



One Industrial Drive - PO Box 130 - Constantine, MI 49042
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TERMS AND CONDITIONS OF SALE

Thank you for your interest in doing business with MarCon Technologies. Whether you are a first time customer or one of our valued long-term partners, we appreciate your business. We recognize that our success is directly linked to that of our customers and suppliers. You deserve prompt service and quality products at a fair price – each and every time. For us to be able to serve you well, it is important that we have the same expectations. The following Terms and Conditions help define our business relationship so that confusion is avoided. We look forward to serving you.

1. **DEFINITIONS**

- A. **Buyer**: One who purchases Goods from Seller.
- B. **Seller**: MarCon Technologies LLC

2. **SALE**

SALE AND DELIVERY OF SELLER'S GOODS ARE CONDITIONED ON BUYER'S ACCEPTANCE OF THE DESCRIPTION SET FORTH ON THE SELLER'S PRICE QUOTE AND THESE TERMS AND CONDITIONS, WHICH ARE ALSO AVAILABLE AT www.marcontechologies.com/terms.htm. NO ADDITIONAL OR DIFFERENT TERMS OFFERED BY BUYER SHALL BE OR BECOME PART OF THIS OR ANY OTHER AGREEMENT BETWEEN BUYER AND SELLER, AND ANY SUCH TERMS ARE HEREBY REJECTED. THE TERMS AND CONDITIONS AS STATED HEREIN SHALL NOT BE MODIFIED WITHOUT THE EXPRESS WRITTEN APPROVAL OF SELLER. FAILURE OF BUYER TO IMMEDIATELY OBJECT IN WRITING TO THESE TERMS AND CONDITIONS SHALL BE DEEMED ACCEPTANCE HEREOF AND SHALL CONSTITUTE A WAIVER OF ANY PRIOR OR SUBSEQUENT TERMS OR CONDITIONS REQUESTED AND/OR SUPPLIED BY BUYER.

3. **WAIVER OF ALL OTHER TERMS AND CONDITIONS**

BUYER EXPRESSLY WAIVES THE ENFORCEMENT AND APPLICABILITY OF ANY AND ALL TERMS AND CONDITIONS SUPPLIED BY BUYER, WHETHER PRIOR OR SUBSEQUENT TO THESE TERMS AND CONDITIONS. BUYER EXPRESSLY AGREES THAT THESE TERMS AND CONDITIONS ARE THE FINAL AND CONTROLLING TERMS AND CONDITIONS. BUYER EXPRESSLY AGREES THAT THESE TERMS AND CONDITIONS CONTROL IN THE EVENT THAT PRIOR OR SUBSEQUENT TERMS AND CONDITIONS SUPPLY DIFFERENT AND/OR ADDITIONAL TERMS.

4. **PRICES**

All prices shall be stated on a price quote. The price quote shall represent the only valid and enforceable price and may not be modified except as stated in this Section 4. All prices quoted by Seller in writing are good for 30 days from the date of the quote. Thereafter, all prices are subject to change or withdrawal upon thirty (30) days written notice to Buyer. Items not purchased within the last 60 days will be subject to re-quote at time of order. Unless otherwise stated by Seller, prices, terms of payment, commitment for specially ordered goods, and pricing policies will be those set forth in the price quote issued by Seller to Buyer. Orders for specially ordered goods are not subject to cancellation without the express written consent of the Seller. In this section 4, written notice may be given by electronic mail, facsimile, or standard mail.

5. **QUANTITY**

The quantity of Goods shall be determined by the Purchase Order.

6. **TOOLING**

Buyer is responsible for the repair and replacement of its own tooling. Seller will provide a written cost estimate of charges when repair and/or replacement is required. Failure of Buyer to provide a Purchase Order within ten (10) days may create delays in future shipments.

7. **PRODUCTION PART APPROVAL PROCESS (PPAP)**

If required, Buyer shall state its expectations for PPAP level including all test requirements and method of payment at the time of quotation. All required engineering data, including math data and checking aids, such as

Mylar, and approved latest release of drawings and timelines, must be provided by Buyer at time of Purchase Order and are subject to Seller's express approval.

8. **CREDIT APPROVAL**

All sales and shipments are subject at all times to credit approval by Seller.

9. **TAXES**

Any taxes which Seller may be required to pay or collect upon the sale, delivery, storage, processing, use or consumption of any of the Goods covered hereby shall be for the account of Buyer who shall promptly pay the amount thereof to Seller upon demand.

10. **FREIGHT**

Unless otherwise stated on the price quote, all Goods are FOB Constantine, MI 49042 with all risk of loss or damage in transit and after delivery being the responsibility of Buyer. All freight and shipping charges shall be as set forth on the price quote issued by Seller. Seller reserves the right to select the method of shipment. No action taken by the Seller for the benefit of Buyer in the shipping of the goods shall be deemed to modify the condition that all prices and risk of loss are the responsibility of Buyer.

11. **WARRANTY**

The Seller warrants its Goods for a period of 12 months from the date of shipment from the factory to be free from defects in material and workmanship under correct use, normal operating conditions and proper application. NO EMPLOYEE, DISTRIBUTOR, OR REPRESENTATIVE IS AUTHORIZED TO CHANGE THIS WARRANTY IN ANY WAY OR GRANT ANY OTHER WARRANTY ON BEHALF OF SELLER.

SELLER MAKES NO EXPRESS WARRANTIES OTHER THAN THOSE WHICH ARE SPECIFICALLY DESCRIBED HEREIN. Any description of the Goods sold hereunder, including any descriptions in catalogs, circulars and other written material published by Seller is for the sole purpose of identifying such goods and shall not create an express warranty that the goods shall conform to such description. Any sample or model is for illustrative purposes only and shall not create any express warranty that the goods shall conform to the sample or model. If a production trial is required, it will be representative of future orders for only the physical attributes defined in writing. However, if Seller expressly accepts Buyer's description, model, or definition of physical attributes in writing, Seller warrants that such goods will conform with Buyer's description for the warranty period of 12 months from the date of shipment. For this warranty to operate, Seller must expressly accept Buyer's description, model, or definition of attributes in writing. BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY OF GOODS SOLD HEREUNDER FOR USE BY BUYER.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED. **SELLER DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** THIS WARRANTY STATES SELLER'S ENTIRE AND EXCLUSIVE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM FOR DAMAGES IN CONNECTION WITH THE SALE OR FURNISHINGS OF SELLER'S GOODS, THEIR DESIGN, SUITABILITY FOR USE, OR FOR ANY CLAIMED DEFECTS THEREIN. SELLER WILL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, NOR FOR ANY SUM IN EXCESS OF THE PRICE RECEIVED FOR THE GOODS FOR WHICH LIABILITY IS CLAIMED.

Claims for defects in material and workmanship shall be made in writing to Seller within ten (10) days of the discovery of defect and shall include a copy of the original pallet load identification label. Seller may either send a service representative or have the Goods returned to Seller. If judged by Seller to be defective in material or workmanship, the Goods will be replaced, free from all charges to Buyer.

12. **PERFORMANCE**

Seller shall not be held responsible for any delay in performance of any contract made on the basis of this document resulting in whole or in part from or made impossible or impracticable by any cause beyond the control of Seller, including, but not limited to, fire, explosion, accident, breakdown, strike, adverse weather conditions, Buyer's tooling that is in need of repair or replacement, Buyer's delay in providing required PPAP information, failure or refusal of any carrier to transport materials, delay in transport thereof, failure of any source of supply to honor orders within time period, customarily or heretofore experienced by Seller in the trade, shortage or lack of material, fuel, power, transportation media, sale or transfer of manufacturing facilities, embargo or any act of God or action or request of any governmental authority, failure or refusal of any carrier or contractor, any contingency or delay or failure or cause beyond Seller's control.

Further, Seller shall not be held liable for any reasonable delay in performance as shipment and delivery dates are merely estimates and Seller does not guarantee delivery of goods on a particular date or at a particular time.

Under no circumstances shall the Seller be held liable for any incidental, consequential, or punitive damages as a result of Seller's delay in performance, or failure to perform. Seller may only be held liable for the replacement of the goods purchased by the Buyer. Instead of providing a full replacement of non-conforming goods, Seller, in its sole discretion, may allow a credit or charge-back. All credits and/or charge-backs must be approved by Seller in writing.

13. **SHIPPING**

Specified shipping dates are based upon Seller's estimates, are approximations only, and are not guaranteed. Seller shall have no responsibility or liability for damages that may be incurred due to delay in shipment of Goods.

14. **PATENTS**

Buyer shall hold Seller harmless and indemnify it against any expense, or loss resulting from infringements of patents or trademarks arising from compliance with designs, specifications or instructions furnished by Buyer.

15. **SERVICE CHARGE**

A charge of 1 ½ percent per month (18 percent annually) will be charged on all past-due amounts where permitted by applicable state and federal law. In the event a charge of 1 ½ percent per month may not be charged under applicable state or federal law, then the maximum amount of service charge permitted under applicable state or federal law shall be charged.

16. **CANCELLATION OR CHANGE OF ORDER**

Buyer may cancel or change its Order only with the written consent of Seller. If a Purchase Order is canceled or partially canceled after Seller has started manufacture, Buyer shall pay the total contract price less Seller's cost of manufacturing the unmanufactured material called for by the purchase order. Buyer may not cancel an order placed for custom manufactured materials and goods, and will be liable for the full purchase price of any such goods.

17. **INSOLVENCY**

If in the sole judgment of Seller the credit of Buyer shall have or is likely to become impaired, or it appears to Seller that it does not have a reasonable expectation of being paid at the time and in the amount specified in the Purchase Order or these Terms and Conditions, without additional expense or delay, or both, then Seller may at its option retain title to the goods manufactured or retain possession of Buyer's goods on which services have been performed until paid in cash or cancel the contract, unless Seller receives reasonable assurances of Buyer's ability to perform.

18. **BANKRUPTCY**

In the event of any voluntary or involuntary proceedings against the Buyer in bankruptcy or insolvency, or in the event of any proceedings for the appointment of a receiver, trustee or assignee for the benefit of creditors of the property of the Buyer, Seller may immediately assert any of its legal rights with respect to this contract, or at Seller's option, cancel the same unless Seller receives reasonable assurances of Buyer's ability to perform.

19. **PAYMENT**

Terms of payment are as specified on the price quote. Sales tax, transportation, and labor are not subject to cash discounts. Cash discounts shall be allowed only within the discount period as specified. If not specified, the net amount shall be due 30 days following the date of invoice. If payments are not received within terms, future production and shipments may be delayed.

20. **RECOVERY OF LEGAL FEES AND COSTS**

In the event it becomes necessary for Seller to file a lawsuit to enforce any of the terms and provisions hereof and Seller is granted a judgment wholly or partly in its favor, Seller shall be entitled to recover, in addition to all other remedies or damages, reasonable attorney's fees and court costs incurred in such suit.

21. **NO MODIFICATION**

These terms and conditions, as set forth herein, shall constitute the sole agreement between Buyer and Seller. Any changes which Buyer requests shall be authorized only if in writing signed by Seller. These terms and conditions shall be binding upon and inure to the benefit of the respective parties, their successors, representatives and assigns.

22. **LIMITATION OF AUTHORITY**

All Sales Representatives of Seller are bound by these Terms and Conditions and are not authorized by Seller to enter into any contract or agreement that applies different or additional terms and conditions, or that is in violation of these Terms and Conditions.

23. **TERMINATION**

Both Buyer and Seller have the right to terminate any Purchase Order upon sixty (60) days written notice to the other Party subject to the full purchase price for custom manufactured materials and goods per section 16. For the purposes of this section 23, written notice may be given by mail or personal service. Written notice under this section 23 may not be given by facsimile or electronic mail.

24. **GOVERNING LAW AND VENUE**

This contract and any questions with respect to the construction, validity, and interpretation to perform it shall be governed by and determined in accordance with the laws of the State of Michigan. This contract shall be deemed to be executed in the State of Michigan and is to be performed in St. Joseph County, Michigan, by reason of the payment(s) required to be made to the Seller in St. Joseph County, Michigan. The Buyer covenants and agrees that any legal action or lawsuit brought to enforce any of the terms and provisions hereof shall be venued in St. Joseph County, Michigan.

25. **PARTIAL INAPPLICABILITY**

Should any term or condition above, or any portion thereof, be invalid or inapplicable, the balance of such terms and conditions shall govern.

26. **NON-WAIVER**

Any waiver or failure of Seller to require strict compliance with the provisions of these Terms and Conditions in any respect shall not be deemed a waiver of Seller's right to insist upon strict compliance in other respects or thereafter in the same respect.

27. **CORRECTIONS**

Seller reserves the right to make corrections caused by any typographical, clerical, or other inadvertent mistakes, or from changes necessary because of incomplete or inaccurate information received from Buyer.

28. **ATTORNEY REVIEW**

The Buyer stipulates that they have had read and understood all of these Terms and Conditions and that they have had an opportunity for these Terms and Conditions to be reviewed by independent legal counsel.

29. **SEVERABILITY**

Whenever possible, each provision of these Terms and Conditions will be interpreted in such a way as to be effective and valid under applicable law. If a provision is prohibited by or invalid under applicable law, it will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of these Terms and Conditions.

30. **MERGER AND INTEGRATION**

These Terms and Conditions together with any Purchase Order constitute the final agreement and understanding between the Parties and supersedes any prior discussion, negotiations, agreements, and understandings.