

TERMS & CONDITIONS

1. ACCEPTANCE – This order may be accepted by Seller's promptly mailing to Buyer its written acceptance within ten (10) days of the order's date, or commencement of performance by Seller. Acceptance is limited to the terms and conditions of this order. Any additional, different, or inconsistent terms or conditions contained in any form of acknowledgment, acceptance, or confirmation used by Seller shall be of no force or effect whatsoever, unless specifically agreed to in a separate written instrument signed by an authorized representative of Buyer after the date of this purchase order. This order, with any attachments, constitutes the entire agreement of the parties. No waiver or modification or additions to the terms of this order shall be valid unless in writing and signed by the parties after the date of this purchase order.
2. WARRANTIES – Seller warrants the goods supplied and/or work performed pursuant to this purchase order shall be in merchantable condition and shall be free from defects in workmanship and materials and shall be in conformity with the specifications, drawings, samples and descriptions attached hereto or referred to on the face hereof, if any. Seller warrants that the goods covered by this Agreement shall be fit for such particular purposes and uses, if any, as specified by Buyer or otherwise known to Seller. Seller warrants that the goods shall be free and clear of any lien or other adverse claim against title, and to the extent not manufactured to detailed designs furnished by Buyer shall be free from defects in design. All warrants contained herein shall survive inspection, test and acceptance by Buyer. Seller agrees, at its own costs and expense, to defend and hold Buyer harmless from and against any and all claims made against Buyer based upon, relating to, or arising out of any claimed defects in the goods or services ordered hereunder. Seller's warranties (and any consumer warranties, service policies or similar undertakings of Seller) shall be enforceable by Buyer's customers and any subsequent owner or operator of the goods as well as Buyer. Except as otherwise expressly provide in this agreement, all terms used in this agreement and which are defined in the State of Colorado Uniform Commercial Code shall have the meanings stated in the Code. Buyer shall be entitled to all incidental damages resulting from a breach of this agreement by Seller, including, but not limited to, reasonable expenses incurred in inspection, receipt, transportation, and storage of rightfully rejected goods, expenses or commission incurred in effecting cover, and any other commercially reasonable charges incident to a delay or breach by Seller. Buyer shall also be entitled to consequential damages resulting from a breach by seller for any loss resulting from the general or particular needs and requirements of Buyer of which Seller is aware at the time the agreement is executed, and that cannot reasonably be prevented by cover, and damages sustained by Buyer from any injury to person or property proximately caused by a breach of warranty by Seller. These warranties shall be in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of articles or services shall not constitute a waiver of any breach of warranty.
3. INSPECTION AND TESTS - All goods ordered hereunder will be subject to inspection and test by Buyer to the extent practicable at all times and places, including during manufacturing or prior to acceptance. Seller agrees to permit access to Seller's facilities at all reasonable times for inspection of goods by Buyer's agents, employees or Customers and will provide all tools, facilities and assistance reasonably necessary for such inspection at no additional cost to Buyer. Such goods will be subject to final inspection and acceptance by Buyer after delivery to Buyer. It is expressly agreed that inspections and/or payments prior to delivery will not constitute final acceptance. If the goods delivered do not meet the specifications or otherwise do not conform to the requirements of this order, Buyer shall have the right to reject such goods. At Buyer's discretion, rejected material will be held for Seller's instruction and at Seller's risk and shall be returned in whole or in part, at Seller's expense, for credit or refund at Buyer's option. No returned material shall be replaced without a prior authorization from Buyer. Buyer shall have the right to use nonconforming material in the manner it deems necessary to meet Buyer's contractual obligations to its customers, without waiving any right or remedy that Buyer may have with respect to the material.
4. BUYERS' PROPERTY – Title to and the right of immediate possession of any property, including without limitation, patterns, tools, jigs, dies, equipment or material furnished, including but not limited to, specifications, drawings, reprints, technical information or data furnished, or paid for by Buyer shall remain in Buyer. No articles made therefrom shall be furnished by Seller to any other party without Buyer's prior written consent. Seller shall keep adequate records of such property which shall be made available to Buyer upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound industrial practice, all at Seller's expense. Unless otherwise agreed to by Buyer, Seller shall insure Buyer's interest in such property against loss or damage by reason of fire (including extended coverage), riot or civil commotion. Copies of certificates of such insurance will be furnished to Buyer on demand.
5. DRAWINGS AND DATA – Seller shall keep confidential all information, drawings, specifications, or data furnished by Buyer, or prepared by Seller specifically in connection with the performance of this order, and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party, except as required for the efficient performance of this order. Seller shall not make copies or permit copies to be made without the prior written consent of Buyer. Seller shall not use, either directly or indirectly, any such data or any information derived therefrom for any purpose other than to perform this order without obtaining Buyer's written consent.
6. TERMINATION – Buyer may terminate for any reason, with or without cause, the performance of the work under this order in whole at any time, or from time to time in part, by written notice to Seller. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with the performance of the order and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to this order. Upon the termination of work under this order, full and complete settlement of all claims of Seller with respect to the terminated work shall be made as follows:
 - (i) As compensation to Seller for such termination, unless such termination is for the default of Seller. Buyer shall pay Seller the percentage of the total order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done as Seller's full compensation for the work completed under the order, and
 - (ii) Upon Buyer's payment to Seller in accordance with this paragraph, title to all equipment, materials, work in progress, finished products, plans, drawings, specifications, information, special tooling and other things for which Seller has paid shall vest in Buyer.Any claim resulting from cancellation must be submitted by Seller within 30 days of the date of the notice of cancellation and must be supported by cost data in form and detail that may reasonably be required by Buyer. If the goods or work supplied are for ultimate use by the federal or state government or any political subdivision or government agency, and Buyer cancels this order as a result of the cancellation of an order to Buyer, then Seller agrees to accept Seller's prorated share of the amount that Buyer is able to obtain from its customer, for canceling the order, as a full and final settlement of amounts due Seller for the cancellation. This paragraph states Seller's exclusive rights against Buyer and Buyer's total obligations to Seller with respect to any cancellation of this order without cause, and Buyer's obligations contained in this paragraph shall not apply in the case of a termination resulting from a breach by Seller. Nothing contained in this paragraph shall be construed to limit or affect any remedies, which Buyer may have as a result of a default, by Seller.
7. DEFAULT – CANCELLATION – Buyer reserves the right, by written notice of default, to cancel this order, without liability to Buyer, in the event of the happening of any of the following: insolvency of Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, Buyer reserves the right, without any liability to Buyer, upon giving Seller written notice, to (i) cancel this order in whole or in part, by written notice to Seller and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach, or (ii) obtain the goods ordered herein from another source with any excess cost resulting therefrom, chargeable to Seller, if such deficiencies are not remedied, the remedies herein provided shall be cumulative and in addition to any other remedies provided at law or in equity.
8. FORCE MAJEURE – Buyer shall not be liable to Seller for any loss incurred by Seller due to strikes, riots, storms, fires, explosions, acts of God, war, embargo, acts of terrorism, government boycott or other governmental action or any other causes similar thereto beyond the reasonable control Buyer. Any failure or delay in performance of any of the foregoing shall not be a default hereunder.
9. GOVERNMENT CONTRACTS – If it is indicated on the face hereof or Seller is otherwise informed that this order is placed, directly or indirectly, under a contract of the United States Government or any State or other governmental authority, then all terms and conditions required by law, regulation or by the Government Contract with respect to this order are incorporated herein by reference. To the extent that the terms and conditions of this order are inconsistent with any such required terms and conditions, then the required terms and conditions shall prevail and be binding on both Buyer and Seller. Seller agrees, upon request, to furnish Buyer with a certificate or certificates in such form as Buyer may require certifying that Seller is in compliance with all such terms and conditions as well as any applicable law or regulation. Upon request, Buyer will make available to Seller copies of all pertinent terms and conditions required by any such Government Contract.
10. EQUAL OPPORTUNITY – Executive Order No. 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules and regulations, including Title VII of the Civil Rights Act of 1964, are incorporated herein by this specific reference. In addition, all laws, rules and regulations applicable to the hiring of disabled veterans and veterans of the Vietnam era and to the hiring of individuals with physical or mental handicaps are incorporated herein by this specific reference.
11. PACKING AND SHIPPING REQUIREMENTS – Deliveries shall be made as specified without charge for boxing, crating, cartage, or storage unless otherwise specified, and articles must be suitably packed and consolidated to secure lowest transportation cost and shipped via Mountain Optech Specified Carrier. If Seller uses a carrier other than Mountain Optech Specified Carrier, Buyer reserves the right to deduct any amounts due to Buyer in excess of what would have been charged by the Specified Carrier. Articles shall be described on Bills of Lading in accordance with current Motor Freight or Uniform Freight Classification, whichever is applicable. Mountain Optech order numbers and symbols must be plainly marked on all invoices, packages, Bills of Lading and shipping orders. Packing lists must accompany each box or package shipment. Mountain Optech's count or weight shall be final and conclusive for shipments not accompanied by packing lists.
12. PAYMENT OF TRANSPORTATION CHARGES – Buyer must be notified prior to shipment if the specified carrier is changed and/or additional charges are applied. All charges not authorized prior to shipment will be debited against Seller's final invoice.
13. INDEMNIFICATION BY SELLER – Seller shall defend and indemnify Buyer, upon demand, against all claims, actions, liability, damage, loss and expense (including investigative expense and attorneys' fees incurred in litigation or because of threatened litigation) as a result of Buyer's purchase and/or use of the goods and arising or alleged to arise from patent, trademark or copyright infringement; unfair competition; the failure or alleged failure of the goods to comply with specifications or with any expense or implied warranties of Seller; the alleged violation by such goods or in its manufacture or sale of any statute, ordinance, or administrative order, rule or regulation; defects, whether latent or patent, in material or workmanship; defective design; defective warnings or instructions; or Seller's negligence.
14. GOVERNING LAW – The transaction reflected by this order shall be governed by and interpreted and construed in accordance with the laws of the State of Colorado, but not including the Colorado conflicts-of-law rules. Buyer and Seller agree that the courts of Boulder County, State of Colorado, shall possess exclusive jurisdiction over any actions to enforce or construe this agreement.
15. INSTALLATION – If this order covers the installation of Seller's products on Buyer's premises or on the premises of Buyer's customers, or other work on such premises, Seller shall indemnify, defend, and hold Buyer harmless from all demands, claims, suits, liabilities, damages, judgments, costs, and expenses, including attorney fees, with respect to any injury or death of any person, or property damage arising out of such work by Seller, its subcontractors, and the employees, agents, or representatives of any of them. Seller shall furnish to Buyer, on demand, an insurance carrier's certificate showing that Seller has worker's compensation, public liability, and property damage insurance with coverages and limits satisfactory to Buyer.
16. ASSIGNMENT – Seller may not delegate its duties nor assign its obligations without the prior written consent of Buyer.
17. BINDING EFFECT – The agreement evidenced by this purchase order shall be binding on and inure to the benefit of Buyer and Seller and their respective heirs, successors, or assigns.
18. MODIFICATION OF UNCONSCIONABLE CLAUSE – If any clause of this agreement is held to be unconscionable by any court of competent jurisdiction, the clause in question shall be modified the clause shall be binding on the parties. The remaining provisions of this agreement shall not be affected by the modification of any unconscionable clause. Unconscionable shall be deemed to mean that the enforcement of the entire agreement or a specified clause of the agreement will work oppression or cause unfair surprise to one of the parties. Unconscionability shall be determined as of the time when the Agreement is made, but shall not be deemed established either by the fact that the agreement subsequently proved disadvantageous to one of the parties or by the fact that one of the parties has bargaining power superior to that of the other.
19. CORRESPONDENCE – All confirming orders, invoices, sales acknowledgments and general correspondence must be directed to: Mountain Optech, Caller Box 3313, Livonia, MI 48151-3313
20. CONFIDENTIALITY – Seller acknowledges that, by reason of its relationship with Buyer, it may have access to certain information and materials concerning Buyer's business, plans, and products (including, but not limited to, information and materials contained in technical data provided to Seller, pricing information, customers, and shipping policies) which is confidential and of substantial value to Buyer, which value would be impaired if such information were disclosed to third parties. Seller shall not use in any way, for its own account or the account of any third party, nor disclose to any third party, any such confidential information which is disclosed to it by Buyer, without written authorization from Buyer. Each party will take every reasonable precaution to protect the confidentiality of such information consistent with the efforts exercised by it with respect to its own confidential information. Each party shall advise the other if it considers any particular information or materials to be confidential. This provision shall survive termination of this Agreement.
21. SETOFF – Payment of any claim under this order shall be subject to setoff or recoupment for any present or future claims which MOI or any of its affiliated companies, may have against Seller or any of its affiliates.