

# MSI Terms & Conditions of Sale

## 1. General

**(a) The Terms.** The terms and conditions contained herein (the "Terms"), together with any additional or different terms contained in any quotation (each, a "Quotation") or purchase order acknowledgement (each, an "Order") issued to Purchaser by Motor Systems Incorporated, an Ohio corporation ("MSI"), constitute the entire agreement (the "Agreement") between the parties with respect to the Services to be performed by MSI, or Equipment to be sold by MSI, and supersede all prior communications and agreements regarding the subject matter hereof. The terms of any Quotation or Order shall control over any conflicting Terms. Issuance by MSI of an Order, or Purchaser's acceptance of a Quotation, is expressly limited to and conditioned upon Purchaser's acceptance of these Terms. Payment for or acceptance of any Equipment or the performance of any Services is deemed to be acceptance of these Terms. Any different or additional terms or conditions in any request for quotation, order, proposal, acknowledgment form, or any other document of Purchaser are hereby deemed material alterations and are null and void and superseded by these Terms. MSI shall not be bound by any other terms or conditions unless expressly agreed to in writing by MSI. MSI shall have the right to revise these Terms from time to time without giving notice to you. The Terms posted to our website located at [www.motorsystems.com/terms-and-conditions](http://www.motorsystems.com/terms-and-conditions) on the date a Quotation or an Order is issued by MSI, as the case may be, shall be the Terms governing such agreement.

**(b) Definitions.** Unless the context otherwise requires, the term "Equipment" as used herein means all equipment, parts, or accessories sold to Purchaser, and all software and software documentation, if any, licensed to Purchaser by MSI ("Software"). Unless the context otherwise requires, the term "Services" as used herein means all labor, supervisory, technical and engineering, training, installation, repair, consulting or other services provided by MSI to Purchaser. As used herein, the term "Purchaser" shall include the initial end user of the Equipment or recipient of the Services.

## 2. Prices

Unless otherwise specified in writing, all Quotations expire thirty (30) days from the date thereof, or the date on which the manufacturer of the Equipment or any supplier to MSI of components for the Equipment increases its prices, if earlier. Thereafter, they are subject to change without notice. If there is a delay in completion or shipment of any Order due to any change requested by Purchaser, or as a result of any delay on Purchaser's part in furnishing information necessary for completion of an Order, the price initially agreed upon at time of acceptance is subject to change. Prices are F.O.B. MSI's shipping dock in Milford, Ohio and do not include any federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable. Purchaser agrees to pay or reimburse MSI for any such taxes, customs duties, tariffs, or other fees which MSI or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon Order placement or at MSI's request, provide MSI with a copy, acceptable to the relevant governmental authorities, of any such certificate or permit.

## 3. Payment

Unless specified to the contrary in writing by MSI, payment terms are net cash, payable without set off, defense, recoupment, or deduction of any kind, in US Dollars, net thirty (30) days. If, in the judgment of MSI, the financial condition of Purchaser at any time prior to delivery of the Equipment or Services does not justify the terms of payment specified, MSI may require payment in advance, payment security satisfactory to MSI, or may terminate the Order. A charge of one and one-half percent (1.5%) per month shall be applied to all past due balances. In addition, MSI is entitled, among its other rights, to cease work and stop deliveries or any other activities with respect to any Order until such payment, including any accrued interest, has been paid in full.

## 4. Title

Title to all Equipment shall remain in MSI until the complete purchase price and all additional costs and charges (collectively, the "Purchase Price") are paid by Purchaser. Purchaser shall keep the Equipment free from all liens, levies and encumbrances until the Purchase Price is paid in full by Purchaser. Purchaser hereby grants to MSI a purchase money security interest in any Equipment sold hereunder to secure payment in full of any amounts owed by Purchaser to MSI for such Equipment. Purchaser agrees to execute and hereby appoints MSI as its attorney-in-fact to execute on Purchaser's behalf, any document requested by MSI which is necessary for attachment and perfection of its purchase money security interest. If Purchaser defaults, MSI will have all the rights of a secured creditor with a purchase money security interest under the Uniform Commercial Code as enacted in the State of Ohio. Risk of loss shall pass to Purchaser upon delivery of the Equipment to the carrier.

## 5. Changes

Any changes requested by Purchaser affecting the ordered scope of work and any resulting adjustments to affected provisions, including price, schedule, and guarantees, shall not be implemented or effective until agreed to in writing by MSI. MSI may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the applicable Order. If Purchaser objects to any such changes, MSI shall be relieved of its obligation to conform to the applicable Order to the extent that conformance may be affected by such objection.

## 6. Inspection, Testing and Acceptance

Any inspection by Purchaser of Equipment shall be scheduled in advance to be performed during normal business hours at MSI's facility and subject to MSI's standard inspection. If the Order provides for site acceptance testing, testing will be performed by MSI personnel to verify that the Equipment has arrived at the site complete, without physical damage, and in good operating condition. Completion of site acceptance testing constitutes full and final acceptance of the Equipment. If, through no fault of MSI, acceptance testing is not completed within thirty (30) days after arrival of the Equipment at the site, the site acceptance test shall be deemed completed and the Equipment shall be deemed accepted. Notice of any defects or claims of any nature (except warranty) must be made within ten (10) days of delivery. The return of Equipment will not be accepted for any reason without MSI's prior written authorization. Returned Equipment must be insured by Purchaser for its full value.

## 7. Warranties and Remedies

**(a) Limited Warranty.** Subject to the following conditions, MSI warrants to Purchaser that the Equipment shall be free from defects in workmanship, material and manufacturing for a period of one (1) year from the date of shipment to Purchaser. As Purchaser's sole remedy for breach of this limited warranty, MSI shall, at MSI's option, repair or replace without charge, or refund to Purchaser the purchase price for such Equipment, upon return to MSI of the defective Equipment; provided any defect in the Equipment is brought to the attention of MSI within the warranty period. MSI alone will be authorized to furnish or arrange for replacements or refund its sales price within the terms of this warranty.

**(b) Exceptions.** This limited warranty does not apply, and no warranty, either express or implied, shall be applicable to Equipment that: (i) is damaged due to accident, negligence, alteration, misuse or abuse, (ii) has been improperly repaired or altered by a party other than MSI, (iii) is not operated or maintained according to the procedures recommended by MSI, (iv) is comprised of materials provided or a design specified by Purchaser, or (v) has failed as a result of ordinary wear and tear. Equipment supplied by MSI but manufactured by another party is warranted only to the extent of such manufacturer's warranty, and only the remedies, if any, provided by the manufacturer's warranty will be allowed. Additionally, MSI is providing the Services to Purchaser on an "as is" basis without any warranty, express or implied, and this limited warranty does not apply to the provision of Services. Purchaser is solely responsible for selecting and determining the suitability of any Service, and MSI will

have no liability for that selection or suitability.

**(c) Software Warranty and Remedies.** MSI warrants that, except as specified below, the Software will, when properly installed, execute in accordance with MSI's, and/or the Software designer's published specifications. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of service and written notice of such nonconformity is provided to MSI promptly after such discovery and within that period, including a description of the nonconformity and complete information about the manner of its discovery, MSI shall correct the nonconformity by, at its option, either (i) modifying or making available to Purchaser instructions for modifying the Software; or (ii) making available at MSI's facility necessary corrected or replacement programs. MSI shall have no obligation with respect to any nonconformities resulting from: (i) unauthorized modification of the Software or (ii) Purchaser-supplied software or interfacing. MSI does not warrant that the functions contained in the Software will operate in combinations which may be selected for use by the Purchaser, or that the Software is free from errors in the nature of what is commonly categorized by the computer industry as "bugs".

**(d) Exclusive Remedies.** THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND MSI'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

## 8. Limitation of Liability

**(a) Disclaimer of Certain Damages.** MSI, ITS AFFILIATES AND THEIR REPRESENTATIVES SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, including, but not limited to, loss of profits or revenue, overhead, labor, injury to person or property, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, or any other incidental loss resulting from any performance or absence of such performance by MSI hereunder, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT PURCHASER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED OR (D) WHETHER SUCH DAMAGES WERE INCURRED BY PURCHASER OR ANY THIRD PARTY TO WHOM PURCHASER IS LIABLE.

**(b) Maximum Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF MSI, ITS AFFILIATES AND THEIR REPRESENTATIVES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT OR OTHERWISE, EXCEED FIFTY PERCENT (50)% OF THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO MSI PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**(c) If Remedy Fails Essential Purpose.** THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS PARAGRAPH 8 SHALL APPLY EVEN IF PURCHASER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. Purchaser acknowledges and agrees that the parties entered into this Agreement in reliance upon the limitations of liability set forth in this Paragraph 8, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

**(d) Contractual Statute of Limitations.** All causes of action against MSI arising out of or relating to this Agreement or the performance or breach hereof shall expire unless brought within one (1) year after the cause of action has accrued.

## 9. Laws and Regulations

MSI Automation does not assume any responsibility for compliance with federal, state or local laws and regulations, and compliance with any laws and regulations relating to the operation or use of the Equipment is the sole responsibility of the Purchaser. All laws and regulations referred to herein shall be those in effect as of the Quotation date. In the event of any subsequent revisions or changes thereto, MSI assumes no responsibility for compliance therewith. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change per Paragraph 5 hereof. Nothing contained herein shall be construed as imposing responsibility or liability upon MSI for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment.

## 10. Software, License and Training Documentation

**(a) Ownership of Software.** MSI owns all rights in or has the right to sublicense any Software or training documentation delivered to Purchaser under this Agreement. As part of the sale made hereunder, Purchaser hereby obtains a limited license to use the Software and the training documentation, subject to the following: (i) the Software and training documentation may be used only in conjunction with Equipment specified by MSI; (ii) the Software and training documentation shall be kept strictly confidential; (iii) the Software shall not be copied, reverse engineered, or modified; (iv) the training documentation shall not be copied or printed without the express written consent of MSI, (iv) Purchaser's right to use the Software and training documentation shall terminate immediately when the specified Equipment is no longer used by Purchaser or when otherwise terminated hereunder; and (v) the rights to use the Software and training documentation are non-exclusive and non-transferable, except with MSI's prior written consent.

**(b) Limited License.** Nothing in this Agreement shall be deemed to convey to Purchaser any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of the limited license granted to Purchaser under this Paragraph 10, Purchaser shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to MSI the Software and all copies thereof and shall remove all machine readable Software from all of Purchaser's storage media.

## 11. Confidentiality

All non-public, confidential or proprietary information of MSI, including but not limited to, specifications, samples, designs, plans, drawings, documents, data, pricing, discounts, or rebates, disclosed by MSI to Purchaser in connection with this Agreement, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by MSI in writing. Upon MSI's request, Purchaser shall promptly return or destroy all documents and other materials received from MSI. MSI shall be entitled to injunctive relief for any violation of this Paragraph, in addition to all other remedies available to MSI, including at law and in equity. This Paragraph does not apply to information that is: (a) in the public domain; (b) known to Purchaser at the time of disclosure; or (c) rightfully obtained by Purchaser on a non-confidential basis from a third party whose disclosure of such information is not in breach of any confidentiality obligations.

## 12. Force Majeure

MSI shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control, including but not limited to acts of war (declared or undeclared), acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by a period equal to the delay plus a reasonable time to resume production.

## 13. Indemnification

**(a) Purchaser Indemnification.** Purchaser agrees to indemnify, defend and hold MSI harmless from and against all costs, expenses, judgments, damages, liabilities, or other reasonable costs of litigation or defense of any claim, including reasonable attorneys' fees and costs, directly or indirectly caused, occasioned or contributed by reason of Purchaser's failure to comply with the provisions of this Agreement or resulting from Purchaser's use or modification of, failure to implement any changes to, or resale of the Equipment delivered hereunder, or selection and implementation of any Service.

**(b) MSI Indemnification.** MSI agrees to indemnify, defend, and hold harmless Purchaser from and against any action brought by a third party to the extent such action is based upon a piece of Equipment infringing upon any intellectual property rights of a third person. If a piece of Equipment becomes, or in MSI's opinion is likely to become, the subject of an infringement claim, MSI may, at its option and expense, either: (i) procure for Purchaser the right to continuing using the Equipment, (ii) replace or modify the Equipment so that it becomes non-infringing without substantially compromising its principal functions, or (iii) terminate this Agreement upon notice to Purchase and refund to Purchaser the Purchase Price actually paid by Purchaser for such Equipment. Notwithstanding the foregoing, MSI will have no obligation under this Paragraph or otherwise with respect to any infringement claim based upon (i) any use of the Equipment not in accordance with this Agreement or for purposes not intended by MSI, or (ii) any modification of the Equipment by a person other than MSI or its authorized agents, employees, representatives, or subcontractors. THIS CLAUSE STATES MSI'S ENTIRE LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

## 14. Termination

MSI may terminate this Agreement immediately upon written notice to Purchaser if Purchaser: (a) fails to accept delivery of the Equipment or Services or to pay any indebtedness to MSI when due, and fails within three (3) days after demand therefor, to fully pay the same or provide assurance of payment satisfactory to MSI; (b) breaches any material provision in this Agreement, and fails to cure within ten (10) days of receiving notice thereof, other than the payment of any indebtedness to MSI; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Termination shall not release or affect, and this Agreement shall remain fully operative as to, any obligations or liabilities incurred by Purchaser prior to the effective date of such termination; provided, however, that all indebtedness of Purchaser to MSI shall become immediately due and payable on the effective date of termination without demand, and MSI may deduct from any sums it owes to Purchaser sums owed by Purchaser to MSI. Any Order received from Purchaser, regardless of acceptance (or the lack thereof) by MSI, which has not been shipped prior to Purchaser's receipt of notice of termination or the effective date of termination or expiration, whichever shall occur first, shall only be shipped C.O.D. or cash in advance.

## **15. Assignment**

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. This Agreement may not be assigned or otherwise transferred by Purchaser, including by merger, reorganization, consolidation, or sale of all or substantially all of Purchaser's assets, without the prior written consent of MSI. Any purported assignment or transfer in violation of this Paragraph 15 shall be void and without force or effect.

## **16. Disputes**

This Agreement and any controversy arising hereunder shall be governed by the internal laws of the State of Ohio. The state and federal courts within Hamilton County, Ohio, shall have exclusive jurisdiction over any litigation resulting with respect to this Agreement, and the parties consent to the jurisdiction of such courts.

## **17. Abandoned Purchaser Property**

If Purchaser engages MSI to perform any Services which require MSI to take custody of any of Purchaser's equipment, parts, or accessories ("Purchaser Property"), such as to repair such Purchaser Property, and Purchaser fails to claim any Purchaser Property within sixty (60) days after being notified by MSI that such Purchaser Property is available to be returned to Purchaser, or fails to satisfy the Purchase Price pursuant to Paragraph 3, such failure to claim Purchaser Property or satisfy the Purchase Price will evidence Purchaser's intent to abandon such Purchaser Property, and MSI will consider the Purchaser Property abandoned. MSI will provide notice of Purchaser Property availability to Purchaser at the mailing address furnished by Purchaser upon delivery to MSI of the Purchaser Property. MSI may dispose of abandoned Purchaser Property in accordance with applicable provisions of law, and specifically may sell abandoned Purchaser Property without liability to Purchaser. MSI reserves its statutory and any other lawful liens for any unpaid Purchase Price.

## **18. Waiver**

No waiver by MSI of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by MSI. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## **19. Severability**

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, 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.

## **20. No Third-Party Beneficiaries**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of the Terms.