

## **P.O. Terms**

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### **MTM Technologies STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

UNLESS THE SUPPLIER ("SUPPLIER") REFERENCED IN THE PURCHASE ORDER THAT SPECIFICALLY REFERENCES THESE STANDARD PURCHASE ORDER TERMS AND CONDITIONS (THIS "AGREEMENT") HAS A MUTUALLY EXECUTED AGREEMENT WITH THE ISSUER OF THE PURCHASE ORDER ("BUYER") THAT RELATES TO THE SALE OF PRODUCTS AND SERVICES TO BUYER (IN WHICH CASE THAT AGREEMENT WILL APPLY), THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ANY ADDITIONAL TERMS IN THE PURCHASE ORDER FORM THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN SUPPLIER AND BUYER WITH RESPECT TO THE PRODUCTS ("PRODUCTS") AND SERVICES ("SERVICES") SPECIFIED IN THE PURCHASE ORDER AND REPLACE ANY ORAL OR WRITTEN PROPOSALS, NEGOTIATIONS, CONVERSATIONS AND OTHER COMMUNICATIONS (INCLUDING ANY OF SUPPLIER'S PROPOSALS, QUOTATIONS OR ACKNOWLEDGMENT FORMS).

#### **PRICE/TAXES:**

If the Prices are not stated in the Purchase Order, the Prices will be Supplier's lowest prevailing market price. "Prices" means the agreed upon prices and currency for Products and Services, including all applicable fees, royalty payments and taxes, as specified in the Purchase Order.

#### **TERMS OF PAYMENT:**

Unless otherwise provided in the Purchase Order, amounts due under the Purchase Order are payable ten (10) days after the end of the month in which Buyer receives from Supplier an accurate invoice.

#### **TERMINATION:**

Buyer may terminate the Purchase Order with or without cause. In the event Buyer terminates without cause, Buyer will compensate Supplier for the actual and reasonable expenses incurred by Supplier for work in process up to and including the date of termination, provided such expenses do not exceed the agreed upon Prices. In addition, Buyer shall be entitled to a prorated refund of any prepaid fees or charges for unused Services for any period after the effective date of such termination.

#### **DELIVERY/PACKAGING/TRANSPORTATION:**

Unless otherwise set forth in the Purchase Order, Supplier is responsible for risk of loss for a Product until it is delivered to Buyer. Buyer may cancel or reschedule the delivery date or change the delivery point as specified in the Purchase Order. Title to tangible Products will pass to Buyer at the delivery point. Unless otherwise specified in the Purchase Order, all software and other intangible Products to be delivered to Buyer shall be delivered electronically to a location designated by Buyer or otherwise made available for electronic download by Buyer.

Supplier will: (i) comply with all packaging and labeling requirements set out in the Purchase Order; (ii) comply with the transportation routing guidelines in the Purchase Order; (iii) not use premium transportation unless specifically authorized in writing by Buyer; (iv) not include more than one daily shipment for one destination on one bill of lading and (v) not declare a value or purchase additional insurance on any F.O.B. Origin shipments to Buyer.

#### **LATE SHIPMENTS:**

In this Agreement and the Purchase Order, time shall be of the essence. If Supplier fails to deliver on time (including failure to comply with a delivery commitment specified on the Purchase Order), Supplier will promptly notify Buyer of a revised delivery date and Buyer may: (i) cancel without charge Products or Services not yet delivered; (ii) procure such Products or Services elsewhere and charge Supplier the cost

differential and (iii) exercise all other remedies provided at law, in equity and in this Agreement.

#### **WARRANTIES:**

Supplier makes the following ongoing representations and warranties:

(i) Supplier will at all times comply with all applicable laws, rules and regulations to which it is or becomes subject (and, if any of the Products are imported from any other country, Supplier will be responsible for all legal, regulatory and administrative requirements associated with such importation and the payment of all associated duties, taxes and fees);

(ii) The Products and Services do not contain libelous matters nor do they directly or indirectly infringe any publicity, privacy or intellectual property rights of a third party including, to Supplier's knowledge, any patents or patent applications;

(iii) Any source code for software Products that Supplier provides (if such provision is required under the Purchase Order) is fully commented and corresponds to the current release or version of the software Product provided by Supplier;

(iv) Software Products are not contaminated by harmful code;

(v) Each Product is safe for use and will meet its respective functional, performance and production capacity specifications (if any) described in the Purchase Order, Supplier's user documentation and any sales and marketing materials provided by Supplier. The term of this warranty is one (1) year starting on the date that Product is accepted, unless the parties agree to a different length of this warranty in the Purchase Order;

(vi) Products and Services that interact in any capacity with monetary data are euro-ready such that they will correctly process, send, receive, present, store, and convert monetary data in the euro denomination, respecting the euro currency formatting conventions (including the euro symbol); and

(vii) Services will be performed in a workmanlike and professional manner by Supplier personnel having a level of skill in the area of work commensurate with the requirements of the scope of work to be performed.

Supplier shall immediately provide Buyer written notice of any change that may affect its representations and warranties. For any breach of Supplier's warranties, Supplier must: (i) promptly repair or replace the nonconforming Products or reperform the nonconforming Services without charge upon receipt of Buyer's description of the applicable nonconformities or (ii) if Supplier cannot repair or replace the nonconforming Products or reperform the nonconforming Services within a commercially reasonable period of time, then, at Buyer's request, promptly refund the prorated portion of Prices paid for such Products or Services. Supplier will replace promptly all defective media returned to it. The foregoing remedies are non-exclusive, and Buyer is not precluded from exercising any other remedy available to it at law, in equity or in this Agreement. Payment will not constitute an acceptance of the Products or Services nor impair Buyer's right to inspect the Products or Services or invoke any of its remedies.

#### **INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION:**

Supplier grants Buyer all rights and licenses necessary for Buyer and its affiliates to use and sell the Products or Services specified in the Purchase Order and to exercise the rights granted under this Agreement and the Purchase Order. Without limiting the foregoing, Supplier grants to Buyer, except as expressly set forth in the Purchase Order or the applicable License Agreement (as defined below), an irrevocable, perpetual, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform and distribute, by means of any media or delivery technology now known or hereafter devised, any software Products provided by Supplier, with the right to sublicense and assign to others such rights. At either party's request, a separate license agreement ("License Agreement") for a software Product shall be negotiated and mutually signed by Buyer and Supplier or Supplier's supplier. All "shrink-wrap" and "click-wrap" license terms that purport to govern the terms of use of any Product shall be void.

Supplier shall indemnify, defend (or at Buyer's option cooperate in the defense of) and hold harmless Buyer, Buyer's affiliates, Buyer personnel and their respective directors, officers and employees from and against any damages, liability and costs (including reasonable attorney's fees) due to any claims that Products or Services infringe the intellectual property rights (including patent, copyright, trademark or trade secret) of a third party and any claims arising from the failure of Supplier to comply with its warranties and obligations under this Agreement or the Purchase Order. Buyer may withhold payments due Supplier under this Agreement until Buyer is indemnified fully by Supplier as required under this Section.

**LIMITATION OF LIABILITY:**

In no event will Buyer be liable to Supplier or any third party for consequential, special or punitive damages including lost profits or other economic damages, even if Buyer is informed of their possibility.

**ASSIGNMENT:**

This Agreement may not be assigned, sublicensed or otherwise transferred, in whole or in part, by Supplier, whether by operation of law or otherwise, without Buyer's prior written consent. Any attempted assignment in violation of this Section will be void.

**EXCHANGE OF INFORMATION:**

All information exchanged in connection with the Purchase Order is nonconfidential. If either party requires the exchange of confidential information, it shall be made under a separate signed confidentiality agreement. For any business personal information relating to Supplier's employees or contractors that Supplier provides to Buyer, Supplier will obtain the informed agreement of such employees and contractors to release the information to Buyer and to allow Buyer to use such information in connection with this Agreement.

**CONFLICTING TERMS AND MODIFICATIONS:**

If there is a conflict between the terms of the Purchase Order and the terms of this Agreement, the terms of this Agreement prevail unless the Purchase Order states that the terms of the Purchase Order will prevail. Notwithstanding the immediately preceding sentence, a term of this Agreement may be modified only if such modification (i) is expressly set forth in the Purchase Order under a section expressly entitled "Modifications to the Agreement" and (ii) expressly references the Agreement Section title that is the subject of the modification. No right that Buyer has regarding this Agreement may be waived or modified except by Buyer in writing.

**APPLICABLE LAWS:**

All rights, duties and obligations arising from or relating in any manner to the subject matter of this Agreement shall be governed by and construed under the laws of the country where the Purchase Order is issued, except that the laws of the State of New York applicable to agreements made and fully performed therein, without regard to its conflict of laws provisions, will apply if any part of the transaction is performed within the United States.