



General Terms and Conditions for MTS Concord Service Plan

1. GENERAL. All quotations or contracts furnished by MTS Systems Corporation ("MTS") or its subsidiaries or its authorized agents and related to the Services (defined herein) are conditioned upon Customer's acceptance of the terms and conditions set forth herein, together with those of any of the following documents (in order of precedence): (1) a mutually agreed upon contract, (2) a quotation, (3) these terms, and (4) purchase order issued by Customer (collectively, the "Agreement"). Any Customer purchase order, if accepted by MTS, is subject to the terms and conditions set forth herein. MTS hereby rejects the inclusion of any different or additional terms proposed by Customer. This Agreement constitutes the sole and entire agreement of the parties with respect to the performance of the Services, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

2. APPLICABILITY AND EXCLUSIONS.

2.1 The Services under this Agreement are specifically defined in the MTS quotation Statement of Work for this Agreement and may include calibration and verification services, preventive maintenance, repairs, training, consultation services, or other general services. The Agreement is subject to any ground rules and assumptions contained in the MTS quotation, including but not limited to the MTS Concord Service Plan - Entitlement Details. Customer must comply with the following requirements in order to remain eligible for the Services contained in the MTS Concord Service Plan provided in the MTS quotation for this Agreement:

a) Customer must have purchased the MTS Commissioned Machine within three (3) years prior to the effective date of this Agreement; however, a Customer that purchased the MTS Commissioned Machine within three (3) years prior to the effective date of this Agreement but did not purchase the MTS Concord Service Plan at the time of initial sale of the MTS Commissioned Machine may satisfy the requirements of this subparagraph (a) by completing a routine maintenance event performed by MTS prior to being eligible for entitlement. If MTS does not have any recommended repairs or upgrades for the Customer's MTS Commissioned Machine, such machine will qualify immediately upon completion of the routine maintenance event. If MTS recommends any repairs, the Customer must have such repairs completed by MTS; pay a ten percent (10%) catch up fee; and pay any outstanding back fees for maintenance contracts on the MTS Commissioned Machine;

- b) Customer must be within its existing MTS product warranty for the MTS Commissioned Machine, or the Customer will have thirty (30) days following expiration of the MTS product warranty to execute an agreement with MTS for the MTS Concord Service Plan. The requirements of subparagraph (a) above still apply, including but not limited to the ten percent (10%) catch up fee;
- c) When calibrations and routine maintenance specified under this Agreement are scheduled by the Customer and MTS, they must be completed during the same service call;
- d) When onsite operator training specified under the Agreement is scheduled by the Customer and MTS, they must be completed at the same time as the calibrations and routine maintenance noted in 2.1(c).

2.2 Customer will forfeit the Services warranty under this Agreement and the entitlements as specified in the MTS Concord Service Plan – Entitlement Details, if it does not have MTS perform all calibrations and routine maintenance as specified in the Agreement. At MTS' reasonable discretion, MTS reserves the right to cancel the Services specified under the Agreement in the event the Customer abuses any of the entitlements included in the Agreement, including but not limited to the MTS Concord Service Plan - Entitlement Details.

3. DEFINITIONS.

"Agreement" has the meaning set forth in the Section 1.

"Change Order" has the meaning set forth in Section 7.2.

"Confidential Information" means any information that is treated as confidential by a party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the disclosing party to maintain the confidentiality of such information.

"Customer Materials" are any documents, data, know-how, methodologies, software and other materials provided to MTS by Customer.

"Disclosing Party" means a party that discloses Confidential Information under this Agreement.

"Force Majeure Event" has the meaning set forth in Section 17.

"Intellectual Property Rights" means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"MTS Commissioned Machine" means MTS is the original equipment manufacturer for the Customer's equipment specified in an MTS quotation for service, and the Customer's equipment was purchased directly from MTS.

"Receiving Party" means a party that receives or acquires Confidential Information directly or indirectly under this Agreement.

"Services" mean the professional or other services to be provided by MTS under this Agreement, as described in more detail in the MTS quotation and Statement of Work therein applicable to this Agreement.

"Statement of Work" - The quotation applicable to this Agreement shall include and define the Statement of Work specifically describing the services to be provided by MTS and the scope of such Services.

"Term" has the meaning set forth in Section 8.

4. SERVICES.

4.1 MTS shall provide the Services to Customer as described in more detail in the Statement of Work in accordance with the terms and conditions of this Agreement.

5. MTS OBLIGATIONS.

5.1 MTS shall:

- (a) assign appropriate MTS personnel to serve as primary contact(s) with respect to this Agreement and who will have the authority to act on behalf of MTS in connection with matters pertaining to this Agreement and who shall be suitably skilled, experienced and qualified to perform the Services;
- (b) obtain and maintain, all necessary licenses and consents and comply with all relevant Laws applicable to the provision of the Services;
- (c) MTS service personnel assigned to this Agreement will comply with the applicable rules, regulations and the policies of Customer that are communicated to Service Provider in writing, including security procedures concerning systems and data, building security procedures, and general health and safety practices and procedures; and
- (d) use reasonable efforts to meet any performance dates specified in the MTS quote.

6. CUSTOMER'S OBLIGATIONS.

6.1 Customer shall:

- (a) cooperate with MTS in all matters relating to the Services;
- (b) provide access to Customer's premises for the purposes of performing the Services;
- (c) respond promptly to any MTS request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for MTS to perform the Services in accordance with the requirements of this Agreement;
- (d) provide such Customer Materials or information as MTS may request in order to carry out the Services, in a timely manner, and ensure that it is current, complete and accurate in all material respects;
- (e) ensure that all Customer Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements;
- (f) obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services in all cases before the date on which the Services are to start and throughout the term of this Agreement; and
- (g) keep, maintain and insure any MTS equipment is in good condition/in accordance with MTS instructions as notified from time to time.

6.2 If MTS's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, MTS shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer.

7. CHANGE ORDERS.

7.1 If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other in writing. MTS shall, within a reasonable time after such request, provide a written estimate to Customer of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the fees and other charges arising from the change;
- (c) the likely effect of the change on the Services; and
- (d) any other impact the change might have on the performance of this Agreement.

7.2 Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 18.

8. TERM. This Agreement shall commence as of the effective date of the Agreement and shall continue thereafter for the period of time specified in the Agreement unless sooner terminated pursuant to Section 16. The parties may renew the term of the Agreement by executing an amendment extending the term of the Agreement at any time prior to the expiration date; however, the total period of performance of the initial Term plus any extension(s) may not exceed a maximum of five (5) years from the original effective date of the Agreement.

9. FEES AND EXPENSES; PAYMENT TERMS.

9.1 In consideration of the provision of the Services by MTS and the rights granted to Customer under this Agreement, Customer shall pay MTS the Agreement price. All payments are NET 30 days upon receipt of invoice, unless otherwise mutually agreed in writing. Any applicable taxes shall be invoiced and payable by Customer, along with the Agreement price, unless MTS receives a tax exemption certificate from Customer. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, MTS income, revenues, gross receipts, personnel or real or personal property or other assets. In the event payments are not received by MTS within thirty (30) days after becoming due, MTS may (a) charge interest on any such unpaid amounts at a rate of one percent (1%) per month or, if lower, the maximum amount permitted under Law, from the date such payment was due until the date paid, and (b) suspend performance of all Services until payment has been made in full. In no event is Customer authorized to audit MTS' financial records or processes and documentation related to trade secrets.

10. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP.

10.1 As between MTS and Customer, all MTS Intellectual Property Rights related to the Services, except for any Confidential Information of Customer and Customer Materials, shall be owned by MTS. MTS hereby grants Customer a license to use all such rights on a non-exclusive, worldwide, royalty-free basis to the extent necessary to enable the Customer to make reasonable use of the Services.

10.2 All software or documentation offered for sale or lease and associated with the Services in this Agreement is an offer to grant a license to Customer and subject to MTS' End User Software License Agreement available upon request and located at: <http://www.mts.com/EULA>.

11. CONFIDENTIAL INFORMATION.

11.1 The Receiving Party agrees:

- (a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Agreement; and
- (b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement.

11.2 If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide:

- (a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and
- (b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which the Receiving Party is legally required to disclose.

12. REPRESENTATIONS AND WARRANTIES.

12.1 Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the Laws and regulations of its jurisdiction of incorporation, organization or chartering;
- (b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and

(d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

13. WARRANTY.

13.1 The Services are warranted to be in a workmanlike manner and shall extend for the time period specified in the Agreement. MTS' entire liability and Customer's exclusive remedy, whether in contract, tort or otherwise for any claim related to or arising out of the breach of warranty covering Services will be re-performance or credit, at MTS' option.

13.2 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, (A) MTS HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND (B) SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

14. INDEMNIFICATION.

14.1 MTS agrees to indemnify Customer for sums Customer becomes legally obligated to pay as damages for bodily injury or property damage cause by the negligence of MTS employees specifically in connection with the Services provided under this Agreement up to the sum of this Agreement's contract value. MTS further agrees to indemnify Customer for reasonable attorneys' fees it incurs defending itself against any suits seeking such damages. MTS shall have no obligation to indemnify Customer for any damages caused by Customer's fault or for any attorneys' fees incurred by Customer in defending itself against suits seeking damages caused by Customer's fault.

14.2 Customer shall indemnify MTS for sums MTS becomes legally obligated to pay as damages for bodily injury or property damage cause by the negligence of Customer employees or agents specifically in connection with this Agreement. Customer further agrees to indemnify MTS for reasonable attorneys' fees it incurs defending itself against any suits seeking such damages. Customer shall have no obligation to indemnify MTS for any damages caused by MTS's fault or for any attorneys' fees incurred by MTS in defending itself against suits seeking damages caused by MTS's fault.

14.3 The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the

defense and investigation of such action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this Section 14.3 shall not relieve the indemnifying party of its obligations under this 14.3 except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

15. LIMITATION OF LIABILITY.

15.1 EXCEPT AS OTHERWISE PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

16. TERMINATION.

16.1 Unless earlier terminated as provided below, this Agreement shall remain in effect for the Term specified in the Agreement. Without prejudice to any other remedies either party may have, this Agreement may be terminated by either party upon sixty (60) days written notice of a breach or default of a material obligation under the Agreement, provided however, that the breaching party shall have the opportunity to cure such breach within thirty (30) days following receipt of written notice. Customer shall be liable to pay MTS all termination liability costs incurred by MTS prior to the date of termination.

16.2 The rights and obligations of the parties as set forth in this Section 16, Sections 1, 9, 10, 11, 13, 14, 15, and 18 will survive any such termination or expiration of this Agreement.

17. FORCE MAJEURE.

17.1 No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire or explosion; (c) war, invasion, riot or other civil unrest; (d) actions, embargoes or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; (f) strikes, labor stoppages or slowdowns or other industrial disturbances; (g) compliance with any Law or governmental order, rule, regulation or direction, or any

action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; (h) shortage of adequate power or telecommunications or transportation facilities; or (i) any other event which is beyond the reasonable control of such party (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

18. MISCELLANEOUS.

18.1 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

18.2 In the event the Services are provided together with the purchase of MTS products, hardware, parts, components or equipment (collectively "MTS Hardware"), these General Terms and Conditions for MTS Concord Service Plan are incorporated into any agreement for the purchase of such MTS Hardware and serve to take priority over, supplement and supersede any conflicting terms related to the Services contained in the agreement for the purchase of MTS Hardware.

18.3 Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, that, upon prior written notice to the other party, either party may assign the Agreement to an affiliate of such party or to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18.4 This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or

be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18.5 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. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

18.6 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission] shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

19. EXPORT. Customer will not disclose, export, re-export, or divert any product supplied by MTS, any system incorporating such product, or any technical data, information, document or material, or direct products thereof, to any country or person to whom such disclosure, export, re-export or diversion is restricted by U.S. Law unless all necessary and appropriate authorization has been obtained from the U.S. government.