

## **MACHINE TOOL SERVICE & TRAINING GROUP, INC. TERMS AND CONDITIONS OF SALE**

### **MACHINE TOOL SPECIALTY COMPONENTS GROUP DIV. OF**

- 1. PURCHASER AND SELLER.** As used herein, "Seller" means Machine Tool Service & Training Group, Inc. "Purchaser" means the entity issuing a purchase order to Seller for the purchase of goods or services supplied by Seller.
- 2. OFFER, ACCEPTANCE, MODIFICATION AND SCOPE.** These terms and conditions and any quotation, order acknowledgement and invoices issued by Seller (collectively, "Purchase Order Terms") constitute an offer made by Seller to Purchaser to enter into the agreement and shall be the only terms and conditions governing the sale of Seller's products or services, except for specific terms relating solely to quantities, shipping instructions or descriptions of products or services appearing on the face of a purchase order. To the extent that any documents originating from Purchaser contain or refer to terms that differ from the Purchase Order Terms, all such different terms are expressly rejected by Seller and Seller's Purchase Order Terms will constitute a counter-offer. Purchaser's acceptance is limited to the Purchase Order Terms and will be effective by signing the Purchase Order Terms, by issuing another writing demonstrating acceptance of the Purchase Order Terms, or by accepting the goods or services from Seller. Seller rejects all additional or different terms or conditions proposed by Purchaser. All such additional or different terms or conditions are void and of no effect unless expressly and conspicuously agreed to by Seller in a subsequent writing manually signed by Seller's authorized agent. Seller rejects all inconsistent, different or additional terms in Purchaser's business forms or appearing on any website, electronic exchange, bidding site or other internet forum ("Internet Media") whether maintained by Purchaser or by a third party. No employee of Seller has authority to agree to any terms, conditions or provisions stated in Purchaser's business forms or appearing on any Internet Media. No changes may be made to these terms and conditions without Seller's express written agreement, clearly identifying the change to be made and signed by Seller. Amendments to the Purchase Order Terms must be in writing and signed by both parties. No course of dealing, usage of trade or custom and practice will modify, supplement, alter, amend or in any way affect these Terms and Conditions.
- 3. RELATIONSHIP OF PARTIES.** Seller and Purchaser are independent parties and neither party will be the agent or legal representative of the other for any purpose whatsoever. Neither party has any authority to assume or create any obligation on behalf of or in the name of the other party.
- 4. ASSIGNMENT AND DELEGATION.** Seller may assign the Purchase Order Terms to any of its subsidiaries or affiliates at any time without further notification or penalty. Purchaser shall not assign, delegate or subcontract any of its substantive obligations under the Purchase Order Terms without Seller's written consent.
- 5. EXPIRATION, CANCELLATION AND TERMINATION.** Seller may terminate any purchase order by providing at least sixty (60) days advance written notice of such termination to Purchaser. Purchaser shall not terminate any purchase order, suspend releases under a requirements contract, or terminate any agreement relating to the purchase of Seller's products or services without Seller's express written consent and then only upon terms to be agreed upon which will protect Seller against all losses or damages. If Purchaser repudiates the contract or notifies Seller to suspend performance, Seller, at its option, may deliver all finished goods, work in process and raw materials or supplies procured in anticipation of producing goods or services, and Purchaser agrees to accept and pay for all such items (at the contract price for all finished goods) plus reimbursement, including lost profits, for any work in process, raw materials or supplies. Seller's pricing includes amortization of Seller's costs and agrees to reimburse Seller for any remaining un-recovered investment for dedicated tooling, capital equipment, or engineering, research or design that was used to manufacture goods for Purchaser. Seller's payment terms will be altered to C.I.A. (Cash in Advance) for the last scheduled shipment of goods, and Seller's account must be current prior to the release of the final shipment.
- 6. PRICES.** All prices are stated and payable in U.S. Dollars and are subject to change by Seller. If a raw material, component, or service provider raises its prices, or imposes a surcharge on Seller, Seller may increase prices or surcharge Purchaser and Purchaser agrees to accept such price increase or surcharge for so long as such change in conditions persists. Pricing established on the basis of Purchaser's based anticipated volumes is subject to unilateral change by Seller if such volumes are not met, whether or not prices are stated as firm. Prices shall be subject to adjustment by Seller at the end of a production cycle, if additional goods are required as service parts. Seller shall have no obligation to supply service parts unless revised prices, reflecting decreased volumes and then-current labor and material costs, are mutually agreed to by the parties. Purchaser may not alter pricing without Seller's express written agreement.
- 7. PAYMENT TERMS.** Unless otherwise stated in Seller's quotation, the terms of payment are thirty (30) days net from the date of Seller's invoice, or in the event of electronic payments, thirty (30) days from the date of delivery. If Purchaser fails to timely pay Seller's invoice(s), Seller may, without prejudice to any other rights or remedies: (a) withhold shipments of goods or the performance of additional services, (b) demand the return of previously shipped goods; (c) institute new payment terms; (d) terminate any purchase orders or supply agreements, and/or (e) institute suit for legal or equitable relief. Purchaser agrees to pay interest on overdue invoices at the lesser of 1 and ½ % per month or the highest rate permitted by law. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify Seller for all costs and expenses, including reasonable attorneys' fees, court costs and associated expenses incurred in connection with Seller's collection efforts.
- 8. CREDIT APPROVAL.** All shipments are subject to the approval of Seller's credit department. Seller may invoice Purchaser and recover for each shipment made pursuant to these terms and conditions as a separate transaction without regard to any other order or agreement with Seller, or if, in Seller's sole judgment, Purchaser's financial situation is or becomes unsatisfactory, Seller may, without prejudice to any of its rights or remedies: (a) defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance, and/or (b) terminate any purchase orders or supply agreements.
- 9. INSPECTION AND NON-CONFORMING GOODS.** Purchaser shall inspect goods or services for non-conformance for a period of fifteen (15) business days immediately following delivery ("Inspection Period"). Purchaser shall notify Seller of any goods or services that do not conform to the Purchase Order Terms within the Inspection Period. After notification, Purchaser shall provide Seller a reasonable opportunity to inspect such non-conforming goods or services and, at Seller's option, to repair or replace such non-conforming goods or services. If Purchaser fails to provide Seller with notice of non-conformity within the Inspection Period, Purchaser will be deemed to have accepted the goods or services. Accepted products may not be returned for any reason. Acceptance may not be revoked. Purchaser shall not return any non-conforming goods

without Seller's prior written authorization. All returns authorized by Seller must be made in accordance with Seller's return policies then in effect. Unless Seller first determines that goods or services are non-conforming and agrees to accept return of such non-conforming goods, Purchaser will be responsible for all costs and expenses associated with any unauthorized returns and shall bear the risk of loss or damage to such goods. Seller may reject any returns that are not made in accordance with this paragraph or that are otherwise returned in a manner inconsistent with Seller's then current-return policies.

**10. SHIPPING.** Unless otherwise specifically agreed, Seller anticipates using common carriers to ship goods. Unless stated in Seller's invoice, the carrier will bill Purchaser directly, and Purchaser shall pay the carrier directly, for all freight charges and all applicable taxes and duties. Seller reserves the right to schedule its production and to make deliveries accordingly. Seller rejects any claim that time is of the essence. In circumstances where Purchaser specifies installment deliveries not in conformity with Seller's production schedule, and Seller elects to deliver as specified by Purchaser, Seller shall have the right to adjust its price to cover Seller's additional costs. All goods shall be shipped F.O.B. Seller's location, and delivery shall complete upon transfer of the goods to the carrier.

**11. DELIVERY AND RISK OF LOSS.** All property rights in goods will transfer to Purchaser upon delivery to the carrier. Purchaser assumes all risk and liability for loss, damage, or destruction, as well as the results of any use or misuse by third parties after the delivery to the carrier. Unless mutually agreed upon, shipping dates are approximate and are based upon prompt receipt of all necessary information. Seller may ship items in single or multiple shipments.

**12. DAMAGE TO GOODS.** Purchaser shall notify Seller and the delivering carrier within ten (10) business days from date of receipt, of any damage to or shortage in the goods, and afford Seller a reasonable opportunity to inspect such goods. Any loss occasioned by damage or shrinkage in transit will be for Purchaser's account and claims for such loss shall be made solely against the carrier.

**13. RELEASES, RAW MATERIAL LEAD TIME AND ACKNOWLEDGEMENT, RAW MATERIAL PURCHASE AUTHORIZATION AND QUANTITIES.** Purchaser acknowledges that Seller must make advance purchases of raw material to fulfill orders. Purchaser authorizes Seller to obtain sufficient raw materials in advance of production to support all open orders submitted by Purchaser. Purchaser acknowledges that material authorizations must allow for normal supply chain lead-times. Seller may modify lead-times for unique components or special market conditions. Purchaser shall reimburse Seller for any raw material ordered at the request of Purchaser, but not used by Seller for Purchaser's account.

**14. EXPRESS WARRANTY GRANTED AND DISCLAIMER OF ALL OTHER WARRANTIES.** Seller warrants only that the products or services sold hereunder: (a) will conform to the description, if any, contained in the purchase order, (b) will be conveyed free and clear of any lien, security interest or encumbrance created by Seller or any party claiming by, through or under Seller, and (c) will be free from substantial defects in material and workmanship under normal use given proper installation and maintenance for a period of six (6) months from the date of delivery to the carrier. Seller may either to repair or replace any non-conforming goods, to refund the purchase price upon return of the products or to grant a reasonable allowance on account of such non-conformity. Purchaser's sole remedy for non-conforming goods is limited to such repair, replacement, repair, refund or allowance as Seller may elect. Seller rejects all charges or costs associated with any third party sorting or containment activities implemented by Purchaser, unless previously approved by Seller in writing. Purchaser shall give Seller a reasonable opportunity to investigate all claims and no products shall be returned to Seller before Seller's investigation. Seller makes no warranty, express or implied, that its goods or services shall conform to any oral or written descriptions, promises or representations made in any meeting, sales call, sales literature, catalogue, website, or correspondence about the quality or future performance of those items, or that its goods will conform to any sample or model given to Purchaser at any time or for any reason. Seller also makes no warranties arising from a course of dealing or usage of trade. **SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE CONCERNING THE GOODS OR SERVICES SUPPLIED HEREUNDER.**

**15. LIMITATION OF LIABILITY AND REMEDIES.** In no event will Seller be liable for, any special, indirect, incidental, punitive, exemplary or consequential damages including, but not limited to: personal injury or death, damage to or loss of real or personal property or equipment, environmental response costs, loss of profits or revenues, loss of use of the goods, costs of capital, raw material charges, recall costs, warranty claims and expenses, customer satisfaction or goodwill adjustments, promotional or manufacturing expenses, overhead costs, interruption of Purchaser's business, reduced market share, damage to brand value, injury to reputation, claims of Purchaser's customers, loss of actual or prospective customers or sales, litigation expenses, attorneys' fees or similar items of damage. Seller shall not have any obligation to indemnify or defend Purchaser against any claim or lawsuit, and shall not be required to indemnify or defend Purchaser for any reason. In no event will Seller's potential liability exceed the purchase price of the specific goods or services for which any claim is made by Purchaser. Purchaser shall not assign any claim or right against Seller to any third party and any such attempted assignment will be void and unenforceable.

**16. PURCHASER'S USE OF GOODS.** Purchaser is solely responsible for determining whether any goods sold hereunder are fit for a particular purpose and suitable for Purchaser's method of application or use. Seller will not be responsible for the results or consequences of any use, misuse or application by anyone of the goods supplied hereunder.

**17. TAXES.** In addition to the purchase price, Purchaser shall pay Seller, all fees, duties, licenses, tariffs, sales, use, privilege, occupation, excise, or other taxes ("Tax Liabilities") which Seller is required to pay or collect in connection with the goods or services provided hereunder. The Seller's failure to collect any such fees or taxes shall not affect Purchaser's obligation hereunder and Purchaser shall defend, indemnify and hold harmless Seller in respect of all such Tax Liabilities.

**18. CONFIDENTIAL INFORMATION.** All information furnished or made available by Seller shall be held in confidence by Purchaser who shall not use such information or disclose it to others without Seller's prior written consent. The obligations of this paragraph will not apply to any information which: (a) at the time of disclosure was, or thereafter becomes, generally available to the public by publication or otherwise through

no breach by Purchaser of any obligation herein, (b) the Purchaser can show by written records was in the Purchaser's possession prior to disclosure by Seller, or (c) is legally made available to the Purchaser by or through a third party having no direct or indirect confidentiality obligation to Seller with respect to such information.

**19. OWNERSHIP OF INTELLECTUAL PROPERTY.** All drawings, designs, specifications, inventions, devices, developments, processes, copyrights, trademarks, patents and applications therefore, and other Intellectual Property disclosed or otherwise provided to Purchaser by Seller and all rights therein (collectively, "Intellectual Property") will remain Seller's property and Seller reserves all rights thereto. Purchaser shall keep such Intellectual Property confidential. Purchaser shall have no claim license, nor ownership interest in, any Intellectual Property. All Intellectual Property shall be returned to Seller promptly upon Seller's written request. Purchaser agrees that no license or rights of any kind are granted to Purchaser hereunder in respect of any Intellectual Property. Unless specifically stated, the sale of goods or services by Seller does not include any design, development or related services associated with any of Seller's Intellectual Property.

**20. EXCUSABLE DELAYS AND FORCE MAJEURE.** Neither party will be liable for a delay in its performance under the Purchase Order Terms due to causes beyond its reasonable control, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), embargo, fires, floods, windstorms, or other natural disaster, explosions, insurrection, riot, war (whether declared or not), terrorism, national emergency, acts of the public enemy, sabotage, labor problems (including strikes, slowdowns, work stoppages, sick-outs or lock-outs), inability to obtain power, material, labor, equipment or transportation, or court injunction or order; provided that written notice of such delay, its cause and its anticipated duration shall be given by the affected party to the other party as soon as possible after the event or occurrence, but in no event more than ten (10) days thereafter. If either party is unable to meet its obligations hereunder because of a force majeure event, and such inability continues for a period of one hundred and twenty (120) days or more, the other party may cancel the Purchase Order Terms without further obligation.

**21. SET OFF.** Seller may offset its payables against its receivables related to goods or services sold hereunder. Purchaser shall not withhold or set-off any payments due Seller.

**22. ADVERTISING.** Purchaser shall not advertise or publish the fact that Seller has contracted to furnish goods or services to Purchaser, nor shall Purchaser use any trademarks, trade names or copyrighted material belonging to Seller, without Seller's prior written consent.

**23. NOTICES.** All notices or other communication required or permitted under these terms and conditions must be in writing and shall become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

**24. MERGER AND INTEGRATION.** These terms and conditions supersede all prior agreements, understandings, representations, writings or quotations with respect to the transaction. No modification, amendment or supplement to these terms and conditions will have any force or effect unless made in writing and signed by Seller.

**25. WAIVER.** Seller's failure to insist upon strict compliance by Purchaser with any of these terms and conditions or Seller's failure to exercise any right accruing upon any default by Purchaser will not impair Seller's rights in case Purchaser's default continues or in case of any subsequent default by Purchaser. Seller's waiver of any breach by Purchaser will not be construed as a waiver of any other existing or future breach.

**26. GOVERNING LAW, DISPUTE RESOLUTION AND LIMITATION OF ACTIONS.** Any dispute arising under these terms and conditions, the Purchase Order Terms, or involving the contract of which these terms and conditions are a part, shall be governed by the laws of the State of Wisconsin, without effect to conflict of laws principles. Any litigation arising out of the Purchase Order Terms entered into between Seller and Purchaser shall be brought within the State of Wisconsin and both Purchaser and Seller consent to the jurisdiction of these courts.

In the event of any dispute between Purchaser and Seller, other than any dispute relating to Intellectual Property, to which traditional court remedies will apply, the parties shall engage in a good faith effort to resolve the dispute by exchanging relevant information and negotiating in good faith. If the dispute is not resolved within thirty (30) days to the mutual satisfaction of the parties, the dispute shall be settled by binding arbitration in front of a panel of three (3) arbitrators, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as such rules may be amended from time to time. The parties are not obligated to employ the services of the AAA to conduct the arbitration, but may do so upon agreement of the parties. The arbitration shall be conducted in or near Brookfield, Wisconsin and shall commence within sixty (60) days of the request for arbitration by either party.

Notwithstanding any contrary statute of limitation, any cause of action for an alleged breach of contract or other legal theory asserted against Seller shall be barred unless commenced by Purchaser within one year from the accrual of such cause or action, but in no event later than two (2) years after delivery of the goods or performance of the services upon which such claim is based.

**27. SEVERABILITY.** If any provision hereof is held to be unlawful or unenforceable, the remaining provisions shall continue to be effective and enforceable.

**28. Export.** All sales are sold for domestic consumption in the United States. If exported purchaser assumes full responsibility for compliance with US export controls.