivery of goods, which includes the right to invoice Buyer for the goods. Buyer agrees that title to the goods will transfer to Buyer upon invoicing notwithstanding Buyer's inability to accept delivery and that Buyer assumes all risk of loss or damage to the goods from the date title passes to Buyer.

### 5. FORCE MAJEURE

If either party is unable by reason of Force Majeure to carry out any of its obligations under this Agreement, other than obligations to pay money, then on such party giving notice and particulars in writing to the other party within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. Force Majeure shall include acts of God, laws and regulations, government action, war, civil disturbance, strikes and labor problems, delays of vendors, carriers, lightening, fire, flood, hurricanes, washout, storm, breakage or accident to equipment or machinery, shortage of raw materials, and any other causes that are not reasonably within the control of the party so affected. Seller shall be paid its applicable standby rate, if any, during any such Force Majeure event.

### 6. CANCELLATION

Orders placed by Buyer and accepted by Seller may be canceled only with the consent of Seller. All of Seller's documents, drawings and like information shall be returned to Seller upon Buyers request for cancellation. Non-stock orders or orders incorporating custom options or customer-defined specifications shall be subjected to a minimum 20% restocking fee.

### 7. TITLE AND RISK OF LOSS

Ownership and risk of loss pass to Buyer upon the earlier of (i) Seller's delivery of the goods to the carrier, or (ii) invoicing by Seller for the goods where Buyer is unable to accept delivery on the scheduled date. Seller retains a security interest in the goods until the purchase price has been paid, and Buyer agrees to perform upon request all acts required to secure Seller's interest. Seller accepts no responsibility for any damage, shortage or loss in transit. Seller will attempt to pack or prepare all shipments so that they will not break, rust or deteriorate in shipment, but does not guarantee against such damage. Claims for any damage, shortage or loss in transit must be made by Buyer on the carrier.

### 8. LIMITED WARRANTY

**New Equipment/Parts.** In the case of the purchase of new Equipment/Parts and solely for the benefit of the original user, Seller warrants, for a period of 15 months from shipment or 12 months from installation, whichever is earlier, that Equipment of its own manufacture shall conform to the material and technical specifications set forth in the relevant scope of work document or purchase order as agreed to in writing by Seller and Buyer. If the Equipment fails to conform with such specifications upon inspection by Seller, Seller at its option and as Buyer's sole remedy, will either repair or replace such defective Equipment with the type originally furnished.

**Remanufactured to "As New" Equipment.** Seller warrants to Buyer, that for a period of twelve months from the date of shipment to Buyer or installation of part (s), whichever is earliest, that reconditioned to "as new" machinery or equipment will be free from defects in material and workmanship.

**Overhauled / Repaired Equipment.** Seller warrants that for a period of four (4) months from the date of shipment or three (3) months from installation, whichever is earliest, that overhauled / repaired equipment will be free from defects in workmanship. This warranty expressly assumes that parts normally considered consumables (including, but not limited to rubber goods, seals (rubber, polymer and/or metallic) and/or bearings, are replaced during overhaul. If Buyer requests that such parts not be replaced, Seller hereby disclaims any warranty for said Equipment or Parts.

**Service.** Seller warrants that the Services to be provided pursuant to this Agreement shall conform to the material aspects of the specifications set forth in the relevant scope of work document as agreed to in writing by Seller and Buyer.

Seller shall re-perform that part of the non-conforming service, provided Seller is notified by Buyer prior to Seller's departure from the worksite. Seller's warranty obligations hereunder shall not apply if the non-conformity was caused by a) Buyer's failure to properly store or maintain the Equipment or Parts; b) unauthorized modifications, repair or service of the Equipment or Parts by Buyer; c) utilization of replacement parts not manufactured by Seller; d) Service provided by Seller on equipment not manufactured by or exclusively serviced by Seller; or e) use or handling of the Equipment or Parts by Buyer in a manner inconsistent with Seller's recommendations. Further Seller's warranty obligations under this Article 8 shall terminate if a) Buyer fails to perform its obligations under this or any other Agreement between the parties; b) Buyer fails to properly maintain purchased goods per Seller's instructions, guidelines, and/or Operations and Maintenance Manuals; c) Buyer fails to maintain purchased equipment per common industrial practices; or d) if Buyer fails to pay any charges due Seller. Any third-party warranties provided on Equipment or Parts not manufactured by Seller are assigned to Buyer, without recourse, at the time of delivery, provided such warranties are assignable.

**THIS ARTICLE 8 SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ONLY OBLIGATION WITH REGARD TO NON-CONFORMING EQUIPMENT, PARTS OR SERVICES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED PURSUANT TO THE PROVISIONS OF THIS ARTICLE 8, SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, AND SELLER DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

### 9. CHANGES

Seller expressly reserves the right to change, discontinue or modify the design and manufacture of its products without obligation to furnish, retrofit or install goods previously or subsequently sold.

### 10. RESTOCKING FEES

Upon Seller's written approval, unused and/or incorrectly shipped or "Made to Stock" goods ordered incorrectly, in new condition and of current manufacture and catalog specifications may be returned by Buyer for credit (subject to a 10% restocking fee), provided written request is received within one month after the purchase date. Non-standard, custom goods, or goods incorporating customer-defined specifications are not returnable for credit, without the consent of the Seller. A 20% minimum restocking fee will apply to all returned non-standard and/or custom goods. Requests for return of goods must show original purchase order number, invoice number, description of material, and date of purchase. Return of goods does not relieve Buyer of the obligation to make payment against Seller's invoice, and any credit or refund allowed will be issued following Seller's receipt of the goods. The credit allowed on returned goods, if any, is a merchandise credit and is applicable only against future purchases of Seller goods. The credit given will be solely in Seller's discretion and may be based on the original or a subsequently adjusted price; a charge will be made to clean-up, refinish and restock. No rubber, electronic products or components, and/or expiration dated products may be returned for credit.

### 11. LIABILITIES, RELEASES AND INDEMNIFICATION

For purpose of this Article 11, the following definitions shall apply: (1) "Seller Group" shall mean (i) Seller, its parent, subsidiary or related companies, (ii) its and their working interest owners, co-lessees, co-owners, partners, joint venturers, if any, and their respective parents, subsidiary or related companies and (iii) the officers, directors, employees, consultants, agents and invitees of all of the foregoing. (2) "Buyer Group" shall mean (i) Buyer, its parent, subsidiary or related companies, (ii) its and their working interest owners, co-lessees, co-owners, partners, joint venturers, if any, and their respective parents, subsidiary or related companies and (iii) the officers, directors, employees, consultants, agents and invitees of all of the foregoing.

### 12. GOVERNING LAW

The Order is made under and shall be governed by the laws of The State of Texas without regard to any principles of conflicts of law which would require the application of the law of another jurisdiction.

### 13. EXPORT COMPLIANCE

By acceptance of these terms and conditions and/or the receipt of the product manufactured, Buyer confirms that the products, commodities, technology, and/or software covered by this sales agreement will not be re-exported, or transhipped in violation of any export regulation of the United States, including but not limited to trade embargos and denied parties lists now in effect. These products, commodities, technology, and/or software were exported from the United States in accordance with the Export Administration Regulations. Diversion, contrary to United States law, is prohibited and is a violation of the sales agreement.

### 14. DOING BUSINESS AS

Elgin Separation Solutions is the registered d.b.a. of the legal entities and affiliates of Centrifugal Services, Inc.; Elgin Equipment Group; KEMTRON Canada, Inc.; KEMTRON Russia, Industrial Process Equipment, Inc.; and KEMTRON Technologies, LLC.