

Machine Consulting Services, Inc.

R-820-001-A Customer Terms & Conditions

In the absence of an executed agreement between parties, the following Terms and Conditions for Order Acceptance will apply.

1. Recital.

MCS is a manufacturing services provider that furnishes the personnel, material, equipment, services and facilities to manufacture products for original equipment and other third parties in accordance with specifications provided by such OEMs and third parties. Buyer desires to engage MCS to manufacture certain of Buyer's products in accordance with orders issued from time to time by Buyer.

2. Statement of Work.

Buyer hereby engages MCS, and MCS hereby accepts Buyer's engagement, to furnish the personnel, material, equipment, services and facilities to manufacture Products in accordance with Buyer provided Specifications (BOM, CAD Files, Test Processes, Mechanical Drawings and other Special Instructions) as required by Orders issued by Buyer and accepted by MCS in accordance with Section 3. MCS's services shall be performed in accordance with the specifications and the applicable AS9100 Standard.

3. Ordering.

(a) MCS's terms and conditions of acceptance are solely within MCS's discretion. Buyer's Orders shall set forth for each ordered Product: the quantity, the applicable Purchase Price and total price, delivery and shipping instructions, the requested delivery schedule, which may be adjusted through regular status reports issued by the MCS in accordance with Section 4. All Orders shall be governed by these Terms and Conditions, which shall not be changed or supplemented without written acceptance by the MCS. Pre-printed terms and conditions on Buyer's Order form, if any, shall not apply to the Order. (b) Order Modification, Cancellation, or Delivery Schedule Changes requested by Buyer will be binding on the MCS upon MCS's written acceptance of the request and upon terms, satisfactory to MCS that compensate MCS for all costs incurred by reason of such modification, cancellation or deferment. "Costs" as used herein includes engineering, production and overhead costs attributable to the order as well as NCNR Inventory and Excess Inventory and profits not realized by the MCS due to modification, cancellation or schedule changes. In the event of Order cancellation (i) MCS will ship and Buyer will accept all Products completed prior to the cancellation date [and (ii) the Product warranty will not apply to the Product which is the subject of the cancelled order. (c) Tooling and Fixtures required to manufacture Buyers products, will be a one-time charge based on a quote for each design. Buyer will retain ownership of the Tooling and Fixtures upon paid invoice. Customer may request tooling and fixtures be returned to them for up to one year from last shipment of the associated product. After one year of inactivity the tooling and fixtures will be disposed of.

4. Shipment and Delivery.

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MCS will ship Products in accordance with each accepted Order, subject to these Standard Terms and Conditions. Delivery of Products shall be made F.O.B at the loading dock of the MCS's facility on the dates specified. Title to, and risk of loss for, Products shall pass to Buyer at the time of delivery of possession of the Products to a common carrier.

5. Acceptance.

The Product shall be deemed accepted by Buyer when the Product has passed MCS's inspection and conforms to Specifications and the applicable AS9100 Standard and is delivered to Buyer, namely, placed it in the hands of a common carrier. Buyer shall have [5] days to notify MCS of Buyer's revocation of acceptance of Product based on non-conformance to specifications or to the workmanship standard. Buyer's revocation must be in writing.

6. Prices, Invoicing and Payment.

Buyer shall pay MCS the Purchase Price as set forth in the invoice. The Purchase Price is exclusive of packaging, shipping and insurance costs and federal, state and local taxes, which the Buyer shall be responsible for. MCS shall invoice Buyer concurrently with each Product shipment. An invoice will include the invoice date, the Order number, and the total price and name and address where payment is to be sent. Buyer shall pay all invoices within thirty (30) days of the invoice date. Payment shall be made in U.S. dollars. Payment not received when due shall bear interest at the rate of 1½% monthly from its due date until paid.

7. Engineering Changes.

If Buyer requests that MCS incorporate an engineering change into a Product, such request shall include a description of the proposed change sufficient to permit MCS to evaluate it. MCS's evaluation shall be in writing and shall state the impact of the requested change on the existing delivery schedule and cost. MCS shall not be obligated to proceed with a requested change until the parties have agreed on the changes to the Product, Specifications, estimated delivery schedule and pricing, including the price for additional NRE, rework, tooling and obsolete materials and testing, if any.

8. Force Majeure.

Neither party shall be liable for its failure to perform due to any occurrence beyond its reasonable control, including acts of God, fire, floods, war, terror, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances and regulations, allocations and price restrictions, inability to obtain material, equipment or transportation, or any other similar occurrence; provided, however, Buyer's payment for Products produced and shipped shall not be suspended by any event of force majeure. The party whose performance is prevented by any such occurrence shall promptly give written notice to the other party of the cessation of performance. The party affected by such occurrence shall use commercially reasonable efforts to minimize the effects of the force majeure event.

9. Intellectual Property and Confidentiality.

(a) Ownership of Intellectual Property. Title to and ownership of all of the technology, trade secrets, knowhow and information regarding Products supplied by Buyer to MCS shall remain the Buyers. Buyer hereby grants MCS a limited, non-transferable, non-exclusive revocable license to use Buyer's software, technology, trade secrets, knowhow and proprietary information (Buyer's Proprietary Information), free of any claim or allegation by Buyer of misappropriation or infringement by MCS of Buyer's Proprietary Information; provided, however, that MCS's license to use Buyer's Proprietary Information shall endure only for the term of the accepted Order. After the termination or expiration of an accepted Order, MCS shall have no further rights to use Buyer's Proprietary Information as to that Order and MCS shall return to Buyer all documents and materials relating to Buyer's Proprietary Information. Title to and ownership of any software, technology, trade secrets, know how, and information of MCS (MCS's Proprietary Information) used by MCS hereunder shall remain the property of MCS. (b) Confidentiality. The parties acknowledge that each party's Propriety Information set forth in Section 9 (a) contains valuable trade secrets. Each party agrees that it will maintain and protect the confidentiality of the other party's Proprietary Information using the same standard of care that such party uses to protect its own Proprietary Information, which in no event shall be less than reasonable care. The obligation to keep each party's Proprietary Information confidential survives the termination or expiration of the accepted Order.

10. MCS Restrictions as to Use of Products.

Buyer acknowledges and agrees that the Products are not designed for and, absent MCS's express written authorization, are not to be used in IPC Class 3 products (equipment where continued performance or performance on demand is critical such as life support systems or critical weapons systems).

11. Product Warranty.

MCS warrants that Products supplied to Buyer hereunder will conform to Buyer's Specifications and will be free from defects in workmanship. Buyer shall notify MCS within [48] hours of Buyer's receipt of Products, in writing, of any Product defect, which notification shall describe the defect in sufficient detail to permit MCS to isolate the defect. Upon notification from Buyer, MCS will provide Buyer with instructions on returning the Product under a warranty claim. Upon receipt of any Products returned by Buyer pursuant to this Section 11, MCS shall inspect Products in accordance with the applicable AS9100 Standard. If MCS determines that the defect is not due to nonconformity with Specifications or the applicable AS9100 Standard or is unable to isolate any defect or malfunction in the Product, then Buyer is solely responsible for isolation of the defect or malfunction and MCS will seek instructions on whether MCS should return the Product to Buyer or dispose of it. If any returned Product contains malfunctions due to nonconformity with the Specifications or the applicable AS9100 Standard, then Buyer's exclusive remedy and MCS's sole liability under this warranty will be, at its sole option and expense, to correct or replace the nonconforming or defective Product or refund the Purchase Price to Buyer. This warranty does not apply to: any first articles, prototypes, pre-production units, test units of a Product, any Products which have been repaired by Buyer or a third party, any Products which have been altered or modified in any way by Buyer or third party; or any Products which have been subject to

misuse, abnormal use or neglect or to components received from Buyer. MCS will not be held liable in the case of damage to a product that occurs during customer contracted rework.

12. DISCLAIMER.

THE PRODUCT WARRANTY STATED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES AS TO QUALITY, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE, WHETHER IMPLIED BY CUSTOM OR LAW. WITHOUT LIMITING THE FOREGOING DISCLAIMER, BUYER ACKNOWLEDGES AND AGREES THAT MCS DOES NOT WARRANT ANY PARTS, COMPONENTS OR OTHER MATERIALS PROVIDED TO MCS BY BUYER AND USED IN THE MANUFACTURE OF THE PRODUCTS.

13. LIMITATION OF LIABILITY.

IN NO EVENT SHALL MCS BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFITS DAMAGES, ARISING OUT OF THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, OR USE OF ANY PRODUCTS OR THE FURNISHING OF ANY SERVICE, WHETHER SUCH LIABILITY IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF BUYER HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

14. Indemnification.

Buyer shall defend, indemnify and hold MCS and its subsidiaries, officers, directors, employees, agents and representatives harmless from any and all claims, demands, liabilities, actions, suits, proceedings, losses, injuries, death, judgments, and/or costs (including without limitation reasonable attorneys' fees and related costs) based on or arising out of any claims or demands based on or relating to: MCS's use of Buyer's Proprietary Information the design of the Products; Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; Buyer's violation or alleged violation of any federal, state, or local laws or regulations, including the laws and regulations governing product safety, labeling, packaging and labor practices; or a breach by Buyer of any of these terms and conditions. MCS shall give written notice of any claim or potential claim to Buyer within a reasonable time following the time at which MCS first became aware of the claim for indemnification hereunder. Buyer may, at its option, have control of any litigation and appointment of counsel in defense of any third-party claim for which MCS seeks indemnification. No suit or proceeding shall be settled or compromised without the prior written consent of MCS. The obligation to indemnify under this shall survive the termination or expiration of the accepted Order.

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15. Governing Law, Merger.

(a) Merger. These Terms and Conditions and the agreements referenced herein constitute the entire agreement of the parties with respect to MCS's services for Buyer and can be modified only by written agreement. (b). Governing Law. The validity, interpretation and performance of these Terms and Conditions shall be governed by the laws of the State of North Carolina, without regard to conflicts of laws principles. Venue for any suit, action or proceeding pertaining to these Terms and Conditions, including any Order, Invoice, Warranty or indemnification claim, shall be in the state or federal courts of the State of North Carolina, as MCS elects. In any arbitration, suit or action to enforce these Terms and Conditions or for the breach of same, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses therein, including expert fees, deposition costs and attorneys' fees as fixed by the arbitrator, trial court and appellate court.