

## MECHMAR INDUSTRIES, INC. PRODUCTS TERMS AND CONDITIONS OF SALE

1. "Seller" shall mean MECHMAR INDUSTRIES, INC or subsidiaries. By purchasing products from Seller, Buyer confirms that the following terms and conditions apply to Buyer's purchase of Seller's products. Even if Buyer sends Seller another form of agreement, or modifications to this agreement, and Seller does not respond, these terms will be the terms of Seller's agreement. If Buyer does not agree with these terms, please call Seller to discuss modifications. Any modifications must be in writing and signed by Seller.
2. **TERMS AND CONDITIONS OF SALES.** Any products or services ("Products") Buyer purchases from Seller by electronic, phone, paper, or any other form of transmission are sold subject to the following: a. If Buyer already has a fully signed sales agreement currently in effect with Seller, then any term in that agreement that conflicts with these terms will be applied to Buyer's purchase; the rest of these terms and conditions will otherwise apply; b. If Buyer does not have a fully signed sales agreement with Seller, then the following is Seller's complete contract, which is governed by the substantive law of the state of New York, without giving effect to its conflicts of laws principles. The United Nations Convention on the International Sale of Goods will not apply.
3. **PRICE.** Product prices are determined by the confirmation Buyer receives from Seller, or, in the absence of such confirmation, by Seller's list prices in effect at the time of shipment. However, if Seller implements a general or industry specific price adjustment for any Product, all orders for such Product that are confirmed but not shipped as of the effective date of such adjustment may be re-priced accordingly. Unless otherwise agreed to, payment will be due in U.S. Dollars within thirty (30) days of the invoice date. Buyer also agrees to reimburse Seller for Seller's costs of collection, including reasonable attorney's fees, should Buyer fail to pay Seller in a timely manner, including interest at the annual rate of LIBOR plus 5%.
4. **DELIVERY.** Any delivery dates Seller quotes are estimates. Seller cannot guarantee delivery on a specific date. All title and risk of loss or damage passes to Buyer at the time products are transferred to a commercial transportation carrier for shipment except that conveyance of title and risk of loss to products shipped from the United States to locations outside of the United States will occur immediately after such products first leave United States territory (including its territorial waters and airspace, as applicable). Buyer grants Seller a purchase money security interest in goods Seller sells to Buyer and Buyer agrees that Seller may take actions in Buyer's name to perfect that interest as Buyer's attorney in fact; if Buyer is located in one of those places which recognizes reservation of title, Buyer agrees that Seller retain title to the goods to secure Buyer's payment for them, and Buyer assigns to Seller all proceeds from their sale or pledge.
5. **WARRANTY.** Products sold by Seller to Buyer conform to the manufacturer's specifications as set forth in the applicable product certification delivered to Buyer. Services performed will be in accordance with generally acceptable industry standards. Buyer will inspect all products Buyer receives for damage, defect or shortage promptly after Buyer receives them, and will give Seller prompt notice of any damage, defect or shortage that Buyer finds. Buyer must give Seller notice of any defect within six months after the date of shipment or completion of services or the date the products are used, whichever comes first. Seller may, at Seller's option, either replace the products or refund the purchase price. This is Buyer's exclusive remedy for breach of warranty. Buyer should not return products until Seller agrees that Buyer may do so. Should applicable law prohibit this limitation of Buyer's remedies, then Seller agrees that the maximum amount Buyer may claim from Seller is twice the net purchase price Buyer actually paid Seller for product determined to be defective. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
6. **LIMITATION OF CLAIMS.** Seller will not be responsible for any harm arising out of Buyer's purchase, possession or use of any products supplied by Seller or any technical advice Seller may offer, except as agreed in the Limited Warranty set out above. **SELLER WILL NOT BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, COST OF ANY SUBSTITUTE FOR THE PRODUCTS BUYER BOUGHT, CLAIMS OF THIRD PARTIES OR INJURY TO PERSONS OR PROPERTY.**
7. **TECHNICAL ADVICE AND OTHER SERVICES.** Buyer is responsible for the design, processing, testing and labeling of any product that Buyer makes using Products Buyer buys from Seller and Buyer will not rely on anything on Seller's web site or any statement by Seller about the suitability of products or services Seller provides. Buyer has tested and investigated Products sold by Seller enough to form an independent judgment concerning their suitability for the use, conversion or processing intended by Buyer and will not make any claim against Seller based on Seller's advice, statements, information, services or recommendations.
8. **PATENTS.** Any suggestions Seller makes about possible articles, designs or uses of products do not give Buyer a license under any patent covering such articles, designs or uses, nor are they a recommendation for use of such products, articles or designs which may infringe any patent. Seller will defend Buyer if there is a claim that Seller's products, as seller delivers them to Buyer, infringe another person's patents, and if necessary will either refund the purchase price or obtain for buyer a license under those patents.
9. **EVENTS BEYOND SELLER'S CONTROL.** Seller will not be responsible if Seller cannot perform under this agreement if events beyond Seller's control occur which make it impossible or commercially unreasonable for Seller to perform, including so-called "Acts of God" or "force majeure" events and raw material shortages.
10. **ENVIRONMENTAL COMPLIANCE.** Seller will give Buyer Material Safety Data Sheets ("MSDSs") and Buyer will provide the MSDSs to all those required by law to receive them. Buyer will take such precautions as may be appropriate for hazards identified in the MSDSs and properly manage and dispose of all wastes and residues resulting from Buyer's use of the materials in accordance with applicable laws and regulations. Buyer agrees to dispose of disposable packaging as required by any applicable disposal or recycling laws.
11. **EXPORT CONTROL COMPLIANCE.** Buyer ensures that products Buyer receives from Seller are exported by Buyer only in compliance with applicable laws, including U.S. export control laws. Buyer certifies that it will not use, or knowingly support the use by others of, such products, technology or software in the design, development, production or use of nuclear, chemical or biological weapons, land mines or ballistic missiles.
12. **ELECTRONIC COMMERCE.** Buyer may not share any password, access code or similar credential which may issued to it by Seller, and Seller reserves the right to suspend or revoke any such credential. Buyer is solely responsible for ensuring the security and integrity of its ordering process. Any information provided by Seller via any Internet site or electronic communication (i) is subject to correction or change without notice, and (ii) is provided for the sole use of Buyer for purposes of facilitating individual transactions involving the purchase and sale of Seller's products. Buyer agrees that it shall not rely upon any such information for any purpose other than making individual purchases and will not seek to assert such information against Seller for any other

purpose. Seller may issue electronic invoices for any purchases of products made using the Internet, e-mail or any other computer-based electronic communications method, and agrees to honor such invoice as if it had been delivered in writing.

13. **TERMINATION; SUSPENSION.** Seller may terminate this agreement or adjust Buyer's payment terms effective immediately upon written notice to Buyer in the event (a) Buyer fails to pay any Seller invoice, within the time provided in this agreement on two or more occasions, (b) Buyer generally fails to pay its debts as they become due, (c) Seller reasonably believes Buyer's creditworthiness has deteriorated or Buyer is insolvent (whether based on the reasonable belief by Seller that Buyer's liabilities exceed its assets; the existence of a bankruptcy, assignment for the benefit of creditors or other similar proceeding involving Buyer; a liquidation of a significant portion of the assets of Buyer; or otherwise) and (d) of a sale of a majority of the assets, or a change of control of the ownership, of Buyer. If Buyer is in default hereunder, including by failure to pay invoices, Seller may suspend shipments of Product, require cash in advance of deliveries and/or reduce payment terms until all invoices are current and Seller receives adequate assurance of future performance.

14. **MEDICAL APPLICATION.** Buyer understands that Seller's materials are not intended for use in any medical application involving permanent implantation in the human body, or any such implantation lasting longer than 29 days, and agrees not to use any of Seller's materials for any such application, or for any other application into which, to Buyer's knowledge, Seller has previously declined to sell material.

15. **GENERAL.** Cancellation of any order, or return of any conforming Product purchased hereunder, will be subject to acceptance by Seller and to a restocking charge in accordance with Seller's policy then in effect. **ORDERS FOR CUSTOM PRODUCT MAY NOT BE CANCELED OR TERMINATED.** Neither course of performance or dealing, nor usage of trade, nor prior writings or agreements shall be used to qualify, explain or supplement any of these terms and conditions. Failure by either party, at any time or from time to time, to require the performance by the other of any term hereof shall not constitute a waiver of such term or provision. The invalidity, in whole or in part, of any term herein, shall not affect any other term, each of which shall be enforced to the full extent permitted by law. Buyer may not assign or transfer any rights or obligations under any Sales Agreement or other agreement governed by these terms without the prior written consent of Seller. Notice shall be deemed properly given if sent by facsimile confirmed by registered mail with return receipt, overnight courier mail, hand-delivered, or registered mail with return receipt, to the addresses set forth on the first page of this Agreement. Seller shall be entitled to reference Buyer as a customer of Seller and utilize photographs of Buyer's applications utilizing Seller's products in Seller's marketing materials.

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