



MINNESOTA WIRE & CABLE COMPANY

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STANDARD TERMS AND CONDITIONS OF SALE

1. APPLICABLE CONTRACT PROVISIONS.

These standard Terms and Conditions of Sale, together with any other documents which Minnesota Wire & Cable Company (“MWCC”) has executed and specifically reference as part of the contract with Buyer shall constitute the entire agreement between MWCC and Buyer regarding the purchase of goods from MWCC (the “Products”) and supersede all other agreements and understandings, whether written or oral, between the parties with respect to the purchase of the Products. MWCC’s acceptance of any offer by Buyer is expressly made conditional upon Buyer’s assent to these Terms and Conditions of Sale, and none of Buyer’s additional or different terms shall apply. Acceptance of MWCC’s offer to sell is expressly limited to acceptance of these Terms and Conditions of Sale, and no other terms or conditions shall apply unless expressly agreed to by MWCC in writing. If the parties have not agreed in writing to specific guidelines or specifications regarding the Products, MWCC’s current Workmanship Standards and Operational Work Instructions and Set Up (Document # M-21) shall apply to the production of the Products.

2. PURCHASE PRICE AND TERMS OF PAYMENT.

a. Price. The price for custom Products shall be the price set forth in MWCC’s proposal or quotation delivered to Buyer. The prices set forth in the proposal or quotation shall be in effect only for the time period or for the quantity of Products set forth in the proposal or quotation. Quotations are valid for thirty (30) days unless otherwise stated in the quotation or otherwise agreed to in writing by MWCC. All prices, including prices for Products subject to a purchase order submitted by Buyer and accepted by MWCC but not yet delivered, shall be subject to change if any raw material costs relating to the manufacture of the Products increases due to any event beyond the reasonable control of MWCC.

The price for standard Products shall be the price set forth on MWCC’s price list in effect as of the date of delivery requested by Buyer. Typographical errors in stated product prices are subject to correction.

In the event that Buyer requests any change in design, process or other change in the Product specifications, the price for the Product shall be modified as provided in MWCC's proposal or quotation for such Product. If the proposal or quotation does not designate a pricing structure for such requested changes, the price for the changed Product shall be the price quoted by MWCC in a new quotation for the changed Product.

b. Payment Terms. Payment terms shall be on a C.O. D. or pre-pay basis unless and until such time as MWCC has extended credit to Buyer as set forth in a separate writing. Such credit terms shall be as set forth in the written credit agreement, including any limitations on Buyer's credit limit. If Buyer fails to make any payment when due, MWCC shall have the right to return Buyer to a C.O.D. or pre-pay basis for any purchase orders not yet completed at the time of such non-payment. Discounts apply to material only (freight and tooling not included).

c. Shipping, Insurance and Taxes. All prices are quoted: (i) FOB Seller's location if the location of requested delivery is in the United States, or (ii) F.A.C. (as such term is defined in Incoterms 2000, published by the International Chamber of Commerce) Seller's location if the location of requested delivery is outside of the United States. Except as otherwise required by applicable law, Buyer agrees to pay any federal, state or local sales or use tax, which may be imposed upon the Products, ordered by Buyer from MWCC.

d. Buyer's Financial Condition; Insecurity. If, in MWCC's sole judgment, Buyer's financial condition or any other circumstance causes MWCC to be insecure with respect to Buyer's performance of any obligation under any purchase order for the Products, MWCC may accelerate and demand immediate payment of any amounts owed MWCC, cancel the purchase order or suspend performance.

e. Late Payment Fee/Collection Costs. Any amounts not paid when due will be subject to a late payment fee computed daily at a rate equal to the lesser of one percent (1.0%) per month or the highest rate permissible under applicable usury law. In addition, Buyer shall be liable to MWCC for all costs incurred by MWCC in its collection of any amounts owing by Buyer which are not paid when due, including collection agencies' and attorneys' fees and expenses, regardless whether an actual lawsuit is commenced.

3. SECURITY FOR PAYMENT OF PURCHASE PRICE.

Buyer hereby grants to MWCC a security interest in the Products and proceeds thereof to secure payment of the purchase price of the Products and all of Buyer's related and incidental obligations to MWCC. Buyer shall execute suitable financing statements for filing. MWCC may file these Terms and Conditions of Sale as a financing statement.

4. SHIPMENT AND DELIVERY TERMS.

a. Shipment. Seller will package the Products for domestic or international shipment, as the case may be, in accordance with standard commercial practices. MWCC shall use UPS Ground transportation as the carrier, unless otherwise agreed to in writing. The carrier shall be deemed to be the agent of Buyer and Buyer shall make all claims with respect to damage in transit against the responsible carrier.

b. Quantities. Unless agreed to in writing, all MWCC custom manufactured Products will ship within +/- 10% of the quantities specified on Buyer's purchase order. If no other orders are submitted by Buyer after a purchase order is shipped short, such purchase order will be considered complete and closed.

c. Title to Products, Risk of Loss. Title to and all risk of loss concerning the Products shall pass to Buyer upon delivery to a common carrier, or to any private carrier designated by Buyer, for shipment to Buyer. Buyer's rejection of any Products shall not shift such risk until the Products are returned to MWCC, freight prepaid, pursuant to MWCC's written authorization.

d. Delivery Schedule. MWCC shall review its material availability, process capabilities and production capacity within 72 hours of receiving a purchase order. MWCC will communicate the best possible ship date to Buyer and confirm such date via MWCC's order acknowledgment. Such delivery dates are estimates only based on prevailing conditions as of the date thereof, and MWCC's failure to meet the same shall not be deemed a breach of any purchase order or other agreement with Buyer.

e. Force Majeure. MWCC shall not be liable to Buyer for any delay or failure of delivery or of any other performance caused in whole or in part by any contingency beyond MWCC's reasonable control, including, without limitation, acts of God, flood, fire, acts of any government or any agency or subdivision thereof, acts of terrorism, or shortage of or inability to secure labor, fuel, energy, raw materials, supplies or machinery at reasonable prices or from regular sources. MWCC shall have the right to allocate Products between its various customers during a period of shortages without incurring any liability whatsoever to Buyer.

f. Inspection and Acceptance. Buyer shall inspect all Products upon arrival and shall notify MWCC in writing within ten (10) days after receipt of any shortages, nonconformance with the purchase order or any other failures to conform to this Agreement which are reasonably discoverable upon arrival. Any shortages and other discoverable nonconformance or other failures under this Agreement not reported within such ten (10) day period shall be forever waived by Buyer.

g. Cancellation or Modification of Order. A purchase order cannot be cancelled or modified after MWCC's acceptance or after the Products become work-in-process, whichever occurs first, except at Buyer's expense for all damages incurred by MWCC due to such cancellation or modification.

h. Return of Products. Buyer may not return any Products without specific written authorization from an authorized representative of MWCC and the issuance of a Return Material Authorization (RMA) number. In the case of a return made at the convenience of Buyer, Buyer shall pay all freight costs incurred in returning the Product to MWCC's facility and a restocking fee equal to fifteen percent (15%) of the invoice price of the returned Product. Only standard Products of MWCC will be subject for return and all returned Product must be received by MWCC in saleable condition. All risk of loss and damage during shipment for any Product being returned shall be that of Buyer.

5. LIMITATIONS OF WARRANTIES, DISCLAIMER OF WARRANTIES.

a. Limited Warranty. MWCC warrants to Buyer that the Products sold under this Agreement shall conform to the written specifications created or approved by MWCC at the time and point of delivery. The exclusive remedy for breach of such warranty shall be, at MWCC's option, to either (i) replace the defective Product or (ii) refund the purchase price of the defective Product paid by Buyer. Buyer shall promptly notify MWCC in writing of any alleged breaches of this warranty. Buyer shall not return to MWCC any alleged defective Product, or take any credits against its Product invoices for such alleged defective Product, without the prior written authorization of MWCC.

b. Disclaimer of Warranty. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5(a) ABOVE, MWCC MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR ANY OTHER MATTER. No employee or representative of MWCC shall have any authority to bind MWCC any warranty or representation, except as expressly stated herein. Buyer shall be exclusively responsible for any warranty, representation or refund policy which Buyer or its employees, agents or representatives may make to its customers regarding the Products.

6. DEFAULT; NON-WAIVER.

In the event of any default by Buyer, MWCC may, in addition to any and all other remedies provided by law, (a) suspend in transit any shipment of products to Buyer; (b) decline to make further shipments; (c) postpone any further performance under any

agreement with Buyer until such default is corrected; (d) immediately cancel any open purchase order or other agreement with Buyer; (e) declare all amounts owed by Buyer under any purchase order or any other agreement with Buyer to be due and payable immediately; and/or exercise all rights of a secured party. If MWCC elects to repossess any Product, Buyer shall permit MWCC, with or without legal process, to enter all premises where the Products are located to remove or take possession of the same. Ten (10) days advance notice of any intended disposition of repossessed Products shall be deemed reasonable.

7. LIMITATION OF REMEDIES.

MWCC SHALL HAVE NO LIABILITY TO BUYER OR ANY PERSON CLAIMING THROUGH BUYER FOR, AND BUYER HEREBY EXPRESSLY WAIVES, ALL REMEDIES AND DAMAGES RELATING TO INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS AND RELIANCE DAMAGES. UNDER NO CIRCUMSTANCES SHALL MWCC'S LIABILITY HEREUNDER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCTS.

8. GOVERNMENT CONTRACT PROVISIONS.

The Products are "commercial items" as defined in FAR 2.101. For purchase orders which reference a U.S. Government agency prime contract number, or are otherwise identified as a U.S. Government subcontract, the following clauses as in effect on the date of the purchase order are hereby incorporated by reference in these Standard Conditions and Terms of Sale only to the extent that they are applicable to commercial item subcontracts based on their FAR or DFARS prescription: (a) the clauses in FAR 52.212-5(e) when Buyer's government contract is for commercial items; or (b) FAR 52.244-6 when Buyer's government contract is for noncommercial items; and DFARS 252.204-7012, Safeguarding of Unclassified Controlled Technical Information; DFARS 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (subparagraphs (a)-(c) and (e)(2) only); DFARS 252.225-7048, Export-Controlled Items (Buyer represents and warrants that any Buyer-requested changes in Product design, manufacturing process, or specifications are not for the purpose of achieving or exceeding any controlled performance level, characteristic or function described in a U.S. Munitions List paragraph.); DFARS 252.239-7010, Cloud Computing Services; DFARS 252.244-7000, Subcontracts for Commercial Items; DFARS 252.246-7003, Notification of Potential Safety Issues; DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System; DFARS 252.247-7023, Transportation of Supplies by Sea. These clauses are modified to read "MWCC" for references to

“Contractor”, and “Buyer” for references to a government official or agency, as the context requires. All other U.S. Government agency contract clauses are rejected. Acceptance of additional government contract clauses, including country of origin clauses, must be explicitly agreed upon in writing by MWCC.

9. GENERAL PROVISIONS.

a. Payment of Undisputed Invoices. Buyer will pay invoices rendered by MWCC covering Products not in dispute regardless of disputes relating to other invoices. Buyer waives the right to assert offsets or counter-claims with respect to such invoices.

b. Assignment/Binding Nature. BUYER MAY NOT ASSIGN ANY OF ITS RIGHTS OR OBLIGATIONS UNDER ITS PURCHASE ORDERS SUBJECT TO THESE TERMS AND CONDITIONS. This Agreement shall be binding upon MWCC’s successors and assigns.

c. Modification and Waiver. No purported amendment, modification or waiver of any provision hereof shall be binding unless set forth in writing signed by an officer of MWCC. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Agreement or of the same circumstance or event upon any recurrence thereof. The failure of MWCC to enforce any provision contained herein at any time shall not be construed to be a waiver of such provision nor of the right of Seller thereafter to enforce such provision.

d. Severability. If any provision hereof is held to be unenforceable by final order of any court of competent jurisdiction, such provision shall be severed from the applicable purchase order(s) and shall not affect the interpretation or enforceability of the remaining provisions hereof.

e. Notices. All notices required or permitted to be given hereunder shall be in writing in the English language and shall be deemed to have been duly delivered (i) when received, if hand delivered, (ii) the next business day after placement with a reputable express delivery service for delivery during the morning of the following business day, or (iii) three (3) days after deposit in the U.S. mails for delivery by certified or registered mail, return receipt requested, postage prepaid and addressed to the appropriate party at the addresses set forth on the first page hereof. However, if the notice is being sent to or from a party located outside of the United States of America, such notices shall be deemed to be duly delivered (i) when received, if hand delivered, (ii) three (3) business days after placement with a reputable international express delivery service for immediate delivery or (iii) ten (10) days after deposit in the mails for registered, airmail delivery, return receipt requested, postage prepaid and addressed to the

appropriate party at the addresses provided on the purchase order. All notices to MWCC shall be delivered to the attention of the President. Addresses may be changed by giving written notice to the other party pursuant to the terms hereof, but any such change shall not be effective until actually received.

f. Applicable Law and Jurisdiction. This Agreement shall be interpreted and governed by the laws of the State of Minnesota, USA, without application of its conflict of law provisions. The U. N. Convention on Contracts for the International Sale of Goods shall not apply to any purchase orders submitted by Buyer. Any and all disputes relating to the purchase of the Products by Buyer, the interpretation, execution, or enforcement of these Standard Terms and Conditions of Sale and related purchase orders arising from the dealings between Buyer and Seller, or among Buyer, Seller and/or customers of the Products or other third parties relating to the Products, shall be dealt with under the exclusive jurisdiction and venue of the state and federal courts located in the State of Minnesota, to the exclusion of all other courts. Each party expressly agrees to submit to the jurisdiction of such courts.

F-4-2, Rev. C