



Terms and Conditions

Effective: January 1, 2017

CONDITIONS OF SALE

Unless otherwise stated in writing by an authorized representative of MacLean Power Systems (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 valid 30 days. Seller's quoted prices apply for the quantity stated on Buyer's RFQ. Seller reserves the right to modify quotations and/or 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 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 Canadian 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 release quantities may apply to individual line items on orders. If a price discrepancy exists on an order the line in question will not be entered into Seller's order system until the price issue is resolved and the order is amended in writing. All orders, including order deferrals, are subject to final acceptance by Seller's Sales Department at its Chateaugay, Quebec Office. Storm Emergency orders requiring expedited delivery may carry additional charges. All emergency (storm) orders require freight to be paid by the buyer.

ORDER ADD-ONS

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

PACKAGING

Seller's prices are based on standard packaging suitable for domestic shipments. 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, estimated 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 POLICY

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 for shipment at one time to a single delivery point in Canada, excluding Enclosures and Pad products. For shipments outside Canada, contact the Seller's Sales Department for freight terms. All MPS products may be combined on a single order to meet the terms and conditions of this transportation policy. EXCEPTION: OEM orders will be freight collect or prepaid & charged. Expedited orders require the buyer to pay freight. Seller reserves the right to select shipping point, method and route of shipment. When Buyer selects method and route of shipment, any resulting 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 from Seller's origin location or otherwise supplies its own transportation. Title and risk of loss shall pass to the Buyer upon delivery of the products by the Seller to the carrier. MPS origin locations are: TRENTON & MEMPHIS, TN.; PELHAM & ALABASTER, AL.; YORK & NEWBERRY, SC.; CHATEAUGUAY, QUEBEC, CANADA AND ST.YORRE, FRANCE.



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TRANSPORTATION POLICY, cont'd

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 10 business 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 a credit to the consignee or ship replacement material (at no cost) to the customer in the amount of the loss. The revised 10 business 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 the shipment is received. Any missing boxes within the pallet must be declared within 10 business 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 acknowledgment date is considered 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 can be made based on an understanding between Seller and Buyer for Drop Ship location in proximity to the Buyer's main location at the same freight cost.

BROKEN PACKAGE CHARGE

Orders must be placed for standard package quantities. Line items that are not placed with standard package quantities may be held until MPS contacts the Buyer to authorize an adjustment to standard package quantities. The Seller also has the right to raise order quantities to multiples of standard package, per item. For order items that the standard packages can be broken, Seller has the right to charge Buyer a 20% broken pack fee for the item.

NON STANDARD OR SPECIAL ITEMS

Orders for non-standard or special, made to order items, even though outlined in Seller's catalog, will be accepted on non-cancelable 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 10 business days of receipt of invoice. Requests for Proof of Delivery documents must also be received within 10 business 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, unless previously agreed to in writing by Seller.

TESTING

Unless otherwise stated in writing, 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 must be completed at the factory of origin and Seller must provide test certificate to Buyer at the time the order is shipped. Buyer must clearly state all testing requirements at time of order.

Revised: 04-12-2019



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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 the time of purchase. Any non-authorized product, product returned in non-standard pack, or any product deemed to be non-resalable will be disposed of 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 return must total a minimum \$500.

CANCELLATION

Cancellation of part or all of an order is subject to acceptance by Seller's Sales department in Chateauguay, Quebec. Storm orders, special, made to order items, items non-standard or listed as special priced are non-cancelable.

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 does not apply to any products that are misused, 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 discovery of defect. 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, ALL WARRANTY 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 be 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 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 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 that Seller's application data.

Buyer agrees to protect Seller and save it harmless from all expenses 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 province of Quebec shall govern all matters relating to the interpretation and effect of these terms and any authorized changes.