



# Mechanical Sales, Inc

## TERMS & CONDITIONS OF SALE

**All sales of goods based upon quotations provided by Mechanical Sales Inc or Mechanical Service and Integration (hereinafter referred to as MSI) are made subject to the terms and conditions below.**

It is mutually agreed between MSI and Buyer that the terms and conditions contained herein constitute the entire complete and exclusive agreement and understanding between MSI and the Buyer and supersede all other agreements, oral or written heretofore made between Buyer and Seller relating to the subject matter contained herein and if Buyer presents a Purchase Order with other terms and conditions, the terms and conditions expressed herein will control. No understanding, promise or representation, and no waiver alteration, addition to, or modification of any provision hereof, shall be binding upon MSI unless agreed to in writing by MSI's President or Vice President. The terms set forth herein shall apply to each purchase agreement as if set forth separately for each order. If any provision of the Purchase Order is found to be invalid by a court of competent jurisdiction, all remaining provisions of the Purchase Order shall remain in full force and effect.

Definitions: Words and phrases used herein have the meaning identified to them on the attached Job Quote (the "Quote"), or their usual meaning if not so identified. Seller means MSI. Equipment means the equipment ordered by Buyer pursuant to the Quote and Buyer's purchase order (the "PO").

Payment Terms: As stated in Mechanical Sales' Quote. If not stated in the Quote, terms shall be net 30 days if on open account. If not on open account payment terms are to be determined and are subject to deposits or pre-payments. Prices in the Quote are good for 30 days from the date of the Quote and are exclusive of tax.

Taxes: All applicable taxes are the responsibility of Buyer and are in addition to the price or prices stated in the Quote unless otherwise provided. Seller may invoice separately any such tax as may be imposed later. Applicable tax exemption certificates must accompany any order to which the same applies.

Freight: Standard Freight terms FOB factory/FFA jobsite. Unless otherwise agreed in writing, freight charges on all shipments shall be paid by Buyer. All off-loading and handling of equipment shall be the responsibility of Buyer

Delivery, Lead-Time: The Equipment will be delivered on the schedule agreed in writing, or otherwise within a reasonable time after Seller receives a PO, subject to availability. The delivery date provided by Seller for the Equipment is only an estimate and is based upon prompt receipt of all necessary information from Buyer including but not limited to progress payments, approval drawings, and other milestones. If Buyer causes Seller to delay shipment or completion of the Equipment, Seller will be entitled to all extra costs and expenses resulting from the delay. Seller will not be liable for any delays, loss, or damage in transit, and failure to deliver within the time estimated will not be a material breach of contract on Seller's part.

Return Policy: Equipment may not be returned by Buyer to Seller without prior written approval from Seller.

Cancellations: Cancellation charges will apply on any PO cancelled by Buyer without the written consent of Seller. The charge will be based on the status of the PO within Seller's production process and will include all costs incurred to date by Seller at the time of cancellation by Buyer.

Damaged & Lost Freight Claims: All claims for damage or lost shipments must be filed with the carrier directly. Buyer is responsible for filing the claim with the selected carrier and is subject to the carrier's claim settlement offers. The original invoice from Seller will be required to be paid. Replacement equipment may be ordered on a new PO and paid as a separate transaction. Claims for errors, shortages or defective goods must be made within ten (10) days after receipt of the Equipment. Signed receipt of the Equipment without rejecting shipment of damaged Equipment or not properly documenting with driver that there is visible damage along with not taking pictures and keeping original packaging constitutes acceptable goods.

Limited Warranty-Limitation of Liability: All equipment warranties are provided by the original manufacturer and governed by their written warranty. Copies are available upon request. Seller is not extending any additional warranty or guaranty, either expressed or implied, including any warranty of merchantability or fitness for any particular purpose. Seller is not responsible for any loss or damage arising from buyers' use or operation of the equipment, unless solely caused by seller's willful misconduct or gross negligence. This warranty does not cover loss of damage that results from improper installation, handling, maintenance, misuse or neglect. The warranty set forth herein is the sole and exclusive warranty, in lieu of all other warranties, and no other warranties of any kind shall apply, whether express or implied.

Delays: Seller shall not be liable for damages or delays in performance due to circumstances beyond its reasonable control. Failure of Seller to perform for any reasons beyond its reasonable control shall not be grounds for Buyer's cancellation of its order, or recovery of any damages, but the delivery date shall be extended accordingly.

Liability: MSI shall not be liable for any special, incidental, indirect, consequential, exemplary or punitive damages or losses which may be suffered by buyer with respect to this agreement, including but not limited to, loss of present or perspective profits, loss of income or revenue, expenditures, investments or commitments, or loss of business or data, whether in an action in contract, equity, negligence, intended conduct, tort, or otherwise (including breach of warranty, negligence, and strict liability in tort), even if such MSI has been advised of the possibility of such damages. The total aggregate liability of MSI for claims asserted under this agreement shall be limited to the total purchase agreement price.

Insurance: Seller is adequately insured for risks associated with production and delivery of the Equipment.

Indemnification: Buyer shall indemnify and hold harmless Seller from any claims for damage arising from the Equipment produced pursuant to Buyer's specifications.

Force Majeure: The parties shall not be liable to each other for any loss, damage or other claim whatsoever arising out of a delay, failure, or inability to perform any obligation(s) contained in the purchase agreement which is beyond a party's reasonable control. Such causes may include, but are not limited to, any act of God, fire, flood, lightning, earthquake, tornado, labor disputes, transportation delays, war, terrorism, revolution, riot, sabotage, act of the public enemy, explosion, embargo, confiscation or act or failure to act of any government, agency, board, or commission. Lack of finances shall in no event be deemed to be a cause beyond a party's control.

Assignment: Assignment of this Purchase Order or any interest therein, or of any payment due or to become due hereunder, without prior written consent of the other Party to this Purchase Order is void.

Waiver: No waiver by MSI of any breach of the terms and conditions or performance of this Purchase Order shall constitute a waiver of any subsequent breach.

Integration. The Quote, PO and these Terms and Conditions (collectively, the "Agreement") contain the entire agreement between Seller and Buyer regarding the matters set forth therein. Any change to or modification of any terms of the Agreement must be made in writing signed by each party. The Agreement binds and inures to the benefit of each party's heirs, personal representatives, and successors.

Construction. The Agreement has been reviewed and approved by each of the parties. Any inconsistency between any provisions of the Agreement shall be construed in favor of Seller unless otherwise accepted in writing by Seller. If any provision of the Agreement is determined to be unenforceable, the remaining provisions of the Agreement shall not be affected and shall be deemed enforceable to the extent permitted by law.

Governing Law and Legal Fees. The Agreement shall be governed by the laws of the state of Washington. Jurisdiction and Venue for any dispute regarding the Agreement shall be proper in King County. In the event of a dispute regarding the Agreement, the losing party shall pay the prevailing party all its attorneys' fees and costs incurred therein.