



Address: 3250 Old Farm Lane, Ste.10 Commerce, MI 48390 Phone (810) 637-5421 Fax (810) 637-5647

- 1. The Agreement.** The Agreement between Michigan Precision Fabricators, LLC (MPF) and Buyer with respect to the sale of Product (the "Product") shall consist only of these terms or any terms mutually agreed to in writing hereafter by MPF and Buyer. MPF objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Buyer's Purchase Order (the "PO") or in any other communication from Buyer to Supplier. The Agreement shall be for the benefit of MPF and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by MPF, to the extent they differ from, modify, add to or detract from the Agreement, shall not be binding on MPF. There are no agreements, promises or understandings, either verbal or written that are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions.
- 2. Termination or Modification.** The Agreement may be modified or terminated only upon MPF written consent. Any PO, once Buyer submits approved drawings to MPF, is not cancellable. In the event of cancellation of an order by Buyer, after submission of approved drawings, MPF expects payment in full according to the terms and conditions set forth.
- 3. Terms of Payment.** Payment terms are those set forth on a PO that is expressly accepted by MPF. For customers with approved credit, standard payment terms are Net 30-days from date of shipment. All invoices issued by MPF are listed in USD Funds. If a shipment is delayed by MPF at request of Buyer, payment therefore shall become due on the date when MPF is prepared to make shipment thereof. Prices are F.O.B. shipping point USA or EXW shipping point unless otherwise agreed upon and specified on the PO or in writing related to a particular purchase of Product. If Buyer does not specify in writing a preferred shipping carrier, associated account number and bill to location, method and route of shipment shall be at the MPF's discretion. Any additional expense shall be the sole responsibility of the Buyer. The freight charges will be applied to the Buyer's invoice with the expectation of payment to be received with the terms established by MPF. Quoted or predetermined freight costs at time of purchase are estimated costs only, Buyer is responsible for additional costs exceeding the estimated cost provided with the expectation of payment received within the terms established by MPF. MPF is entitled to perform periodic credit reviews of Buyer. Whenever, in the judgment of MPF, the financial condition of the Buyer does not justify the continuation of production or shipment on the specified terms of payment, MPF may require full or partial payment in advance of shipment.
- 4. Delivery.** Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by MPF of all information to be furnished by Buyer and the absence of delays, direct or indirect, resulting from or contributed to by circumstances beyond MPF's reasonable control. MPF shall in good faith endeavor to meet estimated delivery dates. MPF reserves the right to withhold delivery of the Product if, for any reason, Buyer fails to pay to Supplier any portion of the purchase price for the Product(s) in the amount(s) and at the time(s) specified in the Contract.
- 5. Risk of Loss.** Unless other terms are expressly agreed to by Supplier upon acceptance of Buyer's PO, Buyer assumes all risk of loss of Product upon delivery of Product by Supplier to carrier.
- 6. Limited Warranty.** MPF warrants that products manufactured by MPF: a) conforms to MPF specifications for that Product that are in effect on the date of shipment or conforms with the description contained in an expressly accepted Buyer's PO, the quality and agreed to specifications stated or incorporated as a schedule, by reference or otherwise, b) are merchantable and free of defect for a period of twenty-four (24) months after shipment or eighteen (18) months after system startup, whichever occurs first. MPF will pass-through any and all actuator, control and indicating device warranties offered by the individual manufacturers of those devices.
THIS WARRANTY IS THE EXCLUSIVE WARRANTY. SUPPLIER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, OR FITNESS FOR A PARTICULAR PURPOSE.
- If Buyer believes any Product is non-conforming or was shipped to Buyer in error, then Buyer shall give MPF prompt written notice of the alleged defect or error MPF's sole obligation under the foregoing warranties will be limited to either, at Supplier's option, replacing non-conforming Product or refunding the purchase price for such Product paid by Buyer. And at MPF's election either shall return the Product to MPF (at MPF's expense), make the Product available for inspection by MPF or its agents at Buyer's place of business or destroy the Product (before or after the date of any inspection). MPF shall not be responsible for any installation or removal costs that may be associated with Product return. Buyer's exclusive remedy for breach of any of such warranties will be enforcement of such obligation of MPF. In no event shall MPF's liability for non-conforming Product exceed the price of the Product. MPF shall not be responsible for any defect in Product that is created after the Product is shipped from MPF, including Product subjected to misuse, neglect, accident or improper handling or storage or which has been altered or misbranded by anyone other than MPF or its authorized representative or modifications to or adaptations of the Product made by Buyer or others. MPF shall not be liable on any claim for non-conforming Product which is not made within thirty (30) days after such Product has been received by Buyer, government (including without limitation any agency or department of the United States of America or any other country), acts of the public enemy, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain materials or labor, or other causes which are reasonably beyond the control of the defaulting Party. MPF shall promptly notify the Buyer of any such delay and its cause.
- 7. MPF's Indemnification.** MPF agrees to indemnify and hold Buyer, its employees, directors, its affiliates and subsidiaries, from and against any and all claims, or liabilities arising out of MPF's material breach of this Agreement or the Product. MPF's obligation to indemnify the Buyer for the Product is limited to the state and condition of the Product when delivered and accepted by the Buyer. In addition, MPF's obligation to indemnify the Buyer as to the Product will apply, except to the extent any such liability arises out of or is related to the negligence or willful misconduct of Buyer, its employees or authorized representative. MPF shall not be liable for any claim or damages or alleged claims or damages that arise from changes or modifications made to the Product by Buyer or Buyer's representatives. In no event shall MPF be liable for loss of profits or business, consequential, special, and indirect or punitive damages, nor for claims resulting directly or indirectly from circumstances beyond Supplier's reasonable control.
- 8. Buyer's Indemnification.** Buyer shall indemnify, defend and hold Supplier and its respective officers, directors, employees and agents harmless from and against all damages arising out of, in connection with or resulting from any claim or allegations with respect to the (i) written and graphic content of any product labels, inserts or stickers, promotional materials, advertisements, and/or websites, except to the extent caused by or attributable to the acts of MPF; (ii) sales of Product sold by Buyer after their guaranteed freshness date; (iii) Buyer's failure to warehouse and distribute Product as per the shipping and storage conditions specified in writing by MPF for the Product; (iv) damaging or tampering with the Product by anyone other than MPF, its employees, agents, contractors, licensees, or invitees; (v) any material breach of this Agreement by Buyer; (vi) the negligence or willful misconduct of Buyer or its agents or employees; and (vii) any claim of infringement by the Product or the trademarks or any intellectual property rights or trade secrets of a third party other than those arising from the portions of the Product created solely by MPF.
- 9. Insurance.** MPF agrees to maintain insurance covering the Product and its performance under the Agreement in compliance with applicable legal requirements and including but not limited to commercial general liability (including products liability, completed operations and third party liability coverage) at no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate, with a reputable insurance company.
- 10. Force Majeure.** MPF's failure to deliver Product by reason of any of the following and such event shall not constitute an event of default or breach of any Terms: strikes, picket lines, boycott efforts, fires, floods, freeze, accidents, war (whether or not declared), revolution, riots, insurrections, acts of God.
- 11. Confidentiality.** Any specifications, samples, designs, formulations, trade secrets, patents, financial data, or other information that Buyer or Seller (the "Disclosing Party") identifies as or otherwise deems confidential (the "Confidential Information") and discloses to the other Party ("Receiving Party") in connection with this Agreement or any PO shall remain the exclusive property of the Disclosing Party and shall, along with any information derived from the same, be kept confidential by the Receiving Party and its employees and agents and shall not, without the Disclosing Party's prior written consent, be disclosed to any third party or used except for purposes of the PO. The Receiving Party agrees not to chemically analyze or reverse engineer any sample or to assist and/or allow any third party to do so without the express written consent of the Disclosing Party.
Notwithstanding the foregoing, such information shall not be deemed confidential to the extent that the Receiving Party can demonstrate by written record that it was previously known by the Receiving Party, became generally available to the public through no fault of the Receiving Party, was disclosed to the Receiving Party by a third party without breach of any confidentiality obligation, or is specifically required to be disclosed by law or legal process.
The Buyer and Seller agree that the covenant of confidentiality and nondisclosure set forth above shall survive termination of this Agreement and shall remain in effect for so long as the Confidential Information remains confidential. The Parties agree that this covenant shall supersede any contrary duration term set forth in any previously executed Confidentiality Disclosure Agreement.
- 12. Governing Law.** Any dispute, claim or controversy arising out of, or between the Parties during the execution of or interpretation of this Agreement shall be construed in accordance with the laws of the State of Michigan USA.
- 13. Miscellaneous.** a) Failure of MPF to insist upon performance of any provisions of these Terms or to exercise any rights hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such right. b) Any enforceable term, provision, undertaking or restriction contained in these Terms are held by a court of competent jurisdiction to be invalid, void or unenforceable (in whole or in part), the remainder of the terms, provisions, undertakings and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated. c) Any notice or request required or permitted to be given in connection with these Terms shall be sent by mail, prepaid, return receipt requested, by fax, with receipt confirmed, or by express delivery service to the address set forth on the PO or to any other business address furnished in writing by the intended recipient to the sender. The date of notice shall be deemed to be the date on which such notice has been sent by fax, received by mail, or by express delivery service. d) Section headings are for convenience only and are not to be construed as part of this Agreement.