



FLEX

Midwest Specialties, Inc.
DBA: Flex Machine Tools

STANDARD

PO TERMS & CONDITIONS

12/4/2024

Version 1.0

GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1. APPLICABILITY

These terms and conditions of purchase (these "Terms") are the only terms which govern the purchase of the goods ("Goods") and services ("Services") by Midwest Flex Machine Tools, Inc., DBA Flex Machine Tools, Inc. ("Buyer"), from the seller named on the Purchase Order ("Seller") unless there is a specific contract executed between the parties with respect to particular Goods. Should Buyer and Seller enter into a specific contract regarding the Goods and should there be any conflict between the contract and these general terms, then, the terms of the contract shall prevail. This Agreement, as defined below, shall prevail over any conflicting terms and conditions contained in Seller's standard terms. The purchase order issued which incorporates these Terms and Conditions (the "Purchase Order" or "PO") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller's general terms and conditions regardless of whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of or other performance under this Purchase Order constitutes acceptance of these Terms.

2. DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "Delivery Date"). If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date.

(a) Seller shall deliver all Goods to the address specified in the Purchase Order (the "Delivery Point") during Buyer's normal business hours or as otherwise instructed by Buyer. Seller shall pack all goods for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's risk of loss and expense.

(b) Seller shall provide the Services to Buyer as described and in accordance with the dates or schedule set forth on the purchase order and in accordance with the terms and conditions set forth in these Terms.

3. QUANTITY

If Seller delivers more than 10% of the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted accordingly.

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4. **SHIPPING TERMS**

Delivery shall be made FOB Delivery Point in accordance with the terms on the face of the PO issued to Seller. If the PO does not state the Delivery Point, it shall be the Buyer's Plant which is the delivery address. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Purchase Order.

5. **TITLE AND RISK OF LOSS**

Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

6. **INSPECTION AND REJECTION OF NONCONFORMING GOODS**

Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to 17. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

7. **PRICE**

The price of the Goods and Services is the price stated in the Purchase Order (the "Price") or Master Purchase Agreement (MPA). If no Price is listed on PO, a formal quote must be submitted by Seller and sent to and accepted by Buyer, prior to PO submission. Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Point, insurance, customs duties and fees. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

8. **PAYMENT TERMS**

Seller shall issue an invoice to Buyer after the completion of delivery and only in accordance with these Terms. Buyer shall pay all properly invoiced amounts due to Seller within 60 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Invoices shall be submitted no earlier than the date of shipment. To be timely, all invoices must be received by Buyer within 90 days after Delivery of Goods. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

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9. SELLER'S OBLIGATIONS REGARDING SERVICES

Seller shall:

- (a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;
- (b) comply with all rules, regulations and policies of Buyer, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access for Buyer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;
- (c) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Services in such form as Buyer shall approve. During the term of this Agreement and for a period of two years thereafter, upon Buyer's written request, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services;
- (d) obtain Buyer's written consent, which shall not be unreasonably withheld or delayed prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Services to Buyer (each such approved subcontractor or other third party, a "Permitted Subcontractor"). Buyer's approval shall not relieve Seller of its obligations under the Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier;
- (e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon Buyer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer;
- (f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;
- (g) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer; and
- (h) keep and maintain any Buyer equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Buyer's written instructions or authorization.

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10. CHANGE ORDERS

Buyer may at any time, by written instructions and/or drawings issued to Seller (each a "Change Order"), order changes to the Services. Seller shall within two (2) business days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under this Agreement.

11. WARRANTIES

Seller warrants to Buyer that for a period of 12 months from the Delivery Date, all Goods will: be free from any defects in workmanship, material and design; conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; be fit for our intended purpose and operate as intended; be merchantable; Seller also warrants that the goods will be free and clear of all liens, security interests or other encumbrances; and not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer; Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. The warranties set forth in this Section 11 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the foregoing warranty. If Buyer gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, promptly (i) replace, repair, or refund the Buyer for the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer, and, if applicable, (ii) correct or re-perform the applicable Services.

12. GENERAL INDEMNIFICATION

Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent company, its subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees (collectively, "indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Goods and Services purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's prior written consent. Buyer has the sole right to designate the attorney or law firm that will defend and represent it in regard to any suit, claim, or action that is subject to an indemnity provision in the Contract. This provision survives termination of the Contract and is not subject to the Limitation on Liability Clause.

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13. INTELLECTUAL PROPERTY INDEMNIFICATION

Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or indemnitee's prior written consent.

14. INSURANCE

During the term of this Agreement and for a period of 12 months thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$3,000,000 per occurrence and \$3,000,000 aggregate with financially sound and reputable insurers. When Seller, its employees, agents or subcontractors (including delivery persons) enter any facility owned, leased or operated by Buyer, then Seller shall also maintain Commercial Automobile Liability insurance with coverage to include owned, hired, and non-owned vehicles; with a minimum bodily injury and property damage combined single limit of \$3,000,000 per occurrence. For Contract Work consisting of engineering services, consulting, construction management or construction services, Seller shall keep and maintain in effect at its sole cost and expense professional liability (errors and omissions) coverage with minimum limits of liability of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer.

15. COMPLIANCE WITH LAW

Seller shall comply with all applicable laws, regulations and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Seller shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Seller. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods. Seller has an ethical obligation and legal responsibility to warn Buyer of any illegal conduct, or acts of impropriety Seller discovers, or reasonably should have discovered, in the course of performing the Contract Work. Seller shall defend, indemnify and hold Buyer harmless from any and all claims and liabilities resulting from noncompliance.

16. TERMINATION

In addition to any remedies that may be provided under these terms, in Buyer's sole discretion Buyer may terminate any Purchase Order, or part thereof, with immediate effect, upon written notice to the Seller at any time prior to Buyer's acceptance of Seller's delivery. If the Seller becomes insolvent, files a petition for bankruptcy, or commences or has commenced against its proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, Buyer may cancel any outstanding PO upon written notice to Seller or may return Goods that have been delivered for a full refund. If Buyer cancels any PO for any reason, Seller's sole and exclusive remedy is payment for the Goods and Services received and accepted prior to the cancellation.

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17. WAIVER

No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. CONFIDENTIAL INFORMATION

All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

19. FORCE MAJEURE

No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such party's (the "Impacted Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Event(s)"):

- (a) acts of God;
- (b) flood, fire, tornado, earthquake, epidemics or explosion;
- (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest;
- (d) government order, law, or action;
- (e) embargoes or blockades in effect on or after the date of this Agreement;
- (f) national or regional emergency;
- (g) strikes, labor stoppages or slowdowns or other industrial disturbances;
- (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials;
- (i) cyber security events, and
- (j) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within 30 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

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20. ASSIGNMENT

Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer's assets.

21. RELATIONSHIP OF THE PARTIES

The relationship between the parties is that of independent contractors. Neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. NO THIRD-PARTY BENEFICIARIES

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

23. GOVERNING LAW

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio.

24. SUBMISSION TO JURISDICTION

Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

25. NOTICES

All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the purchase order or to such other address that may be designated by the receiving party in writing. It shall be deemed delivered upon reasonably reliable evidence thereof based upon the method of delivery (email, USPS, UPS, FedEx).

26. SEVERABILITY

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

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27. SURVIVAL

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction/Arbitration and Survival.

28. AMENDMENT AND MODIFICATION

These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.

29. ACCEPTANCE

Any performance by Seller shall constitute complete Contract acceptance. The parties agree that a signed acknowledgement is not a condition precedent to the Contract enforceability by either party.

30. BUYER REPRESENTATIVE

The Buyer's designated purchasing agent is the only individual authorized by Buyer to negotiate, approve, and deliver Purchase Orders, subcontracts and other engagements, and change orders thereto. The supply chain representative does not include any production, supervisors, engineering, or technical personnel.

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