



## TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

**1. CONTRACT.** These terms and conditions, together with the terms set forth in the Purchase Order (collectively, this "Agreement"), (a) constitute the entire contract between the seller / service provider named in the Purchase Order ("Seller") and Kent Environmental, a TMS Environmental LLC Company ("Kent") with respect to the transaction (whether for sale of goods and / or performance of services) described in the Purchase Order, regardless of whether Seller has acknowledged acceptance of the Purchase Order and / or these terms and conditions, and (b) expressly limit Seller's acceptance to the terms of this Agreement. If the Purchase Order is construed as an acceptance or a confirmation acting as an acceptance, then Kent's acceptance is EXPRESSLY CONDITIONAL ON SELLER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN SELLER'S WRITING. Further, if the Purchase Order is construed as the offer, acceptance thereof is EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND KENT HEREBY EXPRESSLY OBJECTS TO ANY ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS; NO SUCH ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS SHALL BE BINDING ON Kent UNLESS AGREED TO IN WRITING BY KENT. Kent's acceptance of Seller's sales confirmation or other writing, or commencement of performance (including payment for goods or services) shall not constitute acceptance of any of Seller's terms and conditions. Any use of Seller's documentation to administer the sale of goods and / or performance of services hereunder shall be for convenience only and all terms and conditions set forth on such documentation shall be null and void and not binding on Kent unless agreed to in writing by Kent. Kent's failure to object to any terms contained in any subsequent communication from Seller will not be a waiver or modification of the terms set forth herein. In any event, Seller's assent to the terms of this Agreement shall be conclusively presumed from Seller's: (a) delivery to Kent of a signed copy of this Agreement (including by facsimile or electronic means); (b) receipt of the Purchase Order without written objection sent to Kent within ten (10) days after receipt of same; (c) procurement, preparation, shipment and / or delivery of any of the goods to be sold hereunder and / or preparation for and or commencement of any of the services to be provided hereunder, in either case, after receipt of the Purchase Order; or (d) acceptance of all or any part of Kent's payment for the goods and / or services ordered.

**2. REPRESENTATIONS & WARRANTIES.** Seller represents and warrants that all goods sold, and / or delivered hereunder (including goods purchased / delivered in the performance of services) shall: (a) be conveyed with good title and free of any liens or encumbrances; (b) be merchantable, new and of first grade quality; (c) be free of defects in design, workmanship and material; (d) be fit for the purposes for which they are purchased; (e) strictly conform with (i) Kent's descriptions and specifications incorporated herein; and (ii) all applicable federal, state and local laws, ordinances, regulations, orders; and (f) be free of hazardous materials, including, without limitation, petroleum products, explosives, radioactive materials, hazardous or toxic substances, PCBs or related or similar materials, asbestos or any material containing asbestos, or any other substance or material that may be defined or listed as a hazardous or toxic substance, or otherwise regulated by any federal, provincial, state or local law, ordinance, rule or regulation, except to the extent that any of the foregoing hazardous materials are known to Kent to be an essential part of the goods. Seller further represents and warrants that all services performed hereunder shall be performed in a skillful and workmanlike manner, with the highest degree of skill and care, in accordance with generally recognized commercial practices and standards for similar services, and in compliance with all federal, state and local laws, ordinances, regulations, and orders. If Seller, its employees, subcontractors, agents, or any other party under Seller's control (collectively, "Seller Parties") will deliver goods and / or perform services hereunder at Kent premises or the premises of a third party as directed by Kent (in either case, the "Kent Site"), Seller represents, warrants, and agrees that Seller shall, and shall cause all Seller Parties to: (x) at all times comply with all federal, state and local laws, ordinances, regulations, orders, and building codes that are applicable to the operation of its business, this Agreement, and its performance hereunder; (y) comply with all rules and regulations (whether of Kent or a third party) of the Kent Site; and (z) keep materials and the Kent Site (including all property and fixtures thereon) free and clear of any liens for material and labor incident to the sale of goods or performance of any services by Seller hereunder. Without limiting the generality of the foregoing, Seller shall, and shall cause all Seller Parties to, at all times, at its own expense, obtain and maintain all certifications, credentials, authorizations, licenses and permits necessary to conduct its business relating to the performance of its obligations under this Agreement. If requested by Kent, Seller shall execute and deliver to Kent a waiver/ release of lien as a condition of payment hereunder. Each of the foregoing representations, warranties, and agreements shall expire twelve (12) months from the later of the date goods sold hereunder are put into service or the date on which services provided hereunder are completed. In the event of a breach of any of the foregoing representations, warranties, or agreements, Seller shall promptly, safely and expeditiously correct such breach by, at the option of Kent, removal, replacement and reinstallation or repair, modification or adjustment of the nonconforming goods or services. Acceptance by Kent of goods or services shall not relieve Seller of any of its warranty obligations hereunder.

**3. PRICING; SHIPPING & DELIVERY; TAXES.** Prices for goods and / or services shall be as set forth on the Purchase Order; the Purchase Order shall not be filled at higher prices than last quoted or charged to Kent, without prior written approval from Kent. All prices are FOB (Kent Site). Unless progress payments are agreed to by Kent, payment of undisputed amounts due hereunder shall be made within forty-five (45) days after receipt of Seller's invoice, provided that Seller's invoice may not be delivered until all goods are delivered and / or services are performed hereunder, and provided further that Seller's invoice must reference the Kent Purchase Order number. Despite any shipping terms or arrangement, Seller shall have risk of loss for all goods shipped until received and accepted by Kent (or its customer, if applicable), at which time title to and risk of loss with respect to the goods shall pass to Kent (or its customer, if applicable). Partial shipments, if agreed to by Kent, shall be identified as such on the shipping memoranda and on invoices, and marked "PARTIAL" for the preliminary shipments and "FINAL" for the completing shipment. The quantity of goods delivered shall not exceed the quantity set forth on the Purchase Order without prior written approval from Kent. There shall be no charges for boxing or crating unless previously authorized in writing by Kent. If the Purchase Order requires Seller to furnish goods or services for a lump sum amount, Seller shall furnish Kent with any analysis of such amount that Kent may reasonably request. Without prejudice to any other right or remedy it may have, Kent reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Kent to Seller under this Agreement or any other contract between the parties or their affiliates. The parties agree that the Seller is responsible for the payment of any sales, use or other taxes, tariffs, or similar charges arising from the sale of goods and / or performance of services pursuant to this Agreement, and that any such taxes are included in the price set forth in the Purchase Order. Seller will reimburse Kent if it pays any such taxes, tariffs or other charges directly to the relevant authorities, including any interest and / or penalties thereon.

**4. INSPECTION & ACCEPTANCE.** All goods and services furnished hereunder are subject to inspection and testing by Kent, and if applicable, its ultimate purchaser. Final payment shall not be due until final inspection and acceptance by Kent at the Kent Site. Kent shall either accept or reject the goods and / or services within thirty (30) days of delivery of such goods and / or completion of such services. Notwithstanding anything herein to the contrary, rejected goods remain Seller's property at Seller's risk and subject to Seller's disposition.

**5. INSURANCE.** For the duration of this Agreement, Seller shall maintain, at its own expense, and shall require its subcontractors, if any, to maintain insurance coverage meeting or exceeding the requirements set forth herein, unless Kent provides other insurance requirements to Seller in connection herewith, in which case such other requirements shall govern.

Policy Type	Limit Type	Minimum Limits	Additional Insured	Waiver of Subrogation
<b>General Liability</b> Must include contractual liability, products, completed operations and vendor's liability and, if subcontractors are employees, contractor's protective liability.	Each Occurrence Aggregate	\$1,000,000 USD \$1,000,000 USD	Yes	Yes
<b>Automobile Liability</b> Must include hired automobiles and non-ownership liability.	Combined Single Limit	\$1,000,000 USD	Yes	Yes
<b>Worker's Compensation Employers Liability</b>	Statutory Requirement Each Accident / Disease Each Employee / Disease	Statutory \$1,000,000 USD \$1,000,000 USD	N/A	Yes
<b>Excess/Umbrella Liability*</b>	Each Occurrence / Aggregate	N/A	Must Follow Form	Must Follow Form

\*Excess Umbrella Liability may be used to supplement other liability policies, in which case it must follow form.

Seller shall furnish certificates evidencing the insurance coverage required hereby satisfactory in form and substance to Kent, naming Kent and its customer for the Kent Site as additional insureds, with a waiver of subrogation, and providing for at least thirty (30) days' prior written notice of cancellation or modification to Kent. The following endorsement verbiage is required on all such certificates: "TMS Environmental LLC (d/b/a Kent Environmental) and its subsidiaries and affiliates and [Kent Customer Name; City, State] are additional insured's and a waiver of subrogation to the benefit of TMS Environmental LLC (d/b/a Kent Environmental) and [Kent Customer Name; City, State] has been provided. Coverage must be primary and non-contributory; excess must follow form." In addition, any Seller delivering fuel, oils, or other liquids, must include an endorsement that the policies provide coverage for cleanup of any spills. It is also required that Kent be named as a certificate holder on the required insurance policies using the following certificate holder language: "TMS Environmental LLC (d/b/a Kent Environmental) c/o American Management Control Systems, PO Box 129, Conway, AZ 72033." Seller further agrees that it shall pay the fees of Kent's third party insurance compliance administrator to ensure compliance with the requirements of this Section.

**7. DISCHARGE & DEFAULT.** If (a) Seller: (i) becomes insolvent; (ii) has a business failure, dissolves or is dissolved; (iii) enters (voluntarily or involuntarily) any bankruptcy, receivership, insolvency or reorganization proceeding; (iv) assigns assets for the benefit of its creditors; or (v) fails to maintain its account with Kent on a current basis; (b) at any time, Kent reasonably believes that Seller may fail to perform any of its obligations under this Agreement for any of the foregoing reasons; or (c) Seller has failed to substantially or timely perform any of its obligations under this Agreement or any other contract with Kent or its affiliates, then Kent may immediately cancel this Agreement without liability to Seller. In case of any default by Seller, Kent may obtain goods and services from other sources and hold Seller responsible for any damages occasioned thereby. Kent may also deduct from the amount due Seller the cost of replacement goods and services. The rights and remedies under this Agreement are cumulative and in addition to, not in substitution for, any other rights and remedies available at law, in equity or otherwise.

**8. INDEMNITY.** Seller agrees to protect, defend, indemnify and save Kent, its parents, subsidiaries and affiliates, and their respective officers, directors, employees, contractors and agents (the "Indemnified Parties"), harmless from and against any and all actions, losses, liabilities, damages, claims, costs (including attorney's fees), charges, expenses, penalties, fines, or demands of any nature that arise out of, relate to or in connection with: (a) any breach of the terms of this Agreement by Seller; (b) any personal injuries (including death) or property damage (including contamination) arising from Seller's performance under this Agreement; (c) any claim by an employee or agent of Seller or any Seller Party for occupational illness due, or allegedly due, to exposure to the products or by-products of Kent's or Kent's customer's manufacturing process, arising out of, incident to, or resulting from, the performance by Seller hereunder; and (d) any claim that the goods sold by Seller hereunder, or the sale or use thereof, infringe any patent, trademark or copyright; in each case, whether or not due to the negligence of any of the Indemnified Parties, except that Seller shall have no liability for damages caused by the sole negligence of any of the Indemnified Parties.

**9. FORCE MAJEURE.** Kent shall not be liable for any delay in or inability to complete performance due to acts of God; pandemic, epidemic; industrial conflicts (including without limitation strikes, lockouts and work interruptions); acts of war, terrorism, civil or military disturbance; new government rules, regulations, suspensions or requisitions of any kind; fires or any other unforeseen events or circumstances not within the reasonable control of Kent, whether similar or dissimilar to any of the foregoing (a "Force Majeure Event"). Kent shall promptly upon learning of a Force Majeure Event give written Notice to the Customer, stating the nature of the force majeure event, its anticipated duration, and all actions being taken to avoid or minimize its effect. If a Force Majeure Event continues for more than ninety (90) days Kent may terminate this Agreement without penalty by providing Notice as described herein.

**10. APPLICABLE LAW; JURISDICTION.** This Agreement and all related documents (including any SOW, purchase order or documents submitted in connection therewith) shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Louisiana (including, without limitation, the Louisiana Uniform Commercial Code), without giving effect to its conflicts of law provisions. All disputes arising directly or indirectly hereunder or in connection herewith shall be resolved in a court of competent jurisdiction sitting in Baton Rouge, Louisiana.

**11. MISCELLANEOUS.** This Agreement may not be modified, altered or waived, either orally, by usage of trade, course of performance or course of dealing. Any change to, deviation from, or waiver of this Agreement shall only be made pursuant to a writing signed by both parties. If any term or provision of this Agreement is declared invalid, illegal or unenforceable in any jurisdiction, (a) the affected provision will be modified to conform to applicable law, if possible, or omitted, and (b) such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. No assignment or sublease of this Agreement shall be made without prior written consent of Kent, which Kent, in its sole discretion, may withhold for any reason. In the event of a conflict between the terms set forth in the Purchase Order and the terms and conditions in this Agreement, the terms set forth in the Purchase Order shall prevail. All notices, consents, claims, waivers and demands under this Agreement (each, a "Notice") shall be in writing, addressed to the applicable party's address set forth on the Purchase Order, and delivered in person or by courier, or sent by internationally recognized overnight express service, or certified or registered mail, return receipt requested. Any such Notice shall become effective upon delivery if delivered in person or by courier, on the date of the delivery receipt if sent by internationally recognized overnight express service or the date of delivery set forth on the return receipt if sent by certified or registered mail, return receipt requested.