


MTD PRODUCTS INC				Document: PP-3-932-064 Rev.: 002	
BUSINESS PROCESS: Terms and Conditions for Purchase of Production Parts and Materials					
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**Terms and Conditions for Purchase of  
Production Parts and Materials**

**1. Acceptance, Contract Formation.**


(a) If preceded by a Request For Quote ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐  
Affiliates (as defined herein) ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐  
thereto which incorporates and contains only the terms and conditions herein set forth, then  
the Purchase Order and/or Release (including the face-pages thereof, if applicable) to  
which these terms and conditions apply (collectively referred to hereinafter as the  
☐ ☐ ☐ ☐ ☐ ☐ purchasing agent on behalf of its subsidiaries  
and affiliates which make up its principal group of manufacturing and sales affiliates  
☐ ☐ ☐ ☐ e Order, all references to MTD shall refer to MTD in its  
capacity as purchasing agent on behalf of the Affiliates. MTD has authority as agent on behalf  
of its Affiliates (any of which shall have privity of contract hereunder) to enter into the Order.

(b) Except as otherwise stated in Section 1(a) above, the ☐ ☐ ☐  
offer to buy goods, and is expressly conditioned up ☐ ☐ ☐ ☐ ☐ ☐  
all terms and conditions set forth herein and without any additional or different terms. Any  
additional or different terms proposed by Seller hereby are rejected and excluded from the  
terms of purchase and sale between MTD and Seller.

(c) Seller may accept the Order in accordance with the preceding Section 1(b) and by  
either: (i) providing MTD written acknowledgement of ☐ acceptance ☐ ☐ ☐ ☐  
☐ - ☐ ☐ ☐ ☐ ☐ ☐ ; or  
(ii) commencing performance strictly in accordance with the terms of the Order and within a  
reasonable time (not to exceed sixty (60) days) from the date contained on the applicable  
Purchase Order or Release. If Seller objects to any term hereof or proposes any additional  
or different terms, whether or not material, Seller must give to MTD written notice stating any  
such objections and/or proposed additional or different terms before commencing  
performance, and no acceptance of the Order can occur until such objections and/or  
proposals are either withdrawn by Seller or settled by written agreement signed by MTD and  
Seller.

**2. Goods.**

(a) As ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐  
described in the specifications, drawings and/or other written documents either attached  
hereto or otherwise identified or incorporated herein by reference (including, without  
limitation, each MTD Purchase Order and/or Release), as may be modified as provided in  
Section 9 herein.

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(b) All goods delivered hereunder must be in a new and unused condition and not previously rejected for shipment hereunder or under any contract between Seller and another customer.

### 3. Buy/Sell Commitments.


(a) MTD will buy from Seller, and Seller will make, deliver and sell to MTD, the quantity ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ as specified in ☐ Purchase Order and/or Release as given by MTD to the Seller via the Portal, (or as otherwise set forth elsewhere in the Order), all as herein provided.

(b) If ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ specifies a percentage of requirements, MTD will buy from Seller the quantities of goods set forth: (i) in the Shipping Schedules and Releases which MTD provides to Seller pursuant to Section 7(a)(ii) herein; and (ii), if applicable, in the Production Planning Schedules which MTD provides to Seller pursuant to Section 7(a)(i) herein and are applicable to the sixty (60) day period following the ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ applicable production year. Except as provided in this Section 3, MTD has no obligation hereunder to buy any estimated quantity of goods stated in or in connection with the Order or ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ applicable period, whether or not the quantity actually purchased is deemed unreasonably disproportionate to any stated estimate or requirements or other quantity purchased in any prior production year or other applicable period.

(c) ☐ ☐ ☐ ☐ as to quantity of goods denotes only the goods described above in Section 2 and excludes all modifications thereof, except those modified as directed by MTD pursuant to Section 9 herein or otherwise approved by MTD in writing for purchase hereunder. MT ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ e Order under Section 17 with regard to ☐ ☐ ☐ ☐ ☐ decision to change the design, composition or configuration thereof and/or to discontinue use and/or sale thereof for any technical, economic or commercial reason, including a change in or termination of a contract with any MTD customer.

(d) Except as otherwise expressly provided herein, Seller will provide and supply, at its expense and without any charge, other than the purchase price, all materials, equipment, tools, facilities, licenses, and other items required to perform its obligations under the Order, except the provision of special tooling which Seller provides pursuant to a separate purchase order or agreement between MTD and Seller, or the cost of which special tooling MTD has agreed in writing to pay or reimburse to Seller apart from the purchase price of the goods.



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## 6. Packing, Marking, Shipping.

(a) Seller will properly pack, mark, route and ship all goods and containers thereof in ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ (as set forth on the Portal), and/or such other written instructions regarding the packaging, marking, or shipping of the goods as MTD provides to Seller in writing. Seller will reimburse to MTD all expenses incurred by MTD as a result of improper packaging, marking, routing or shipping.

(b) Except as expressly provided in the Order, Seller will make no charge for containers, crating, boxing, handling, damage or storage without ☐ ☐ ☐ authorization.

(c) ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ rejection and/or revocation of acceptance of any goods which are defective or fail to conform to any requirement of the Order.

## 7. Planning Schedules, Shipping Schedules and Releases.

(a) From time to time during the applicable production year, MTD will provide to Seller (via the Portal):


☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ the goods that MTD expects to need for production purposes during the period(s) specified therein; and

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ order and release for the fabrication and shipment of a specific quantity or quantities of goods to MTD during the period(s) specified therein.

(b) Seller will ship goods both in the quantities and at the times specified in the Order (including the applicable Shipping Schedule, Purchase Order and/or Release) as required for the goods to arrive on the applicable due date at the designated ship-to destination as identified in the Order, or as otherwise ☐ ☐ ☐ ☐ ☐ ☐

(c) MTD may change both the quantities and times for shipment of goods previously scheduled for shipment and delivery hereunder, including temporary suspensions and postponements, by written notice to Seller at any time prior to shipment.

(d) If Seller fails or is unable to ship goods for delivery on the due date at the designated ship-to location for any reason, except a cause or condition which excuses

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part thereof, as and when available, at the earliest time and by the most expeditious method of transport, including air freight, and Seller will pay or reimburse to MTD the full cost of such expeditious method of transport.

### 8. Receipt, Inspection.

(a) MTD may inspect and test all goods delivered to the ship-to location or other location as MTD elects. MTD may accept and retain, reject and/or revoke acceptance, of any or all goods, as MTD elects, which are delivered at the designated location: (i) in a quantity which is either less than or more than the authorized quantity; (ii) either before or after the due date or time, or (iii) in a condition or manner that fails to conform to any requirement of the Order. MTD may reject and/or revoke acceptance of goods which are incorporated in products manufactured and sold to third persons by MTD (including MTD ☐ ), and, thereafter, are discovered not to conform to a material requirement of the Order or otherwise determined by MTD to be defective.

(b) Seller will pay to MTD all handling, sorting, packing, transportation (including inbound and out-bound freight charges), and other expenses which MTD incurs in connection with any goods returned pursuant to Section 8(a) plus an administrative fee up to ten percent (10%) of the aggregate purchase price of the goods returned. If MTD elects to retain any defective or non-conforming goods to support immediate production needs, Seller will pay or reimburse to MTD all costs incurred in correcting such defective or non-conforming condition. In addition, Seller will pay or reimburse to MTD all costs and expenses incurred by MTD in ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ -conforming goods whether or not MTD elects to accept and retain, reject and/or revoke acceptance of such defective and/or non-conforming goods.

(c) If (i) Seller fails to deliver any goods to the designated location on the due date or in a condition that fails to conform to any requirement hereunder and (ii) as a result thereof, MTD is unable to start or continue any of its production operations, then unless such failure is excused under Section 19 hereof, Seller will pay or reimburse to MTD an amount which is not less than thirty-eight dollars (\$38.00) per hour multiplied by the aggregate number of hours that each production employee was unable to perform work as a result thereof. MTD will provide to Seller its calculation of such amount. The foregoing remedy is not in lieu of or in limitation of other rights or remedies available to MTD either hereunder or at law.

### 9. Changes.

(a) By providing a written change notice to Seller, MTD may direct Seller to make, and Seller will make, changes within the general scope of the Order, including changes in: (i) the














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(d) In the event that any goods sold by Seller to MTD are determined by a governmental agency, court or MTD to contain any material defect that poses a safety issue and/or not to be in compliance with the terms of the Order (including any mandatory or mutually agreed upon voluntary standards or requirements) so as to make advisable that such items be reworked or recalled, MTD shall promptly communicate all relevant facts to Seller and MTD and Seller shall then determine what corrective action should be taken. These actions may include service bulletins and/or recalls. The parties shall cooperate with and assist each other in completing all necessary filings and corrective action; provided that, nothing contained in this Section 14(d) shall preclude MTD from taking any unilateral action as may be required of MTD under applicable law or regulation. Any costs associated with a product recall or a corrective action agreed upon shall be borne by Seller and Seller shall reimburse MTD for all such costs and expenses, including, without limitation, legal fees incurred by MTD in connection with these matters and any fines and/or penalties assessed, levied or imposed upon MTD by a governmental agency or court.

#### **15. Intellectual Property.**

(a) Seller warrants to MTD that sale or use of goods purchased from Seller (including the incorporation of such goods in products manufactured, assembled and sold by MTD) does not and shall not infringe upon any patent, trademark, trade secret and/or copyright ☐ of any third-party in any jurisdiction in which the goods (including any MTD product incorporating such goods) are sold.

(b) Seller hereby grants to MTD and the Affiliates an unrestricted and royalty-free right and license under each patent owned and/or controlled by Seller to use and sell goods delivered hereunder, including the right to modify and reconstruct same.

(c) In the event that a claim is asserted against MTD and/or the Affiliates that any goods or part thereof or any device or product resulting from use thereof infringes any Intellectual Property right, then Seller will indemnify, hold harmless and own expense, such claim and any lawsuit or other proceeding to the extent based on such claim, and Seller will pay all damages, attorney fees, and costs awarded therein, if MTD: (i) gives Seller written notice thereof; (ii) provides Seller with copies of all documents received in connection therewith; (iii) cooperates with Seller, at ☐ ☐ ☐ ☐ ; and (iv) gives Seller full authority to control the defense thereof through lawyers of its own choice, including compromise and settlement of all claims. Further, if any such goods, parts, devices or products are held to infringe and use thereof is enjoined, Seller, at its own expense and option, will either procure for MTD (including its Affiliates and customers) the right to continue using same by license or otherwise, modify same to avoid infringement, replace same with a non-infringing article, or refund the full purchase price thereof and pay all costs which MTD (including its Affiliates and

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customers) incurs in connection with receipt and return such goods, parts, devices or products.

(d) To the extent any material prepared by Seller in connection with the sale of the ☐ and hereby assigns copyright in the Work to MTD. Seller will execute and deliver any necessary documentation to transfer copyright in the Work to MTD.

(e) The names and trademarks of each party and its affiliates will remain the sole and exclusive property of that party or its affiliate. A party will not use any name or trademark of the other party or any of its affiliates for any purpose whatever without t ☐ ☐ ☐ ☐ authorization. The preceding sentence notwithstanding, MTD may resell any goods, whether alone or as a part of another product, which Seller provides hereunder and bears the trade name, trademark and/or trade dress of Seller.

#### 16. Confidentiality.


(a) All patterns, designs, drawings, specifications, bills of material, manufacturing documentation, quality control procedures, plans and other materials and/or documents which MTD provides to Seller in connection with the Order, whatever the form, whether printed, documentary, electronic media or otherwise, is the proprietary and confidential ☐ , and such MTD Confidential Information will be deemed to contain trade secrets and will be and remain the property of MTD.

(b) Seller will hold all such MTD Confidential Information in confidence; will not use such MTD Confidential Information for any purpose, except the production and delivery of goods pursuant to the Order; and will not disclose MTD Confidential Information to any third person, except to suppliers of materials and services that Seller requires to perform its ☐ confidentialia ☐ confidentiality obligations to MTD in accordance with the terms of any separate confidentiality ☐

#### 17. Termination by MTD.

(a) MTD may terminate the Order, in whole or in part, at any time by written notice to Seller, whether or not Seller is in default of any obligation hereunder and without regard to the existence of any cause or event specified in Section 18 herein.

(b) After receipt of a termination notice, unless MTD otherwise directs, Seller will immediately cease all work directly related to the terminated part of the Order and, also: (i)

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terminate all orders and subcontracts directly related thereto; (ii) settle all claims arising out of or related to such termination; (iii) transfer title and deliver to MTD (A) all completed work which conforms to the requirements of the Order and does not exceed the quantity authorized for shipment to MTD and (B) all reasonable quantities (but not in excess of amounts authorized by MTD) of any work in process and materials produced or acquired in respect of the performance of the terminated part of the Order, which are of a type and quality suitable for producing supplies which conform to the requirements of the Order and which Seller cannot reasonably use in producing products or other materials for itself or its other customers; (iv) ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ MTD has or may acquire an interest; and (v) present its termination claim to MTD promptly but not later than thirty (30) days after the effective date of the termination notice. On the basis of information available to it, whether or not Seller submits its termination claim as herein specified, MTD may determine the amount of compensation, if any, reasonably due to Seller with respect to the termination of the Order or part thereof and such determination shall be final.

(c) Upon reasonable notice, MTD, through its representatives and agents, shall have ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ subsequent to payment so that MTD may verify any charges supporting any termination claim asserted by Seller.

(d) The provisions of Section 17(b) and 17(c) shall not apply in the event that MTD cancels and/or terminates the Order due to or as a result of ☐ ☐

#### 18. Cancellation for Default.

MTD will have the right to terminate the Order, without liability to Seller, if: (a) Seller defaults in the performance of any material obligation hereunder unless such default is excused by a cause or event specified in Section 19; (b) Seller ceases to conduct its operations in the normal course of business; (c) Seller is unable to meet its obligations as they mature; (d) any proceedings under the bankruptcy or insolvency laws is brought by or ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ made ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ the benefit of its creditors; or (g) Seller assigns or otherwise transfers the Order (or any part or portion thereof) to any other person, and/or sells or transfers ownership or control of its entire business or the part of its business which makes and delivers goods to MTD hereunder to any other person, whether or not Seller owns, controls or otherwise is affiliated with such other person, without the prior written consent of MTD.


#### 19. Excusable Delays.









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subsequent notice to the other party, and will be deemed given and effective only when received by the other party.

## **27. Entire Agreement.**

**(a)** The Order: (i) includes each MTD document identified or referenced herein, including each exhibit and attachment thereto and any documents and instructions that MTD is required to give or gives to Seller as herein provided; (ii) contains the entire agreement between the parties regarding the subject matter hereof, and (iii) supersedes any prior or contemporaneous agreements and understandings, oral or written, between the parties.

**(b)** Except as expressly set forth herein, no representative of MTD has the authority to make any representation or warranty to Seller in respect of the Order which is not reduced to writing, signed by both parties and incorporated by reference or otherwise into the Order. In entering into the Order, Seller affirms that it is not relying on any representation or other assurance by MTD or any of its representatives, which is not set forth in writing and expressly incorporated herein.

**(c)** The Order may be modified only by a writing signed by an authorized representative of each party.