

GENERAL PURCHASING TERMS AND CONDITIONS (US)

1. **Applicability.** These terms and conditions (“**Terms**”) shall apply to any purchase order issued by Material Handling Systems, Inc. and its subsidiaries and affiliates (“**Buyer**”) for the purchase of goods (“**Goods**”) and/or services (“**Services**”) from the seller identified on the face of the purchase order (“**Seller**”) (individually a “**Party**”; collectively the “**Parties**”). The purchase order, together with these Terms, and any attachments and exhibits, specifications, drawings, or instructions of Buyer, whether physically attached or incorporated by reference (collectively, the “**Purchase Order**”), shall constitute the entire and exclusive agreement between the Parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

SELLER’S ACCEPTANCE IS EXPRESSLY LIMITED TO THE ACCEPTANCE OF THESE TERMS. ANY ADDITIONAL TERMS OR DIFFERENT TERMS, WHETHER CONTAINED IN SELLER’S FORMS OR OTHERWISE PRESENTED BY SELLER AT ANY TIME, EVEN IF SELLER PURPORTS TO CONDITION ITS ACCEPTANCE OF A PURCHASE ORDER ON BUYER’S AGREEMENT TO SUCH ADDITIONAL OR DIFFERENT TERMS, ARE REJECTED AND SHALL NOT FORM A PART OF THE PURCHASE ORDER.

Notwithstanding anything herein to the contrary, if a master agreement covering the Goods or Services is in effect between the Parties, such master agreement shall supersede these Terms.

2. **Acceptance.** Seller shall be deemed to have accepted these Terms upon the earlier of (i) written or electronic acknowledgement of the Purchase Order, including submission of an invoice, or (ii) commencement of performance under the Purchase Order.

3. **Price.** The price of the Goods and/or Services is the price stated on the Purchase Order or such other document designated by Buyer (“**Price**”). Unless otherwise specified in the Purchase Order, the Price includes all packaging, freight, insurance, and customs duties and fees. No increase in the Price is effective, whether due to increased material, labor, freight, or otherwise, without the prior written approval of Buyer.

4. **Payment Terms.**

4.1. **Process and Procedure for Invoices; Setoff.** Unless otherwise specified in the Purchase Order, Seller shall issue an invoice to Buyer upon delivery in accordance with Buyer’s requirements. All amounts under this Agreement shall be in US Dollars. If requested by Buyer, Seller’s invoice shall be accompanied by lien waiver(s). Buyer shall pay all properly invoiced amounts due to Seller within 45 calendar days after Buyer’s receipt of the invoice, except for any amounts disputed by Buyer in good faith. If Buyer disputes any amounts, Buyer shall deliver a written statement to Seller listing all disputed items and providing a reasonably detailed description of each disputed item. The Parties shall seek to resolve all disputes expeditiously and in good faith. Seller shall continue performing its obligations despite any dispute. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

4.2. **Audit Rights.** Seller shall allow Buyer or its agents, at all reasonable times, access to all pertinent bookkeeping and accounting information, as reasonably requested by Buyer, to audit all Seller’s payables as invoiced to Buyer under the Purchase Order. Seller shall allow Buyer or its agents to make copies of those portions of its records that Buyer deems reasonably necessary for its audits. Buyer shall protect Seller’s information provided to Buyer under this Subsection as Confidential Information.

5. **Delivery of Goods/Services.**

5.1. **Delivery of Goods.** Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order (“**Delivery Date**”). If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Purchase Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date. Early delivery must receive Buyer’s prior written approval; otherwise, Buyer may return any such Goods delivered before the Delivery Date at Seller’s expense and Seller shall redeliver the Goods on the Delivery Date.

5.2. **Shipping Terms.** Unless otherwise provided in the Purchase Order, delivery shall be made FOB destination. Seller shall pack all Goods for shipment according to Buyer’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition.

5.3. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods at the “ship to” address specified in the Purchase Order.

5.4. **Delivery of Services.** Seller shall provide the Services to Buyer as described and in accordance with the Purchase Order and these Terms.

6. **Changes.** Buyer reserves the right to make changes at any time within the general scope of a Purchase Order, which shall be done by issuance of either an updated Purchase Order or a written change order. If any change by Buyer causes an increase or decrease in the cost or delivery schedule, Seller may request an equitable adjustment in the Price and/or the delivery schedule, provided that no changes can be made without written authorization from Buyer.

7. **Performance.**

7.1. **Time is of the essence.** Time is of the essence with respect to Seller’s performance hereunder. Seller will deliver the Goods or perform the Services in strict accordance with the schedule specified in the Purchase Order. Seller shall promptly notify Buyer in writing of any circumstance that may cause a delay.

7.2. **Right to Acquire Substitute Items.** If a delay occurs, Buyer may acquire substitute or replacement goods or services from an alternate source, and subject to Subsection 7.3, Seller shall be liable for any difference between the cost of the substituted goods or services and the Price. Rights and remedies provided in this Subsection shall be in addition to any and all other remedies available to Buyer.

7.3. **Force Majeure.** Neither Party shall be liable to the other for any delay or failure in performing its obligations under the Purchase Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, without the Party’s fault or negligence, and which by its nature could not have been foreseen by the Party or, if it could have been foreseen, was unavoidable (“**Force Majeure Event**”). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes, or industrial disturbances. Seller’s economic hardship or changes in market conditions are not Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized, and resume performance under the Purchase Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Purchase Order, Buyer may terminate the Purchase Order immediately by giving written notice to Seller.

8. Confidential Information. Seller and its affiliates will comply with the terms of any nondisclosure agreement executed by Seller (or any of its affiliates) (“NDA”). If an NDA does not exist, has expired, or is otherwise no longer in full force and effect, Seller (including its affiliates) shall (a) keep Confidential Information confidential; and (b) use such Confidential Information solely to perform its obligations under the Purchase Order. Confidential Information means all non-public, proprietary, or confidential information of Buyer and its affiliates/subsidiaries, including but not limited to, specifications, designs, drawings, trade secrets or know-how, and other technical or business information disclosed by Buyer to Seller, in oral, visual, written, electronic, or other tangible or intangible form, whether or not marked or designated as “confidential”. Upon Buyer’s request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain through no wrongful act of Seller; (b) known to Seller prior to disclosure; (c) rightfully obtained by Buyer on a non-confidential basis from a third party; or (d) was or is independently developed by Seller without using any Confidential Information.

9. Inspection. All Goods/Services are subject to inspection by Buyer on or after delivery. Buyer may reject all or any portion of Goods/Services that it determines are defective or otherwise nonconforming. Goods rejected or Goods supplied in excess of quantities ordered may be returned to Seller at its sole expense. If Buyer requires replacement or reperformance of defective or nonconforming Goods/Services, Seller shall, at its expense, promptly replace or reperform the defective or nonconforming Goods/Services and pay for all related expenses, including without limitation, freight costs. If Seller fails to timely deliver replacement Goods or reperform Services, Buyer may replace them with goods or services from a third party and charge Seller the cost of replacement and may terminate the Purchase Order pursuant to Section 20. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller’s obligations under the Purchase Order. Buyer may conduct further inspections after Seller has carried out its remedial actions. Payment by Buyer does not constitute acceptance.

10. Warranties.

10.1. Warranties for Goods. Seller warrants to Buyer that all Goods: (a) are free from any defects in workmanship, material, and design; (b) fully conform to applicable specifications, drawings, designs, and other requirements (including required certifications and testing); (c) are fit for their intended purpose and operate as intended; (d) are merchantable; (e) are made from new (not refurbished or reconditioned) materials; (f) are free and clear of all liens, security interests, or other encumbrances; and (g) do not infringe or misappropriate any third party’s patent or other intellectual property rights.

10.2. Warranties for Services. Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the Purchaser Order.

10.3. Warranty Period. Warranty shall remain in effect for a period of: with respect to Goods, 18 months from delivery or 12 months from installation, whichever occurs earlier; with respect to Services, 12 months from completion of Services to the reasonable satisfaction of Buyer. Notwithstanding the foregoing, if the period provided in Seller’s standard warranty covering the Goods/Services is longer, Seller shall warrant for the length of such standard warranty period. If Seller provides replacement or reperformance of Goods/Services, the warranties in Subsection 10.1 and 10.2 are automatically extended for a period of 12 months from the delivery of the replacement or reperformance.

10.4. Seller’s Obligations Upon Noncompliance. If Buyer gives Seller notice of noncompliance under this Section, Seller shall, at its own cost and expense, (i) promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Goods to Seller and the delivery of repaired or replacement Goods to Buyer, and, if applicable, (ii) repair or reperform the applicable Services.

10.5. Statute of Limitations. Any applicable statute of limitations runs from the date of Buyer’s discovery of the noncompliance of the Goods or Services with the warranties in Subsections 10.1 and 10.2.

11. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing in these Terms creates any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party has authority to contract for or bind the other Party in any manner. Seller shall be liable for the payment of its employees’ wages, benefits and all taxes with respect thereto, and Seller shall comply with all applicable federal, state and local laws, regulations, codes, rules and ordinances with respect to the hiring, employment, compensation, health and safety of employees.

12. Insurance. Seller shall, at its own expense, maintain and carry insurance with a commercially reasonable (as specified by Buyer) insurance limit in full force and effect with financially sound and reputable insurers. Upon Buyer’s request, Seller shall provide Buyer with a certificate of insurance from Seller’s insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with 30 days’ advance written notice in the event of a cancellation or material change in Seller’s insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer and Buyer’s insurers. Seller’s worker’s compensation and employer’s liability insurance shall cover all of Seller’s employees, agents, officers and directors. Seller must ensure that any subcontractors carry insurance as required by Buyer.

13. Intellectual Property. Buyer owns all right, title and interest to any and all deliverables, ideas, inventions, works of authorship, know-how or any other intellectual property created by or on behalf of Seller as a result of its performance under the Purchase Order or derived from or based on the use of information supplied by Buyer (collectively “**Work Product**”). All Work Product protectable by copyright will be considered work(s) made for hire for Buyer, as the phrase “work(s) made for hire” is defined in the U.S. Copyright Act (17 U.S.C. § 101) or Seller will give Buyer “first owner” status related to the work(s) under local copyright law where the work(s) was created. To the extent any Work Product is not considered work made for hire, Seller hereby irrevocably assigns to Buyer all right, title, and interest to and in such Work Product and Seller shall enter into and execute any documents that may be required to transfer or assign ownership in and to any such Work Product to Buyer.

14. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer and Buyer’s parent company, its subsidiaries, affiliates, successors, or assigns and their respective directors, officers, shareholders and employees (collectively, “**Indemnitees**”) against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification under the Purchase Order, and the cost of pursuing any insurance providers (collectively, “**Losses**”) arising out of or occurring in connection with the Goods or Services purchased from Seller or Seller’s negligence, willful misconduct, or breach of the Terms. Seller shall not enter into any settlement without Buyer’s prior written consent.

- 15. Intellectual Property Indemnification.** Seller shall, at its expense, defend, indemnify, and hold harmless Buyer, its subsidiaries, affiliates, successors, assigns, directors, officers, employees, and agents (collectively, “**Buyer Indemnitees**”) against any loss, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification under the Purchase Order (collectively, “**Losses**”) arising out of or in connection with any claim that Buyer Indemnitees’ use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret, or other intellectual property right of any third party (collectively, an “**Infringement Claim**”). Seller is responsible for any costs incurred for Goods/Services that must be re-qualified due to an Infringement Claim.
- 16. Compliance with Law.** Seller shall comply with all applicable laws, regulations and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under the Purchase Order.
- 17. Jobsite Conduct; Compliance with Buyer’s Policies; Safety.** Seller shall comply with all rules, regulations, and policies of Buyer or Buyer’s customer(s) that are made available to Seller. In addition, Seller must strive for professional and courteous behavior. This includes but is not limited to: (a) complying with applicable jobsite-specific rules, wearing professional attire, using professional language, only using designated smoking areas, and keeping the jobsite clean; and (b) complying with the requirements set forth in the MHS Contractor Safety Program.
- 18. Publicity.** Without Buyer’s prior written consent, Seller may not use or permit the use of Buyer’s name, logos, trademarks or other commercial symbols in any manner. Seller may not issue any press release or other publicity that relates to any purchase by Buyer.
- 19. Limitation of Liability.** BUYER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LIQUIDATED DAMAGES, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES; AND, IN NO EVENT SHALL BUYER’S LIABILITY TO SELLER EXCEED THE AMOUNT OF FEES PAYABLE UNDER THE PURCHASE ORDER.
- 20. Termination.** Buyer may terminate all or any part of the Purchase Order at any time and for any reason upon 5 days written notice to Seller. If Buyer terminates the Purchase Order for any reason, Seller’s sole and exclusive remedy is payment for those conforming Goods delivered and Services satisfactorily performed prior to termination.
- 21. Assignment.** Seller shall not assign any of its rights or delegate any of its obligations under the Purchase Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section is void. No assignment or delegation will relieve Seller of any of its obligations under the Purchase Order. Buyer may at any time assign any of its rights or delegate any of its obligations under the Purchase Order without Seller’s prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer’s assets.
- 22. Cumulative Remedies.** Seller acknowledges that any breach of the Purchase Order will cause irreparable harm and injury to Buyer for which money damages would be an inadequate remedy and that, in addition to remedies at law, Buyer is entitled to equitable relief as a remedy for any breach. Seller waives any claim or defense that Buyer has an adequate remedy at law in any proceeding. Nothing in the Purchase Order shall limit the equitable or available remedies at law for Buyer.
- 23. Severability.** If any provision of the Purchase Order is invalid, illegal, or unenforceable, that provision is severed from the Purchase Order and the remaining provisions in the Purchase Order remain in full force.
- 24. Amendment and Modification.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each Party.
- 25. Notices.** All notices, requests, consents, claims, demands, waivers, and other communications (each, a “**Notice**”) must be in writing and addressed to the Parties at the addresses set forth on the face of the Purchase Order (or to any other address that may be designated by the receiving Party from time to time in accordance with this Section). The Parties shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or e-mail (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in the Purchase Order, a Notice is only effective (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section.
- 26. Waiver.** No waiver by Buyer of any of the provisions of the Purchase Order is effective unless explicitly stated in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the Purchase Order operates, or may be construed, as a waiver. No single or partial exercise of any right, remedy, power, or privilege under the Purchase Order precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 27. Governing Law; Jurisdiction.** The laws of the Commonwealth of Kentucky (without giving effect to its conflict of law principles) govern all matters arising under and relating to the Purchase Order. The UN Convention on Contracts for the International Sale of Goods does not apply to the Purchase Order. Any legal suit, action, or proceeding relating to the Purchase Order must be instituted in the federal or state courts located in Louisville, Jefferson County, Kentucky. Each Party irrevocably submits to the exclusive jurisdiction of those courts.
- 28. Survival.** Any provision of these Terms which by their nature extend beyond the expiration, termination, or cancellation of the Purchase Order shall remain in full force and effect until fulfilled and/or performed.
- 29. Business Ethics.** MHS is committed to the highest standards of business ethics. Seller warrants that it has neither accepted nor provided gifts or gratuities of any kind from or to any employee, representative, or agent of Buyer in connection with the Purchase Order; and further warrants that it shall uphold the highest standards of business ethics and ensure compliance with all applicable laws, including without limitation, the United States Foreign Corrupt Practices Act and the UK Bribery Act of 2010. Seller agrees to certify at least annually it is in compliance with MHS Supplier’s Code of Conduct (<http://www.mhsglobal.com/globalassets/mhs-blocks/pdfs/mhs-suppliers-code-of-conduct-rev.3.pdf>) and applicable anti-corruption laws and regulations by executing a form supplied by MHS for this purpose. Violation of this Section by Seller shall be a material breach and MHS shall be entitled to terminate this Agreement and any Purchase Order immediately.