



STANDARD TERMS & CONDITIONS OF SALE

1. Acceptance of Terms

All sales by Mechanical Solutions and its subsidiaries and affiliates (“MSI”) to any person (a “Buyer”) of the product(s) specified in the document to which these MSI Terms and Conditions of Sale are attached or referred (the “Product”) will be governed by these MSI Terms and Conditions of Sale. If the terms or conditions of any purchase order, offer or acceptance from Buyer or of any supply or other agreement differ from or seek to add to, subtract from or supplement these MSI Terms and Conditions of Sale, these MSI Terms and Conditions of Sale shall constitute a counter-offer and will not be effective as an acceptance of Buyer's differing, additional or supplemental terms and conditions, all of which are hereby rejected. The terms governing any software licensed by MSI to Buyer are set forth in the MSI End User License Agreement pertaining to such software. **THESE MSI TERMS AND CONDITIONS OF SALE SHALL BE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF AGREEMENT BETWEEN MSI AND BUYER REGARDING THE PURCHASE AND SALE OF PRODUCTS.**

2. Prices and Payment

All price quotations are subject to confirmation and are non-binding. Unless otherwise agreed to by MSI in writing, all prices for the sale of Product are stated in and to be paid in United States Dollars. All payments are due and payable in thirty (30) days from date of invoice. MSI reserves the right to require alternative payment terms, including without limitation letter of credit or payment in advance. Payments not made by the due date shall be subject to a late payment charge of one and one-half percent (1 ½%) per month from the date of the original invoice. Prices are net of all taxes and customs duties in the Buyer's jurisdiction. Any U.S. export duties or shipping costs will be the Buyer's responsibility. Buyer shall be responsible for the payment of any sales, use, value added, service or similar tax applicable to the sale of the Product, and agrees to indemnify MSI from liability should Buyer fail to pay applicable taxes.

3. Delays

All delivery times are estimates only and in no event shall MSI be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligations is prevented or delayed by any cause which is beyond the reasonable control of MSI.

4. Limited Warranty

- A. Buyer acknowledges that MSI is not the manufacturer of the individual components that are assembled by MSI into the Product. As to the components of the Product manufactured by a third party ("OEM"), MSI will transfer to the Buyer MSI's rights

under the OEM warranty (to the full extent transferable). In addition, upon request MSI will provide reasonable assistance to Buyer in processing any warranty claim with the OEM. MSI shall have no other responsibility or liability for OEM components or parts.

MSI warrants to the original Buyer that the Product, upon proper installation and functioning of the OEM components, will be sufficient to enable the corresponding MSI Software to function as warranted by MSI in the applicable End User License Agreement.

- B. The Limited Warranty does not apply to software supplied or made available by MSI for use in connection with certain Products. Buyer's rights with respect to such software are solely as set forth in the applicable MSI End User License Agreement pertaining to such software.
- C. MSI makes no warranty, express or implied, that the Product as designed or, when installed and placed in operation and used by the Buyer, will comply with any or all occupational safety and health standards, rules, regulations, orders issued pursuant to the O.S.H.A. Regulations or other laws.
- D. **EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, MSI MAKES NO WARRANTIES EXPRESS OR IMPLIED WITH RESPECT TO THE PRODUCT AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- E. MSI shall have no obligation under the Limited Warranty or otherwise, and this Limited Warranty does not apply to (i) Products which are (a) identified by MSI as a pre-production product, alpha, beta or similar product or a prototype, (b) specials, modifications, or customized items meeting the specifications provided by Buyer; (c) items repaired, modified or altered by any party other than MSI; (d) items used in conjunction with equipment not provided by, or acknowledged as compatible by, MSI; (e) subjected to unusual physical, thermal, or electrical stress; (f) damaged due to improper installation, misuse, abuse, or storage; or (g) damaged due to accident or negligence in use, storage, transportation or handling.

5. **Limitation on Liability**

IN NO CASE SHALL MSI BE LIABLE TO ANYONE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR BREACH OF THE LIMITED WARRANTY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, OR UPON ANY OTHER BASIS OF LIABILITY WHATSOEVER, EVEN IF THE LOSS OR DAMAGE IS CAUSED BY MSI'S OWN NEGLIGENCE OR FAULT.

MSI SHALL HAVE NO LIABILITY FOR ANY PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LOSS BASED ON THE USE OF THE PRODUCT IN COMBINATION WITH OR INTEGRATED INTO ANY OTHER INSTRUMENT OR DEVICE. HOWEVER, IF MSI IS HELD LIABLE, WHETHER DIRECTLY OR INDIRECTLY, FOR ANY LOSS OR DAMAGE ARISING UNDER THE LIMITED WARRANTY OR OTHERWISE, REGARDLESS OF CAUSE OR ORIGIN, MSI'S MAXIMUM LIABILITY SHALL NOT IN ANY CASE EXCEED THE PURCHASE PRICE OF THE PRODUCT WHICH SHALL BE THE COMPLETE AND EXCLUSIVE REMEDY AGAINST MSI.

6. **Intellectual Property Rights**

Any intellectual property rights on a worldwide basis, including, without limitation, patentable inventions (whether or not applied for), patents, patent rights, copyrights, work of authorship, moral rights, trademarks, service marks, trade names, trade dress trade secrets and all applications and registrations of all of the foregoing relating to the Product conceived, developed, discovered or reduced to practice by MSI, shall be the exclusive property of MSI. Specifically, MSI shall exclusively own all rights, title and interest (including, without limitation, all intellectual property rights throughout the world) in and to the Products and any and all inventions, works of authorship, layouts, know-how, ideas or information discovered, developed, made, conceived or reduced to practice, by MSI relating to the Product or otherwise conceived in the course of the performance of these Terms and Conditions of Sale.

7. **Indemnification**

- A. The Buyer shall indemnify and save harmless MSI from and against any and all liability for bodily injury to persons or property damage occasioned by any willful or negligent act or omission of the Buyer, its subcontractors, agents, or employees, including any and all expenses, legal or otherwise, incurred by MSI in the defense of any such claim or suit, arising out of the sale or use of the Product.
- B. The Buyer agrees that after acceptance of Product the Buyer shall indemnify, defend and hold harmless MSI from and against any and all claims, whether such claims are based on negligence, breach of warranty, strict liability in tort or products liability, and including counsel fees and costs incurred in defending against such claims, by the Buyer's employees, agents, representatives, Buyer or any other person, third party, firm or corporation, brought against MSI for any damage to any property or for bodily injury to or the death of any person, or for any loss or expense resulting therefrom, including any and all special, consequential or incidental damages, and patent infringement arising directly or indirectly out of the possession, use, sale and/or operation of the Product or attributable to any condition, failure of, or design defect in, the Product.

8. **Notices**

- A. All notices to MSI under this Agreement shall be in writing and sent to:
Mechanical Solutions
11 Apollo Drive
Whippany, NJ 07981 USA
Attention: Director of Contracts
- B. All notices to the Buyer under this Agreement shall be in writing and sent to such address and persons as designated in the purchase order.

9. **Claims**

Any claims against MSI by the Buyer for any breach of these Terms and Conditions of Sale, must be made to MSI in writing within fifteen (15) days after the Buyer becomes aware of such occurrence or such claims shall be deemed waived and unenforceable.

10. **Dispute Resolution**

Any dispute arising out of or relating to these Terms and Conditions of Sale, shall be addressed in a meeting between the Presidents or Senior Vice Presidents of the parties. If such senior officers cannot resolve the dispute, the matter will then be referred to non-binding mediation with the same representatives. If the dispute remains unresolved after such mediation, then at MSI's sole discretion, such dispute may be litigated in a State Court in Morristown, Morris County, New Jersey, USA or Federal Court in Newark, New Jersey USA, and both MSI and Buyer expressly submit to the personal jurisdiction and venue of such courts.

11. **No Assignment**

These Terms and Conditions of Sale and the rights of Buyer hereunder may not be assigned in whole or in part without the prior written consent of MSI.

12. **Invalidity**

If any provision of these Terms and Conditions of Sale is held invalid by any governing law or regulation or by any court having valid jurisdiction, such invalidity will not affect the enforceability of other provisions.

13. **Governing Law**

These Terms and Conditions of Sale shall be construed under and governed in all respects by the laws of the State of New Jersey USA without regard to the conflicts of law principles thereof. Buyer expressly agrees that the U.N. Convention on International Sale of Goods shall not apply to the purchase and sale of Product.

14. **US Government Contracts**

Notwithstanding the foregoing, in the event the Buyer is a federal agency of the United States government that is subject to the requirements of the Federal Acquisition Regulations (the "FAR"), any provision contained herein (e.g. indemnification provisions) that conflict with or violate the FAR or the provisions of applicable federal common law, including without limitation the Prompt Payment Act, the Anti-Deficiency Act and the Contract Disputes Act, shall be null and void and the provisions of such applicable federal common law shall control.

15. **Export Control Laws**

Buyer shall comply with all applicable laws, regulations and treaties relating to the sale and destination of the Products, including, without limitation, U.S. and European export control regulations. Buyer agrees not to sell any of the Products in any territory or country prohibited by applicable U.S. laws and to obtain representations from its customers that they will not resell or transfer any of the Products to such countries or territories. Buyer will defend, indemnify and hold MSI harmless for any damages or costs to MSI arising from Buyer's failure to comply with these terms.