



## STANDARD TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale ("Terms") shall govern all proposals, quotations, orders and contracts for the sale of goods and services of MSS to Purchaser. These Terms supersede any prior written or oral agreement, understanding, representation or promise, and any pre-printed or standard terms and conditions contained in Purchaser's request for proposal/quote, purchase order, invoice, order acknowledgement, contract or other similar document. These Terms may not be amended, supplemented, changed or modified except by concurrent or subsequent written agreement, signed by an authorized representative of MSS and Purchaser. MSS's acknowledgement of Purchaser's order shall not constitute acceptance of any terms and conditions contained therein, regardless of how such terms and conditions may be prefaced or described.

### **1. DEFINITIONS:**

"MSS" means MSS Solutions, LLC or the affiliated MSS entity named in the proposal or order which is providing the goods and/or services. "Purchaser" means the company who accepted MSS's offer or is named in the order. The goods and/or services provided by MSS to Purchaser shall collectively be referred to as "Work".

**2. PRICES & TAXES:** Unless otherwise mutually agreed to in writing, prices do not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. Purchaser shall pay, in addition to the stated price, all taxes not legally required to be paid by MSS or, alternatively, shall provide MSS with acceptable tax exemption certificates. MSS shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the Work. Stenographic, clerical and mathematical errors are subject to correction. Prices are exclusive of expenses related to special packaging or procedures to cover unique circumstances of shipment or storage unless specifically noted. Until acceptance of order on these Terms, quoted prices are subject to change.

**3. DELIVERY & PERFORMANCE:** Dates for the furnishing of services and/or delivery or shipment of goods are approximate only and are subject to change, and MSS shall use commercially reasonable efforts to meet such dates; provided, however, that MSS shall not be liable in damages or otherwise, nor shall Purchaser be relieved of its performance hereunder, because of MSS's failure to meet them. Additionally, MSS shall not be liable, directly or indirectly, for any delay in or failure to perform caused by carriers or suppliers; labor difficulties, shortages, strikes or stoppages of any sort; difficulty in obtaining materials; customer requested order changes; fires, floods, storms, accidents, or acts of God; any statute, sanction, injunction or other governmental restraint or prohibition; or other causes beyond MSS's reasonable control. In the event of any such delay, the date of delivery/performance shall be extended for a length of time at least equal to the period of the delay. All Work for which MSS does not receive notice of rejection for within seven (7) days after receipt, will be deemed accepted. If Purchaser fails to perform any of its obligations under this agreement, MSS shall be entitled to suspend its performance under the agreement until such time as Purchaser performs such obligations, and any dates for the delivery of goods or performance of services shall be extended for an amount time determined in MSS's discretion.

**4. SHORTAGE; DAMAGE:** If the materials or equipment included in this order/proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of MSS, then in the case of such temporary unavailability, the time for performance of the Work shall be extended to the extent thereof, and in the case of permanent unavailability MSS shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefor. Title and risk of loss in all goods sold hereunder shall pass to Purchaser when goods are made available for pickup at MSS's facility, except that Purchaser grants MSS a lien on and a purchase money security interest in and to all of the right, title, and interest of Purchaser in the goods purchased hereunder until full payment

has been made.

**5. SCOPE OF WORK:** Any MSS proposal is based upon the use of straight time labor only. Plastering, patching and painting are excluded. "In-Line" duct and piping devices, including, but not limited to, valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by MSS, shall be distributed and installed by others under MSS's supervision but at no additional cost to MSS. Purchaser agrees to provide MSS with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. MSS agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge MSS for any costs or expenses without MSS's written consent

**6. PAYMENT:** MSS may invoice Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site. Unless otherwise agreed in writing by MSS, payment for Work shall be net thirty (30) days. Waivers of lien will be furnished upon request, as the work progresses, to the extent payments are received. MSS retains all remedies for Purchaser's insolvency including, but not limited to, the right to stop work and/or delivery, reclaim any goods delivered, or withhold delivery except for cash. Failure to pay invoices at maturity date, at MSS's election, makes all subsequent invoices immediately due and payable and MSS may stop work and/or withhold all subsequent deliveries until the full account is settled and MSS shall not, in such event, be liable for non-performance of contract in whole or in part. Purchaser agrees to pay, without formal notice, one and one-half percent (1.5%) per month of the amount not paid when due, or, if such rate is in excess of applicable governing law, Purchaser agrees to pay the maximum permitted rate. No deduction, whether by way of set-off, counterclaim or otherwise, shall be made by Purchaser. If prerequisites for any payment (such as delivery, completion or formal acceptance) cannot be satisfied due to Purchaser's breach, such payment shall nevertheless become due and payable at the time agreed to and MSS's further right to seek damages shall remain unaffected.

**7. CANCELLATIONS & CHANGES:** In the event of Purchaser's cancellation, Purchaser shall be liable for a cancellation charge equal to the greater of (i) twenty-five percent (25%) of the purchase price and (ii) any loss or cost incurred by MSS, including, but not limited to, cost of materials, labor, engineering, reconditioning and a reasonable profit margin. Purchaser is responsible for all reasonable storage, insurance, and all other expenses incurred by MSS as a result of Purchaser's cancellations and/or changes. No changes to the specification or the order are accepted without the prior written consent of both parties. In the event Purchaser requests a change, MSS will provide a quotation to Purchaser within ten (10) days detailing the corresponding change in delivery, price, materials, and similar. MSS shall not be obligated to implement the requested change until the quotation is agreed by the parties.

**8. LIMITED WARRANTY:** Unless otherwise mutually agreed to in writing, (a) MSS warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from delivery of said equipment, or if installed by MSS, for a period of one (1) year from installation, and (b) MSS services are warranted to Purchaser to have been performed in a workmanlike manner for a period of ninety (90) days from the date of performance. If the Work does not conform to the warranty stated above, if Purchaser provides written notice to MSS of any such defect within thirty (30) days after the appearance or discovery of such defect then as Purchaser's sole remedy, MSS shall, at MSS's option, either repair or replace the defective goods or re-perform defective services. Third party goods furnished and/or installed by MSS will be repaired or replaced as Purchaser's sole remedy, but only to the extent provided in and honored by the original manufacturer's warranty. Unless otherwise agreed to in writing, MSS shall not be liable for breach of warranty or otherwise in any manner whatsoever for: (i) any goods or services which, following delivery or performance by MSS, has been subjected to accident, abuse,



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misapplication, improper repair, alteration, improper installation or maintenance, neglect, or excessive operating conditions; (ii) defects resulting from Purchaser's specifications or designs or those of Purchaser's contractors or subcontractors other than MSS; (iii) damage resulting from the combination, operation or use with equipment, products, hardware, software, firmware, systems or data not provided by MSS, if such damage or harm would have been avoided in the absence of such combination, operation or use; or, (iv) Purchaser's use of the Work in any manner inconsistent with MSS's written materials regarding the use of such Work. In addition, the foregoing warranty shall not include any labor, dismantling, re-installation, transportation or access costs, or other expense associated with the repair or replacement of the Work. THE WARRANTIES CONTAINED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES AVAILABLE TO PURCHASER AND MSS HEREBY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**9. COMPLIANCE WITH LAWS:** MSS shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the Work. Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.

**10. LIMITATION OF LIABILITY:** NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN: (A) IN NO EVENT SHALL MSS BE LIABLE FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION, THIRD PARTY CHARGES AND COSTS, LOST PROFITS, PRODUCT, PRODUCTION, BUSINESS OR BUSINESS OPPORTUNITY, REGARDLESS OF THE CAUSE, INCLUDING WITHOUT LIMITATION, THE NEGLIGENT ACTS OR OMISSIONS, BREACH OF CONTRACT, WARRANTY (EXPRESS OR IMPLIED) OR DUTY (STATUTORY OR OTHERWISE) OR STRICT LIABILITY OF MSS OR ANY OTHER THEORY OF LEGAL LIABILITY; AND (B) MSS'S AGGREGATE LIABILITY ARISING FROM OR IN CONNECTION WITH ALL ORDERS AND CONTRACTS FOR GOODS AND SERVICES UNDER THESE TERMS SHALL NOT EXCEED THE CONTRACT PRICE FOR THE GOODS AND/OR SERVICES FOR WHICH LIABILITY IS CLAIMED.

**11. HAZARDOUS MATERIALS:** Unless specifically noted in the scope of work or services undertaken by MSS under this agreement, MSS's obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environment hazards or dangerous substances, to include but not be limited to asbestos or PCBs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by MSS shall not operate to compel MSS to perform any work relating to the aforementioned hazards without MSS's express written consent.

**12. OCCUPATIONAL SAFETY AND HEALTH:** The parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating in any way to the project or project site.

**13. APPLICABLE LAW; VENUE; ARBITRATION:** The rights and duties of the parties hereunder shall be governed by the laws of the State where the project is located, excluding its conflicts law and choice of laws principles. Any action or proceeding with respect to this agreement shall be resolved by binding arbitration through the American Arbitration Association ("AAA") conducted by arbitrator(s) selected in accordance with the Construction Industry Arbitration Rules currently in effect as of

the date of filing a demand for arbitration ("Arbitrator"). This agreement is made pursuant to a transaction in interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C.A § 1, without regard to conflict with local applicable laws. The arbitration will be conducted in Charlotte, North Carolina at an office to be determined by the Arbitrator. The prevailing party (as determined by the Arbitrator) shall be entitled to recover the cost and expense of the arbitration, including reimbursement of all reasonable attorneys' fees, expert witness fees, costs of appeal and costs to enforce the arbitration provision contained herein. Nothing herein shall limit any rights under construction lien laws.

**14. INDEMNITY:** MSS shall indemnify Purchaser from and against third party claims only to the extent directly caused by the negligence or willful misconduct of MSS, its employees, contractors, or agents.

**15. INSURANCE:** MSS shall maintain insurance coverage consistent with its existing programs but shall not name Purchaser as an additional insured nor waive any rights of subrogation MSS or such insurers may have against Purchaser or its affiliates. MSS will provide Purchaser with written notice of cancellation of any applicable policy thirty (30) days prior to the effective cancellation date of such policy, and will provide Purchaser with its standard certificate of insurance upon request.

**16. NO OTHER CONTRACT PROVISIONS; OTHER:** There are no representations, agreements, obligations, or conditions, expressed or implied, statutory or otherwise, relating to the subject matter hereof, other than contained herein. These Terms constitute a completely integrated agreement and cannot be modified unless modifications are accompanied by signed writing approved by MSS. For the avoidance of doubt and not in limitation of the foregoing, MSS shall not be bound by the terms of any contract between Purchaser and any third party or other flow down provisions, regardless of whether Purchaser notifies MSS of such terms unless MSS expressly agrees to be bound by such terms in writing by an authorized representative of MSS. If any provision hereof is invalid or not enforceable under applicable law, the remaining provisions shall remain in full force and effect. MSS reserves the right to transfer or assign its obligations, rights and responsibilities hereunder, so long as such successor or assign agrees to these Terms. Any assignment of Purchaser's rights hereunder without MSS's consent (which shall not be unreasonably withheld) shall be void. MSS's failure to require Purchaser's performance of any of these Terms shall not serve as a waiver of or diminish MSS's rights to require strict performance of these Terms.

**17. EO CONTRACT CLAUSE:** MSS and Purchaser agree to abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.