



## MTS Systems Corporation/ Sensors Division Quote/Contract Terms & Conditions

1. **GENERAL.** All Quotations furnished by MTS Systems Corporation ("MTS") or its authorized agents are solely for the information of the party to whom the Quotation is addressed ("Buyer"). Any order resulting from a Quotation shall not constitute a contract until such order has been accepted in writing by a duly authorized agent of MTS. Such acceptance is conditioned upon Buyer's acceptance of the express terms and conditions set forth herein (hereinafter "Sensors Division Q/C T&C"), together with those of any MTS quotation, invoice or contract attached hereto, constitutes the entire agreement between MTS and Buyer (the "Agreement") and supersedes all other agreements and undertakings, whether written or oral, between the Parties with respect to the subject matter of this Agreement except for specific Distributor or OEM Agreements executed by the Parties. The order of precedence of all terms and conditions in the Agreement are those designated: (1) in body of a contract, (2) in body of a quotation, and (3) those herein. MTS hereby rejects the inclusion of any different or additional terms proposed by Buyer in any order resulting from the Quotation and if such different or additional terms are so included in such order, Buyer agrees that a binding contract of sale will result including only the terms stated herein, unless MTS agrees in writing to accept such different or additional terms. By accepting MTS quotes, proposals or any other MTS document marked as MTS Proprietary or Confidential, Recipient (Buyer) agrees to the terms of Article 15 below. By placing a Purchase Order with MTS, Buyer agrees to all terms herein.

2. **ERRORS/CHANGES.** Any stenographic or clerical errors appearing in the typed portion of an MTS Quote or Contract may be corrected at any time by MTS. MTS reserves the right to make changes in design and manufacture in any item included in any MTS Quotation or Contract without incurring any obligation to install such change upon units manufactured for, or delivered to, the Buyer prior to such design change.

3. **TERMS OF PAYMENT** are net 30 days from the date of invoice, unless specifically stated otherwise. A service charge of 1.5% per month (but not exceeding the maximum permitted by law) will be payable on any past due accounts. No discounts are allowed on invoices paid prior to 30 days of invoice date.

4. **DELIVERY TERMS.** Unless specifically stated otherwise, all deliveries hereunder shall be shipped, F.O.B. MTS manufacturing facility (the "Shipping Point"), and Buyer shall assume all risk of loss for products upon delivery by MTS of the products to the Shipping Point. Buyer will pay all loading, freight, shipping, insurance, forwarding and handling charges, taxes, storage, customs, export or import tariffs and all other duties or charges applicable to Products after they are delivered by MTS to the Shipping Point.

5. **LISTED PRICES** shown in all MTS publications are subject to change without notice and shall not be construed as part of this Quotation or any other Quotation or offer to sell by MTS. Such lists are maintained only as a source of general information and any prices shown therein are subject to confirmation through specific Quotations.

6. **ORDER CANCELLATION.** Orders placed by Buyer and accepted by MTS for Products may only be canceled by Buyer upon payment of reasonable cancellation charges which shall include non-recoverable costs and commitments incurred by MTS from time of order placement until a written notice of cancellation is received.

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

8. **SHIPPING DATES** quoted are approximate and 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.

9. **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) **Computer Software** shall mean computer or processor pro-

grams and computer data bases, including software or firmware embedded in semiconductor chips; (c) **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; (d) **Integrated Software** shall mean Computer Software that is generally integral to Product and generally essential to the functional operation of Product; (e) **Independent Software** shall mean Computer Software that is licensed independent of Product hardware, services and other Computer Software and that is specifically defined as Independent Software; (f) **Distributed Software** (often known as "Third Party" software) shall mean Computer Software that is not owned by MTS, is sub-licensed by MTS under a separate license agreement between MTS and the owner of the said Software; (g) **Development Software** shall mean Computer Software that is licensed to develop and produce application programs for use on equipment other than the equipment the Development Software runs on and is specifically defined as Development Software; (h) **End User** shall mean the actual person or entity using Product.

10. **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 qualifying certification (UL, FM or equivalent) of said Product for that purpose. Buyer agrees that MTS has the right to cancel any contract and require Buyer, at Buyer's cost, to remove said Product from any uncertified application.

11. **DAMAGES INDEMNIFICATION.** MTS shall not be liable for any incidental or consequential damages or losses incurred by Buyer arising from delays in delivery, installation and/or use of the Product by Buyer. By purchase of Product, Buyer assumes all liability for any damages of any kind which may result from its use or misuse by Buyer's employees, agents, End Users or any other person(s) including third parties unknown to MTS or Buyer, including damages due to failure of the Product and Buyer agrees to indemnify, defend and hold MTS harmless from any and all such damages or losses, including, without limitation, reasonable attorneys' fees incurred by MTS in defending against the same, excepting such loss, cost or damage occasioned by fault or negligence of MTS. MTS has the right to require Buyer to back up this indemnification with product liability insurance of MTS specified amount and with MTS as an additional named insured on Buyer's insurance policy.

12. **EXPORT.** - Buyer 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 all necessary and appropriate authorization has been obtained from the U.S. government. MTS will provide Buyer with reasonable assistance in determining if U.S. government authorization is necessary for such disclosure, export, re-export or diversion. This provision shall survive the termination of this Agreement.

13. **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, lock-outs 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.

14. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Minnesota USA, except that its conflict of law rules shall not apply.

15. **PROPRIETARY DATA RIGHTS.** Buyer and MTS agree that Proprietary Information of one Party ("Owner") transmitted to the other Party ("Recipient") in writing in any request to quote, specification, quotation, bid, proposal, technical manual, software listing or any written communication thereafter and marked as Confidential or Proprietary except all Computer Software is to be considered proprietary irrespective of the medium it is on and markings to this effect, is subject to the proprietary rights of the Owner and the restrictions set forth herein. Proprietary Information shall not include information which was in possession of the Recipient prior to receiving it from the Owner, is or becomes in the public domain through no wrongful act of the Recipient, or becomes legitimately available to the Recipient from other than the Owner. The Parties agree Proprietary Information shall remain the sole property of

the Owner and agree to keep it confidential using a degree of care commensurate with maintenance of trade secret information. The Buyer agrees not to use Proprietary Information to assist in creating or attempting to create by reverse engineering or otherwise, the Source Code Programs, hardware designs or manufacturing processes from products provided or to make a new product or system, or repair any product or system except as necessary to support the use of any system or products supplied by MTS. In the event that MTS Proprietary Information is first conceived or developed by MTS in the performance of a contract for Buyer, MTS shall be free to use any such proprietary information for any purpose and for any other person or entity, including MTS.

**16. MTS COMPUTER SOFTWARE LICENSE AGREEMENT.** All Computer Software or documentation offered for sale or lease is an offer to grant a license to Buyer to use a copy of same under the terms stated herein. MTS hereby grants, on receipt of payment or Buyer's Purchase Order, and Licensee ("Buyer"), by issuing a Purchase Order, hereby accepts a non-exclusive, royalty-free, non-transferable (except for certain sub-license rights specifically granted by separate written agreement with MTS) License to use the MTS Computer Software and any subsequent updates thereof, delivered under contract with MTS, solely under the conditions set forth herein. This grant of license specifically excludes Source Code Programs.

**16.1. Term.** This License shall be effective from the date of delivery of Computer Software by MTS, and shall remain in effect until Buyer discontinues the use of such Computer Software, or this License is otherwise terminated as provided herein.

**16.2. Title.** Buyer hereby acknowledges that title to and ownership of the Computer Software shall at all times remain with MTS or the owner of Distributed Software.

**16.3. Buyer Use Limitations.** Buyer agrees to use the Computer Software and any part thereof only on the delivered Product incorporating said Computer Software or designated hardware and to copy the Computer Software in whole or in part (with the proper inclusion of MTS's copyright notice and any of MTS's pro-proprietary notices) only for use on said designated Product or hardware, and not for publication. Transfer of licensed Computer Software is specifically forbidden on any computer network other than to said designated Product or hardware. Computer Software contains Trade Secrets and to protect them, Buyer agrees not to decompile, reverse engineer or otherwise reduce object code to Source Code Program form. Buyer agrees not to modify, adapt, translate or create derivative works based on Computer Software and accompanying documentation and not to distribute copies of Computer Software or accompanying documentation to others. In the event that a malfunction occurs causing the Computer Software to become inoperable on said designated Product or hardware, the Computer Software (or copies thereof) may be used on other Product or hardware on a temporary basis during such malfunction if MTS is notified in writing. Buyer may move a licensed copy of Development Software only to another computer but the Buyer agrees not to make copies of the licensed Development Software for simultaneous multiple use. This License Agreement does not apply to application programs developed or produced with licensed Development Software.

**16.4. Termination.** In the event Buyer fails to perform or observe any of its obligations under this License Agreement, or if a receiver or trustee in bankruptcy is appointed, this License shall immediately terminate. Upon any termination, Buyer shall immediately return to MTS or destroy the Computer Software, its documentation and all other materials supplied to Buyer by MTS under this Agreement.

**16.5. Miscellaneous.** Article 9, Definitions; Article 14, Governing Law; Article 15, Proprietary Data Rights; and, Article 17, Limited Warranties; herein, are specifically incorporated into this License Agreement as they relate to Computer Software.

## 17. MTS LIMITED WARRANTIES:

**17.1 MTS Product Limited Warranty.** MTS warrants Product hardware of its manufacture to be free from defects in materials and workmanship for a period of twenty four (24) months from date of shipment by MTS, with the exception of the EP2 product, which has a twelve (12) month warranty. Remedy under warranty is provided only after defective goods are returned to the factory. Unless otherwise specifically agreed to in writing by MTS, MTS limits its warranty on Product not published in a then current Ordering Guide (hereinafter "Special Product") to meet MTS specifications for Special Products as these products are delivered to the Buyer and as used under normal conditions that are equivalent to those as tested by MTS. MTS does not warrant said Special Product to not be affected by any special environments or conditions induced by End User of said MTS Special Product. 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. Items subject to normal wear and/or replacement, will not be covered under warranty if their failure is the result of normal wear. MTS reserves the right to reject those claims for warranty where it is determined that failure is caused by Buyer made modifications, improper maintenance, misuse, misapplication, improper or incomplete qualification, or abuse of the Product.

**17.2. MTS Integrated Software Limited Warranty.** For a period of twelve (12) months following shipment, MTS will de-sign, code, check out, document and deliver promptly any amendments or alterations to the Integrated Software that may be required to correct

errors present at the time of its shipment and which materially affect performance in accordance with the specifications. This warranty is contingent upon (a) Buyer advising MTS in writing of such errors, and (b) the Integrated Software being used only in conjunction with the Product in which it was supplied, and (c) there having been no alterations, modifications or enhancements to the Integrated Software which were not approved in writing by MTS. MTS specifically excludes from any warranty, the uninterrupted or error-free use of Computer Software.

**17.3. MTS Independent and Distributed Computer Software; No Warranty.** In lieu of any warranties for MTS Independent or Distributed Software, Buyer shall accept the Licensed Independent or Distributed Software (a) when the said Software performs in accordance with its applicable specifications or (b) within thirty (30) days of delivery of the said Software, whichever occurs earlier. In the event Buyer determines within such thirty (30) day period that the said Software is unacceptable, Buyer may return the said Software and manuals to MTS or MTS suppliers without liability to MTS; provided however, that MTS shall have thirty (30) additional days to make the said Software acceptable to the Buyer and in the event that the said Software is made acceptable to Buyer, the said Software shall be deemed accepted as of the date that Buyer notified MTS of its acceptance.

**17.4 Product Returns.** Prior to return of any product to MTS, whether under warranty or otherwise, Buyer must obtain a return authorization from MTS. Unless a return authorization has been obtained, shipment may be refused. All returned product(s) shall include reference to all pertinent order information, including order number, part, model or serial number. Information shall also be provided on use/performance history and requested action. Shipping charges for returning any product(s) to MTS are the responsibility of the Buyer. If not covered by warranty, subsequent costs for inspection, shipping, expediting and placing returned product(s) into working condition will be charged to the 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. Where Buyer requests that MTS perform warranty work in Buyer's plant, Buyer shall reimburse MTS for reasonable travel costs, living expenses, travel time and on-site labor. MTS will cover in-warranty repairs including outbound shipping charges via ground transportation of its choosing.

**17.5. Termination of Warranties.** All applicable warranties, expressed or implied, including any warranties created or established by statutory law or operation of law, if any, are deemed null and void in the event Product has been modified in any manner by Buyer, End User or any person or party other than MTS, unless such modification has been authorized in writing by MTS prior to the modification work being undertaken.

**17.6. Nature of Breach.** MTS' liability for breach of warranty under the terms set forth herein shall arise only after Buyer's notice to MTS of the claims breach, and such notice must be given within thirty (30) days after discovery thereof.

**THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NO WARRANTIES ARE EXPRESSED OR IMPLIED WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF, IN NO EVENT SHALL MTS BE LIABLE TO BUYER FOR COLLATERAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND. THIS EXCLUSIVE REMEDY WILL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS MTS IS WILLING AND ABLE TO REPAIR, REPLACE OR REFUND THE PURCHASE PRICE OF WARRANTED PRODUCTS AS PROVIDED HEREIN.**



### MTS Systems Corporation

Sensors Division  
3001 Sheldon Drive  
Cary, North Carolina 27513  
Telephone 1-800-633-7609 FAX 919-677-0200

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