

## PURCHASE ORDER TERMS AND CONDITIONS OF SALE

NOTICE: THE TRANSACTION EVIDENCED BY THIS PURCHASE ORDER (INCLUDING THE FACE PAGE HEREOF), INCLUDING, BUT NOT LIMITED TO, ANY OFFER, QUOTATION, ORDER CONFIRMATION, ORDER ACCEPTANCE, OR INVOICE FOR THE SALE OF ANY PRODUCTS OR SERVICES THEREIN (COLLECTIVELY, "TRANSACTION") IS SUBJECT TO AND CONDITIONED UPON ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY A SELLER OF PRODUCTS OR SERVICES ("SELLER"), ARE OBJECTED TO BY, AND WILL NOT BE BINDING UPON, MSF DATA SERVICES, INCLUDING ITS SUBSIDIARIES AND AFFILIATES (COLLECTIVELY, "PURCHASER"). THESE TERMS AND CONDITIONS OF SALE ARE INCORPORATED INTO THIS TRANSACTION AND SHALL APPLY TO THIS TRANSACTION WHETHER OR NOT THEY APPLIED TO A PRIOR PURCHASE OF PRODUCTS OR SERVICES BY PURCHASER, UNLESS EXPLICITLY OBJECTED TO IN WRITING BY SELLER, WHICH WRITING MUST BE RECEIVED BY PURCHASER WITHIN FIVE (5) DAYS AFTER THE DATE OF THIS DOCUMENT.

1. **Acceptance; Cancellation; Changes.** All orders received by Purchaser are subject to final acceptance or confirmation by Purchaser and no terms or orders are binding upon Purchaser until so accepted. Seller may not cancel or change an order once placed with and accepted by Seller except with the prior written consent of Purchaser and upon terms that will indemnify Purchaser against any loss. Purchaser may correct mathematical or clerical errors.
2. **Excusable Delays.** Purchaser shall not be liable for delays or failure to perform due, directly or indirectly, to causes beyond Purchaser's control, including the inability of Purchaser or its suppliers to deliver goods, services, or raw materials necessary for Seller to perform this Transaction, acts (including failure to act) of any governmental authority, war (declared or undeclared), terrorism, vandalism, strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, and epidemics).
3. **Warranties; Quality.** Seller expressly warrants to Purchaser that (a) the products will be in merchantable condition and suitable for the uses described on the package or in other Seller supplied promotional material used in connection with Products, will be of kind and quality specified or designated in the Purchase Order or any related agreement, will conform to the applicable Purchaser specifications and will be free from defects in workmanship and title, and (b) any Work Product arising from the Services will be presented to Purchaser free and clear of any liens and encumbrances and will not infringe the intellectual property rights of others. Furthermore, Seller will assign to Purchaser all warranties for materials provided by vendors. Seller's obligations under this section shall not apply to any defect caused by (x) Purchaser's or its agents' handling of the product, (y) a design or other fault in any Purchaser supplied drawings or (z) materials provided or specified by Purchaser.
4. **Indemnity; Limitation on Liability.** Seller shall indemnify Purchaser against and hold it harmless from, any loss, cost, liability and expense (including court costs and reasonable fees of attorneys and other professionals) ("Loss") to the extent that such Loss (a) arises out of, any claim that any product or service or related Work Product supplied by Seller infringes any patent, trademark or other intellectual property right, of any third party or (b) results from or arises out of any products or services supplied by Seller.
5. **Proprietary Information.** Purchaser is and shall be the sole owner of all intellectual property rights, including, without, limitation, Purchaser's patents, trademarks, trade names, trade secrets, and copyrights, and of all drawings, illustrations, specifications and designs (collectively "Work Product") related to or arising out of this Transaction and all inventions and intellectual property derived therefrom ("Proprietary Information"). Without limiting the scope of the preceding sentence, if this Transaction is for services, Work Product also includes all weldment, assembly, CAD and other drawings, models and designs in whatever form produced or created by or for Seller as a result of or related to the performance of work or the rendition of services under this Transaction. Seller shall provide a copy of any Work Product to Purchaser upon request from Purchaser. Seller shall not use, copy or disclose to any other persons or use for any purpose whatsoever any or all of the Work Product or other Proprietary Information without Purchaser's prior written consent.
6. **Assignment.** Seller may not assign its rights or obligations hereunder without the prior written consent of Purchaser, and any purported assignment by Seller without the consent of Purchaser shall be void and of no effect.
7. **Choice of Law; Venue; Jurisdiction.** Any dispute or claim relating to this Transaction shall in all respects be governed by and construed according to the laws of the State of New York excluding its conflict of law principles. The New York State courts and/or the United States District Courts situated in New York shall constitute the exclusive forum(s) for the adjudication of any and all disputes or controversies arising out of or relating to the Transaction or related products or services. Seller and Purchaser consent to the exercise of personal jurisdiction over them by such courts with respect to any dispute or controversy and waive any objection to the assertion or exercise by such court of such jurisdiction.
8. **Construction of Agreement.** The provisions contained in this Transaction are incorporated into these terms and conditions of sale by reference, and in the event any provisions of this Transaction conflict with any provisions of these terms and conditions, the provisions of the Transaction shall control (with the other provisions of these terms and conditions continuing to apply to this Transaction). These terms and conditions of sale may not be amended, modified, or supplemented except by written agreement executed by Seller and Purchaser. The provisions of this Transaction are hereby deemed by the parties to be severable and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision. These terms and conditions of sale constitute the entire agreement between Seller and Purchaser with regard to the sale or transfer of products or services and supersede all prior oral or written statements of any kind made by the parties or their representatives.