

# **KENMARK® TECH SOLUTIONS (KTS) - GENERAL TERMS AND CONDITIONS**

## **DEFINITIONS**

These General Terms and Conditions (hereinafter the "Conditions"), KTS shall mean Kenmark® Tech Solutions, Customer shall mean the party who buys or agrees to buy Goods or Services from the KTS or from a third party in cases where the KTS is acting as an intermediary. Goods shall mean all the articles which the Customer agrees to buy from the KTS; "Services" will include but not limited to, the carrying out of maintenance, overhaul, repair work, reconditioning, whether on board ships or ashore and dry docking. Price shall mean the price for the Goods or Services as set out in the invoice issued by the KTS; "Contract" shall mean the contract for the sale of Goods or supply of Services between the KTS and the Customer.

## **Orders and service contracts**

All quotes, service contracts and orders undertaken by KTS shall be subject to these Conditions. No revisions or changes to these Conditions shall be valid unless confirmed by both parties in writing. KTS shall hold the Customer which either orders the carrying out of any work or the Customer taking delivery (if they are different) as jointly and severally liable for all amounts due to KTS for work undertaken by KTS in accordance herewith. Where KTS has inspected the extent of the work to be undertaken, or the Customer has advised the precise scope of the work, quotations provided by KTS will be on a lump sum basis when so expressly noted. In all other cases, quotations will be approximate only. Unless otherwise expressly stated therein, all quotations shall be valid for only thirty (30) days, and will only be regarded as binding if the Customer has confirmed the order in writing within such period. Any alteration to the work to be carried out by KTS according to a contract, irrespective of whether such alteration is a result of the customer's instructions, or discrepancies between the actual situation and the information given by the customer shall be considered as additional work to which these Conditions will apply and subject to additional charges to be mutually agreed.

Unless a specific price has been agreed upon by the Customer in advance, the charges for work undertaken shall be on the basis of the invoice as calculated by KTS in accordance with the quantum of the work.

If a specific price has been agreed by the parties, any additional work undertaken will be subject calculated in accordance with quantum of the work duly reported by KTS. In the event of work proving less than anticipated, KTS will credit the customer with a corresponding amount of the agreed price.

In addition to the charges for work referred as above, KTS will be entitled to charge the customer for time spent on packing, loading, transportation of tools and other equipment, as well as travel and waiting time for KTS personnel.

In addition, the customer will pay to KTS all administrative costs incurred in connection with the carrying out by KTS of the work agreed by the Customer including but not limited to freight charges, transport, packing, octroi, class and other third party surveys, cranes, travel and hotel accommodation costs and related daily allowance and expenses. KTS charges for the costs referred to in this provision will be in accordance with the quotation submitted by KTS. KTS will levy a surcharge of 15% for the above administrative services wherein we need to use a third party to execute the work on behalf of the Customers and the payment is made by us on their behalf.

Jobs which may have been partly completed will be charged on the basis of time spent and material used.

Unless otherwise expressly stated, all prices quoted and / or agreed by KTS for delivery of equipment, machinery, spare parts etc. are net prices exclusive of all taxes and duties delivered ex-KTS workshop or from the suppliers. KTS will have the option of not accepting the order if only part of the order is confirmed by the Customer. If the Customer desires the job may be quoted again with the revised prices. Used materials, replaced or exchanged parts and tools and equipment manufactured by KTS for the carrying out of particular contract or any work will become the property of KTS free of charge unless otherwise agreed.

## **Payments and KTS Liability**

While work is being carried out, KTS shall, at its option be entitled to require the customer to make an on account payment of the full amount agreed by the party in respect of cost agreed by the customer. Payment for work carried out or products delivered by KTS together with costs and expenses shall be made by the customer by cheque at the time of delivery of components, advance payments or as stated in the quotation from the date of the invoice from KTS and without any deduction except for the applicable TDS as agreed between the two parties.

The Ship Owners & Ship Managers are wholly responsible for the payment towards the services rendered, Spares & Equipments supplied.

KTS are entitled to have interest on all late payments of 28.33% or as decided by MSME from time to time, part of month to be considered as a whole month, and to have judicial costs and other Costs for the collection of outstanding amounts agreed by the customer for the services rendered.

Comments or remarks which the customer might have with regard to the invoice presented by KTS, must validly be made seven (7) days from receipt of the invoice otherwise the customer will be regarded as having agreed to the invoice.

KTS have the right of retention of the customer's property in KTS workshop or otherwise in the possession of KTS, until the customer has settled all KTS claim in full.

All the items supplied by KTS remain the property of KTS till the payment against the invoice is affected. Unless payment is made in accordance with these conditions, KTS has the right to sell such property at its discretion in order to recover its claim.

KTS has the right to sell goods repaired which have not been collected within three months after the customer has been notified that the goods are ready for collection. KTS is entitled to charge for storage of goods, which are not collected by the customer within a reasonable time namely not later than (1) month after KTS has notified the customer that the goods shall be collected. KTS shall have the right to start proceedings to attach the property of the customer in order to secure payment of outstanding amounts.

KTS has the right of refusal to any warranty claims if the payments are not made in full at the time of receiving the warranty claim.

## **Accounting practice**

Accounting practice for imports/overseas sales etc.

1. Currency rate to be taken on the date of AWB, BL or delivery to client.

2. Final amounts are subject to revision in accordance with currency rates applicable as per the date fixed above.

## **Service related Supervision and KTS Warranty**

All work carried out by KTS is effected under the supervision and authority of the customer.

The customer undertakes to give KTS all necessary assistance for the carrying out of the contractual work.

KTS will ensure that the suitable technical manpower and reliable equipment will be used for the contract work. KTS will give the customer a SIX (6) calendar month's warranty on machinery, equipment, spare parts, etc. delivered by KTS, covering only defects arising out of bad Workmanship or use of faulty material in the products delivered.

Overhauling of Equipment is a general term and is restricted to specific work to be carried out and not a strip down overhaul of the equipment. For Engines KTS tariff rates are for Top overhaul, Complete Overhaul (bottom), Major Overhaul and Crank renewal. (Scope of work can be ascertained before awarding contract)

KTS liability under this guarantee is limited to an obligation, at KTS discretion, to repair the defective part of the products supplied on ex-works basis.

## **Service related Liability**

KTS is not liable for any claim, loss, and expenses or damage direct or indirect and any consequential damage howsoever arising in connection with the work carried out.

If KTS is found liable for damage in connection with the execution of a contract as against third parties against whom KTS cannot invoke these Conditions, the customer undertakes to indemnify and hold harmless KTS in respect of all liability including product liability to third parties. KTS shall not be liable for any damages arising from force majeure, understood as all Circumstances beyond the control of KTS irrespective of whether the circumstances were foreseeable or not, which prevent, permanently or temporarily, the successful fulfillment of the contract, including but not limited to strikes, lock-outs, war, want of transport facilities and failure by sub-contractors. The customer shall notify KTS immediately upon knowledge thereof, in writing, of any and all damage allegedly caused by KTS and any claim, which relates thereto, must be presented to KTS in writing, not later than one month from the date the contractual work was terminated or should have been terminated.

If the customer fails to comply with the above mentioned, KTS shall be relieved from all liability.

## **Communication**

The contracts / Purchase orders, query, job and all communication related to the job, entered between the Customers / suppliers and KTS by means of email shall be binding in all respects to all parties in absence of any hard copies.

## **Cancellation of service contracts and orders for equipments or parts**

In case the customer cancels a contract, KTS is entitled to debit the customer for the time spent and costs incurred. Orders placed for equipments or parts can not be cancelled since the processing commences on receipt of the order.

In case the execution of the contractual work has been hindered by force majeure, as specified in the Clause above, for more than two (2) weeks, either of the parties is entitled to cancel the contract. In case of cancellation for such reasons, neither of the parties shall be entitled to damages, but KTS shall always have the right to compensation, as mentioned under Clause above.

## **Law and Jurisdiction**

These conditions shall be governed by the law in force in India and the civil court of Mumbai shall have jurisdiction to hear all disputes.

Date 31 March 2015