



MTS Systems Corporation

QUOTE/CONTRACT TERMS & CONDITIONS



1. GENERAL. All Quotations or Contracts furnished by MTS Systems Corporation ("MTS") or its subsidiaries or its authorized agents are conditioned upon Buyer's acceptance of the terms and conditions set forth herein, together with those of any of the following documents (in order of precedence): (1) a mutually agreed upon contract, (2) a quotation, and (3) these terms (collectively, the "Agreement"). This Agreement constitutes the entire agreement of the parties and supersedes all other agreements and undertakings, whether written or oral, between the parties with respect to the subject matter of this Agreement. MTS hereby rejects the inclusion of any different or additional terms proposed by Buyer.

2. CHANGES. Buyer is obligated to pay for all changes, modifications, or alterations beyond the original scope. All material changes and those changes affecting fit, form or function must be mutually agreed upon in writing. Buyer is responsible for all costs and damages to MTS related to any Buyer caused delay.

3. TERMS OF PAYMENT Buyer's obligation to pay on time is of the essence of these Terms, and Buyer will pay the invoiced amount without setoff or deduction. Amounts not paid will incur an interest charge of 1.5% per month or the highest allowable by law. Failure to pay full amounts will result in a revocation of any licenses or rights provided under the transaction. In no event is Buyer authorized to audit MTS' (i) financial records, documents, or papers and/or (ii) processes or documentation related to trade secrets.

4. DELIVERY TERMS. Unless specifically stated otherwise, all deliveries hereunder shall be shipped by MTS from the manufacturing facility of its choice FOB Origin for all domestic shipments with title passing at origin; and DDU Destination for all international shipments with title passing at destination. (Per Incoterms 2000.)

5. ORDER CANCELLATION. If any order placed by Buyer and accepted by MTS is canceled, Buyer must pay reasonable cancellation charges which shall include non-recoverable costs and commitments incurred by MTS from time of order placement until the date of written notice of cancellation.

6. VERBAL ORDERS. Verbal orders are accepted subject to the terms herein. Any discrepancies between MTS' understanding of the verbal order (which is expressed in an order acknowledgment document) and the Buyer-issued order confirmation are the responsibility of the Buyer and may subject Buyer to appropriate order revision charges.

7. SHIPPING DATES. Shipping dates quoted represent a reasonable estimate of the time required for manufacturing at the time of order acceptance or quotation. These dates shall not be construed as promises or contractual agreements to ship or deliver goods unless specifically agreed in writing.

8. DEFINITIONS. as used herein: (a) **Product** shall mean any hardware, software, services and documentation purchased from MTS with any software or documentation included in Product supplied only under license (for purposes of this Agreement, the term "sale" or "purchase" will be understood to mean "license" whenever used in connection with such Software or documentation); (b) **Services** shall mean work and/or performance by MTS for Buyer as expressly defined in related scope of work; (c) **Software** shall mean computer or processor programs, applications, documentation and/or computer data bases, including software or firmware embedded in hardware such as semiconductor chips; (d) **Source Code Program** shall mean a computer program that is in a form that reveals the functional operation of the computer program to one skilled in the art.

9. PRODUCT USAGE. Buyer warrants that Product, including any resale or Buyer-modified Product, will only be used for the specific purpose intended in the design of that said Product and said Product will not be used in any hazardous application or environment without first obtaining qualifying certification (UL, FM or equivalent) of said Product for that purpose.

10. LIMITATION OF LIABILITY. MTS' liability is limited to actual damages; in no event will MTS be liable for any special, incidental or consequential damages or losses incurred by Buyer or any third party for any reason, including arising from delays in delivery, installation and/or use of the Product by Buyer, regardless of the theory advanced.

11. EXPORT. Customer agrees to comply with all applicable export control laws and regulations. Customer will not disclose, export, re-export, or divert any Product supplied by MTS, any system incorporating such Product, or any technical information, document or material, or direct Products thereof, to any country or person to whom such disclosure, export, re-export or diversion is restricted by U.S. law unless Customer has first obtained all necessary and appropriate authorizations from the U.S. government. Customer will, prior to providing any technical information or products to MTS, advise MTS if such technical information or products are restricted under export control laws and regulations, and the applicable classifications of such technical information or products. Customer shall immediately notify MTS if Customer is, or becomes, listed in any Denied Parties List or if Customer's export privileges or ability to engage in U.S. government contracts are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency. Customer shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Customer, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

12. FORCE MAJEURE. Neither party shall be liable for any delay or failure to perform any of its obligations under this Agreement if and to the extent such delay or failure is due to circumstances beyond the reasonable control of such party, including but not limited to, fires, floods, explosions, accidents, acts of God, declared and undeclared wars or riots, strikes, lockouts or other concerted acts of workmen, acts of government, shortages of materials, inability to obtain export or import licenses, or any provision or requirement of the U.S. Export Administration Regulations or any government act, omission, regulation, license, order or rule.

13. COMPLIANCE WITH AND GOVERNING LAW. MTS and Buyer agree to comply with all applicable laws and regulations. This Agreement shall be governed by the laws of the state or country of the MTS entity signing the order, except that its conflict of law rules shall not apply.

14. PROPRIETARY DATA RIGHTS. Buyer will not disclose to any person or entity any information or data fixed in a tangible medium and marked as the confidential or proprietary information of MTS, or any information disclosed as a result of the parties' discussions, visually or orally, and that should reasonably have been understood by Buyer, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to MTS (hereinafter collectively referred to as "Confidential Information"). Confidential Information shall expressly include any and all information derived from the Confidential Information, including residual mental impressions of such information. Buyer shall treat Confidential Information as confidential and proprietary to MTS, prohibit copying and use such Confidential Information only in connection with fulfilling its obligations under the Agreement.

Buyer will not use MTS Confidential Information to assist in creating or attempting to create by reverse engineering or otherwise, the Source Code Programs, hardware designs or manufacturing processes from Product provided or to make a new product or system, or repair any product or system except as necessary to support the use of any Product supplied by MTS. Buyer will return all Confidential Information to MTS upon completion of such obligations for its use, or upon MTS' request. Buyer's obligations will survive the termination, cancellation or final payment of any or all Purchase Orders. All drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, trade secrets, copyrights, mask works, source code, object code, patents, patent applications, know-how, computer and/or Software and all parts thereof, trademarks and all other information, technical or otherwise which was developed, made or supplied by or for MTS in the production of any Product or the performance of any Service sold, rendered or licensed hereunder, including any and all derivative works, will be and remain the sole property of MTS (or its licensors, if any) and MTS may use them for any purpose and for any other person or entity, including MTS. Buyer will not reverse engineer any Products.

15. MTS SOFTWARE LICENSE AGREEMENT. All Software or documentation offered for sale or lease is an offer to grant a license to Buyer and subject to MTS' End Use Software License Agreement available upon request and located online at: <http://www.mts.com/EULA>.

16. MTS LIMITED WARRANTIES:

16.1 MTS Product Limited Warranty. Unless specifically stated otherwise, MTS warrants Product hardware of its manufacture to be free from defects in materials and workmanship for a period a twelve (12) months from date of shipment by MTS. Unless otherwise specifically agreed to in writing by MTS, customized Products are warranted only to the extent used under normal conditions that are equivalent to those as tested by MTS. MTS shall, at its option, repair or replace free of charge within the warranty period any Product supplied by MTS which proves to be defective in workmanship or materials. Consumables and normal wear and tear are not covered under warranty. MTS reserves the right to reject those claims for warranty where it is determined that failure is caused by Buyer- or third party made-modifications, improper maintenance, misuse, misapplication, improper or incomplete qualification, abuse of the Product, damage caused by connections, interfacing or use in unforeseen or unintended environment. These conditions will render warranties null and void.

16.2 Services Warranty. Services are warranted to be in a workmanlike manner for a period of 90 days after performance. MTS' entire liability and Buyer's exclusive remedy, whether in contract, tort or otherwise for any claim related to or arising out of the breach of warranty covering Services will be re-performance or credit, at MTS' option.

16.3 WARRANTY LIMITATION. THESE MTS LIMITED WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NO WARRANTIES ARE EXPRESSED OR IMPLIED WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF

16.4 Product Returns. Prior to returning any product to MTS, whether under warranty or otherwise, Buyer must obtain a return authorization from MTS or the shipment may be refused. Shipping charges for returning any product(s) to MTS are the responsibility of Buyer. If not covered by warranty, subsequent costs for inspection, shipping, expediting and placing returned Product(s) into working condition will be charged to Buyer. Buyer shall issue a purchase order to cover such non-warranty work. Products returned under warranty and found to be in good working order shall be subject to charges for inspection, testing and return shipping costs. MTS will cover in-warranty repairs including outbound shipping charges via transportation of its choosing.

17. NATURE OF BREACH. Liability for breach under the terms set forth herein shall arise only after notice is sent to the breaching party and cure of alleged breach is not initiated by breaching party within ten (10) days of receipt of notice.

18. SITE PREPARATION AND CONDITION FOR SERVICES. If applicable, prior to the date specified in the quotation or statement of work for the performance of Service, Buyer will (a) obtain and pay for all governmental or third party consents, permits, approvals, licenses and public and private easements necessary for MTS' unrestricted access to any site or location needed for performance of the Services and delivery of the Product, and (b) notify MTS in advance of any requirements including all local laws, regulations, ordinances and the like to which MTS is or will be required to comply in the rendering of Services and in the supplying of Product hereunder. Buyer will be solely responsible for preparation of the site, at which MTS will perform the Services, to the specifications and in accordance with the time schedule stated in the quotation or statement of work. Buyer warrants to MTS that each such site is in compliance with all applicable health and safety regulations and is free from all asbestos and hazardous contamination or pollutants.

19. BUYER'S DEFAULT. MTS may, upon written notice to Buyer, cancel any or all Purchase Orders or Contracts effective immediately if: (i) in MTS' opinion, Buyer's financial condition deteriorates to be detrimental to MTS' interest hereunder; (ii) Buyer fails to perform any obligations under these Terms and such failure is not remedied within 15 calendar days after notice has been given to Buyer; (iii) Buyer fails to pay in accordance with any invoice payment terms; or (iv) any change occurs in the direct or indirect ownership of Buyer if, in MTS' opinion, such change may be detrimental to MTS' interest hereunder. Any cancellation pursuant to this Section will be in addition to and will not be exclusive of or prejudicial to any other rights or remedies at law or in equity available to MTS.

20. ASSIGNMENT/WAIVER. Either party may assign its rights and obligations under this Agreement with written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any such assignment or delegation without such consent shall be void. A waiver of any defaults hereunder or of any term or condition of this Agreement and Order shall not be deemed to be a waiver of any other default or any other term or condition.

21. SURVIVAL. The following Sections survive termination, cancellation or expiration of this and related agreements: 9, 10, 11, 13, 14, 15, 16.3, and 17.

22. SEVERABILITY: If any provision of this Agreement is declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

MTS SYSTEMS CORPORATION