

Morgan MEDesign Supply LLC. Terms and Conditions of Sale

Morgan MEDesign Supply exists to serve our customers, so if any term conflicts with your policies please call us and we will try to work it out.

1. **ORDERS:** Quotations are an integral part of the collaborative design process between MMS and its customers. Quotations are "solicitations for offers" when signed by the customer and become "orders" when finalized and accepted in writing at MMS Windsor, office by an MMS corporate officer.
2. **Quotations and prices:** MMS's prices and quotations are FOB MMS's final assembly plant, and are subject to the following:
 - A) Published prices are subject to change without notice.
 - B) Quoted prices remain valid for 30 days. This time may be extended, in writing, at the discretion of MMS.
 - C) All prices quoted are exclusive of the costs of transportation, insurance, taxes, (including without limitation any sales, use or similar taxes), license or customs fees, duties and other charges related thereto. Customer shall be responsible for all such costs, taxes, fees, duties and charges.
3. **PAYMENT:** The unpaid balance of the purchase price shall be due as specified in the MMS Quotation. Past due payments shall be subject to a service charge and interest at the maximum rate allowed by law. Customer's failure to make any payment when due shall absolve MMS from any further duty to perform under this agreement.
4. **RISK OF LOSS:** Each product is sold FOB MMS's final assembly plant. While MMS takes care to properly pack their products, and contracts with nationally known transport companies, the transport company, not MMS, is responsible for safe arrival of any shipment. MMS may, but is not obligated to insure, at Customer's expense, the full value of any shipment or declare full value thereof to the transportation company at the time of shipment. Customer may specify and agree to pay for additional insurance as part of the freight charges.
5. **DELIVERY:** Dates indicated for delivery or other performance represent MMS's best estimate only and shall not be construed as a basis for liability for, nor shall any penalties arise from any delay in delivery due to circumstances beyond MMS's control, including without limitation such delay due to supplier, fabricator, or other subcontractor caused delay, customer caused delay, or delay due to MMS's or customer's inability to comply with any law or regulation now in effect or subsequently enacted.
6. **LOCUS / CHOICE OF LAWS:** This agreement is and shall be deemed to have been made in the State of California, United States of America. It is subject to and governed by California law and applicable U. S. federal laws and regulations. Except where otherwise provided in this Agreement and Limited Warranty, MMS shall each have the remedies provided under the Commercial Code of the State of California for any breach, default, or nonperformance of any provision in this agreement.
7. **BENEFIT OF AGREEMENT:** Except as previously provided herein, this Agreement is made solely for the benefit of the parties to this Agreement and no other person or entity shall have or acquire any right by virtue of this agreement.

8. LIMITED WARRANTY: This warranty shall be provided for a period of one year after the date of SALE with written acceptance by MMS under paragraph 1. (above). This warranty shall apply only to the original purchaser. During the warranty period, MMS will promptly repair or replace product that is defectively manufactured by MMS. MMS's liability under this warranty shall be limited to repairing or replacing the defective product. MMS may elect between repair or replacement. MMS shall not be liable for any consequential damages. MMS shall not be liable for customer's loss of profits, business good will, or other consequential damage, despite any failure to repair or replace the Product. Customer has accepted this restriction on its right to recover consequential damages as a part of its bargain with MMS. Customer realizes and acknowledges that the price of the Product would be higher if MMS were required to be responsible for Customer's consequential damages. MMS makes every effort to ensure that its Product designs are innovative, original and unique to MMS, however, MMS makes no warranty that the Product is or will be delivered free of any person's claim of Patent, Trademark or similar intellectual property right infringement. There are no warranties that extend beyond the description of the Product provided on the face of this contract. MMS disclaims any warranty of any other kind, including any warranty that the Product is merchantable or fit for a particular purpose. MMS further limits its liability of any kind with respect to the Product, including any negligence on its part, to the purchase price of the Product. MMS sole liability and Customer's exclusive remedy are stated in this warranty.

9. INDEMNIFICATION: As an express condition of this sale, Customer agrees to indemnify, defend and hold MMS harmless from any damage or injury resulting from or relating to:

A) Any fault or negligence of third parties;

B) Any fault or negligence of Customer, its officers, directors, shareholders, agents, representatives, employees or licensees;

C) Use or operation of the Product by Customer, its officers, directors, shareholders, agents, representatives, employees or licensees prior to completion of applicable tests by MMS and/or prior to acceptance by Customer. Customer shall indemnify MMS notwithstanding any fault or negligence attributable to MMS, provided however, if it is determined in accordance with applicable California law, that any fault or negligence of MMS, its employees or agents, materially contributes to damage or injury to third parties resulting from or related to any of the causes set forth in clauses A or B above, MMS shall be responsible only in such proportion to its relative fault.