

TERMS AND CONDITIONS OF SALE

Komet of America, Inc., 2050 Mitchell Blvd., Schaumburg, Illinois 60193-4544

1. **Offer and Contract.** Acceptance by KOMET of Buyer's order is expressly made conditional on assent to these Terms and Conditions, either by written acknowledgement or by conduct of Buyer that recognizes the existence of the contract with respect to Products described on this acknowledgement form. These Terms and Conditions also serve as notice of KOMET's objection to and rejection of any Terms and Conditions of purchase or sale included in Buyer's purchase order or other writing that are different from or additional to these Terms and Conditions.

2. **Prices and Taxes.** All prices are F.O.B. Schaumburg, Illinois unless otherwise agreed by Buyer and KOMET in writing. Buyer agrees to pay all present and future U.S. federal, state and local tax obligations, including but not limited to sales, use and excise taxes. If Buyer claims that the Products are exempt from any particular tax, Buyer must provide KOMET with a tax exemption certificate acceptable to the tax authorities.

3. **Cancellation Charges.** No cancellations or changes of any kind in the purchase order shall be effective unless agreed to in writing by KOMET. All changes are accepted subject to adjustment in prices and delivery dates. All cancellations are accepted subject to cancellation charges which will be determined by KOMET and will reflect, among other factors, the expenses already incurred and commitments made by KOMET, sales and administrative overhead, and profits. KOMET shall have the absolute right to cancel the order upon (i) material breach of any of these Terms and Conditions by Buyer, or (ii) failure by Buyer to make any payment or (iii) insolvency of Buyer, the filing of a voluntary petition in bankruptcy by Buyer, the filing of an involuntary petition to have the Buyer declared bankrupt, the appointment of a receiver or trustee for Buyer, the execution by Buyer of an assignment for the benefit of creditors, or (iv) the discontinuance of business by Buyer or the sale by Buyer of the bulk of its assets other than in the usual course of business. Upon cancellation, KOMET shall be entitled to a cancellation charge as described above.

4. **Shipments**

a. **Freight Allowance:** All shipments are KOMET's shipping point. No allowances are given for freight. Special shipping charges (airfreight or trucking) will be sent freight collect. Whenever possible all shipments will be made via regular FED EX unless otherwise specified with your purchase order.

b. **Claims:** Since the title and right of possession passes to the customer upon delivery to the carrier, claims for damaged or lost shipments must be made to the carrier. Discrepancies in shipments must be reported to the KOMET Customer Service Department within five (5) working days from receipt of products.

e. **Insurance:** KOMET takes no responsibility for insuring its shipments. All purchasers are encouraged to carry their own applicable shipping insurance.

5. **Force Majeure, Waiver.** KOMET shall not be liable for any delay to make delivery or failure to deliver due to any cause or contingency beyond the control of KOMET (including but not limited to accidents, breakdowns, strikes, riots, sabotage, insurrections, war, delay or interruptions in or failure of sources of materials, supplies, labor, energy or transportation, acts of God, or orders of any court, governmental body, authority or agency). KOMET may, at its option, allocate available supplies among its customers, including Buyer, in any manner that KOMET decides is fair and reasonable, extend the delivery time, or cancel the contract for such Products, in whole or in part. Such allocation, extension of delivery time, or cancellation shall not affect the right of KOMET to cover for any unpaid Products previously delivered. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER LOSS, DAMAGE OR EXPENSE OF ANY KIND, INCLUDING LOSS OF PROFITS, ARISING IN CONNECTION WITH SUCH FAILURE OR DELAY IN DELIVERY.

6. **Terms of Payment.** Unless otherwise expressly agreed between Buyer and KOMET in writing, terms of payment are net sixty (60) days after date of shipment. KOMET reserves the right to alter or suspend credit terms and require C.O.D. or advance payment, whenever KOMET has reasonable doubt as to Buyer's creditworthiness. If Buyer becomes delinquent in payment or refuses to accept C.O.D. shipments, KOMET shall have the right, in addition to any other rights it may have, to cancel any order of Buyer's, withhold further deliveries, and declare all unpaid amounts for Products previously delivered immediately due and payable. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. Amounts past due shall be subject to a late charge of 1.5% per month. All costs and expenses incurred by KOMET as a result of nonpayment or delinquent payment by Buyer, including collections, costs, interest and reasonable attorneys' fees, shall be paid by the Buyer.

7. **Return and Cancellation Policy**

a. Special tooling orders are subject to a cancellation charge for work completed when order is terminated.

b. Only new, unused, unaltered and salable standard and stocked materials as defined in current Komet of America price lists are returnable.

c. Authorization from Komet of America must be obtained prior to returns for credit. Corresponding date, customer purchase order number and respective Komet of America invoice numbers must be included with all returns. If returned tool was in use, a completed Warranty Claim Report must also be attached to the aforementioned paperwork.

8. **Warranty.** KOMET warrants that its Products are free from defects in design, workmanship and material for a period of twelve (12) months from the date of shipment, assuming normal and proper usage, storage and handling. KOMET's warranty shall not extend to any Products subjected to (i) improper handling or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal or unusual operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Product; or (v) a purpose or application materially different from that for which the Products were designed.

THE WARRANTY EXPRESSED HEREIN IS IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON KOMET'S PART. UNDER NO CIRCUMSTANCES WILL KOMET BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS, DAMAGE OR EXPENSE OF ANY KIND, INCLUDING LOSS OF PROFITS, ARISING IN CONNECTION WITH THE SALE OR USE OF THE PRODUCTS. KOMET'S SOLE LIABILITY AND THE BUYER'S SOLE REMEDY IS LIMITED TO EITHER (i) REPAIR OR REPLACEMENT OF DEFECTIVE PARTS OR PRODUCTS, OR (ii) AT KOMET'S OPTION, RETURN OF THE PRODUCTS TO KOMET AND REFUND OF PURCHASE PRICE. SUCH REMEDY SHALL BE BUYER'S ENTIRE AND EXCLUSIVE REMEDY, IN THE EVENT OF BREACH OR WARRANTY OR NEGLIGENCE OF KOMET.

Warranty returns require a completed KOMET Form 600 in addition to a return authorization number prior to returning product. Returns not marked with a return authorization number will be refused and returned to the originator at their expense. All returns are subject to inspection and final count by KOMET. Freight charges both ways must be paid by the Buyer.

9. **Limitation of Actions.** Any cause of action arising from this agreement or the breach thereof must be commenced within one (1) year after the cause of action accrues.

10. **Applicable Law.** The law governing this agreement and any further agreement or contractual relation between KOMET and Buyer shall be the law of the State of Illinois. The invalidity of any provision of this agreement shall not affect the validity of the remaining provisions.

11. **Non-Assignment.** Buyer's rights and obligations hereunder may not be assigned without prior written consent of KOMET.