



## TERMS AND CONDITIONS OF SALE

### **GENERAL TERMS**

All quotations, orders, order acknowledgements, and promises of MCL Industries, Inc. (hereafter referred to as MCL) are firm and subject to change in any respect only by a written authorization from the CEO of MCL, or his authorized delegate at MCL's principal office in Pulaski, Wisconsin.

Failure of MCL to object to provisions in conflict with standard terms and conditions whether or not contained in the Buyer's Purchase Order, shall not be construed as a waiver of standard items or as an acceptance thereof.

NO STATEMENT, REPRESENTATION, OR WARRANTY NOT CONTAINED IN THE STANDARD TERMS AND CONDITIONS, CURRENT PRICE LISTS AND AUTHORIZED WRITTEN QUOTATIONS, SHALL BE BINDING UPON MCL UNLESS MADE IN WRITING BY AN OFFICER OF MCL.

Typographical and clerical errors in quotations and orders are subject to correction.

### **PUBLISHED PRICES AND QUOTATIONS**

Prices shown on published price lists are not offers to sell a specific product and are subject to confirmation with a specific quotation and acceptance of subsequent Buyer order. All published prices and discounts are subject to change without notice.

Unless otherwise specified, all written quotations are subject to change upon written notice to the Buyer and are void after 30 days. A verbal quotation, unless confirmed in writing within twenty-four hours, is valid only for forty-eight hours after it is made.

### **ENGINEERING SERVICE**

MCL can furnish a competent engineer or technician to supervise start-up or checkout of our equipment in the field. This service must be quoted separately from equipment. When provided, this service is to supplement and complement services provided to the customer. As such, MCL assumes no responsibility or liability for workmanship of others or for damages resulting from their acts or omissions.

### **MCL'S DRAWINGS, ETC.**

MCL's prints or drawings attached hereto, heretofore or hereafter furnished by MCL to Buyer in connection herewith are the property of MCL and represent proprietary articles of MCL, in which MCL retains any and all proprietary rights, and all rights of use and/or sale. Buyer's possession of such prints or drawings does not convey any permission to manufacture the article or articles therein. Such permission is to be granted only by specific authorization in writing, signed by an officer or other authorized agent of MCL. Upon completion by MCL of its obligations under these Terms and Conditions, including any sales acknowledgement, and at any time upon MCL's request, Buyer shall return all such prints or drawings, together with a certificate from Buyer that he or she has not retained any copies thereof.

MCL grants no license, express or implied, to use such prints or drawings or any materials provided by MCL, other than the right of the Buyer to use the specific materials embodied in the goods delivered by MCL.

In the event the Buyer's approval of prints or drawings is required prior to MCL's commencement of fabrication of the goods, both the price and delivery schedules relating thereto shall be subject to readjustment if Buyer's approval is not received within one week (seven days) after MCL's initial submission thereof.

Prints and drawings as referred to above include electrical or mechanical drawings, assembly drawings, photographs, work instructions, testing instructions and other manufacturing aides developed before, during, or after MCL's production occurs.

### **ORDERS**

MCL accepts all orders only at its principal office in Pulaski, Wisconsin, and only by an authorized delegate of the CEO. No other persons or representatives are authorized to accept orders.

### **TAXES**

MCL's prices do not include applicable sales, use, excise, or similar taxes. The amount of any such tax will be added to each invoice unless the Buyer has furnished MCL with an exemption certificate acceptable to MCL's taxing authorities.



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### **PAYMENT TERMS**

Payment terms are Net 30 days, except as discussed below, or authorized in writing from the CEO of MCL or an authorized delegate. Services may be suspended if payment of an invoice(s) is not received within 30 days of the invoice date.

Projects that are on a time and material basis will be invoiced no less than the end of each calendar month. Projects that are quoted for \$30,000 or more will be invoiced in accordance with the terms outlined in the proposal.

Interest will be charged on all invoices that are not paid in full within 30 days of the invoice date. Interest will be charged at a rate of 18% per annum (1.5% per month).

### **MINIMUM BILLING CHARGE**

Buyer orders in any category for materials whose net price is less than \$500.00 is entered for the minimum billing charge of \$500.00 in each case. The Buyer is notified of the minimum charge prior to shipment.

### **DELIVERY**

The shipping dates given by MCL are approximated and are based on prompt receipt of all necessary information regarding the order. MCL uses its best efforts to meet all shipping schedules but cannot be held responsible for its failure. Shipment and delivery are further subject to delays caused by specification changes.

### **CANCELLATION**

Suspension or cancellation of any order may be made by the Buyer only upon written approval of an authorized officer of MCL. If the order is cancelled by the Buyer, the Buyer shall pay MCL reasonable costs and expenses including engineering and all commitments to suppliers and subcontractors, including restock charges, incurred by MCL prior to receipt of notice of such cancellation.

Cancellation of the order for the convenience of MCL does not result in a charge to the Buyer; but, cancellation by MCL caused by deleterious action or lack of required action by the Buyer is considered and handled as a cancellation by the Buyer and subject to the same charges.

### **PACKAGING AND PACKING**

Standard commercial packing as utilized by MCL for domestic shipments is provided at no charge to the Buyer. ANY change or deviation from standard packing and handling is subject to an extra charge, which is added to the customer invoice. Extra charges for special packing are based on the extra costs to MCL.

### **SHIPMENTS AND TRANSPORTATION**

All equipment is shipped F.O.B. Factory, Pulaski, Wisconsin with the following exceptions:  
Shipments of equipment purchased by MCL for resale to the buyer when shipped direct from factories are shipped in accordance with that manufacturer's standard terms of shipment.  
Equipment delivered by MCL, title would then pass at delivery.

The Customer makes all claims against the carrier for shortages or damages in transit. All published weights are approximate.

### **INDEMNITY AGAINST INFRINGEMENT AND OTHER SUITS**

Orders for equipment, whole or partial, to the Buyer's specifications and/or designs are manufactured with the express understanding that the Buyer warrants and agrees:  
That the equipment as required does not infringe upon any United States patent, design, copyright, trade secret, or trademark of any third party.  
To defend indemnity, and hold harmless, MCL, its successors and assigns, against any loss, liability cost or expense resulting from the action of any third party relating to infringements of any of the previously mentioned alleged rights or privileges of that third party, resulting from the manufacture and shipment of that equipment.

### **RETURNED GOODS**

Goods sold hereunder may not be returned unless accompanied by an executed "Material Return Authorization" issued only by MCL, at its option.



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### TITLE

Title to all goods sold by MCL to Buyer will pass to Buyer when delivered to the carrier for shipment to Buyer unless delivered by MCL, (see above).

If Buyer should fail to pay any amount due, when due, to MCL on account of such goods, MCL shall have, in addition to any other rights, the right to repossess such goods. In addition, until Buyer has paid MCL the entire amount due, MCL shall retain, and Buyer hereby grants a security interest in such goods to secure payment in the amount of the full purchase price plus all other amounts due under these Terms and Conditions and all costs of collection incurred by MCL (including but not limited to reasonable attorney's fees), and MCL shall retain all rights and remedies of a secured party under the Uniform Commercial Code, as in effect at the time of delivery of such goods. A copy of MCL's invoice for goods sold may be filed at any time as a financing statement to perfect MCL's security interest. In addition, upon the request of MCL, Buyer will execute appropriate financing statements and other documents necessary for MCL to perfect its security interest in the goods, with Buyer hereby irrevocably granting to MCL a power of attorney with full and irrevocable power to execute such financing statements on behalf of Buyer.

### **LIMITED WARRANTY AND LIMITATION OF REMEDY**

All new equipment is warranted free of defects in material or workmanship and to conform to applicable drawings and specification approved by MCL for a period of twelve months from the date of shipment. Within the warranty period MCL will repair or replace F.O.B. Factory, the components or the complete equipment. All claims must be in writing to MCL. MCL shall in no way be liable for (a) damages in shipments not made by MCL; (b) damages by Buyer's employees when removing goods from MCL's truck; (c) failures or damages due to misuse, abuse, improper installation or abnormal conditions of temperature, dirt or corrosives; (d) failures due to operation, intentional, or otherwise, above rated capacities; (e) non-authorized expenses for removal, inspection, transportation, repair or rework; (f) consequential damages.

THERE IS NO FURTHER WARRANTY, EITHER EXPRESS OR IMPLIED and MCL's liability shall in no event exceed the cost of corrective defects in the equipment.

The foregoing replacement or repair is the exclusive remedy available from MCL should any of MCL's products prove defective. MCL is not liable for damage of any type whatsoever, including incidental and consequential damages.

NO WARRANTY OF MERCHANTABILITY OR FITNESS OF PURPOSE SHALL APPLY.

In order for the foregoing warranties to be valid, Buyer must obtain MCL's authorization for the return of goods prior to the return thereof, and all items returned to MCL for repair or replacement and must be sent freight, prepaid to its factory and will be returned to Buyer, freight collect. In the event that the goods are part of a custom-built system installed by MCL at a location specified by Buyer, Buyer shall not be responsible for returning any nonconforming goods or parts to MCL. MCL shall make such repairs or replacements at the location of such custom-built system, with Buyer being responsible for travel costs (including travel time) and costs incurred or arising as a result of any delay resulting from Buyer's failure to make such system available to MCL's repair team.

Consumable items or items with a useful life affected by factors of usage and ordinary wear and tear, such as fuses or light bulbs are not covered by this warranty. Parts replaced or repaired within the warranty period set forth herein, shall remain under warranty for the unexpired portion of the original warranty period.

Warranty service will typically be provided during normal working hours, and MCL shall have the option of repairing or replacing any goods or parts so returned.

MCL will not be liable for any labor performed by Buyer or its subcontractors in preparing any goods under warranty for return to MCL's factory or for preparation work for field repair or replacement. MCL shall not be responsible for any of Buyer's labor costs. It is the sole and exclusive responsibility of Buyer to determine the suitability of any and all goods for the Buyer's intended application.