

MCT BRATTBERG, INC.

TERMS AND CONDITIONS OF SALE

1. *General.* All orders and sales are subject to the following terms and conditions of sale and those contained on the face of this quotation. The issuance of an acceptable written purchase order by Buyer shall be considered an acceptance of these terms and conditions of sale.

These terms and conditions shall supersede any terms and conditions contained on any confirmation order, or other writing Buyer may give or receive, and the rights of the parties shall be governed exclusively by the terms and conditions hereof. These terms and conditions may not be modified or varied unless MCT BRATTBERG, INC., a Texas corporation (the "Company") agrees in writing, and the Company shall not be deemed to have accepted such other terms and conditions nor to have waived any of these terms and conditions by failing to object to provisions contained in any purchase order or other communication from Buyer. No person has authority on behalf of the Company to vary any of the following terms and conditions of sale except an officer of the Company and then only in writing signed by an officer of the Company.

2. *Payment Terms.* Payment is due and payable Net thirty (30) days from the date of invoice. Invoices will be dated day of shipment. The Company may subject Buyer to a service charge of one and one-half percent (1½%) for each month or part of each month following the invoice due date during which the invoice remains unpaid, except in those states where such charge is excessive of that permitted by law, in which case the service charge shall be the highest charge permitted by law.

Unless otherwise stated on the face of the invoice, payment terms for export transactions are payment in advance, payment by confirmed letter-of-credit or payment of cash to documents. All methods of payment must be arranged in writing prior to acceptance of the order. All payments made on the invoice must be made in U.S. dollars. If the invoice involves payment for goods from an entity organized outside of the United States, all payments to be made on the invoice shall have been approved by all appropriate government foreign exchange control agencies, and Buyer shall immediately upon demand provide Company with evidence of such approval.

3. *Taxes.* The amount of the present or future sales, use, revenue, excise or other taxes applicable to the sale of goods listed herein, or any liability or interest charge due on these taxes, shall be added to the purchase price and shall be paid by the Buyer, or in lieu thereof the Buyer shall provide Company with a tax exemption certificate acceptable to the taxing authorities.

4. *Shipment.* Buyer shall pay all rigging, draying, insurance and transportation charges. Company shall ship in accordance with Buyer's shipping instructions; in the absence of specific instructions or if Buyer's instructions are deemed unreasonable,

Company reserves the right to ship by the most appropriate method. Unless otherwise agreed to in writing by Company, all products shall be packed, if appropriate, for shipment and storage in accordance with standard commercial practices. All shipments are insured at the Buyer's expense and made at the Buyer's risk. Identification of the goods to the contract shall occur as each shipment is placed in the hands of the carrier and Company's weights taken at its shipping point shall govern.

5. *Quotations; Prices.* Prices are subject to change without notice and orders calling for future delivery will be invoiced according to the price in effect at the time of delivery. This is not a firm offer.

6. *Compliance.* Orders will be considered complete upon shipment of a reasonable quantity over or under the amount specified in the order when it is impractical to produce the exact quantity ordered. Normal tolerances in specifications shall be acceptable.

7. *Claims and Limitation Period.* Claims for nonconformity of the goods shall be made in writing within ten (10) days after the discovery thereof, and in any event within thirty (30) days after delivery. All other claims must be asserted in writing within ten (10) days after delivery or the scheduled delivery date if the claim is for non-delivery. Any notice of claim must specify the nature of the claim. Buyer's failure to notify Company in writing within the applicable time frame of any claim shall constitute an absolute unconditional waiver and release of such claim. In no event shall an action on any claims be commenced after six (6) months from date of delivery or after the scheduled delivery date, as the case may be. After notice of any claim, Company shall be afforded a reasonable opportunity to inspect the goods. If Company elects to repair the goods, it shall be given a reasonable period of time to effect such cure.

8. *Limitation of Liability.* In no event shall Company be liable for punitive, incidental or consequential damages to person or property, loss of use, loss of time, inconvenience, equipment rental, loss of earnings or profits or any other commercial loss. The remedies of Buyer as set forth in these terms and conditions of sale are exclusive and the liability of Company with respect to the sale, delivery or resale of any goods pursuant to this contract, whether in contract, in tort, under any warranty or otherwise, shall not exceed the difference between the price of the goods as specified in this contract and the value of the goods as delivered by Company. Company shall not be liable for any loss or damage of any kind arising from delay or inability to deliver due to any cause beyond Company's control.

9. *Import/Export License.* Any import or export license or permit required with respect to the goods sold pursuant hereto shall be Buyer's sole responsibility.

10. *U.N. Convention on International Contracts Disclaimed.* Company and Buyer hereby expressly agree that the United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not be a part of the law applicable to this contract. This contract shall be governed by and construed in accordance with the Uniform

Commercial Code as adopted in the State of Texas, United States. To the extent this provision or any other provision of this contract is found to be unenforceable and the respective provision of the Uniform Commercial Code as adopted in Texas is found inapplicable, the parties expressly agree that the similar provision of the CISG shall be applicable to this contract.

11. *Representation of Solvency.* By executing this contract or other documents in connection herewith, and by accepting the goods sold pursuant herein, Buyer represents and warrants to Company that it is solvent; and Buyer's performance hereto is expressly in reliance on such representation and warranty.

12. *Assurances of Performance.* Promptly upon Company's demand therefore, Buyer shall provide to Company adequate assurance of Buyer's performance hereunder and Buyer's failure to provide such assurance of performance within a reasonable time shall constitute a breach of this contract.

13. *Cancellation.* An order once placed with and accepted by Company can be canceled only upon Company's written consent and upon terms that indemnify Company against all losses, including loss of its profit on the sale of goods described in the order.

14. *Credit.* All contracts shall be subject to the Company's approval of Buyer's creditworthiness.

15. *Deliveries; Force Majeure.* Deliveries shall be subject to, and contingent upon, strikes, labor difficulties, riot, civil unrest, war, fire, delay or defaults of common carriers, failure or curtailment in Company's usual sources of supply, governmental decrees or orders, or, without limiting the foregoing, any other delays beyond Company's reasonable control, and Company shall not be liable for any loss or damage arising therefrom. Company shall have the additional right, in the event of the happening of any of the above contingencies, at its option, to cancel this contract or any part thereof without any resulting liability. Shipments made within 20 days after specified date of delivery shall constitute a good delivery. Any delivery not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise.

16. *Patents.* Buyer shall hold Company harmless from, and release and not make claim or suit against Company because of, any suits, claims, losses, or other liability made against, or suffered by, Buyer arising from any claim of, or infringement of, patent, copyright, trademark, or other proprietary right, at common law, or claim of unfair trade or unfair competition, resulting from, or occasioned by, Buyer's use, possession, sale, or delivery of the merchandise sold to Buyer by Company.

17. *Drawings And Specifications.* The Company shall at all times have title to all drawings and specifications furnished by the Company to Buyer and intended for use in connection with this quotation. Buyer shall use such drawings and specifications only in connection herewith and shall not disclose such drawings and specifications to any person

or entity other than the Company's or Buyer's representatives who require such knowledge.

18. *Company's Right of Possession.* Company shall have the right, in addition to all others it may possess, at any time, for credit reasons or because of Buyer's default or defaults, to withhold shipments, in whole or in part, and to recall goods in transit, retake same, and repossess all goods which may be stored with Company for Buyer's account, without the necessity of taking any other proceedings, and Buyer consents that all the merchandise so recalled, retaken, or repossessed shall become Company's absolute property, provided that Buyer is given full credit therefor. The foregoing shall not be construed as limiting, in any manner, any of the rights or remedies available to Company because of any default of Buyer under the Uniform Commercial Code as in force and effect in the State of Texas as of the date of this quotation.

19. *Bankruptcy.* In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Buyer, the inability of Buyer to meet its debts as they come due, or in the event of the appointment, with or without Buyer's consent, of an assignee for the benefit of creditors or of a receiver, then the Company shall be entitled, in its sole discretion, to cancel any unfilled part of an order without any liability whatsoever.

20. *Governing Law.* These terms and conditions shall be governed by, and construed in accordance with, the law of the State of Texas as of the date of this quotation.

21. *Late Charges/Attorneys' Fees.* Buyer agrees that in the event it fails to pay the invoice on the date such invoice is due and payable, Buyer shall pay a monthly late payment charge of one and one-half percent (1-1/2%), compounded monthly, on all outstanding overdue balances and Company shall be entitled to recover its reasonable costs of collection thereof, including attorneys' fees, in addition to any other relief to which it may be entitled.

22. *No Waiver.* No waiver of a breach of any provisions herein shall constitute a waiver of any other breach of such provision.

23. *Suspension of Seller's Duty to Perform.* If Buyer fails to obtain any necessary import license or permit or fails to make timely payment of any invoices, Company may, in its sole discretion and without waiving any other rights or remedies which Company may have, suspend delivery on any unfilled purchase orders from Buyer and unilaterally cancel any obligation of Company to later perform any unperformed obligations under any contract with Buyer. BUYER HEREBY EXPRESSLY WAIVES ANY RIGHT OR CAUSE OF ACTION AGAINST COMPANY, IN CONTRACT, IN TORT OR OTHERWISE FOR ANY SPECIAL, DIRECT OR INDIRECT, OR CONSEQUENTIAL DAMAGES INCURRED AS A RESULT OF COMPANY'S CANCELLATION OF ITS FURTHER OBLIGATIONS UNDER THE CONTRACT, AND REFUSAL TO DELIVER UNDER THIS PROVISION SHALL NOT BE CONSIDERED A BREACH OF THE CONTRACT BY COMPANY, AS OBTAINING IMPORT LICENSES OR PERMITS AND THE TIMELY PAYMENT OF ALL INVOICES SHALL BE CONSIDERED A NECESSARY CONDITION PRECEDENT TO THE COMPANY'S DUTY TO PERFORM. Failure by

the Company to exercise its rights under this provision shall not constitute waiver of its right to do so in the future. Cancellation of Company's duty to perform under this provision shall not negate Buyer's obligations to perform its duties under any contract.

24. *Foreign Government and Indian Nation.* If Buyer is a foreign government or an Indian Nation, BUYER HEREBY EXPRESSLY WAIVES ITS DEFENSE OF SOVEREIGN IMMUNITY IN THE EVENT OF A DISPUTE BETWEEN BUYER AND COMPANY REGARDING THIS INVOICE AND BUYER EXPRESSLY ACQUIESCES TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF THE UNITED STATES THOUGH THIS ACQUIESCENCE SHALL NOT REPLACE THE BUYER'S AND COMPANY'S AGREEMENT TO ARBITRATE AS REQUIRED IN SECTION 29 SET FORTH BELOW.

25. *Indemnification.* Buyer agrees to indemnify, hold harmless and defend Company and its officers, directors, agents and employees from and against any and all claims, liabilities, costs and expenses arising out of or related to Buyer's use of the goods, or in any way involving injury to person or property or accident occasioned by the goods sold by Company to Buyer.

26. *Severability.* If one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this contract, but this contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained.

27. *Disclaimer of Warranties.* **THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES AS TO MERCHANTABILITY OR AS TO THE FITNESS OF THE MERCHANDISE FOR ANY PARTICULAR USE OR PURPOSE, AND SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, DIRECTLY OR INDIRECTLY, ARISING FROM THE USE OF SUCH MERCHANDISE OR FOR CONSEQUENTIAL DAMAGES.** In no event shall Company be liable for punitive, incidental or consequential damages arising out of this sale, including, but not limited to, damage to persons or property, loss of use, loss of time, inconvenience, equipment rental, loss of earnings or profits or any other commercial loss. Company is not responsible for any warranties of any nature made by any distributor, sales agent or other entity that have not also been agreed to in writing by an officer of the Company.

28. *Limitations of Company's Obligations.* The Company's obligations under this Terms and Conditions of Sale, and any liabilities arising therefrom, only extend to the Buyer and do not extend to any other person or entity unless such liabilities or obligations are expressly assumed in writing by an officer of the Company.

29. *Arbitration.* THE BUYER AND COMPANY AGREE THAT ALL CLAIMS AND DISPUTES OF ANY NATURE ARISING BETWEEN THEM SHALL BE SUBJECT TO AND RESOLVED SOLELY BY AN ARBITRATION HELD IN HOUSTON, TEXAS AND GOVERNED BY THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION.