

MSI-Forks - Terms and Conditions of Sale

- Acceptance of Order.** All orders are subject to seller's acceptance and approval, as confirmed by the buyers purchase order or receipt of the seller's sales order acknowledgement. All orders shall be governed by these terms and conditions which shall control in the event of conflict with any other terms and conditions, and acceptance is made expressed conditional on assent to the terms and conditions contained herein.
- Sale.** Seller hereby agrees to sell, and buyer agrees to buy, receive and pay for during the terms of this agreement and in accordance with the provisions of this contract, the quantity set forth on the face hereof of the goods identified therein, and at the prices specified therein.
- Warranty of Title and Security Interest in Seller.** Seller warrants that at the time of this agreement seller neither knows, nor has reason to know of the existence of any outstanding title or claim of title hostile to the rights of seller in the goods. Buyer grants security interest in the goods to seller to be effective upon the passage of title to the goods to buyer and to remain in full force and effect until such time as buyer as fully paid seller. If seller so requests, buyer agrees to provide sell a security agreement and financing statement in form and content acceptable to seller covering all goods for which seller has not be paid.
- Payment.** Unless otherwise expressly provided on the face of this contract. Buyer shall make payment for the goods within 30 days from the time when, and at the place where, the goods are shipped to buyer. All prices are EXW seller's place of business. **Payment Methods.** Available options are: ACH, Wire Transfer, Check or Credit Card (3% processing fee will apply on all Credit Card payments). Buyer shall bear all costs, including premiums and other charges and expenses incurred after seller has placed the goods in the custody of the carrier at the place of business. Buyer shall bear all costs, including premiums and other charges and expenses incurred after seller has placed the goods in the custody of the carrier at the place of shipment. If requested by customer seller agrees to pay freight charges and arrange for shipping on buyer's behalf. Seller will invoice such freight charges to buyer and buyer agrees to pay for such charges. Shipment method (s) and route (s) of shipment are at the seller's election unless buyer supplies instructions in writing. Seller has no liability for the selection of shipment method (s) or route(s). Buyer shall pay all sales, use and similar taxes required in addition to the sales price. Buyer agrees to pay a service charge of 1 ½% per month on any unpaid balance over 30 days beyond the date payment is due. **Past Due.** Invoices will be considered past due after 7 days of its due date. **MSI-Forks** has the right to stop/hold new shipments until Past Due amount is collected.
- Risk of Loss.** The risk of loss from any casualty to the goods, regardless of the causes, shall be on buyer after the goods have been delivered to the F.O.B. place of shipment Buyer agrees to maintain insurance in the full value of the goods to protect the interest of the buyer and seller against any loss of damage to the goods after delivery to the F.O.B. place of shipment. Title to the goods sold hereunder will remain the property of seller until they are delivered by seller to the buyer's facility or to common carrier for transportation to buyer's facility. Upon such delivery, title to the goods passes to buyer.
- Right of Inspection.** Buyer shall have the right to inspect the goods on arrival and, within 24 hours after delivery, buyer must give notice to seller of any claim for damages on account of shortages, condition, quality or grade of the goods, and buyer must specify the basis of the claim of buyer in detail. The failure of buyer to comply with these conditions shall constitute irrevocable acceptance of the goods by buyer.
- Returns.** All returns must be authorized by seller and buyer must receive a return authorization number (RMA) prior to shipping. Buyer shall bear all costs, including premiums and other charges and expenses incurred; buyer shall make all shipping arrangements, seller has no liability for the selection of shipment method (s) or route(s). Buyer might also be responsible for a restocking fee of 25% of the goods sold per returned order. Unauthorized returns may be returned to buyer at buyer's expense.
Non-Returnable forks: Custom produced goods to buyers supplied specification or modified at buyers' request are non-returnable and non-refundable. Goods are non-returnable if buyer modifies, uses, or damages goods and are not warranted.
- Force Majeure.** Seller shall not be liable under the provisions of this agreement for nonperformance, failure to timely deliver or for damages of other nonconformance on account of strikes, lockouts, accidents, fires, delays in manufacturing, delays of carriers, act of God, governmental actions, state of war or any other causes beyond control of seller whether or not similar in those enumerated.
- Warranties.** (a) Seller warranty that the goods sold will be free from defects in workmanship and materials for a period of one (1) year from the date of purchase. (b) THERE SHALL BE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER OBLIGATION ON THE PART OF SELLER WITH RESPECT TO ANY OF THE PRODUCTS EXCEPT THE WARRANTY OR WARRANTIES EXTENDED PURSUANT TO THE SECTION. (c) Buyer's exclusive remedy shall be limited to replacement or repair at seller's option of any nonconforming goods. In any event and notwithstanding anything in this contract to the contrary, seller's liability under any warranty shall be discharged by replacing or repairing any goods or parts which may prove defective under normal or proper use, within the effective period of the warranty, if shown to be defective by proper evidence submitted to seller. SELLER SHALL HAVE NO LIABILITY TO BUYER. ITS SUCCESSORS OR ASSIGNS WHATEVER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND WHETHER ARISING UNDER THEORIES OF TORT, CONTRACT OR OTHERWISE. Where due to operation of law such indirect, incidental special, punitive, or consequential damages cannot be excluded, such damages are expressly limited in amount to the price of the product causing the damage, loss of claim. Under no circumstances shall seller's liability hereunder exceed the price paid by the buyer hereunder.
- Indemnification.** Except for the exercise by buyer of its exclusive remedy, described above, buyer agrees to indemnify, hold harmless and defend (including without limitation, reimbursement for reasonable attorneys fees and expenses of litigation) seller, its agents, servants, representative of employment against any and all claims, by whosoever made, arising in connection with goods sold pursuant to these terms and conditions, including, without limitations, any claim arising out of this design, manufacturer sale, delivery, use or resale of goods, whether based on warranty, contract, negligence, strict liability or otherwise (whether valid or otherwise) for loss damage or injury to property or person (including injuries causing death) allegedly caused by or arising out of the use of goods sold hereunder. The term "claims" wherever used in this paragraph shall include, without limitation, any claims in which seller, its agents, servants, representatives or employees have or are alleged to have contributed to the loss, damage or injury.
- Entire Agreement.** This contract constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreement, representations and understanding of the parties. This agreement shall govern in the event of any conflict with any other terms and conditions, including without limitation terms and conditions in any purchase order. No supplement, modification or amendment of this contract shall be binding unless executed in writing by buyer and seller. No waiver of any of the provisions of this contract shall be denied, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- Blinding Effect on Successors and Assigns.** This contract shall be blinding on and shall inure to the benefit of the successors and assigns of the parties to this agreement.
- Attorney Fees.** If any legal action or other proceeding is brought for the enforcement of this contract, or because of an alleged dispute, breach or default in connection with this contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fee and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
- Governing Law.** This agreement shall be governed by the laws of South Carolina. Buyer agrees to submit to the jurisdiction of the courts of the State of South Carolina. Venue shall be in Columbia, South Carolina.
- Severability.** In the event any section, paragraph or portion of this contract shall be or be deemed to be, by any court having lawful jurisdiction of the subject matter of this agreement, void, voidable or invalid for any reason, this agreement shall be otherwise valid and enforceable as if the void, voidable or invalid section, paragraph or portion of this agreement had not been a part of it in the first instance.
- Termination.** Termination upon Notice; either party may terminate this agreement for any reason by giving upon 6 months' notice to the other party. In addition to all other available remedies, seller may terminate this contract forthwith on any default by buyer hereunder or in the event that buyer shall be or become insolvent. Any termination shall be without prejudice to all rights and remedies of seller under applicable law. All rights and remedies of seller are cumulative. Without prejudice to other rights or remedies, seller may, during any default by buyer, suspend deliveries.
- Dispute Resolution.** The parties agree to endeavor to resolve any claims, disputes or other matters in question between the parties by mediation, followed if mediation is unsuccessful by litigation. Mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association currently in effect and shall be held in Columbia, South Carolina. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Any demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the application stature of limitations.
- Buyer's Specifications.** If any product sold hereunder is supplied in whole or in part in accordance with buyer's design or specifications, buyer warrants to seller that such product, or any part thereof, shall not infringe upon or constitute misappropriation of the proprietary right of any third party and buyer holds the seller harmless from and against and indemnifies seller for any damages, loss or expense, including reasonable attorneys' fees, incurred in connection with such claim or in connection with an alleged or actual design defect.
- International Sales.** The seller and buyer agree to exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.
- Confidentiality.** The receiving party will hold in confidence all Confidential Information disclosed by the disclosing party to the receiving party. **Non-Disclosure.** A receiving party may not disclose Confidential Information to any third party. The following documents below are considered Confidential Information: Price lists, Supply Forecasts, Product Prints and Drawings, Manufacturing details, and Other sensitive information shared between the parties during the term of this Agreement that are not of public knowledge.
Notice. A receiving party will notify the disclosing party if it: is required by Law to disclose any Confidential Information, or learns of any unauthorized disclosure of Confidential Information.
- Assignment.** Neither party may assign this agreement or any of their rights or obligations under this agreement without the other party's written consent.
- Relationship of the Parties.** Nothing in this agreement creates any special relationship between the parties, such as a partnership, joint venture, or employee/employer relationship between the parties. Neither party has the authority to, and will not, act as agent for or on behalf of the other party or represent or bind the other party in any manner.