

**KASTO LIMITED**  
**CONDITIONS OF SALE**

**1. DEFINITIONS**

“the Seller” Kasto Limited (registered in England under number 2188798);  
“the Buyer” means the person who accepts a quotation of the Seller for the sale of Equipment or whose order for the Equipment is accepted by the Seller.  
“the Contract” means the contract between the Seller and the Buyer the terms and conditions of which are set out in the Seller’s written quotation and these Conditions.  
“the Equipment” means the subject of the Contract.  
“the Contract Price” means the price stated in the Seller’s written quotation as payable by the Buyer to the Seller for the Equipment.  
“the Conditions” the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.  
“Writing” includes facsimile transmission and comparable means of communication.

**2. BASIS OF THE SALE**

2.1 The Seller shall supply and the Buyer shall purchase the Equipment in accordance with any written quotation of the Seller which accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract (and all subsequent contracts for the sale of any goods or equipment made between the Seller and the Buyer) to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.  
2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.  
2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Equipment unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

**3. ORDERS AND SPECIFICATIONS**

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller’s authorised representative in the form of the written quotation of the Seller.  
3.2 The quantity, quality and description of and any specification for the Equipment shall be those set out in the Seller’s written quotation.  
3.3 The Seller reserves the right to make any changes in the specification of the Equipment which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality or performance.  
3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Seller as a result of cancellation.

**4. DELIVERY**

4.1 The Seller’s sole obligation with regard to delivery shall be to make reasonable efforts to deliver the Equipment within the approximate delivery time stated in the Contract. The Seller shall not be liable for any delay in delivery of the Equipment howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing.  
4.2 Where the Equipment is to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.  
4.3 If the Seller fails to deliver the Equipment for any reason other than any cause beyond the Seller’s reasonable control, or the Buyer’s fault, and the Seller is accordingly liable to the Buyer, the Seller’s liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Equipment.  
4.4 If the Seller cannot deliver the Equipment for any reason, other than its gross negligence or wilful default, it may place the Equipment into store at the Buyer’s risk and expense and shall notify the Buyer that it has done so.  
4.5 If the Buyer fails to take delivery of the Equipment or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of the Seller’s fault) then, in the Seller’s absolute discretion and without prejudice to any other right or remedy available to the Seller, the Seller may:-  
4.5.1 store the Equipment until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or  
4.5.2 sell the Equipment at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.  
4.6 The Buyer will afford access after delivery for the Seller to complete the installation of the Equipment, if installation is required by the Contract.

**5. RISK & PROPERTY**

5.1 The risk in the Equipment shall pass to the Buyer on delivery or, if the Buyer unreasonably refuses to take delivery or arrange collection of the Equipment, the time when the Seller has tendered delivery of the Equipment, and the Buyer shall (at its own expense) insure accordingly on the Seller’s behalf.  
5.2 Notwithstanding delivery or the passing of risk in the Equipment, property in the Equipment shall not pass to the Buyer until the Seller has received payment in full in cash or cleared funds of all sums becoming due from the Buyer to the Seller under the Contract or of any sum then due from the Buyer to the Seller, notwithstanding that the Equipment be affixed to the Buyer’s land.  
5.3 So long as the Seller is entitled to the property in the Equipment or to any interest in any compound object(s) incorporating Equipment, the Buyer as fiduciary agent and bailee shall:-  
(i) keep the same fully insured, separate from the Equipment of the Buyer or any third parties and identifiable as the property of the Seller or as object(s) in which the Seller is interested and not remove, obscure or delete any mark placed on the Equipment by or upon the instructions of the Seller enabling the same to be so identified;  
(ii) not pledge or in any way charge the Equipment by way of security or otherwise; and  
(iii) upon request by the Seller and at the Buyer’s expense, deliver up the Equipment to the Seller.  
5.4 Until such time as the property in the Equipment passes to the Buyer, the Buyer shall be entitled to resell or use the Equipment in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Equipment whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible

proceeds, properly stored, protected and insured.

5.5 Should the Buyer default either in any payment owed to the Seller when due or under condition 5.3 (iii) the Seller will be entitled to repossess all Equipment held by the Buyer which is still the Seller’s property (without prejudice to any other rights or remedies arising out of such default) and for this purpose the Seller will be entitled (with any necessary vehicles) to enter upon any land or buildings on or in which the Equipment may be situated and to remove the same. All costs incurred by the Seller in repossessing the Equipment shall be borne by the Buyer. Notwithstanding the repossession of any such Equipment the Buyer shall remain liable to pay the price for the same and any interest accruing thereon. Any Equipment so repossessed may be sold and the proceeds of sale set off against the amounts due to the Seller by the Buyer.

**6. THE CONTRACT PRICE**

6.1 The Contract Price shall not include packaging any delivery charges, hydraulic oil or consumables or installation charges or any insurance costs of the Seller relating to the same unless otherwise stated on the face of the Seller’s written quotation, and does not include Value Added Tax.  
6.2 There shall be added to the Contract Price at the Seller’s sole option the extra cost incurred by the Seller because of:-  
(a) any increases in freight or insurance rates between the date of the Contract and the date of delivery;  
(b) any increase in customs, import and other duties, or import deposits or similar schemes incurred between the date of the Contract and the date of delivery;  
(c) any variation in exchange rates between the pound and the currency of the country of origin or destination of the Equipment between date of the Contract and date of delivery;  
(d) any change in delivery dates or specifications requested by the Buyer or any delay caused by the instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

6.3 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Equipment on or at any time after the acceptance of any Seller’s quotation by the Buyer or the acceptance of any Buyer’s order by the Seller.

6.4 The Buyer shall pay sums due under the Contract in United Kingdom pounds sterling in immediately available funds without set-off or counterclaim immediately prior to delivery or collection from the site at which the Equipment is located.

6.5 The time of payment of the price of the Equipment shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

6.6 The Seller shall notify the Buyer when the Equipment is ready to be delivered or collected. If the Buyer does not pay any outstanding balance of the Contract Price within 7 days from the date of the Seller’s notice, the Seller without prejudice to any other rights or remedies to which it may be entitled may charge interest on the unpaid balance of the Contract Price at 2% per annum above the Midland Bank Plc Base Rate from time to time, and may also withhold delivery until the balance is paid, and additionally charge the Buyer with the costs of storing, transporting, handling and insuring the Equipment until it is delivered or collected.

**7. TERMINATION**

7.1 Without prejudice to any other rights or remedies available to it, the Seller may terminate or at the Seller’s sole option may suspend performance of the Contract forthwith by written notice to the Buyer and without any liability to the Buyer in any of the following events:-

- (a) the failure by the Buyer to pay all or any part of the Contract Price within 7 days of the due date for payment;
- (b) the breach by the Buyer of any other term of the Contract;
- (c)(1) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or  
(2) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or  
(3) the Buyer ceases, or threatens to cease, to carry on business; or  
(4) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly;
- (d) if the Buyer is in breach of any other contract with the Seller.

Such termination or suspension shall become immediately effective in respect of the Seller’s obligations, but shall not terminate or suspend the Buyer’s responsibilities until the obligations under 7.2 have been fulfilled and payment has been made to Seller of any damages suffered due to such termination or suspension.

7.2 If the Seller terminates the Contract in accordance with this Condition, then without prejudice to any other rights the Seller may have, it shall be entitled to retain any deposit or part of the Contract Price already received by it, and it shall also be entitled to retain any part exchange machine the property of which shall have already passed to it pursuant to Condition 11.2.

**8. FINANCE**

Where the Contract is expressed to be subject to finance being available to the Buyer, the Buyer shall provide all information and make all disclosures that the person providing the finance may require. The Buyer warrants that all disclosures will be true in all respects and will indemnify the Seller for any loss or damage suffered by the Seller as a result of that information or those disclosures not being true in all respects.

**9. SELLER’S LIABILITY**

9.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Seller’s obligations in relation to the Equipment, if the delay or failure was due to any cause beyond the Seller’s reasonable control.

9.2 Subject to the conditions set out below the Seller warrants that the Equipment will correspond with its specification at the time of delivery and will be free from defects in material and workmanship for such period as stated in the Contract or if none a period of three months from the date of its initial use or three months from delivery, whichever is the first to expire.

9.3 The above warranty is given by the Seller subject to the following conditions:

9.3.1 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller’s instructions (whether oral or in Writing), failure to maintain the Equipment in accordance with first class engineering maintenance practice, misuse or alteration or repair of the Equipment without the Seller’s approval;

9.3.2 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Contract Price for the Equipment has not been paid by the due date for payment;

9.3.3 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

9.4 Subject as expressly provided in these Conditions, and except where the Equipment is sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other

terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.5 Where any valid claim in respect of any of the Equipment which is based on any defect in the quality or condition of the Equipment or its failure to meet specification is notified in Writing to the Seller within the period specified in Condition 9.2, the Seller shall be entitled to replace the Equipment (or the part in question) free of charge or, at the Seller’s sole discretion, refund to the Buyer the Contract Price of the Equipment (or a proportionate part of the Contract Price), but the Seller shall have no further liability to the Buyer.

9.6 Except in respect of death or personal injury caused by the Seller’s negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or in equity, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Equipment or its use or resale by the Buyer, except as expressly provided in these Conditions.

9.7 The provisions of this Condition shall in the case of second-hand Equipment be subject to Condition 10.

9.8 Notwithstanding anything stated in any estimate, quotation, order or acceptance, the Seller’s maximum aggregate liability in respect of the supply of the Equipment shall be limited to the original VAT exclusive price of such Equipment.

9.9 The Seller shall be under no liability under the warranty in Condition 9.2 in relation to any Equipment unless it has received written particulars of the nature of any claim from the Buyer within the period specified in Condition 9.2 in respect of that Equipment.

**10. SECOND-HAND EQUIPMENT**

10.1 If, in the Seller’s written quotation or any other estimate order or acceptance, the Equipment is described as “seen and inspected by the Buyer”, the Seller shall not be liable for any defect in Equipment whether present at the date of the Contract or arising at any time thereafter.

10.2 If, in the Seller’s written quotation or any other estimate order or acceptance, the Equipment is described as “overhauled by the Seller”, the Seller’s sole obligation and in its absolute discretion shall be either to repair or replace any part of the Equipment upon which work has been done by the Seller that fails because of faulty workmanship carried out by the Seller within the period specified in the Contract. The Seller shall have no liability in respect of any other part of any Equipment so described irrespective of the condition thereof.

10.3 Save as expressly or implicitly excluded by the terms of this Condition, the provisions of Condition 9 shall apply to this Condition mutatis mutandis.

**11. PART EXCHANGE MACHINES**

11.1 Where the Contract states that the Buyer is selling to the Seller a part exchange machine the Seller’s standard Conditions of Purchase (a copy of which is available from the Seller upon request) shall apply to that sale. Save as otherwise provided in those standard Conditions of Purchase, the Buyer warrants that he has the right to sell the part exchange machine, and that it is free from any lien, charge or other encumbrance; and that he has disclosed in Writing, receipt of which is acknowledged by the Seller, all defects in the part exchange machine of which he is aware or ought to be aware. If the Seller discovers additional defects, then in addition to any other rights or remedies of the Seller, the Buyer shall be liable to indemnify the Seller against all loss or damage (including costs) arising from those additional defects.

11.2 Save as otherwise provided in the Seller’s standard Conditions of Purchase, the property in a part exchange machine shall pass to the Seller on the date of the Contract but the part exchange machine shall remain at the Buyer’s risk until the Seller has taken possession of it.

**12. EXPORT TERMS**

12.1 In these Conditions “Incoterms” means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

12.2 Where the Equipment is supplied for export from the United Kingdom, the provisions of this Condition 12 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

12.3 The Buyer shall be responsible for obtaining any export licence required on the export of the Equipment from the UK, complying with any legislation or regulations governing the importation of the Equipment into the country of destination and for the payment of any duties thereon.

12.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Equipment shall be delivered f.o.b. at the air or sea port of shipment specified in the Seller’s written quotation and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

12.5 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in the United Kingdom acceptable to the Seller.

**13. BUYER’S DUTY**

The Buyer shall ensure that the Equipment is stored and operated in a safe manner and with all due warning notices attached and shall fully and effectively indemnify the Seller against all liability which the Seller may incur in respect of any failure by the Buyer to do so.

**14. GENERAL**

14.1 The Seller shall be entitled to sub-contract the whole or part of the performance of any Contract without prior notice to the Buyer. All Contracts are personal to the Buyer and may not be assigned without the prior written consent of the Seller.

14.2 Notices given by either party hereto to the other shall be deemed validly served by prepaid registered letter through the post or facsimile sent to its address given in any quotation or order or such other address as may from time to time be notified for this purpose, and any notice so served shall be deemed to have been served if sent by post 48 hours after the time at which it was posted or if sent by facsimile when the correct “answerback” is received and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted or if a facsimile that it was properly addressed and despatched.

14.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

14.5 The Contract shall be governed by the laws of England and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts.