

# Terms and Conditions of Sale



(Supersedes and cancels all previous Terms and Conditions)

Machine Safety Management Corporation reserves the right, at its sole discretion, to change, modify, add or remove portions of these Terms and Conditions, at any time. It is your responsibility to check these Terms and Conditions periodically for changes.

- 1. Generally.** Unless otherwise agreed to in writing, all sales are made subject to these Terms and Conditions of Sale and any additional terms provided in the Sales Invoice and Packing List.
- 2. Entire Agreement.** The terms and conditions provided in these Terms and Conditions of Sale shall constitute the complete and exclusive statement of the agreement between the Buyer and Seller (MACHINE SAFETY MANAGEMENT CORPORATION, "MSMC") Any additional or different terms proposed by the Buyer are rejected and shall not be part of any agreement unless expressly agreed to in writing by the Seller.
- 3. Payment.** The price for goods will be stated on the Sales Invoice and will reflect Seller's current price at the time of shipment. All prices are subject to change without notice. Payment terms will be as specified on the Sales Invoice, or if not specified, in accordance with the Seller's policy in effect at the time of shipment which have been established for the customer. Unless otherwise stated in the Sales Order an initial deposit of 50% is required for orders over \$1000 USD. Maximum allowable. Late fees may apply for unpaid invoices or incurred costs in collections of delinquent amounts.
- 4. Transfer of Title and Security Interest.** Title to the goods will pass to Buyer only upon Buyer's complete payment of the purchase price. Seller shall retain a security interest in the goods until complete payment of the purchase price, and Buyer authorizes seller to file financing statements on behalf of Buyer. Failure of the Buyer to pay any amounts when due will give Seller the right to immediately enter the Buyer's premises and take possession and remove the goods at any time without notice. Seller's taking possession of such goods will be without prejudice to any other remedies Seller may have. At the request of Seller, Buyer will execute one or more financing statements, in a form satisfactory to Seller, or other documents reasonably required by Seller to protect Seller's security interest in the goods.
- 5. Delivery and Risk of Loss or Damage.** Delivery of the goods will be F.O.B. Seller's warehouse. Buyer shall bear the risk of loss or damage once Seller has delivered the goods to the carrier. Seller will arrange shipment of the goods and will in its sole discretion select the mode of transportation. Seller assumes no responsibility for insuring shipments of goods. Delivery dates are approximate only, and Seller will have no liability for delay in delivery or for early delivery of goods.
- 6. Warranty, Limitations and Remedy.** All purchases are subject to the MSMC LIMITED WARRANTY. A copy of the Limited Warranty can be found on our website. The link is attached to all sales orders. A copy can also be obtained by requesting a copy from the Seller.
- 7. Returns.** Product may only be returned as provided in MSMC Return Goods Policy. Contact MSMC for full information.
- 8. Patents.** Seller will, at its own expense, defend any suit brought against Buyer that is based on a claim that the goods infringe on any U.S.A. patents or trademarks and will indemnify Buyer against any award of damages and costs made to the extent that the award does not exceed the purchase price of the infringing goods, if Buyer promptly notifies Seller in writing of any such claim, gives Seller full authority to conduct such lawsuit, and furnishes Seller with whatever information and assistance may be reasonably required for such defense. Seller shall have no liability to Buyer with respect to any patent infringement or claim that is based on or arises from (a) the use of the goods by Buyer in a manner for which they were not designed or (b) the modification of the goods by Buyer or any third party. This paragraph provides Buyer's sole and exclusive remedy against Seller for patent infringement.
- 9. Confidential Information.** Buyer agrees not to disclose to any person outside of its employment, and not authorized by Seller, any information relating to Seller's affairs, including, but not limited to, information about its engineering designs and drawings, product specifications or any other proprietary information/documents. In the event Buyer chooses not to purchase goods being quoted, Buyer will return to the Seller all drawings, blueprints, descriptions, and all other documents containing Seller's propriety information.
- 10. Taxes.** Prices of goods are exclusive of all applicable federal, state and local taxes. Buyer agrees to pay (or reimburse Seller for) all taxes, however designated, arising out of the sale imposed under the authority of any federal state or local taxing jurisdiction, upon receipt of a Sales Invoice for the amount of the tax.
- 11. Delays.** Seller will be excused for, and will be free from liability for loss or damage due to delays in performance arising from acts of God, strikes, labor difficulties, riot, war, fire, health epidemics, delay or defaults of common carriers, failure or curtailment of Seller's usual sources of supply, government decrees or orders, prolonged shortage of energy supplies, or, without limiting the above, any other delays beyond Seller's reasonable control.
- 12. Cancellation.** Seller reserves the right to cancel all or part of the undelivered portion of any order without any liability, if Buyer breaches any of the terms and conditions of this Terms and Conditions of Sale, becomes insolvent, makes an assignment for the benefit of creditors, or files a petition or has a petition filed against it in bankruptcy. It shall be within the Seller's sole and exclusive discretion to decide whether to allow Buyer to cancel or change any order. Seller may, in its sole and exclusive discretion, require Buyer to pay reasonable cancellation or change order charges, which may include, but will not necessarily be limited to, all costs and expenses incurred in connection with the canceled or changed order.
- 13. Indemnity.** Buyer shall protect, defend, indemnify and hold harmless the Seller for all loss, cost or expense (including reasonable actual attorney's fees) arising out of any breach of the Terms and Conditions of Sale by Buyer or any of Buyer's negligent or wrongful conduct.
- 14. Law.** The rights and obligations of the parties, the Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of the state of Minnesota. The Buyer and Seller agree that any dispute arising out of or related to the sale of goods shall be resolved by action in the Minnesota state or federal courts and both parties hereby submit and waive all objections to exclusive jurisdiction by those courts.
- 15. No Waiver.** Seller's failure to enforce any right possessed under these Terms and Conditions of Sale shall not constitute a waiver of Seller's right to subsequently enforce and compel strict compliance with every term and condition.
- 16. Limits on Actions.** No action, regardless of form (including tort, contract, breach of warranty and otherwise) arising out of the sale or use of the goods may be brought by any person more than one year after the claim has accrued, except claims for non-payment of the purchase price of any goods may be brought at any time after the date the last payment was due on any goods or services rendered or warranty work completed for distributor.
- 17. Assignment.** None of the Buyer's rights under the Terms and Conditions of Sale, Sales Invoice or any order shall be assigned to any other person, whether by operation of law or otherwise, without the Seller's prior written approval.

SUBJECT TO CHANGE WITHOUT NOTICE