

**MTC ("SELLER") PURCHASE ORDER TERMS AND CONDITIONS (v200805)**

**GENERAL:** This purchase order/confirmation of purchase order (Order) for the sale or rental of equipment, materials, services as reflected in the Order is expressly conditioned upon Customer's agreement to the terms and conditions contained in this order. These terms and conditions govern the sale of goods and/or labor performed as described in this order to the exclusion of any conditions in Customer's purchase order. Customer's receipt and acceptance of the goods shipped and/or labor performed hereunder shall constitute such agreement. If Customer declines these terms and conditions this Order is cancelled and becomes null and void and no obligations will be owed to Customer by Seller.

**TRANSPORTATION COSTS; SALES AND USE TAXES:** Transportation costs, labor costs, per diem and applicable sales and use taxes, if any, are the responsibility of and to the account of Customer. Customer must submit tax exemption certificate with this Order, if applicable, to receive credit.

**PAYMENT:** Payment is due within 30 days unless otherwise noted. Customer becomes obligated to pay for wet-out goods at the time the good are wet-out (saturated or injected with resin). If Customer fails to pay when due any payment, Customer will be in default for all outstanding invoices without further notice. Without prejudice to any other rights or remedies of Seller, Seller shall have the right to cancel further deliveries and to charge interest on all overdue amounts at the rate of 1.5% per month, or the greatest amount permissible by law, whichever is less, from the date payment is due. Failure, by the Customer, to remit payment for services rendered shall be considered a material breach of this Proposal / Order. Should Seller incur costs or expenses to collect monies claimed due from Customer, Customer shall pay to Seller, in addition to all other sums due to Seller, reasonable attorneys' fees, consultants' costs, and other expenses and costs, including litigation and/or arbitration expenses and arbitrator compensation, in connection therewith. Customer authorizes the project owner, general contractor, or any other party in receipt of the goods to make any and all payments related to the goods jointly payable to Seller and Customer upon Seller's demand, until such time as Seller provides notification that it has been paid in full for the goods sold to Customer under this Order.

**DELIVERY AND/OR PERFORMANCE:** Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Seller's Facility (the "**Delivery Point**" designated in the Purchase Order) using Seller's standard methods for packaging and shipping such Goods. Seller shall not be liable for goods which are improperly handled, stored or damaged in transit or installation. Seller shall not be liable for goods which are not timely picked up at Seller's manufacturing, wet out facility or Shipping Point by Customer or Customer's carrier. Seller reserves the right to make delivery in installments and each such installment shall be paid for as invoiced. Delivery dates are only indicative and will be observed as far as the circumstances reasonably permit. Delay in delivery of any installment shall not relieve Customer of its obligation to accept remaining deliveries and shall not give rise to any liability on the part of the Seller. Seller is not liable for any premature exotherm after goods are made available to Customer, Customer's carrier or during installation.

**SHIPPING, TITLE AND RISK OF LOSS:** Delivery shall be made FOB Shipping Point which shall be Seller's Facility designated in the Purchase Order. Title & risk of loss passes to Customer upon delivery at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Customer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code of the state where the Goods are ultimately used.

**INSPECTION:** Customer shall inspect Goods received within 3 days of receipt ("Inspection Period"). Customer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. All defects and nonconformities that are not so specified in writing shall be deemed waived by Customer and such Goods shall be deemed accepted. Installation of the Goods shall constitute acceptance and no attempted revocation of acceptance will be effective. "Nonconforming Goods" means the product shipped is different than identified in Customer's purchase order. If Customer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility designated in the Purchase Order. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Customer's shipment of Nonconforming Goods, ship to Customer, at Customer's expense and risk of loss, the replaced Goods to the Delivery Point. Customer acknowledges and agrees that the remedies set forth in this Section are Customer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under in this Section, all sales of Goods to Customer are made on a one-way basis and Customer has no right to return Goods purchased to Seller.

**TECHNICAL ADVICE:** SELLER, INCLUDING SELLER'S OPERATOR(S), AGENTS AND AFFILIATES, ASSUME(S) NO LIABILITY FOR ANY TECHNICAL ADVICE GIVEN OR RESULTS OBTAINED THEREFROM, ALL SUCH ADVICE BEING GIVEN AND ACCEPTED AT CUSTOMER'S SOLE RISK. CUSTOMER SHALL BE RESPONSIBLE FOR MAKING ITS OWN TESTS AND VERIFICATIONS BEFORE APPLYING SUCH TECHNICAL ADVICE OR USING AND OPERATING THE GOODS. THIS PARAGRAPH APPLIES TO ALL DEALINGS BETWEEN SELLER AND CUSTOMER, INCLUDING BUT NOT LIMITED TO ALL FORMS OF TECHNICAL ADVICE, INSTALLATION GUIDANCE OR FIELD SUPPORT AND SELLER EXPRESSLY DISCLAIMS ANY OUTCOMES FROM ITS ADVICE OR THAT IT SHOULD BE RELIED UPON BY CUSTOMER.

**CONFIDENTIALITY:** Neither party shall disclose, nor will it permit its employees or agents to disclose, the other party's confidential information to any third party without written consent. All information relating to this Order shall be considered confidential except for information that is: (i) rightfully known by the disclosing party prior to discussions leading to this PO; (ii) independently developed by the disclosing party

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without reliance on confidential information; (iii) part of the public domain or lawfully obtained from a third party without any confidentiality violation; or (iv) contributed by Seller to the Dun & Bradstreet Global Trade Exchange Program or a similar database for trade credit experiences.

**WARRANTIES:** For a period of one (1) year from date of shipment of the goods, Seller warrants title and that goods sold hereunder shall conform to Sellers' standard specifications for goods of the kind being sold and shall be free of material defect subject in each case to Customer's proper use and maintenance of the goods while the goods are in Customer's possession or ownership. AS INSTALLATION CONDITIONS AND EXPERIENCE AND TECHNIQUES DIFFER GREATLY, SELLER DISCLAIMS AND EXCLUDES ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS AND RESULTS WHICH CAN BE ACHIEVED BY CUSTOMER IN ITS USE OF THE GOODS. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, SELLER EXCLUDES ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS SOLD HEREUNDER AS TO PERFORMANCE, COMPLIANCE WITH ANY PROJECT SPECIFICATIONS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO THE GOODS WHETHER USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS.

**CLAIMS:** Any claim for shortage or for damage incurred in transit of goods must be made within ten (10) days after Customer's receipt of the goods. All other claims, including claims for alleged defective goods, must be made within ten (10) days after Customer learns of the facts on which such claim is based, but in no event later than the commencement of installation of the goods or thirty (30) days after Customer's receipt of the goods. All claims not made in writing and received by Seller within the time periods specified above shall be deemed waived. No claim will be allowed or returned goods accepted if the goods have been treated or processed in any manner, except upon proof satisfactory to Seller of the existence of a latent defect not ascertainable before treating or processing and then only if such proof is submitted within ten (10) days after such defect becomes apparent.

**LIMIT OF LIABILITY:** Seller's liability for any and all losses or damages to Customer resulting from defective goods or from any and all other causes shall be limited in all cases and in the aggregate to the purchase price of the particular goods with respect to which losses or damages are claimed plus any transportation charges paid by Customer for shipment of the goods to Customer. At Seller's option, its liability shall be limited to the repair or replacement of defective or damaged goods. Transportation charges for the return of goods shall be paid by Seller only if such return is requested by Seller and Seller agrees in writing to such return of the goods. Seller shall in no event be liable for any special, indirect or consequential (including, but not limited to, lost profits, liquidated damages, delay damages) damages or punitive damages arising out of or relating to this Order. Customer assumes responsibility for and shall defend, indemnify and hold Seller harmless from liability for any personal injury and/or property damage arising out of the handling, possession or use of the goods by the Customer. Seller is not responsible for any failures of the goods and/or equipment after leaving Seller's facility and Customer shall indemnify, defend, and hold harmless Seller against any and all losses, liabilities, and claims by any third party related to the performance or defects in the goods and reimburse seller for all reasonable attorneys' fees, costs, and expenses incurred in establishing the right to indemnification.

**TERMINATION:** If payment is not received by the due date, or if Customer shall or has become insolvent, shall be declared bankrupt; shall be subject of proceedings under insolvency or bankruptcy law; or shall make an assignment for the benefit of creditors, Seller reserves the right to consider the sale cancelled, without having to give notice of default. Any installments paid may be retained by the Seller by way of damages or interest. Seller shall have the right to enter Customer's premises where the goods are stored in order to take possession of and remove the goods.

**FORCE MAJEURE:** Deliveries may be cancelled by Seller without liability in case of Act of God, war, riots, fire, explosion, flood, strike, lockout, injunction, inability to obtain fuel, power, raw materials, labor, containers, or transportation facilities, accident, malfunction of machinery or apparatus, national defense requirements, or any cause beyond the reasonable control of Seller, which prevents or hinders the manufacture or shipment of the goods or of a material upon which the manufacture of the goods is dependent. If, because of any such circumstance, Seller is unable to supply the total demand for the goods, Seller may allocate its available supply among itself and all of its customers, including those not under contract, in an equitable manner. Except to the extent of cancellation of deliveries or allocation of supply hereunder, the contract shall remain unaffected.

**PATENTS & TRADEMARKS:** Customer expressly assumes all risks of patent or trademark infringement by reason of his use or sale of the goods, either alone or in conjunction with other materials.

**APPLICABLE LAW - ENTIRE AGREEMENT:** This contract is to be construed according to the laws of the State of Missouri, USA, except that its laws on conflict of laws shall be disregarding in their entirety when interpreting this agreement or the performance of the parties. Any controversy or claim ("Claim") arising out of or related to this contract, or the breach thereof, shall be settled by mediation between the parties. In the event mediation fails to produce a satisfactory resolution of the Claim within sixty (60) days, then any Claim shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall be governed by the United States Arbitration Act to the exclusion of any provision of state, national or local law inconsistent therewith or which would produce a different result. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction. The arbitration shall be held in St. Louis, Missouri, USA. There shall be one arbitrator who shall have no jurisdiction to award punitive damages or exemplary damages. The arbitrator shall determine the Claim(s) of the parties and render a final award in accordance with the substantive law of the State of Missouri, USA, excluding any conflicts provisions of such law, whether statutory or case law. In the event that any arbitration instituted to enforce any provision of this contract, and/or to remedy, prevent or obtain relief from a breach of this contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including costs of arbitration, as well as court costs incurred, including those incurred in any and all appeals or petitions therefrom. This document constitutes the full understanding of the parties, and no terms, conditions,

understanding or agreement purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be bound.

**MISCELLANEOUS:** (a) Customer will not, without Seller’s prior written consent, make any news release, announcement, denial or confirmation of this Order, its value, or its terms. Nothing in this Order grants Customer the right to use any trademarks, trade names or logos proprietary to Seller. If Customer is granted a right to use Seller’s marks, Customer will do so only in strict compliance with Seller’s guidelines. (b) Customer will not, without Seller’s prior written consent, assign or subcontract all or any portion of this Order. (c) Failure by Seller to insist upon strict performance by Customer of any of its obligations under this Order will not waive any subsequent or other default or failure to perform by Customer. (d) The invalidity, in whole or in part, of any provision of this Order will not affect the validity of any other provision. (e) Customer is an independent contractor and not an agent or employee of Seller or any of Seller’s affiliates. Customer is solely responsible for paying wages, salaries, fringe benefits and any other compensation to or claims by Customer’s employees. (g) Seller has the right to offset any amount owed by Customer to Seller against any amount owed by Customer to Seller under this Order.