



## TERMS AND CONDITIONS

Effective: 6/15/2016

### CONDITIONS OF SALE

Unless otherwise stated in writing by an authorized representative of MacLean Power, LLC (hereafter "Seller"), all transactions between the Buyer and Seller are expressly subject to these terms and conditions. The Seller will not be bound by any terms proposed by Buyer, whether in purchase orders or otherwise, which are additional to or different from the terms and conditions set forth herein. Terms and conditions are subject to change without notice and become immediately effective.

### PRICES

**Prices are subject to change without notice.** In the event of a price increase, quoted material not covered by a firm purchase order entered on Seller's computer system by the Seller may be subject to adjustment to those in effect at time of shipment. Buyer may not apply price changes to unfulfilled purchase orders that have been entered into the Seller's system without written authorization from the Seller. Possession of Seller's published price sheets does not obligate Seller to sell to the Buyer possessing the price sheets.

### QUOTATIONS

Valid quotations are those issued by Seller and, unless otherwise specified, are subject to Buyer's written acceptance within 30 days of issuance to be valid. The Seller can modify quotations prior to their expiration date if the Buyer has not yet accepted them. Seller's quoted prices apply for the quantity stated on Buyer's RFQ. Seller reserves the right to make price adjustments on items where quantities exceed the original quoted quantity or which exhibit extreme volatility costs or to rescind prices on items with no order activity within 120 days of the quote date. All clerical errors are subject to correction.

### TAXES

Published or quoted prices do not include sales, excise, or similar taxes that are the responsibility of the Buyer. Where Seller is required to collect such taxes, they will be invoiced as a separate item to Buyer unless an appropriate tax exemption certificate is filed with Seller. Taxes not billed or quoted by the Seller are the responsibility of the Buyer.

### CREDIT

Acceptance of orders shall be subject to Buyer providing Seller with an acceptable Credit Application. If in the judgment of Seller, the financial condition of the Buyer, at any time, does not prove worthy of extending credit, the Seller may require full or partial payment in advance of production or shipment.

### PAYMENT TERMS

**Unless modified in writing by Seller's quotation, terms of payment are net 30 days from date of invoice payable in US funds.** Accounts that become overdue will be subject to a 1.5% monthly service charge until paid and Buyer will be liable for reimbursing Seller's expenses and legal fees in collecting such accounts. Seller may also suspend shipments of open orders to Buyer until Buyer's account is current.

### ORDERS

**Minimum charge on any individual order is \$500 net.** Orders not meeting the above minimum will be automatically raised to and billed at the minimum billing level. All orders, including order deferrals, are subject to final acceptance by Seller at its Fort Mill, SC headquarters. Order deferrals may be subject to a price adjustment. Individual line items on Buyer's order may be subject to either a \$ or quantity minimum. If a price discrepancy exists on an order, the order in question will not be entered into Seller's order system until the price issue is resolved and the order is amended in writing. Storm Emergency orders requiring expedited delivery may carry additional charges. All emergency (storm) orders require freight to be paid by the buyer.

Requests for shipping deferrals must be approved by Seller and are subject to price negotiation. Each release on a multi-release order will be treated as an individual order with respect to freight allowance and minimum order value.

### ORDER ADD-ONS

Items can be added to Buyer's order at the original order terms within 5 calendar days of original order entry as long as the original order has not shipped complete.

### PACKING

Seller's prices are based on standard packaging suitable for domestic shipments in the 48 contiguous United States. If special packaging is required by Buyer additional charges will be invoiced to the Buyer.

### SHIPMENT ESTIMATES

Shipment dates as set forth on order acknowledgments are approximate.

Although Seller will use all reasonable efforts to meet shipment dates, Seller will not be responsible for failure to meet said dates. In no event will Seller be liable for any loss or damage or for any special, incidental, consequential or liquidated damages to Buyer resulting from failure to deliver within the times specified. Unless otherwise amended and approved in writing, Seller reserves the right to ship up to 30 days in advance of the acknowledged shipping date. Seller reserves the right to make shipment in installments which shall be separately invoiced and paid when due without regard to subsequent deliveries.

### TRANSPORTATION

All shipments will be made F.O.B. Origin with transportation by the most economical means, prepaid and allowed for any single order or release with a value of **\$7500** net or more and allowing for shipment at one time to a single delivery point within the 48 contiguous United States. MPS reserves the right to route all qualified freight allowed shipments via least expensive surface route within the Continental United States and Canada. Buyer will assume all charges for transportation specified via more expensive means. All MPS North American Products can be combined on a single order to achieve minimum for prepaid freight (excluding Enclosures and Pad products). For orders below \$7500 net, Seller will ship prepaid with freight cost added to the invoice or Buyer can request freight collect (UPS cannot ship freight collect without Buyer providing their account number). **EXCEPTION: OEM orders will be freight collect and VMI orders will remain at \$500 freight allowed.** Expedited orders require the buyer to pay freight.



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Shipments to Alaska and Hawaii, meeting the above requirements, will be shipped to the nearest west coast port chosen by Seller, unless quoted otherwise, with freight collect beyond. For shipments outside the U.S. contact the Seller for freight terms.

Seller reserves the right to select shipping point, method and route of shipment. When Buyer selects method (including flatbed trailers or expedited items) and/or route or timing of shipment, any resultant additional expenses will be invoiced to the Buyer. No credit for any shipping or freight cost will be allowed to Buyer if Buyer accepts shipment or product at Seller's factory or warehouse or otherwise supplies its own transportation. Seller shall not be liable for any cartage or storage charges at destination. Title and risk of loss shall pass to the Buyer upon delivery of the products by the Seller to the carrier. MPS factory shipping locations are: CHATEAUGAY, QUEBEC, CANADA; TRENTON, TN; ALABASTER, AL; MEMPHIS, TN; PELHAM, AL, YORK, SC & NEWBERRY, SC.

MPS's responsibility for exception-free delivery ceases when the transportation company receives shipment in good condition. Claims for obvious loss, pallet shortages, or damage must be reported directly to the carrier and MPS at time of delivery. Buyer will have no more than 14 calendar days to report other shortages to MPS in order to properly file a freight claim. MPS's willingness to assist does not indicate liability for claim or replacement.

Any issues noticed at the point of delivery need to be clearly stated on the carrier's Delivery Receipt (LTL Carriers) or Bill of Lading (Truckload or Intermodal Carriers). This must occur for a claim to be able to be filed later if required. If it is determined that a Claim needs to be filed with a transportation provider for recovery due to loss or damage, the freight terms will dictate the responsible party.

Our most common freight terms are as follows:

### **Freight Prepaid**

In this arrangement, the seller accepts the responsibility for freight charges and freight claims exposure. MPS would be the party that would file the freight claim with the carrier. MPS would issue credit to the consignee or ship replacement material (at no cost) to the customer in the amount of the loss. The revised (14) calendar day notification period for advising MPS of discrepancies applies to this situation as well.

### **Freight Collect or Freight Third Party**

In this arrangement, the buyer is responsible for the freight charges and freight claims exposure. MPS would not file the freight claim. The consignee would be the party responsible for filing the freight claim. MPS would not issue credit to the consignee nor ship replacement material (at no cost) for any lost or damaged goods as this recovery will come from the consignee's requested carrier.

### **ACCEPTANCE**

Any missing pallet must be declared at time of shipping receipt. Any missing boxes within the pallet must be declared within fourteen days of receipt of invoice. Failure to provide Seller with written notice within the prescribed timeframe obligates Buyer to have waived such errors, defects or shortages and to have accepted Buyer's items as delivered.

### **ZONE DAYS**

Seller will assign the Buyer a zone day for shipment based on their geographical region. Requests for shipments outside of zone day or the original acknowledgement date as shown on MPServiceNet is considered an expedite and may require the Buyer to pay freight. Any order with a request date outside standard lead time will be shipped within lead time, unless the order is deferred at buyer's request.

### **DROP SHIPMENT**

Buyer must pay freight for all orders requesting delivery to a location other than to a recognized Buyer stocking warehouse. Exceptions are made for civil market buyers, transmission project orders, full truckload quantities, and export orders.

### **BROKEN PACKAGE**

**Orders must be placed for standard package quantities.** Orders with lines that are not placed with standard package quantities will be held until MPS contacts the Buyer to authorize an adjustment to standard package quantities.

### **NON-STANDARD OR SPECIAL ITEMS**

Items built for specific Buyer's requirements, even though outlined in Seller's catalog, are considered non-standard. Orders for these items will be accepted on a non-cancelable, non-returnable basis. The quantity manufactured, shipped, and invoiced may vary by 10% above or below the ordered quantity, and the order will be considered as shipped complete without further consequence.

### **ADJUSTMENTS**

Unauthorized deductions by Buyer from its remittance to Seller will not be permitted unless Seller issues written authorization and credit memoranda. Buyer must notify Seller of any suspected discrepancies within fourteen calendar days of receipt of invoice. Requests for Proof of Delivery documents must also be received within fourteen calendar days of invoice receipt. Deductions exceeding those authorized by Seller will be invoiced by Seller and will become payable upon receipt. Failure to settle Buyer's account may lead to suspension of future shipments to Buyer.

### **TOOLING**

Seller shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures, tools, and test equipment made for or obtained for the performance of any order including items paid for by the Buyer.

### **TESTING**

Unless otherwise stated in writing, product prices include only Seller's standard test data. Any special testing required by the Buyer shall be invoiced accordingly unless included in the Seller's quotation. All testing and Buyer inspections must be completed at the factory of origin. Buyer must provide a contact for inspection no later than two weeks prior to the product's scheduled ship date. Buyer must clearly state all testing requirements at time of order.



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### **MODIFICATIONS**

Unless otherwise provided, Seller reserves the right to modify the specifications, materials, or manufacturing methods of products ordered by the Buyer if the modification will not materially affect the quality or performance of the product. Products may be discontinued, modified, or changed without incurring any obligation to the Seller.

### **RETURNED GOODS**

Returns are authorized at the discretion of MPS. No material can be returned without first obtaining a written return goods authorization from Seller. A copy of this authorization must be included with the material being returned.

Products accepted for return must be in their original, unopened cartons, in standard package quantities, of current design and manufacture, and in resalable condition. Only stock items, as defined on the website product information page, can be returned. All returns are subject to a restocking and handling charge of 25% of the original net value of the products at time of purchase. Any non-authorized product, product returned in non-standard pack, or any product deemed to be non-resalable will be scrapped and no credit given. Distributors are allowed one annual return per year at a total value of 5% of previous year's sales at a 25% restocking fee.

Material authorized for return must be shipped prepaid to the Seller's destination within 60 days of authorization. No products will be accepted for return in the month of December. The value of returns must total at a minimum \$500.

### **CANCELLATION**

Cancellation of part or all of an order is subject to acceptance by Seller. Requests for cancellation of stock items must be received a minimum of 5 calendar days before the scheduled ship date. Special order items, storm orders, non-stock items, items not listed in the MPS catalog, or items listed with a special price are subject to review of the Seller before a cancellation will be considered.

### **WARRANTY**

Seller warrants that the products it manufactures and sells shall be free from defect in material and workmanship for a period of 18 months from date of shipment to Buyer, or 12 months from date of product installation, whichever is shorter. The warranty covers normal use only and does not apply to any products that are misused (used for a purpose other than originally intended), improper installation, modified, repaired or otherwise abused by Buyers or others. Seller's sole obligation for breach of warranty shall be to repair or replace (F.O.B. original delivery point) any goods within 30 days of Buyer reporting defect to Seller. All installation and transportation expenses, and all other incidental expenses and damages shall be borne by Buyer.

**THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

### **LIMITATION OF LIABILITY**

**IN NO EVENT SHALL SELLER BE LIABLE FOR ANY TYPE OF SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHERWISE.**

Such damages shall include, but not limited to, liquidated damages, loss of profit or revenues, loss of use of the equipment or associated equipment, costs of substitute equipment, facilities, down time costs, increased construction costs, change out costs, or claims for damages. Seller shall not be liable for any loss, claim, expense or damage caused by, contributed to or arising out of the acts or omissions of Buyer, whether negligent or otherwise.

### **PRODUCT USAGE**

Buyer agrees that by accepting Seller's products, it agrees to use each product solely as Seller intended such product to be used and in accordance with Seller's instructions. Buyer further agrees that improper operation, storage, or maintenance of Seller's products could result in injury or death to a person, or damage to other property or equipment and it will hold Seller and its affiliates harmless for any such injury or damage. **BUYER AGREES TO INDEMNIFY AND HOLD SELLER, ITS AFFILIATES AND THEIR OFFICERS AND DIRECTORS HARMLESS AGAINST ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND (INCLUDING ATTORNEY'S FEES) ARISING OUT OF OR RELATED TO THE USE OF ANY OF SELLER'S PRODUCTS.**

### **PATENT INDEMNITY**

Seller shall defend any suit or proceeding brought against Buyer based on a claim that any goods of Seller's design furnished to Buyer constitute an infringement of any U.S. patent. Buyer must notify Seller promptly, in writing, of such claim. Seller will not be liable if alleged infringement is the result of the application or use to which such goods are put by Buyer or others if different than Seller's application data.

Buyer agrees to protect Seller and save it harmless from all expense and damages that result from claims or demands that goods manufactured by Seller according to Buyer's design or specification infringe the right, title or interest of any third party because of being so produced. Buyer shall defend Seller in such claims and pay all expenses and damages based on claimed infringement. The foregoing states the entire liability of either party to the other with respect to infringement.

### **GOVERNING LAW**

The laws of the State of Illinois shall govern all matters relating to the interpretation and effect of these terms and any authorized changes.

### **WAIVER OF JURY TRIAL**

Both Buyer and Seller, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action, legal proceeding or counterclaim arising out of or in connection with any purchase order or other transaction between Buyer and Seller. This waiver applies to any and all actions and legal proceedings, whether sounding in contract, tort or otherwise.



## MACLEAN POWER LLC INTERNATIONAL TERMS AND CONDITIONS

### **GENERAL**

These **Terms and Conditions of Sale** shall apply to MacLean Power LLC international sales of MacLean Power Systems ("MPS") products and any products from an MPS affiliate, MPS joint venture, or MPS supplier. Unless otherwise stated in writing by an authorized representative of MPS, any different or additional terms and conditions proposed in a customer purchase order, response to a quotation or other proposal, shall not be incorporated into any agreement for the sale of MPS products. All orders and shipments are subject to approval by MPS.

### **PRICES**

All prices are quoted and invoiced in United States Dollars ("U.S. Dollars"). Unless otherwise stated, prices are exclusive of any sales, use, excise, import duties or other tax.

### **QUOTATIONS**

Only price quotes on MPS letterhead are valid and, unless otherwise specified, are subject to purchaser's written acceptance.

### **PAYMENT TERMS**

Standard payment term for MPS acceptance of the customer purchase order is letter of credit in accordance with the Uniform Customs and Practice for Documentary Credits International Chamber of Commerce Publication No. 600 ("UCP 600") confirmed by a prime United States bank payable at sight against shipping documents. MPS shall advise the customer of any change required for acceptance of the letter of credit.

### **PACKING**

Prices for packaging of MPS products are based on standard packaging suitable for export shipment compliant with International Plant Protection Convention ("IPPC") regulations. Additional charges may be assessed by MPS for special packaging requested by the customer or additional export packaging not stipulated in the approved purchase order.

### **SHIPMENT**

Product shipment shall be made following MPS receipt of the operative letter of credit with terms and conditions acceptable to MPS. Shipping dates provided by MPS are approximate and are based on conditions existing at time of MPS approval of the customer order for production. MPS will in good faith endeavor to ship by the estimated shipping date but shall not be responsible for any delay or damage resulting therefrom, including but not limited to, any steamship line delay to further advance safety on the vessel.

### **TRANSPORTATION**

Unless otherwise specifically agreed by MPS, standard shipment terms for all products are ocean freight with delivery terms of FCA (Free Carrier to US Port of Export) in accordance with INCOTERMS 2010 of the International Chamber of Commerce ("ICC"). Order values must be a minimum U.S. Dollars \$7,500 to be shipped as FCA INCOTERMS. Orders less than U.S. Dollars \$7,500 will be shipped EXW (ExWorks MPS Factory).

Effective October 16, 2017

MacLean Power LLC  
Kingsley Park Five 481 Munn Road, Suite 300 Fort Mill, SC 29715 USA  
855-MPS-SHIP (Toll Free)

These International Terms & Conditions supersede all previously published terms & conditions from MPS, MPS affiliates, and companies acquired by MPS.

**MINIMUM ORDER VALUE**

The total EXW value of a discrete purchase order must be a minimum of \$1000 USD. No single release on an order may be for less than \$1000 USD.

**RISK OF LOSS & TITLE TRANSFER**

Risk of loss or damage to the products and title transfer of the goods shall pass to the purchaser on MPS delivery in accordance with the shipment terms.

**MANUFACTURING CLEARANCE**

MPS shall provide the customer with confirmation when the purchase order is released to manufacturing. Purchase orders for products that are built to unique customer requirements are considered non-standard or non-stock MPS products and shall be released for product manufacture on MPS receipt of the operative letter of credit with terms and conditions acceptable to MPS.

At the sole discretion of MPS, a customer purchase order for a standard or stock MPS product that has not been customized may be released to manufacturing at the time of MPS order acceptance.

**PRODUCT INSPECTIONS**

All MPS products undergo in-process and pre-shipment inspections in accordance with standard industry practice. Any inspection requirement not explicitly stated in the MPS production control plan is subject to MPS approval. The purchaser shall bear the cost of any third party or purchaser in-house party inspection at an MPS plant. It is the responsibility of the purchaser to raise the need for any specific inspection at the time of customer request for quotation.

**TOOLING & MANUFACTURING EQUIPMENT**

MPS shall bear the cost of tooling unless otherwise negotiated with the customer. MPS shall own all tooling, dies and manufacturing equipment.

**TESTING**

Unless otherwise stated in writing, quoted prices include only industry standard production tests and test reports. Any special testing or type testing required by the purchaser must be requested at the time of quotation and shall be viewed as an additional cost subject to invoicing.

**MODIFICATIONS**

Unless otherwise provided, MPS reserves the right to modify the specifications, materials, or manufacturing methods of products ordered by the customer if the modification will not materially affect the quality or performance of the product.

**ORDER CANCELLATION**

The customer may cancel their purchase order within five (5) calendar days of order placement without penalty.

**WARRANTY**

MPS warrants that the product it manufactures and sells shall be free from defect in material and workmanship for a period of eighteen (18) months from date of shipment to the purchaser, or twelve (12) months from date of product installation, whichever is shorter. The warranty covers normal use only and does not apply to any products that are misused (used for a purpose other than originally intended), modified, improperly installed, repaired, or otherwise abused by the purchaser or others. MPS's sole obligation for breach of warranty shall be to repair or replace any defective goods FCA (Free Carrier to US Port of Export) as reasonably expeditious as possible. All installation and transportation expenses, and all other incidental expenses and damages shall be borne by the purchaser.

**THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

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These International Terms & Conditions supersede all previously published terms & conditions from MPS, MPS affiliates, and companies acquired by MPS.

**LIMITATION OF LIABILITY**

IN NO EVENT SHALL MPS BE LIABLE FOR ANY TYPE OF LIQUIDATED DAMAGES WHETHER SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHERWISE.

Such liquidated damages shall include, but not limited to, loss of profit or revenues, loss of use of the equipment or associated equipment, costs of substitute equipment, facilities, down time costs, increased construction costs, change out costs, or claims for damages.

MPS shall not be liable for any loss, claim, expense, or damage caused by, contributed to or arising out of the acts or omissions of the purchaser, whether negligent or otherwise.

**PATENT INDEMNITY**

MPS shall defend any suit or proceeding brought against the purchaser based on a claim that any goods of MPS's design furnished to the purchaser constitute an infringement of any U.S. patent. The purchaser must notify MPS promptly, in writing, of such claim. MPS will not be liable if alleged infringement is the result of the application or use to which such goods are put by the purchaser or other if different than MPS's application data.

The purchaser agrees to protect MPS and save it harmless from all expense and damages that result from claims or demands that goods manufactured by MPS according to the purchaser's design or specification infringe the right, title or interest of any third party because of being so produced. The purchaser shall defend MPS in such claims and pay all expenses and damages based on claimed infringement.

The foregoing states the entire liability of either party to the other with respect to infringement.

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Kingsley Park Five 481 Munn Road, Suite 300 Fort Mill, SC 29715 USA  
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**GOVERNING LAW & JURISDICTION**

These terms and conditions and all agreements between MPS and the purchaser shall be governed by the laws of the state of Illinois without reference to principles of conflicts of laws. The purchaser hereby submits to the exclusive jurisdiction of the applicable state or federal courts located in the state of Illinois.

**FORCE MAJEURE**

MPS shall not be liable for any delay or failure to perform its obligations, resulting directly or indirectly from or contributed to by any acts of God, acts of customer, acts of government or other civil or military authorities, strikes or other labor disputes, war, embargoes, delays in transportation, or other circumstances beyond MPS's reasonable control.

**SEVERABILITY**

If any provision or provisions of these terms and conditions shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**FOREIGN CORRUPT PRACTICES ACT**

MPS fully complies with the United States Foreign Corrupt Practices Act of 1977 ("FCPA"). A purchaser in its performance under a purchase order agrees to comply with and abide by the FCPA and all other applicable laws and regulations. The purchaser represents and covenants that it will not take any actions that may subject MPS to liability under the FCPA or other applicable laws or regulations. The purchaser will indemnify and hold harmless MPS from any suits or penalties which may arise due to purchaser failure in this respect.

Please visit the MacLean-Fogg website at [www.macleanfogg.com](http://www.macleanfogg.com) to view the FCPA Compliance Policy.