

## **MECHANICAL SYSTEMS REMANUFACTURING INC. STANDARD TERMS AND CONDITIONS OF PURCHASE**

**1. ACCEPTANCE OF TERMS AND CONDITIONS** Seller agrees to be bound by and to comply with all terms set forth herein and in the purchase order, to which these terms are attached and are expressly incorporated by reference (collectively, the "Order"), including any amendments, supplements, requirements, specifications, and other documents referred to in this Order and located at the following link: (<http://www.msr-rail.com/terms-and-conditions>). Acknowledgement of this Order, including, without limitation, full or partial performance by Seller, shall be deemed acceptance of this Order. The terms set forth in this Order take precedence over any alternative terms in any other document connected with this transaction unless such alternative terms are: (A) part of a written supply agreement ("Master Supply Agreement"), which has been negotiated between the parties and which the parties have expressly agreed may override these terms in the event of a conflict and/or (B) issued by Purchaser (Mechanical Systems Remanufacturing Inc.) as set forth on the face of the Order to which these terms are attached and in the absence of a Master Supply Agreement. In the event these terms are part of a written Master Supply Agreement between the parties, the term "Order" used herein shall mean any purchase order issued under the Master Supply Agreement. In the event of a conflict between the terms set forth herein and in the Order to which these terms are attached, the terms in the Order shall control; provided, however, in the event that the parties have executed a Master Supply Agreement, the terms of the Master Supply Agreement shall control over the Order. These terms and conditions apply to everything listed in this Order and constitute Purchaser's offer to Seller, which Purchaser may revoke at any time before Seller accepts it. This Order is not an acceptance by Purchaser of any offer to sell, any quotation, or any proposal. Reference in this Order to any such offer to sell, quotation, or proposal will not constitute a modification of any of these terms and conditions. Terms and conditions different from or in addition to these terms and conditions, whether contained in any acknowledgment of this Order, or with delivery of any goods or services under this Order, or otherwise, will not be binding on Purchaser, whether or not they would materially alter this Order, and Purchaser hereby rejects them.

**2. PRICES** Mechanical Systems Remanufacturing Inc ("MSR") shall not be billed at prices higher than those stated on the Order. Unless otherwise specified the price stated includes all charges for materials, services, labor, packing, hauling, storage and transportation to point of delivery. Seller will pay all delivery charges in excess of any delivery charge MSR has agreed to pay. Seller agrees that any price reduction made with respect to the items covered by this Order subsequent to its placement but prior to shipment will be applicable to this Order.

**3. PAYMENT** Seller agrees to issue a separate invoice for each shipment and purchase order. Credit and discount periods shall be computed from the later of the date of receipt of goods or receipt of a correct invoice through to the date MSR's check is mailed.

**4. DELIVERY** Deliveries are to be made both in quantities and at times specified herein. Time is of the essence. If the Seller's deliveries fail to meet this schedule, Seller agrees to provide and pay expedited routing costs. Expediting routing costs will be debited to Seller's account upon notification and approval from Seller's Customer Service Representative. MSR shall not be liable for Seller's commitments or production arrangements in excess of the amount or in advance of the time necessary to meet MSR's delivery schedule. Goods, (including without limitation, raw materials, components, consumables, services, labour, intermediate assemblies, constructions, products, drawings, designs, molds, computer software and data) which are delivered in advance of schedule may at MSR's option, either (i) be returned at Seller's expense for proper delivery, (ii) have payment therefore withheld by MSR until the date goods are actually scheduled for delivery, or (iii) be placed in storage for Seller's account until delivery date specified herein.

**5. INSPECTION/REJECTION** (a) All goods shall be subject to inspection and test by MSR to the extent practicable at all times and places including the period and place of manufacture and in any event prior to acceptance. (b) In case any goods or lots of goods are defective in material or workmanship or otherwise not in conformity with the requirements of this Order, MSR shall have the right either to reject them, to require their correction, or to require their replacement. Goods, or lots of goods, which have been rejected or require correction shall be removed or, if permitted or required by MSR, corrected in place by and at the expense of the Seller promptly after notice. MSR agrees to utilize Seller's Return Material Authorization Process, should it exist, for the return or replacement of defective goods. If Seller fails to remove goods or lots of goods, MSR either (1) may by separate contract or otherwise replace or correct such goods and charge to the Seller the additional cost incurred by MSR thereby, or (2) may cancel this Order for default as provided in Article 15 "Termination for Default". Unless Seller corrects or replaces such goods within the delivery schedule, MSR either (1) may pay for such items at a reduced price which is equitable under the circumstances, or (2) may cancel this Order for default as provided

in Article 15 "Termination for Default". (c) If any inspection or test is made by MSR, the Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of MSR's inspectors in the performance of their duties. All inspections and tests by MSR shall be performed in such a manner as not to unduly delay the work. MSR reserves the right to charge to Seller any additional cost of inspection and test when goods are not ready at the time such inspection and test is scheduled by the parties or when reinspection or retest is necessitated by prior rejection. (d) The Seller shall provide and maintain an inspection system acceptable to MSR covering the items hereunder. Records of all inspection work by Seller shall be kept complete and available to MSR during performance of this Order and for such longer period as may be specified elsewhere in this Order, including through the end of the warranty period. (e) Unless otherwise provided herein, final inspection and acceptance shall be after delivery to MSR's facility. Acceptance or rejection of goods shall be made as promptly as practicable after delivery, but failure to inspect and accept or reject goods shall neither relieve Seller from responsibility for such goods that are not in accordance with the requirements of this Order nor impose liability on MSR therefor. (f) The inspection and test by MSR of any goods or lots thereof does not relieve Seller of responsibility for defects or other failures to meet Order requirements that may be discovered prior to acceptance or during the warranty period set forth in Article 6, or for latent defects. (g) If at any time during the performance of this Order, or during the warranty period, it was known, or should have been known, by MSR that said goods did not conform to any or all of the requirements of this Order, final acceptance or notice or particulars notwithstanding, the failure of MSR to inform the Seller of such non-conformance shall not be construed as a waiver of any rights MSR may have with respect to items purchased under this Order.

**6. CHANGES** MSR may, at any time, make changes within the general scope of the Order. If such changes cause an increase or decrease in the cost of this Order or the time required to perform, an equitable adjustment shall be made and the Order modified in writing accordingly. Any claim hereunder must be asserted in writing within ten (10) days from the date the change is ordered. Nothing contained herein shall excuse Seller from proceeding without delay with the Order as changed including failure of the parties to agree upon any adjustment to be made under this Article. Changes shall not be binding upon MSR except when confirmed in writing by MSR. The issuance of information, advice, approvals or instructions by MSR's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect MSR's and Seller's rights and obligations hereunder, unless the same is in writing signed by an authorized representative of MSR which expressly states that it constitutes an amendment to this Order.

**7. WARRANTIES** Seller warrants that goods or services furnished hereunder will conform to the applicable specifications and will be free from defects in material and workmanship. Such warranty shall expire: (1) in the case of services, one year after the rendering of the service in question; and (2) in the case of a good, one year after placement of the good in service or eighteen months after the shipment of the good by Seller to MSR, whichever occurs earlier. In the event of a breach of the foregoing warranty, the obligation of Seller shall be to correct such failure at its own cost by, at its option, either: (1) repairing the defective good; (2) replacing the defective good; or (3) in the case of a service, providing a corrective service. The foregoing states the entire warranty of the Seller with respect to goods and services provided hereunder, and all other warranties are hereby disclaimed, including warranties of merchantability and fitness for a particular purpose. The remedies set forth in this Section 7 are the sole and exclusive remedies of the Seller in the event of a defect or non-conformity in any goods or services furnished to MSR by Seller.

**8. APPLICABLE LAWS AND TAXES** This Order shall be governed by and construed in accordance with the laws of the Province of Ontario. Seller agrees to comply with all federal, provincial and local laws, rules and regulations.

**9. SELLER'S STATUS** In supplying goods or services under this Order, Seller shall operate as and have the status of an independent contractor and shall not act as or be an employee or agent of MSR.

**10. ASSIGNMENT AND SUBCONTRACTING** This Order shall not be assigned or subcontracted by the Seller without the written consent of MSR. Utilization of independent delivery services and similar activities are acceptable. Such consent, if granted, shall not relieve Seller of any responsibilities under this Order.

**11. SUCCESSION** This Order shall be binding upon the successors and assigns of MSR and Seller.

**12. DELAYS AND NOTICE OF LABOR DISPUTES** If delivery under this Order should be unavoidably delayed, MSR shall extend the time for completion of the Order for the determined number of days of excusable delay. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during Seller's performance was not caused directly or substantially by the acts, omissions, negligence or mistakes of Seller, Seller's supplies or their agents was substantial and in fact caused Seller to miss delivery dates, and could not adequately have been guarded against by contractual or legal means. When any delays in delivery occur, Seller shall immediately notify MSR in writing the cause of

the delay and potential schedule impact. Seller shall confirm such notice in writing furnishing as much detail as is available. Whenever an actual or potential labor dispute is delaying or threatening to delay the performance of the Order, Seller shall immediately give written notice thereof to MSR. Failure of Seller to so notify MSR shall result in a waiver of any rights that Seller may have for an extension of time under this Order. Seller shall inform MSR of any known or potential labor disputes that could reasonably be expected to impact performance under this Order prior to acceptance of this Order. It is expressly understood and agreed that the Seller shall not be entitled to damages or compensation for and shall not be reimbursed for losses on account of delays resulting from any cause under this provision.

**13. INDEMNIFICATION** (a) The Seller agrees to defend, indemnify, protect and save harmless MSR, its subsidiaries, and their agents, servants, directors, officers, and employees from and against any and all suits, claims, demands or damages of whatsoever kind or nature arising out of or related to the performance of this Order by the Seller or its directors, officers, agents, servants, or employees including but not limited to expenditures for and costs of investigations, hiring of expert witnesses, court costs, counsel fees, settlements, judgments or otherwise; provided, however, that the obligations of the Seller hereunder shall only apply to the extent of fault or negligence of the Seller, its agent or employee. MSR shall, as soon as practicable, after a claim has been made against it, give written notice thereof to the Seller along with full and complete particulars of the claim. If the suit is brought against MSR, MSR shall forward to the Seller every demand, complaint, notice, summons, pleading, or other process received by MSR or its representatives. MSR shall provide Seller with the authority to defend any claim brought against MSR. Seller shall consult with MSR prior to settling any such claim.

**14. TERMINATION FOR CONVENIENCE** (a) MSR shall have the right to terminate this Order in whole or in part at any time, and from time to time, by written notice effective upon receipt by Seller of such notice, even though Seller is not in breach of any obligation hereunder. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with MSR's instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to this Order. In the event of such termination, Seller shall be paid an amount in settlement to be mutually agreed upon by the Parties which shall cover Seller's reasonable costs of performance incurred prior to termination in connection with the items for which this Order is terminated plus a reasonable profit based upon such costs. However, said payment shall not exceed the price specified herein for such goods. Seller shall advise MSR in writing, of Seller's claim, if any, for termination costs within twenty (20) days after receipt of the notice of termination. Termination in accordance with this Article shall not affect MSR's obligation to pay for goods accepted by MSR prior to such termination. (b) Nothing contained in paragraph (a) hereof shall limit or affect MSR's right to terminate this Order for Seller's breach.

**15. TERMINATION FOR DEFAULT** (a) MSR may cancel this Order in whole or in part by written or telegraphic notice: (1) If the Seller fails to make delivery of goods or to perform the services within the time specified in this Order or any increments thereof or extensions thereto or (2) if the Seller fails to perform its obligations under any of the other Articles of this Order, provided that the Seller shall fail to remedy any such condition with ten (10) days from the date of receipt of a notice from MSR concerning the existence of the condition. (b) In the event MSR cancels this Order in whole or in part as provided in paragraph (a) of this Article, MSR may procure upon such terms and in such manner as MSR may deem appropriate, goods or services similar to those canceled, and the Seller shall be liable to MSR for any excess costs of such similar items or services. The Seller shall continue the performance of this Order to the extent not canceled under the provisions of this Article. (c) After receipt of notice of such cancellation, the Seller shall transfer title and deliver to MSR satisfactorily complete work and such work in progress as may be directed by MSR. (d) The rights and remedies of MSR provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Order. (e) If, after notice of cancellation of this Order under the provisions of this Article, it is determined that the Seller was not in default under the provisions of this Article, the rights and obligations of the parties shall be the same as if the notice of cancellation had been issued pursuant to Article 14 "Termination for Convenience."

**16. RELEASE OF CLAIMS** It is agreed that Seller's acceptance of final payment from MSR shall release in full all claims for payment for work under this Order by Seller, its subcontractors or suppliers against MSR.

**17. NO WAIVER** No omission or delay by MSR at any time to enforce any right or remedy reserved to it or to require performance of any of the terms of this Order shall be a waiver of any such right or remedy to which it is entitled, nor shall it in any way affect the right of MSR to enforce such provisions thereafter.

**18. MAINTENANCE OF RECORDS AND AUDIT** During the term of this Order and for three years after final payment is made to Seller, Seller shall maintain and make available for audit by MSR or its designee all books, records, receipts, documents, papers and any other data or information relevant to and related to this Order.

**19. COMMUNICATIONS** Communications shall be in writing and shall be delivered to the MSR contact provided on the Order or to MSR procurement. Telephone calls may be used to expedite communications but shall not be official communications unless confirmed in writing under letterhead, or by Email. Communications shall be considered received at the time actually received by the addressee or designated agent.

**20. INSURANCE** The Seller shall maintain the following minimum insurance during this Order and shall provide MSR with proof thereof, as requested. Comprehensive General Liability \$5,000,000 per occurrence for bodily injury and property damage Comprehensive Automobile \$5,000,000 per occurrence for bodily injury and property damage Worker's Compensation As required by law

**21. USE OF INFORMATION** Seller agrees that all information heretofore or hereafter furnished or disclosed to MSR by Seller in connection with the placing or filing of this Order is furnished or disclosed as a part of the consideration for this Order, that such information is not, unless otherwise agreed to by MSR in writing, to be treated as confidential or proprietary and that the Seller shall assert no claims by reason of the use or disclosure of such information by MSR or its assigns.

**22. TOOLS, MATERIALS AND INFORMATION**

If any designs, sketches, drawings, blueprints, patents, dies, molds, masks, software, models, tools, gauges, equipment or special appliances should be made or procured by Seller especially for producing the items covered by this Order, then immediately upon manufacture or procurement they shall become the property of MSR. Seller shall maintain current inventory list of the foregoing. Any such item or any materials or any engineering data or other technical or proprietary information furnished by or paid for by MSR shall: (a) become and shall be identified as property of MSR, (b) be held by Seller on consignment at Seller's risk, (c) be used exclusively in the production for MSR of items required by this Order, (d) be subject to disposition by MSR at any and all times and upon demand they shall be returned to MSR.

**23. PACKING** Unless otherwise specified in this Order, Seller shall be responsible for safe and adequate packing which shall conform to the requirements of carrier's tariffs. Seller shall separately number all cases, packages, etc., showing the correspondence numbers on the invoices. An itemized packing slip, bearing this Order number, shall be placed in each container. No extra charge shall be made for standard packaging or packing materials. Seller must receive approval from MSR for nonstandard or specially requested packaging costs prior to shipping goods.

**24. PRODUCT SUPPORT** (a) The Seller warrants that the items purchased under this Order, including sub-assemblies, service, and spare parts shall be available to MSR during the operational life of the goods purchased or a reasonable time after the date of final shipment under this Order, whichever is later. (b) In the event an item purchased under this Order is superseded, Seller agrees to notify MSR of the super-session and shall provide the superseded part. In the event the Seller discontinues service or manufacture of the aforementioned goods, sub-assemblies or spare parts therefore and does not provide for another qualified source, the Seller shall make available to MSR all drawings, specifications, data and know-how which will enable MSR to service, manufacture, or procure said goods, sub-assemblies and spare parts under a royalty-free license which is hereby granted. Seller shall give MSR timely written notice of such discontinuance.