

## Standard Conditions of Sale

**I. GENERAL:** All references to MRI (or any derivative thereof) shall mean Meurer Research and all references to Buyer shall mean the customer named in a purchase order, quotation or proposal (collectively referred to herein as "quotation"). All quotations from MRI shall be considered solicitations of offers and all purchase orders placed by Buyer shall be considered offers, which can only be accepted in writing by MRI. Buyer shall either sign MRI's quotation, or in the alternative, issue a non-conflicting purchase order containing necessary information, such as site name, price schedule, type and quantity of product, requested delivery date and delivery instructions. MRI hereby objects to and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer's request for quotation, purchase order, purchasing or shipping release forms. Notwithstanding any terms or conditions that may be included in Buyer's purchase order form or other communications, MRI's acceptance is conditional upon Buyer's assent to the terms and conditions set forth herein. It is agreed that sales are made only on the terms and conditions herein and any other terms or conditions shall not become a part of the agreement unless expressly agreed to in writing by MRI. MRI's failure to object to any terms or conditions contained in Buyer's purchase order or other communication shall not be deemed to be acceptance of such terms or conditions. These terms and conditions shall be deemed incorporated (as though set forth in full) into any agreement entered into between MRI and Buyer unless otherwise noted in writing. MRI reserves the right, without any increase in price, to modify the design and specifications of MRI products, provided that the modification does not adversely affect the original performance specifications as specified by MRI or as requested by Buyer. Shipments, deliveries and performance of work shall at all times be subject to the approval of MRI's Credit Department. MRI may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to MRI.

**II. PRICES, TERMS OF PAYMENT & TAXES:** (a) **PRICES:** Unless expressly stated to be firm for a definite period, MRI's offers are subject to change without notice, and in all cases are subject to withdrawal at any time before acknowledgment by Buyer. Quoted prices are firm for only thirty (30) days. Orders placed after thirty (30) days are subject to price increases in MRI's sole discretion. Prices on acknowledged orders are firm for the agreed upon delivery time. Customer requests to extend originally agreed upon delivery date(s) will be subject to price escalation. If a price is stated in the quotation, it is based upon shipment of the quantities and quality requested by Buyer and on the basis of MRI's internal delivery schedule at the time of preparation of said quotation. (b) **TERMS OF PAYMENT:** Payments against invoices shall be due and payable thirty (30) days from the date of delivery to a carrier, or upon receipt of an invoice from MRI, whichever first occurs. If in MRI's opinion, Buyer's financial condition does not justify continuation of production or shipment on the terms of payment specified, MRI may, upon written notice to Buyer, cancel or suspend any outstanding order or part thereof, unless Buyer shall promptly pay for all goods delivered or shall make advance payments to MRI as it, at its option, shall determine. If Buyer delays shipment for any reason, date of readiness for shipment shall be deemed to be the date of shipment for payment purposes. If Buyer delays manufacture for any reason, a payment shall be made based on purchase price and percentage of completion, with the balance payable in accordance with the terms as stated. If payments are not made in conformance with the terms stated herein, the contract price shall, without prejudice to MRI's right to immediate payment, be increased by 1½% per month on the unpaid balance, not to exceed the maximum amount permitted by law. If at any time in MRI's judgment Buyer may be or may become unable or unwilling to meet the terms specified herein, MRI may require satisfactory assurance or full or partial payment as a condition to commencing, or continuing manufacture, or in advance of shipment. A 2.0% processing fee will be added to all invoices over \$10,000 paid by credit card. (c) **TAXES:** Except for the amount, if any, of tax stated in a MRI quotation, the prices set forth therein are exclusive of any amount for federal, state, local, excise, sales, use, property, in-country, import, VAT or similar taxes or duties. Such prices also exclude permit, license, customs and similar fees levied upon shipment of MRI products.

**III. SHIPMENT/STORAGE:** (a) **SHIPMENT:** The anticipated shipment date(s) set forth in the quotation is/are approximate and subject to change. Notwithstanding other limitations set forth by MRI, MRI shall not be liable for any delays in shipment which are caused by events beyond the control of MRI including, but not limited to, delays caused by inaccurate or incomplete data, changes or revisions in the work to be performed, tardy approval of drawings by Buyer, acts of Buyer or Buyer's agent, Force Majeure, accidents, strikes, inability to obtain labor or materials, or delay in transportation. MRI shall have the right to extend the anticipated shipment date for up to ten (10) business days, for any reason, provided MRI shall give Buyer written notice of such delay prior to the scheduled shipping date. Buyer's order will be crated for domestic truck shipment and MRI assumes no responsibility for loss of, or damage to, the equipment following delivery to a carrier, who shall be deemed to be acting as agent for Buyer, and the equipment shall thereafter be at the Buyer's sole risk. It is MRI's policy to ship its equipment "Bill Collect," and the carrier will mail its invoice(s) directly to Buyer's billing address, unless otherwise agreed to in writing. (b) **STORAGE:** Once Buyer has been notified that its order is ready for shipment, if Buyer requests that the order (in whole or in part) not be shipped until a later date, the equipment will be segregated from other inventory and Buyer shall execute MRI's Transfer of Title form evidencing transfer of title and transfer of risk of loss from MRI to Buyer pursuant to Section IV below. In the event that Buyer shall refuse to execute MRI's Transfer of Title form and/or if the fabricator is unable to withstand storage of the equipment, MRI shall have the right, at its sole discretion, to transfer the equipment to an intermediate storage facility, all at Buyer's cost, whereby transfer of title and risk of loss will be deemed to pass, pursuant to Section IV below, when the products are delivered to the carrier at the factory. All costs associated with shipping the equipment to said storage facility or from said storage facility to the job site (or any other site requested by Buyer) shall be the responsibility of Buyer. Buyer shall reimburse MRI upon demand for any costs incurred by MRI in connection with said storage, including without limitation, steps taken to protect the equipment from the elements, transport, storage facility fees, insurance, etc. Any delay in shipment requested or caused by Buyer or its agents will not affect the Terms of Payment above.

**IV. TITLE & RISK OF LOSS:** MRI's prices are F.O.B. MRI's Factory and are exclusive of taxes, shipping, handling and insurance. Title to all equipment and risk of loss, deterioration or damage shall pass to Buyer upon delivery to a carrier; except that a security interest in the equipment or any replacement shall remain in MRI's name, regardless of mode of attachment to realty or other property, until the full purchase price has been received by MRI. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect MRI's interest by adequately insuring the products against loss or damage from any external cause, including during any storage or transport, with MRI named as insured or co-insured. Any claim by Buyer against MRI for shortage or damage occurring prior to delivery must be made in writing within ten (10) calendar days after receipt of shipment and accompanied by an original transportation bill signed by the carrier noting that carrier received goods from MRI in the condition claimed. MRI shall have the right to ship all goods at one time or in portions, within the time for shipping provided in such order, unless specifically requested in writing by the Buyer that these shipments be made in total. Any shipments returned to MRI as a result of Buyer's unexcused delay or failure to accept delivery will require Buyer to pay all additional costs incurred by MRI, including any storage costs as set forth in Section III above.

**V. ERECTION:** Unless otherwise agreed in writing, products are assembled, installed and/or erected by and at the full expense of Buyer.

**VI. CANCELLATION & BREACH:** Buyer agrees that MRI products are specially manufactured goods that are not suitable for sale to others in the ordinary course of business. Therefore, purchase orders placed with MRI cannot be canceled without recourse, nor shipments of goods made up, or in process, be deferred beyond the original shipment dates specified, except with MRI's written consent and upon terms which shall indemnify MRI against all loss. In the event of cancellation or the substantial breach of the agreement between Buyer and MRI, including without limitation, failing to make payment when due, Buyer agrees that MRI will suffer serious and substantial damage which will be difficult, if not impossible, to measure, both at the time of entering the agreement and as of the time of such cancellation or breach. Therefore, the parties agree that upon such cancellation or breach, the Buyer shall pay to MRI the sums set forth below which MRI and Buyer do hereby agree shall constitute agreed and liquidated damages in such event:

- a. If cancellation or breach shall occur after the acceptance of the purchase order but prior to mailing of general arrangement drawings by MRI to Buyer, liquidated damages shall be 10% of the selling price.
- b. If cancellation or breach shall occur within thirty (30) days from the mailing of general arrangement drawings by MRI to Buyer, the liquidated damages shall be 30% of the selling price.
- c. If the cancellation or breach occurs after thirty (30) days from the mailing of general arrangement drawings by MRI to Buyer, but prior to notification that the order is ready for shipment, the liquidated damages shall be the total of 30% of the selling price plus the expenses incurred, cost of material, and reasonable value of the work expended to fill the respective order by MRI's engineers and other employees, agents and representatives after the mailing of general arrangement drawings by MRI to Buyer. All sums will be determined at the sole reasonable discretion of MRI provided, however, that the total liquidated damages under this provision shall not exceed the total selling price.
- d. If cancellation or breach shall occur after MRI has notified Buyer that the order is ready for shipment, then the liquidated damages shall be the total selling price.

**VII. DRAWINGS & SPECIFICATIONS:** In the event that drawings are sent to Buyer for approval after an order is placed, the drawings must be returned marked "Approved" or "Approved As Noted" within twenty (20) calendar days after receipt unless otherwise noted. In the event that Buyer's written comments are not given within the twenty (20) day period, MRI shall deem the items approved.

**VIII. CORRECTIVE WORK & "BACK CHARGES".** In no event shall any work be done, or services or material be purchased or expense otherwise incurred by the Buyer for the account of MRI until after full and complete particulars (including an estimate of material cost) have been submitted in writing and approved in writing by MRI. MRI must be given the opportunity to discuss and research alternative methods to lower the costs involved in such corrective work. Unless agreed-upon in writing by MRI, MRI will not be liable for labor costs, overhead, administrative costs, interest or any other consequential or indirect costs Buyer incurs. Returned items will not be accepted unless MRI has previously agreed to such return in writing and supplied written return-shipping instructions to Buyer.

**IX. SELECTION OF MATERIALS:** Because all MRI products are specially manufactured products, the material make-up of many of MRI's products varies from project to project. The determination of the materials' suitability and adaptability (including without limitation, paints and/or coatings) to the specific needs of the Buyer is solely the Buyer's choice and responsibility.

**X. CONFIDENTIAL INFORMATION & IMPROVEMENTS:** The design, construction, application and operation of MRI's products, services and relevant documentation embody proprietary and confidential information; therefore, Buyer will maintain this information in strict confidence, will not disclose it to others, and will only use this information in connection with the use of the products or to facilitate the provision of services sold by MRI. Buyer will not copy or reproduce any written or printed materials or drawings furnished to Buyer by MRI. Buyer agrees to immediately return all confidential material to MRI if requested in writing by MRI. Buyer will not copy any information provided by MRI or make any design drawings of MRI's equipment and will not permit others to copy or make any design drawings of the equipment. MRI shall have a royalty-free license to make, use and sell, any changes or improvements in the products invented or suggested by Buyer or its employees. Buyer acknowledges that a remedy at law for any breach or attempted breach of this Section will result in a harm to MRI for which monetary damages alone will not be adequate. Buyer covenants and agrees that neither it nor any of its affiliates will oppose any demand for specific performance and injunctive and other equitable relief in case of any such

breach or attempted breach. Notwithstanding anything to the contrary herein, MRI may seek enforcement of any breach of this Section without the necessity of complying with the provisions regarding resolution of disputes herein.

**XI. FIELD SERVICE:** Field Service included in the quotation will only be scheduled upon written request and may be subject to credit approval. Should the Buyer have outstanding balances due MRI, no startup / field service will be scheduled until such payments are received by MRI. The Buyer assumes all responsibility for the readiness of the system when it requests startup service. Should MRI's Field Service Engineer arrive at the jobsite and determine that the system cannot be started up within a reasonable time, MRI shall have the option to bring the Field Service Engineer home and bill the Buyer for time, travel and living expenses. Additional field service is available from MRI at the prevailing per-diem rate at the time of the request for service plus all travel and living expenses, portal-to-portal. A purchase order or change order will be required prior to scheduling this additional service.

**XII. LIMITATION OF LIABILITY:** Unless expressly agreed to in writing by MRI, all damages not direct and actual in nature, including without limitation, consequential, incidental, indirect, exemplary and punitive damages, shall be expressly prohibited damages. Such prohibited damages include, but are not limited to, lost rent or revenue; rental payments; costs (increased or not) of administration or supervision; costs or delays suffered by others unable to commence work or provide services as previously scheduled for which a party to this contract may be liable; increased costs of borrowing funds devoted to the project (including interest); delays in selling all or part of the project upon completion; damages caused by reason of Force Majeure or acts of God (with the broadest statutory or court of law definition possible); termination of agreements to lease or buy all or part of the project, whether or not suffered before completion of services or work; forfeited bonds, deposits, or other monetary costs or penalties due to delay of the project; interest for any reason assessed to Buyer; increased taxes (federal, state, local, or international) due to delay or recharacterization of the project; lost tax credits or deductions due to delay; impairment of security; attorney and other legal fees for any reason assessed to Buyer, loss of use of the Equipment or any associated Equipment, costs of substitute Equipment, facilities or services, down time costs, claims of customers of Buyer for such other damages; or any other indirect loss arising from the conduct of the parties. MRI only agrees to responsibility for damages from proven negligent and willful acts of its direct employees only.

**XIII. FORCE MAJEURE AND UNFORESEEN PRICE/TIME ESCALATIONS** – MRI shall not be responsible for failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including but not limited to, acts of God, acts of Purchaser, natural or artificial disaster, riot, war, strike, delay by carrier, acts or omissions of other parties, changes in law, material shortage, fire, strikes, floods and the like which shall be considered Force Majeure excusing MRI from performance and barring any remedies for non-performance. During the daily course of business, MRI absorbs normal trade supply chain fluctuations; however, in the event that between the time that the pricing is extended, and the purchase of materials used, there is an enactment by any governmental entity or a tariff of other charge that impacts the cost or timing to obtain materials beyond a normal fluctuation, MRI reserves the right to increase the price and/or timing of products delivered to the Purchaser to include all or a portion of this tariff or other charge.

**XIV. APPLICABLE LAWS & GOVERNING LAW:** To the best of MRI's knowledge, MRI products comply with most laws, regulations and industrial practices; however, MRI does not accept responsibility for any state, city or other local law not specifically brought to MRI's attention. For OSHA compliance, (1) MRI is only liable for those OSHA standards that are in effect as of the date of the quotation, and to the extent they are applicable to the performance of MRI. (2) MRI is only responsible for the physical characteristics of the product(s) and not for the circumstances of the use of the product(s). (3) MRI's liability through any noncompliance to OSHA shall be limited to the cost of modifying the product(s) or replacing the non-complying product(s) or component(s) after receipt of prompt written notice of noncompliance. The rights and obligations of Buyer and MRI shall be governed by and interpreted in accordance with the substantive laws of the state of Florida including the uniform commercial code of Florida, excluding conflicts of law and choice of law principles.

**XV. DISPUTE RESOLUTION:** Any issue, difference, claim or dispute ("Action") that may arise out of or in connection with the project referenced in the quotation, including these terms and conditions, shall be first resolved by negotiation at the highest executive levels between the Buyer and MRI. If said negotiation is unsuccessful, any said Action or any transactions contemplated hereby or in the Quotation shall be finally settled under **BINDING ARBITRATION** in Broward County, Florida. Any such arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association and shall be overseen by one (1) single arbitrator. Buyer and MRI shall agree upon a single arbitrator or, if Buyer and MRI cannot agree upon an arbitrator within thirty (30) days, then the Buyer and MRI agree that the American Arbitration Association shall appoint a single arbitrator. In the event that an Action is brought, the prevailing party shall be entitled to be reimbursed for, and/or have judgment entered with respect to, all of its costs and expenses, including reasonable attorney's fees' and legal expenses. The award of the arbitrator shall be binding and may be entered as a judgment in any court of competent jurisdiction.

**XVI. PATENTS:** MRI shall indemnify Buyer against any judgment for damages and costs which may be rendered against Buyer in a suit brought on account of the alleged infringement of any United States patent by any product supplied by MRI, unless (a) the alleged infringement occurs as a result of any alteration or modification to the product or the use of the product in combination with the products or services of any party other than MRI, or (b) the product was made in accordance with materials, designs or specifications furnished or designated by Buyer, in which case Buyer shall indemnify MRI against any judgment for damages and costs which may be rendered against MRI in any suit brought on account of the alleged infringement of any United States patent by such product or by such materials, designs or specifications; provided that prompt written notice be given to the party from whom indemnity is sought of the bringing of the

suit and an opportunity be given to such party to settle or defend it as that party may see fit and that every reasonable assistance in settling or defending it shall be rendered. MRI shall in no event be liable to Buyer for special, indirect, incidental or consequential damages arising out of allegation of patent infringement.

**XVII. MECHANICAL WARRANTY:** For a period of one (1) year following the date the Equipment is shipped ("Warranty Period"), MRI's Equipment is limitedly warranted to be free from defective material and workmanship, under normal use and service and when installed, operated and maintained in accordance with installation instructions, this policy and maintenance/operating procedures. To make claim under this Warranty, Buyer must notify MRI within ten (10) business days after the date of discovery of any nonconformity and make the affected Equipment immediately available for inspection by MRI or its service representative. MRI Equipment may be deemed nonconforming only by an authorized MRI representative. **Returns will not be accepted unless MRI has authorized said return in writing.** If MRI's inspection indicates nonconforming materials and/or workmanship, the Equipment will, at MRI's option, either be repaired or replaced without charge. Upon receipt of MRI's written consent, Equipment may be promptly returned to MRI, F.O.B. its factory. However, under certain circumstances, MRI may decide, in its sole discretion, to repair or replace the Equipment at the Project site. Buyer hereby agrees to provide MRI, its employees and/or representatives, free of charge, on-site access to the Project site, and any necessary utilities and plant personnel needed by MRI for the purpose of repairing and/or replacing nonconforming Equipment per this Warranty.

**The following will void this Warranty:**

- (A) Equipment is used for purposes other than those for which it was designed;
- (B) Equipment is not used in accordance with generally approved practices;
- (C) Disasters, whether natural or manmade, such as fire, flood, wind, earthquake, cave-in, lightning, war, or vandalism;
- (D) Unauthorized alterations to or modifications of the Equipment not approved by MRI, in writing;
- (E) Abuse, neglect or misuse of Equipment, including without limitation, operation of Equipment after a defect is discovered;
- (F) Operation of Equipment by persons not properly trained for that purpose;
- (G) Failure to operate the Equipment in accordance with MRI's specifications, O&M manuals or other written guidelines; and/or
- (H) Failure to perform regular cleaning, inspection, adjustment and/or preventative maintenance.

**BE ADVISED:** MRI is not liable for any corrective work or expenditure that has not been authorized by MRI in writing prior to the commencement of such work and prior to committing to such expenditures. Inspection service calls, requested by Buyer, where no evidence of nonconforming materials and/or workmanship is found, will be invoiced to the Buyer at MRI's current per diem, plus all travel and living expenses. Onsite labor and freight are not covered by this Warranty. This Warranty does not cover normal wear and tear. Following a Warranty claim, verification of proper operation and maintenance is required. Physical damage due to external forces and/or accident is not covered by this Warranty. The effects of corrosion and unforeseeable influent characteristics are excluded from this Warranty. Actions by 3<sup>rd</sup> parties in causing nonconformity of the Equipment are not covered under this Warranty.

**THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER GUARANTEES AND WARRANTIES OF ANY KIND WHATSOEVER, WRITTEN, ORAL OR IMPLIED; ALL OTHER WARRANTIES INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.**

**XVIII. INDEMNIFICATION:** Buyer shall comply and require its employees to comply with all instructions given by MRI regarding installation, use and maintenance of the Equipment sold by MRI and shall require its employees to use reasonable care and all safety devices in the operation and maintenance of said Equipment. Buyer shall not remove or permit removal or modification of any safety device, warning sign or label. Buyer shall immediately give MRI written notice of any personal injury or property damage arising out of the use of the Equipment and cooperate with MRI in investigating any such accident or malfunction. Buyer agrees to indemnify and hold MRI and its suppliers harmless from any and all claims, demands, liabilities, causes of action, suits, costs and expenses of any kind and nature (including attorney's fees) for personal injury or property damage arising from or in any way connected with the operations, activities or use of the Equipment sold by MRI if Buyer fails to fulfill any of the foregoing obligations. Buyer agrees to indemnify and hold MRI and its suppliers harmless from any and all claims, demands, liabilities, causes of action, suits, costs and expenses of any kind or nature (including attorney's fees) which may be asserted against MRI and its suppliers by any person relating to any portion of the Equipment which includes Buyer's existing equipment or equipment furnished by Buyer and to defend MRI and its suppliers at Buyer's expense against any suit which may be commenced relating to the foregoing. Buyer agrees to indemnify and hold MRI and its suppliers harmless from any and all claims, demands, liabilities, causes of action, suits, costs and expenses of any kind or nature (including attorney's fees) for loss or damage to persons or property, other than the Equipment sold hereby or Buyer's possession or use of said Equipment.

**XIX. MISCELLANEOUS:** MRI does not assume responsibility for nor warrant the performance or accuracy of Buyer's furnished design, design criteria, or specifications. The parties agree that the foregoing terms and conditions constitute the entire terms and conditions between Buyer and MRI and that there are no other agreements, terms or conditions, expressed or implied, unless otherwise agreed to in writing by MRI. The terms and conditions herein shall supersede any terms and conditions of any other document that may apply to the transaction between the Buyer and MRI. This document may not be modified or superseded other than by an instrument in writing signed



by both Buyer and MRI. This document shall be binding upon and inure to the benefit of Buyer and MRI and their heirs, assignees, legal representatives and the project Owner for the project referenced in the quotation. The invalidity or non-enforceability of any particular provision of this document shall not affect the other provisions hereof, and this document shall be construed in all respects as if such invalid or unenforceable provisions were omitted.