

Customer Purchase Order Terms and Conditions

The sale of products and services (“Products”) by MSFDS (“MSFDS”) are subject to these terms and conditions (“Agreement”) regardless of other or additional terms or conditions that conflict with or contradict this Agreement in any purchase order, document, or other communication (“Order”). Preprinted terms and conditions on any document of customer (“Customer or Buyer”) and/or MSFDS’ failure to object to conflicting or additional terms will not change or add to the terms of this Agreement.

1. **Price.** Prices on the goods specified do not include any city, state, or federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use, and similar taxes, fees, or other charges imposed by governmental entities. When applicable, taxes will be added to the invoice as a separate charge to be paid by Buyer. If an exemption from a tax is claimed, supporting documents must be furnished by Buyer prior to delivery. Any and all sales quotations provided by MSFDS to Buyer shall automatically expire thirty (30) calendar days from the date issued and are subject to termination by MSFDS by notice to Buyer at any time.
2. **Minimum Order.** Buyer may be charged a minimum charge for consultation fees/engineering fees/supplier contact or acquisition if these services are provided prior to receiving a Purchase Order or a Manufacturing Contract is signed.
3. **Terms of Payment.** Payment terms are net thirty (30) days from the date of MSFDS’ invoice. For any special order requiring MSDS. to produce a custom made product, Buyer shall pay one-third of the total Order price upon delivery of its Purchase Order, one-third of the total Order price not less than three (3) days before MSFDS must ship the goods pursuant to the Order, and the remaining one-third of the total Order price within thirty (30) days of shipment, subject to approved credit.
4. **Cancellations.** Buyer may not cancel or change an Order without the written consent of MSFDS.
5. **Security Interest.** To secure the payment of MSFDS’ invoice, Buyer grants to MSFDS a security interest in all goods sold to Buyer under the Order, including all proceeds therefrom. Buyer authorizes MSFDS to perfect its security interest through a filing of a financing statement pursuant to the Uniform Commercial Code and shall reimburse MSFDS for any fees incurred in filing the financing statement which may be added by MSFDS to the amount of MSFDS’ invoice to Buyer.
6. **Delivery and Risk of Loss.** All shipments under the Order are F.O.B. MSFDS’ facilities in Hartland, WI or Allen, TX and all risk of loss shall pass to Buyer at that time regardless of the method of shipment that may be elected by Buyer. Shipping and handling will be added as a separate charge on the invoice.
7. **Delays.** MSFDS will not be liable for any delay in the performance of its obligations under the Order, or for any damages suffered by Buyer due to such delay, if the delay is, directly or indirectly, caused by a fire, flood, accident, civil unrest, act of God, war, governmental interference or embargo, labor strike, shortage of materials, or any other cause beyond MSFDS’ control.
8. **Materials.** The Order is conditional upon MSFDS’ ability to obtain the necessary raw materials at a reasonable price, and all shipments under the Order are subject to MSFDS’ supply schedules and any government regulations, orders, directives, and restrictions that may be in effect.
9. **Nonconforming Goods.** Buyer shall inspect all goods upon tender and delivery by MSFDS, and should any of the goods be nonconforming goods, Buyer must notify MSFDS, in writing, within ten (10) days of MSFDS’ tender and delivery of the goods describing the nature of any nonconformity. MSFDS shall have the right and option to repair or replace any nonconforming goods. The failure of Buyer to notify MSFDS in writing that the goods are nonconforming within ten (10) days of MSFDS’ tender and delivery of the goods, shall constitute acceptance of the goods and Buyer shall be liable to MSFDS for the total Order price.

10. **Indemnification.** You agree to and will indemnify, hold harmless and defend MSF Data Services, Inc. (and its employees, subsidiaries, affiliates, successors and agents) from and against any and all judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and reasonable attorneys' fees) incurred or suffered by MSF Data Services, Inc., which relate to or arise out of (a) your use, handling, marketing, sale or distribution of the products sold hereunder; or (b) the infringement or violation of any third party's intellectual property or other rights arising out of or in connection with your use of specifications, materials or other items provided to MSF Data Services, Inc. by you.
11. **LIMITATIONS ON DAMAGES.** MSFDS SHALL NOT BE LIABLE TO BUYER FOR ANY LOST PROFITS OR OTHER ECONOMIC LOSS OF BUYER, OR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER SIMILAR DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT BY MSFDS, ANY OBLIGATIONS OF MSFDS PURSUANT TO THIS AGREEMENT OR THE FAILURE OF THE GOODS TO PERFORM IN ANY PARTICULAR MANNER.
12. **Warranties.** MSFDS agrees to assign to you any assignable warranties that we receive from the manufacturers of the products sold to you hereunder. The warranties set forth in the immediately preceding sentence are sole and exclusive and in lieu of all other warranties whether statutory, expressed, or implied.

Software is provided "as is" without warranty of any kind, express or implied, including but not limited to warranties of performance, merchantability, fitness for a particular purpose, accuracy, omissions, completeness, currentness and delays. Customer agrees that outputs from the Software will not, under any circumstances, be considered legal or professional advice and are not meant to replace the experience and sound professional judgment of professional advisors in full knowledge of the circumstances and details of any matter on which advice is sought.
13. **Special Orders.** Products are manufactured by MSFDS to meet Buyer's specifications or requirements. Buyer shall indemnify and hold MSFDS harmless from any and all claims arising from the purchase, use, or sale of the special goods, and from any related costs, attorneys' fees, expenses, or liabilities incurred by MSFDS therefrom.
14. **Law and Procedure.** The Order, this Agreement and the transaction described therein shall be subject to, construed under and enforced according to the laws of the State of New York. ANY ACTION IN REGARD HERETO OR ARISING OUT OF THE TERMS AND CONDITIONS HEREOF SHALL BE INSTITUTED AND LITIGATED IN THE COURTS OF THE STATE OF NEW YORK AND NO OTHER. IN ACCORDANCE HERewith, THE UNDERSIGNED HEREBY SUBMITS TO THE JURISDICTION AND VENUE OF THE COURTS WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK. BUYER AND MSFDS HEREBY WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF THE ORDER, THIS AGREEMENT OR THE TRANSACTION DESCRIBED THEREIN.
15. **Remedies.** In the event that Buyer is in default or otherwise breaches the Order or this Agreement, MSFDS shall be entitled to pursue any and all remedies, legal or equitable including an action to recover the total Order price, as well as its costs of enforcing the Order, including, without limitation, its attorneys' fees. In the event that MSFDS is in default or otherwise breaches the Order, the liability of MSFDS to Buyer for such breach or default shall be limited to the replacement value of the goods under the Order which is the sole and exclusive remedy of Buyer for any such breach or default.
16. **Entire Agreement.** This Agreement is intended by the parties as a final expression of the terms and conditions of the Order. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This Agreement can only be modified in a writing signed by both parties. No previous course of dealing between the parties or trade usage may be used to interpret, limit, or otherwise impair the operation of this agreement.
17. **Waiver.** MSFDS shall not be deemed to have waived any rights under this Agreement or the Order unless such waiver is given in writing and signed by MSFDS. No delay or omission on the part of MSFDS in exercising any right shall operate as a waiver of such right or any other right. A waiver by MSFDS of a provision of this Agreement or the Order shall not prejudice or constitute a waiver of MSFDS' right otherwise to demand strict compliance with that provision or any other provision of this Agreement or the Order. Neither prior waiver by MSFDS nor any course of dealing

between Buyer and MSFDS, shall constitute a waiver of any of MSFDS' rights or of any of Buyer's obligations as to any future transactions. Whenever the consent of MSFDS is required under this Agreement or the Order, the granting of such consent by MSFDS in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Buyer.

18. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when a record has been actually delivered, deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown upon the Order, received by telecopy or received through the Internet. Any party may change its address for notices under this Agreement by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address.
19. **Fees.** In the event of any dispute arising out of the Order, this Agreement or the transaction described therein, in addition to an award of damages, the MSFDS shall be entitled to recover all expenses of litigation, including without limitation all filing fees and court costs; and all attorneys' fees incurred regardless of whether such fees or expenses are incurred before or after the initiation of litigation.