

Muller Technology MO, Inc. Terms and Conditions

1. ORDERS. The sale of any products and/or the provision of services by Muller Technology MO, Inc., a Missouri corporation ("Seller") to the buyer of such products and/or services ("Buyer") is expressly made subject to and conditioned upon the terms and conditions contained or referred to herein, in addition to those set forth on any applicable quotation, credit application, invoice, acknowledgment or packing slip (as well as any attachments to any of the foregoing) provided by Seller (collectively, the "Terms"). The Terms shall apply to the exclusion of all other terms and conditions, including (a) any terms or conditions which are implied by trade, custom, practice or course of dealing or which Buyer may purport to apply; or (b) any prior, additional, contrary or inconsistent terms or conditions contained in any purchase order, order confirmation, acknowledgment, estimate, shipment, invoicing document or other written correspondence of Buyer. The fact that Buyer places an order for any products or services offered for sale by Seller shall serve as conclusive evidence that Buyer acknowledges and accepts, without restriction or reservation, the Terms prior to such order.

2. PRICES. Prices are EXW (Incoterms 2020) Seller's facility unless otherwise specified by Seller in writing. Prices do not include any present or future tariffs, duties, sales, use, excise, value-added or similar taxes, which, where applicable, shall be paid by Buyer and excludes any shipping costs and delivery charges which, unless otherwise agreed by Seller in writing, will be paid by Buyer. The proposal of Seller constitutes an invitation for an offer by the Buyer, open for a period of 60 days from the date thereof (unless otherwise specified by Seller in writing), but subject, nonetheless, to change by Seller during such 60 day period. All proposals are subject to change upon an on-site inspection or review of final specifications.

3. PROJECT AND DESIGN DEFINITION. Seller shall send a Customer Specification Packet to Buyer upon receipt of an order. This Customer Specification Packet will be used to establish the parameters of the goods to be built. Any changes beyond the Customer Specification Packet could result in delays and/or additional costs to Buyer. Interfacing with existing machinery is Buyer's responsibility unless otherwise agreed in writing by Seller.

4. CHANGES AND CANCELLATIONS. Unless otherwise specified herein, all orders accepted by Seller shall be firm and no change shall be allowed without the mutual written consent of the parties. All deposits are non-refundable. No waiver, alteration, or modification of the Terms is binding or effective, unless in writing and mutually approved by Buyer and Seller. Unless otherwise agreed, Buyer may cancel an entire order by written notice received by Seller no later than 90 days before the acknowledged shipping date. Buyer may cancel part of an order by written notice received by Seller no later than 60 days before Seller's completion of that part of the order. On receipt of such cancellation notice, Seller will stop all work on the order or part thereof as promptly as is reasonably possible. Buyer will then be invoiced for, and will pay to Seller a cancellation charge. For completed items, the cancellation charge will be equal to Seller's then-established prices. For items not completed, the cancellation charge will be 120% of Seller's full cost of production as determined by Seller plus a charge for any packing and storage, less a credit to Buyer for any scrap value of the materials. The full cost includes burden and overhead costs incurred by Seller or by Seller's affiliates. To the extent any damages required to be paid hereunder are deemed to be liquidated, the parties acknowledge and agree that: (a) they intend that such damages constitute compensation and not a penalty, (b) the harm or loss would be very difficult or impossible to accurately estimate at the time of entering into the Terms, (c) otherwise obtaining an adequate remedy is inconvenient and (d) the damages calculated hereunder constitute a reasonable approximation of the anticipated or actual harm or loss.

5. SPECIALLY MANUFACTURED GOODS. Seller's quotation, acceptance and performance of any order for goods specially manufactured to Buyer's specifications assumes timely receipt of all required information. Buyer shall defend and indemnify Seller and its affiliates, directors, officers, subsidiaries, parent companies, agents, employees and suppliers against any claim or liability arising out of Seller's compliance with Buyer's specifications for specially manufactured or custom ordered goods.

6. DELIVERY. All shipments are EXW (Incoterms 2020) Seller's facility unless otherwise stated in writing by Seller. Any shipping schedule provided by Seller is Seller's current estimate of delivery dates and all deliveries are subject to change without liability to Seller, and in no event shall Seller be liable for any delays in transit or delivery. Title to the goods passes to Buyer upon Buyer's signature of a Delivery/Acceptance Certificate. Buyer agrees to sign a Delivery/Acceptance Certificate that is tendered by Seller, or to promptly provide Seller in writing with Buyer's objections thereto. Buyer agrees to promptly sign a Delivery/Acceptance Certificate when Seller has reasonably satisfied Buyer's written objections. If Buyer does not promptly sign a Delivery/Acceptance Certificate, Buyer shall be deemed to have refused delivery of the goods, and Seller, in addition to other remedies available in law or equity, shall be entitled at any time to immediately remove the goods from Buyer's premises or the goods' current location and retain them. If Buyer fails to take delivery promptly, Seller shall not be deemed responsible for the eventual delivery of such goods unto Buyer. Risk of loss shall pass to Buyer upon Seller making the goods available for pick-up at the Seller's facility. Seller shall not be responsible for the storage, protection, or insurance of such goods after the risk of loss passes to Buyer. It is the Buyer's responsibility to receive, uncrate, and inspect the good upon arrival. If Seller's performance of its obligations under the

Terms is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under the Terms or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay. Seller is not responsible for any delay or failure in shipment, transportation, or delivery due to or arising from shortage of raw materials, fires, strikes, lockout, labor troubles of any kind, floods, drought, weather, earthquakes, civil commotion, accidents, act of God, terrorists threats or acts, national emergencies, insurrections, war or consequences of war, breakdown of machinery, embargoes, perils of the sea, governmental acts, restrictions, failure of sub-suppliers to deliver, suspension of shipping facilities, acts of omission, commission, negligence or default of any carrier or any other contingencies of whatever nature beyond Seller's reasonable control.

7. SOFTWARE. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all goods, documents, work product and other materials that are delivered to Buyer under these Terms shall be owned exclusively by Seller. Buyer is granted a non-exclusive, non-sublicenseable, non-transferable (except in connection with the transfer of the goods), royalty-free single user license to use any software supplied as part of the goods (the "Software"). Buyer acknowledges and agrees to use, or permit the Software to be used, only in the operation of the goods. Such use shall not be to the detriment of Seller. Without limiting the foregoing and except as otherwise expressly set forth in this Terms, Buyer shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Software, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (iv) remove any proprietary notices from the Software; or (v) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any person, or that violates any applicable law. The goods comprised of software or firmware may be subject to additional terms and conditions set forth in a separate license agreement provided by the vendor of such goods that control the use of such goods.

8. PAYMENTS AND SECURITY INTEREST. All terms of payment shall be as specified by Seller in writing and shall be made in good funds in U.S. Dollars. Buyer's obligation to pay outstanding invoices and all other amounts is absolute and unconditional and is not subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. Seller may decline at any time either to accept an order, or to ship the same, until Seller has received payment. Unpaid balances shall bear interest from the due date at the rate of 2% per month, not to exceed the applicable legal rate. Buyer shall pay Seller all costs of collection on past due accounts including but not limited to reasonable attorneys' fees, whether or not litigation is commenced in aid thereof. Buyer hereby grants to Seller a purchase money security interest in the goods sold in the amount of the purchase price as security for payment in full of such purchase price and the performance of all obligations of Buyer herein. This security interest will be satisfied by timely payment and satisfaction in full of Buyer's obligations herein. The parties intend for this agreement to constitute a security agreement under the Uniform Commercial Code. Until the goods are fully paid for, they shall remain at the place of delivery, shall not be relocated, shall be insured against all losses (with Seller as a named insured), shall be accessible at all reasonable times for inspection by Seller or Seller's agents, and Seller or Seller's agents have the right to conduct such inspections on the premises where the goods are located. Upon request, Buyer agrees to execute a financing statement (UCC-1) or other documents, evidencing Seller's security interest in the goods sold. Seller shall be entitled to all applicable rights and remedies of a secured party under applicable law.

9. SPECIFICATIONS. Specifications, statements, drawings, and descriptions regarding weights, dimensions, rate of speed, capacity and other details supplied by Seller, including those contained in brochures and catalogues, are approximate and descriptive only, and are not intended or designed as warranties or guarantees. After Seller has accepted Buyer's order, one set of accurate outline drawings will be supplied to Buyer free of charge upon Buyer's request. Buyer agrees that all concepts, designs, or drawings are the sole property of Seller. These drawings may not be shared or transmitted to any third parties without Seller's prior written consent. Seller's responsibility and obligation under or arising out of this agreement shall be fully discharged when the goods provided are in substantial compliance and conformity with the Customer Specifications Packet.

10. WARRANTY. Seller hereby warrants the goods are to be delivered without defects in material and workmanship in the course of the normal use for which it was designed, for a period of 12 months after shipment. Seller's sole obligation under this warranty shall be limited to, at Seller's option, the repair and/or replacement of material EXW (Incoterms 2020) at Seller's plant, or to correct any workmanship shown to be defective. Removal of said parts shall be at Buyer's expense. No work will be done by Seller at the site of the installation unless in Seller's opinion it is impractical for Buyer to remove the defective parts. This warranty is contingent upon the following conditions: (a) that Seller promptly receive written notice of the defect;

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(b) that Buyer establish that the product has been properly installed, maintained, and operated within the limits of related and normal use as specified by Seller; and (c) that upon Seller's request, Buyer will return to Seller at Buyer's expense the defective product or part. This warranty shall be null and void if Buyer, after delivery, modifies, alters, substitutes or changes any part of any goods acquired from Seller. The conditions of actual production in each Buyer's plant vary considerably. Therefore, descriptions of the production or performance capabilities of good are estimates only and are not guaranteed. This warranty does not extend to parts not manufactured by Seller, including, but not limited to, motors, controls, timers, valves, and parts or components (hereafter referred to as "OEM Components"). Seller will assist Buyer with obtaining information regarding OEM Component warranties from the manufacturer of the OEM Component, and providing assistance with obtaining a replacement component at Buyer's expense. Buyer agrees to return defective OEM Components to Seller for forwarding to the applicable OEM Component manufacturer. If the component is determined to be a warrantable item by the OEM manufacturer, a credit for the currently applicable replacement component cost or portion thereof will be issued to Buyer's account. Seller does not warrant that the goods it sells which are manufactured by third parties are free from patent or trademark infringement. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES PROVIDED HEREUNDER, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING ANY: (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; ALL OF WHICH ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THIS WARRANTY. FURTHERMORE, SELLER ALSO DISCLAIMS ANY LIABILITY FOR CLAIMS ARISING OUT OF PRODUCT MISUSE, IMPROPER PRODUCT SELECTION, PRODUCT MODIFICATION, MISREPAIR OR MISAPPLICATION. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION. THE REMEDIES PROVIDED IN THIS SECTION ARE THE ONLY REMEDIES OF BUYER FOR ANY BREACH OF WARRANTY OR ANY OTHER CLAIM.

11. INDEMNITY. Buyer shall defend, indemnify and hold Seller and its affiliates, and their respective shareholders, directors, officers, employees, independent contractors and agents (collectively, the "Indemnitees"), harmless for, from and against any and all losses, liabilities, damages and expenses of any kind (including reasonable attorneys' fees) imposed upon or incurred by the Indemnitees, directly or indirectly, arising out of, resulting from or in connection with any and all of the following (i) any breach or threatened breach of the Terms by Buyer; (ii) the use, application of, distribution, sale, handling, disposal or other exploitation of any goods by or on behalf of Buyer or by any subsequent transferee of such goods; (iii) any allegation that the goods or the use to which the goods are put infringes the intellectual property rights of any third party, including, but not limited to, such allegations arising from compliance with Buyer's designs, specifications or instructions; (iv) Seller and Seller's employees' and agents' presence on Buyer's property; and (v) any economic loss and any other harmful consequences that arise in connection with Seller's performance hereunder.

12. LIMITATIONS TO LIABILITY. Buyer agrees that Seller's liability and Buyer's sole and exclusive maximum remedy pursuant to any claim of any kind, including but not limited to a claim in negligence or strict liability, against Seller, shall be a refund of any payments (without interest thereon) made by Buyer with respect to the defective products. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE TERMS OR ANY OTHER DOCUMENT OR AGREEMENT, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, WHETHER OR NOT FORESEEN OR FORESEEABLE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, DAMAGE TO ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS OR APPARATUS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWN TIME COSTS, OR CLAIMS OF THIRD PERSONS WHO BUY FROM OR DEAL WITH BUYER FOR SUCH DAMAGES. Buyer assumes all risk and liability arising from, or growing out of the operation and/or use of any and all of the goods purchased from Seller. Buyer is exclusively responsible for the proper and safe operation of said goods acquired from Seller, and for operating goods within the normal range of specifications for which these goods have been designed and sold by Seller.

13. TERMINATION. In addition to any remedies that may be provided under the Terms, Seller may terminate the Terms and any order(s) with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under the Terms; (b) has not otherwise performed or complied with any of the Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors or Seller has reasonable concerns as to Buyer's solvency.

14. CONFIDENTIAL INFORMATION. All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with the Terms or the order(s) is confidential, solely for the use of performing the Terms and the order(s) and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller is entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

15. GENERAL. The Terms shall inure to the benefit of and be binding upon the parties hereto, their successors, personal representatives and assigns. Buyer may not assign any of its rights arising out of the contract without Seller's prior written consent, and any attempted assignment without such prior written consent shall be void. Seller's failure strictly to enforce any of the Terms or to exercise any right arising hereunder shall not constitute a waiver of Seller's right strictly to enforce such term or condition or exercise such right thereafter. Each right or remedy granted to Seller hereunder shall be deemed cumulative and may be exercised from time to time. Any waiver of Buyer's default hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. The parties agree to waive, to the fullest extent permitted by law, any and all rights to a trial by jury in connection with any dispute. If any of the Terms shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. In the event that any party institutes a legal suit, action or proceeding against the other party arising out of or relating to the Terms, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs. Provisions of the Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Terms. The relationship between the parties is that of independent contractors. Nothing contained in the Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.