

## TERMS AND CONDITIONS OF SALE

1. **Conditions of Sale** – SALE OF THE EQUIPMENT OR SERVICES DESCRIBED OR REFERRED TO HEREIN AT THE PRICES INDICATED IS EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS SET FORTH ON THIS PAGE. ANY CONFIRMATORY ACTION BY THE BUYER HEREUNDER, OR ANY ACCEPTANCE OF SUCH EQUIPMENT OR SERVICES, SHALL CONSTITUTE ASSENT TO SAID TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS SET FORTH IN THE BUYER'S ORDER OR OTHER COMMUNICATIONS ARE OBJECTED TO BY SELLER AND SHALL NOT BE EFFECTIVE OR BINDING UNLESS ASSENTED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SELLER.
2. **Prices** - All prices are firm for 30 days from the date of proposal and are f.o.b. our plant. Prices do not include sales, use, excise or similar taxes. Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise or other similar tax applicable to the sale or use of the equipment hereunder shall be paid by the Buyer, or in lieu thereof the Buyer shall provide Seller with a tax-exemption certificate acceptable to the taxing authorities. Prices are firm upon acceptance of the order at Seller's home office unless subject to escalation terms in this proposal.
3. **Delivery** – Shipping dates are approximate and are based upon prompt receipt of an acceptable written purchase order and all necessary information. Seller may make partial shipments. Seller shall not be liable for delays in delivery or in performance or failure to manufacture or deliver, due to (1) causes beyond its reasonable control, or (2) acts of God, acts of the Buyer, acts of civil or military authority, priorities, fires, strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation or car shortages, or (3) inability on account of causes beyond its reasonable control to obtain necessary labor, material, components or manufacturing facilities, or failure of subcontractors to meet delivery schedules. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay. Under no circumstances shall Seller have any liability for delays, loss of use, or for any indirect, special or consequential damages.
4. **Payment** – With credit approval, payment terms are Net 30 days from date of shipment. Amounts past due are subject to a service charge of 1-1/2% per month or portion thereof.
5. **Limited Warranty & Disclaimer** – Seller warrants that the equipment supplied to Buyer conforms to Seller's specifications for such equipment at the time of manufacture, unless other specifications have been agreed with Buyer in writing. THIS IS BUYER'S EXCLUSIVE WARRANTY. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. This warranty and disclaimer apply regardless of whether the equipment is used singly or in combination with other products or equipment or in any process. In the event of any breach of this warranty, Seller will, at its option, either replace or repair the defective equipment or refund an equitable portion of the purchase price paid for such defective equipment. THIS IS BUYER'S EXCLUSIVE REMEDY FOR NON-CONFORMING PRODUCTS, PRODUCT DEFECTS OR OTHERWISE. Buyer must provide written notice to Seller of any claimed defect within one (1) year after date of delivery.
6. **End-User License Agreement** – With respect to any software or firmware provided by Seller intended for installation and use with the equipment sold to Customer, the terms and conditions set forth in the "Rider to Terms and Conditions of Sale: MTI End-User License Agreement" shall apply.
7. **Cancellation** – The Buyer may cancel his order only upon written notice and upon payment to Seller of reasonable and proper cancellation charges which will include a profit on the work performed to the date of receipt of the notice of cancellation.
8. **Limitation of Remedies** - Regardless of the circumstances, Seller's total liability to Buyer for any and all claims, losses, or damages arising out of any cause whatsoever, whether based in contract, negligence or other tort, strict liability, breach of warranty or otherwise, shall in no event exceed the purchase price of the equipment in respect to which such cause arose. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES.
9. **Indemnification** - TO THE EXTENT A PARTY IS LEGALLY LIABLE THEREFOR, EACH PARTY WILL INDEMNIFY, AND HOLD HARMLESS THE OTHER PARTY, ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES AND AGENTS, FROM AND AGAINST ANY THIRD PARTY LOSS, COST, DAMAGE OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) ASSESSED AGAINST OR INCURRED BY AN INDEMNIFIED PARTY RESULTING FROM ANY AND ALL ACTIONS, SUITS, CLAIMS OR DEMANDS ("CLAIMS") FOR BODILY INJURY OR DEATH OF ANY PERSON. NEITHER PARTY WILL HAVE ANY INDEMNIFICATION OBLIGATIONS FOR CLAIMS OTHER THAN AS SET FORTH ABOVE.
10. **General** - Seller represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

All drawings and specifications furnished by Seller are to remain Seller's property and no copies are to be made.

Any assignment of this contract or any rights hereunder, by the Buyer, without written consent of Seller shall be void.

The provisions of this contract are for the benefit of the parties thereto and not for any other person.

This contract shall be governed by and construed according to the laws of the State of New York.

No understanding, promise or representation, and no waiver, alteration or modification of any of the provisions hereof, shall be binding upon Seller unless assented to in writing by an authorized representative of Seller.

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## MTI End-User License Agreement

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- e. Customer may not repackage, reverse engineer, decompile or modify the Software.

### 4. Limited Warranty

Seller warrants that the Software is free from any material defect which prevents the Software from being installed for use with the equipment for which it is intended to be used

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