

Terms and Conditions of Sale

- 1. Acceptance.** M&C Specialties Co., an Illinois Tool Works Inc. company, is herein referred to as “M&C”, and the customer purchasing products (“Products”) or services (“Services”) from M&C is referred to as “Purchaser.” These terms and conditions of sale (“Terms”), any M&C quotation, acknowledgment or invoice and all documents incorporated by specific reference herein or therein (“M&C Documents” and together with these Terms, the “Agreement”), constitute the complete terms governing the sale of Products and Services. M&C HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER’S BUSINESS FORMS OR IN PURCHASER’S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. No site usage agreement or any other click through agreement on a website will have any binding effect whether or not M&C clicks on an “ok,” “I accept,” or similar acknowledgment. Commencement of any work by M&C or Purchaser’s acceptance of delivery of the Products or Services will manifest Purchaser’s assent to the Agreement. Additional or different terms applicable to a particular sale may be specified in the body of an M&C Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized officer of M&C; (b) M&C Document terms, (c) these Terms.
- 2. Quotations.** Quotations are only valid in writing and for 30 days from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Purchaser. Quotations are made subject to approval of Purchaser’s credit. M&C may refuse orders and has no obligation to supply Products or Services unless M&C issues an order acknowledgement or upon the shipment of Products or commencement of Services.
- 3. Prices and Payment Terms.** Prices are in U.S. Dollars and are subject to change without notice. All orders are accepted subject to M&C’s price in effect at time of shipment. Prices do not include any sales, use, value-added or other taxes, import duties, license fees or like charges (“Fees”) related to the sale, importation or use of Products or Services, and Purchaser is responsible for those Fees. If M&C is subsequently required to pay any Fees, Purchaser shall fully defend and indemnify M&C therefor. Terms of payment are 30 days net from the date of M&C’s invoice. Overdue invoices will incur interest at the rate of 1.5% per month, or at the maximum rate allowable by governing law. Purchaser’s inspection rights herein will not affect the payment terms. Under no circumstances will Purchaser have a right of set-off. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify M&C for all associated costs incurred by M&C, including reasonable attorney fees and court costs.
- 4. Credit Approval.** All shipments are subject to approval by M&C’s credit department. M&C may invoice Purchaser and recover for each shipment as a separate transaction. If, in M&C’s sole judgment, Purchaser’s financial condition is or becomes unsatisfactory, then M&C may, without prejudice to any of its other remedies: (a) defer or decline to make any shipments except upon receipt of satisfactory security or cash payments in advance; and/or (b) terminate any or all of Purchaser’s purchase orders.
- 5. Cancellation or Modification.** M&C may cancel any purchase order or release thereunder, or terminate any agreement relating to the purchase of M&C’s Products or Services upon reasonable prior written notice to Purchaser. Once M&C has accepted a purchase order or begun taking actions with respect to a purchase order, Purchaser cannot cancel or modify that purchase order except with M&C’s written consent. In such event, Purchaser will be liable for cancellation or modification charges and all costs incurred and committed for the order or in connection with the cancellation or modification, as applicable, together with a reasonable allowance for prorated expenses and anticipated profits.
- 6. Inspection / Non-Conforming Shipments.** Purchaser may inspect Products for a period of 15 business days after delivery (“Inspection Period”). Purchaser must notify M&C in writing of any Products that do not conform to the specifications applicable to their sale within the Inspection Period and afford M&C a reasonable opportunity to inspect such Products and cure any nonconformity. If Purchaser fails to provide M&C such written notice within the Inspection Period, Purchaser will be deemed to have accepted the Products. Purchaser may not return any Product without M&C’s prior written authorization. Any return authorized by M&C must be made in accordance with M&C’s return policies. Purchaser will be responsible for all costs associated with returns of Products and will bear the risk of loss, unless M&C agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale. Any variation in quantities shipped over or under those ordered (not to exceed 10%) will constitute compliance with Purchaser’s order, and the stated price per item will continue to apply.
- 7. Shipment.** M&C anticipates use of common carriers for shipment of Products. The carrier, and not M&C, will bill for freight rates and other shipping charges. Payments for such charges shall be paid by Purchaser directly to the carrier. All Products will be shipped FCA M&C’s facility (Incoterms 2010). Shipping dates are approximate and are based upon prompt receipt of all necessary information from Purchaser. M&C may ship items in a single or multiple shipments.

Terms and Conditions of Sale

8. Title/Risk of Loss. Title to the Products shall pass to Purchaser upon delivery to the carrier. Purchaser assumes all risk and liability for loss and use or misuse by third parties who acquire or use the Products illicitly after delivery to the carrier. Purchaser must notify M&C and the delivering carrier within 15 business days from date of receipt of Products, of any damage or shortage, and afford M&C a reasonable opportunity to inspect the Products. Any loss occasioned by damage or shrinkage in transit will be for Purchaser's account, and claims for such loss must be made solely against the carrier.

9. Warranty. M&C warrants that it will convey the Products free and clear of all liens, security interests and encumbrances created by, through or under M&C. M&C further warrants that at the time of shipment, the Products, subject to M&C's normal merchandising tolerances: (a) will conform to mutually agreed upon written specifications or other descriptions; and (b) will be free from substantial defects in material and workmanship.

In the event of a breach of the warranties set forth above (the "Warranties"), M&C's sole liability and Purchaser's sole remedy will be (at M&C's option), for M&C to replace or credit Purchaser's account for, any Product that fails to conform to the Warranties, provided that (i) M&C is promptly notified in writing upon discovery of such failure with a detailed explanation of any alleged deficiencies; (ii) M&C is given a reasonable opportunity to investigate all claims; and (iii) M&C's examination of such Product confirms the alleged deficiencies and that the deficiencies were not caused by wear and tear, accident, misuse, abuse neglect, improper storage or maintenance, abrasive or chemical action, alteration, improper testing or compliance with Purchaser's specifications. No Products may be returned to M&C until inspection and approval by M&C.

EXCEPT AS SET FORTH ABOVE, M&C MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE).

10. Limitation of Liability and Remedies. M&C WILL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST M&C, FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWNTIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON M&C'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. IN NO EVENT WILL M&C'S LIABILITY UNDER THESE TERMS OR IN CONNECTION WITH THE SALE OF M&C'S PRODUCTS OR SERVICES EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE.

11. Product Use. Purchaser is solely responsible for determining if a Product is fit for a particular purpose and suitable for Purchaser's method of application. Accordingly, and due to the nature and manner of use of M&C's Products, M&C is not responsible for the results or consequences of use, misuse or application of its Products. All physical properties, statements and recommendations are either based on the tests or experience that M&C believes to be reliable, but they are not guaranteed.

12. Tooling/Molds/Dies. All material, equipment, facilities and special tooling (including tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment and manufacturing aids and replacements thereof) used in the manufacture of the Products will remain the property of M&C. Any material, tooling or equipment furnished to M&C by Purchaser will remain the property of Purchaser with title to and right of possession remaining in Purchaser.

13. Ownership of Intellectual Property. All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Purchaser by M&C and all rights therein (collectively, "Intellectual Property") will remain the property of M&C and will be kept confidential by Purchaser in accordance with these Terms. Purchaser has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to M&C upon request from M&C. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use M&C's Products or receive the Services purchased from M&C.

14. Confidential Information. All information furnished or made available by M&C to Purchaser in connection with the subject matter hereof shall be held in confidence by Purchaser. Purchaser agrees not to use, or disclose to others, such information without M&C's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Purchaser of any obligation herein; (b) Purchaser can show by written records was in Purchaser's possession prior to disclosure by M&C; or (c) is legally made available to Purchaser by or through a third party having no direct or indirect confidentiality obligation to M&C with respect to such information.

Terms and Conditions of Sale

15. Infringement and Indemnification. Except as set forth below, M&C agrees to defend and indemnify Purchaser against any claims, costs, damages, liability and expenses resulting from actual patent, trademark or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign that may arise from the sale of M&C's proprietary Product to Purchaser as such pertains to the subject matter of the Agreement (each, a "Claim"); provided, however, (a) Purchaser supplies M&C written notice of such Claim immediately after the Purchaser has notice of such Claim, (b) Purchaser cooperates with M&C in the defense and settlement of such Claim; and (c) Purchaser allows M&C the right to defend and settle such Claim at M&C's expense. If a suit or claim results in any injunction or order that would prevent M&C from supplying any part or Product falling under the Agreement, or if the result of such a suit or claim would, in the reasonable opinion of M&C, otherwise cause M&C to be unable to supply such parts or Products, M&C may do one or more of the following: (i) secure an appropriate license to permit M&C to continue supplying those parts or Products; (ii) modify the appropriate part or Product so that it becomes non-infringing; (iii) replace the appropriate part or Product with a non-infringing but practically equivalent part or Product; or (iv) if M&C cannot reasonably accomplish the actions specified in subsections (i) – (iii), then in M&C's sole discretion, M&C may discontinue selling the part or Product without any further liability to Purchaser. Notwithstanding the foregoing, M&C shall have no liability or duty to defend and indemnify Purchaser against any Claim relating to: (1) the use of any part or Product, (2) the combination of any part or Product with any other part or product not supplied by M&C, or (3) any part or Product or process that is designed or specified by Purchaser.

16. M&C Employees. M&C sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Purchaser documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on M&C or such M&C employees.

17. Compliance. Purchaser agrees to comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Purchaser's obligations hereunder and Purchaser's use of the Products and Services, including import/export laws, labor laws and anti-corruption laws.

18. Relationship of the Parties. Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint venturers or as agents for one another or as authorizing either party to obligate the other in any manner.

19. Force Majeure. M&C will not be responsible for failure to perform in a timely manner under the Agreement when its failure results from events beyond its reasonable control (an event of "Force Majeure"), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of Supplier's employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable M&C to perform.

20. Assignment; Binding Effect. No assignment of any rights or interest or delegation of any obligation of Purchaser under the Agreement M&C or Purchaser's purchase order may be made without the prior written consent of M&C. Any attempted assignment will be void. The Agreement will inure to the benefit of and be binding upon each of the parties hereto and their respective permitted successors and assigns.

21. Integration Clause. The Agreement constitutes the entire agreement between M&C and Purchaser with respect to the Products and Services covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.

22. Waiver. In the event of any default by Purchaser, M&C may decline to ship Products or provide Services. If M&C elects to continue shipping or otherwise fails to insist upon strict compliance of these Terms, M&C's actions will not constitute a waiver of Purchaser's default or any other existing or future default, or affect M&C's legal remedies.

23. Bankruptcy. If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of involuntary bankruptcy, has a receiver appointed or has its assets assigned, the other party may cancel any unfulfilled obligations hereunder.

24. Limitation of Actions/Choice of Law/Litigation Costs. Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of the State of Illinois and litigated exclusively in a state or federal court located in Cook County, Illinois. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. If either party commences litigation or arbitration concerning any provision of the Agreement, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorney's

Terms and Conditions of Sale

fees in such litigation or arbitration, provided that if each party prevails in part, such fees will be allocated in the manner as the court or arbitrator determines to be equitable in view of the relative merits and amounts of the parties' claims.

25. Survival. Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.

26. Jury Waiver. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction.

27. Severability. If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.