



# MTS Systems Corporation

## GENERAL TERMS & CONDITIONS



**1. GENERAL.** All quotations or contracts furnished by MTS Systems Corporation ("MTS") or its subsidiaries or its authorized agents 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, and (3) these terms (collectively, the "Agreement"). This Agreement constitutes the entire agreement of the parties and supersedes all other agreements and undertakings, whether written or oral, between the parties with respect to the subject matter of this Agreement. MTS hereby rejects the inclusion of any different or additional terms proposed by Customer.

**2. CHANGES.** Customer is obligated to pay for all changes and modifications beyond the original scope. All material changes and those changes affecting fit, form or function must be mutually agreed upon in writing. Customer is responsible for all reasonable costs and actual damages to MTS related to delays caused by Customer.

**3. TERMS OF PAYMENT.** Customer's obligation to pay on time is of the essence of these terms, and Customer will pay the invoiced amount without setoff or deduction. Amounts not paid will incur an interest charge of 1.5% per month or the highest allowable by law. Failure to pay full amounts will result in a revocation of any licenses or rights provided under the transaction. In no event is Customer authorized to audit MTS' financial records or processes and documentation related to trade secrets.

**4. DELIVERY TERMS.** Unless specifically stated otherwise, all deliveries hereunder shall be shipped by MTS from the manufacturing facility of its choice FCA Origin with title passing at origin for all domestic shipments and CIP Port for all international shipments (per Incoterms®2010) with title passing upon release to the first carrier.

**5. ORDER CANCELLATION.** If any order placed by Customer and accepted by MTS is canceled, Customer must pay reasonable cancellation charges which will include non-recoverable costs and commitments incurred by MTS from time of order placement until the date of written notice of cancellation.

**6. VERBAL ORDERS.** Verbal orders are accepted subject to the terms herein. Any discrepancies between MTS' understanding of the verbal order (which is expressed in an order acknowledgment document) and the Customer-issued order confirmation are the responsibility of the Customer and may subject Customer to appropriate order revision charges.

**7. SHIPPING DATES.** Shipping dates quoted represent a reasonable estimate of the time required for manufacturing at the time of order acceptance or quotation. These dates will not be construed as promises or contractual agreements to ship or deliver goods unless specifically agreed to in writing.

**8. DEFINITIONS.** (a) **Product** means any hardware, software, services and documentation purchased from MTS with any software or documentation included in Product supplied only under license. For purposes of this Agreement, the term "sale" or "purchase" will be understood to mean "license" whenever used in connection with such Software or documentation; (b) **"Services"** means work and performance by MTS for Customer as expressly defined in a related scope of work; (c) **"Software"** means computer or process or programs, applications, documentation and computer databases, including software or firmware embedded in hardware such as semiconductor chips; (d) **"Source Code Program"** means a computer program that is in a form that reveals the functional operation of the computer program to one skilled in the art.

**9. PRODUCT USAGE.** Customer warrants that the Product, including any resale or Customer-modified Product, will only be used for the specific purpose intended in the design of that said Product and said Product will not be used in any hazardous application or environment without first obtaining qualifying certification (UL, FM or equivalent) of said Product for that purpose.

**10. LIMITATION OF LIABILITY.** MTS' liability is limited to actual damages; in no event will MTS be liable for any special, incidental or consequential damages or losses or lost profit or lost opportunity incurred by Customer or any third party for any reason, including arising from delays in delivery, installation and/or use of the Product by Customer, regardless of the theory advanced. In no event shall MTS's liability under the Agreement exceed the purchase price of the Product.

**11. EXPORT.** Customer will not disclose, export, re-export, or divert any Product supplied by MTS, any system incorporating such Product, or any technical 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.

**12. FORCE MAJEURE.** Neither party shall be liable for any delay or failure to perform any of its obligations under this Agreement if and to the extent such delay or failure is due to circumstances beyond the reasonable control of such party, including but not limited to, fires, floods, explosions, accidents, acts of God, declared and undeclared wars or riots, strikes, lockouts or other concerted acts of workmen, acts of government, shortages of materials, inability to obtain export or import licenses, or any provision or requirement of the U.S. Export Administration Regulations or any government act, omission, regulation, license, order or rule.

**13. COMPLIANCE WITH AND GOVERNING LAW.** MTS and Customer agree to comply with all applicable laws and regulations. This Agreement shall be governed by the laws of the state or country of the MTS entity signing the order, except that its conflict of law rules will not apply.

**14. CUSTOMER DELAY/DEEMED ACCEPTANCE.** If scheduled factory acceptance testing is delayed thirty (30) days or more as a result of Customer's action or inaction, the Product shall be deemed to have passed factory acceptance testing and MTS shall ship the Product. If Customer uses the Product installed at its facility for other than acceptance testing prior to formal acceptance, Customer shall be deemed to have accepted the Product.

**15. PROPRIETARY DATA RIGHTS.** Neither party will disclose to any person or entity any information or data fixed in a tangible medium and marked as the confidential or proprietary information of the disclosing party or any information disclosed as a result of the parties' discussions, visually or orally, and that should reasonably have been understood by recipient, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to the disclosing party (collectively "Confidential Information"). Confidential Information will expressly include any and all information derived from the Confidential Information. The recipient shall treat Confidential Information as confidential and proprietary to the disclosing party and prohibit copying and use such Confidential Information only in connection with fulfilling its obligations under the Agreement. Customer will not use MTS Confidential Information to assist in creating or attempting to create by reverse engineering or otherwise, the Source Code Programs, hardware designs or manufacturing processes from Product provided or to make a new Product or system, or repair any Product or system

except as necessary to support the use of any Product supplied by MTS. The recipient will return all Confidential Information to the disclosing party upon disclosing party's written request. The parties' obligations will survive the termination, cancellation or final payment of any or all purchase orders. All drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, trade secrets, copyrights, mask works, source code, object code, patents, patent applications, know-how, computer and/or Software and all parts thereof, trademarks and all other information, technical or otherwise which was developed, made or supplied by or for MTS in the production of any Product or the performance of any Service sold, rendered or licensed hereunder, including any and all derivative works, will be and remain the sole property of MTS (or its licensors, if any) and MTS may use them for any purpose and for any other person or entity, including MTS. Customer will not reverse engineer any Products.

**16. MTS SOFTWARE LICENSE AGREEMENT.** All Software or documentation offered for sale or lease 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>.

**17. MTS LIMITED WARRANTIES:**

**17.1 MTS Product Limited Warranty.** Unless otherwise expressly agreed to in writing by MTS, MTS warrants Products of its manufacture to be free from defects in materials and workmanship for a period a twelve (12) months from date of shipment by MTS; or if MTS is responsible for installation, for a period of twelve (12) months from customer acceptance, but not to exceed eighteen (18) from date of shipment by MTS. Products are warranted only to the extent used under normal conditions that are equivalent to those as tested by MTS. MTS shall, at its option, repair or replace free of charge within the warranty period any Product supplied by MTS which proves to be defective in workmanship or materials. Consumables and normal wear and tear are not covered under warranty. MTS reserves the right to reject those claims for warranty where it is reasonably determined that failure is caused by Customer- or third party made- modifications, improper maintenance, misuse, misapplication, improper or incomplete qualification, abuse of the Product, damage due to factors which are beyond the control of MTS, damage caused by connections, interfacing or use in unforeseen or unintended environment. These conditions will render warranties null and void.

**17.2 Services Warranty.** Services are warranted to be in a workmanlike manner for a period of ninety (90) days after performance. 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.

**17.3 WARRANTY LIMITATION. THE MTS LIMITED WARRANTIES IN THE AGREEMENT ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NO WARRANTIES ARE EXPRESSED OR IMPLIED WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF.**

**17.4 Product Returns.** Prior to returning any Product to MTS, whether under warranty or otherwise, Customer must obtain a return authorization from MTS or the shipment may be refused. Shipping charges for returning any Product to MTS are the responsibility of Customer. If not covered by warranty, subsequent costs for inspection, shipping, expediting and placing returned Product into working condition will be charged to the Customer. Customer shall issue a purchase order to cover such non-warranty work. Products returned under warranty and found to be in good working order will be subject to charges for inspection, testing and return shipping costs. MTS will cover in-warranty repairs including outbound shipping charges via transportation of its choosing.

**18. GENERAL PRODUCT SAFETY STATEMENT.** MTS Products, to the best of its knowledge, comply with national and international safety standards in as much as they apply to materials and structural testing. Because of the wide range of applications which MTS Products are

used, and over which MTS has no control, additional protective devices and operating procedures may be necessary due to specific accident prevention regulations, safety regulations, further directives or locally valid regulations. The extent of MTS' delivery regarding protective devices is defined in the respective quotation. MTS is free of liability in this respect. MTS strongly recommends that the Customer conduct its own product safety risk assessments. At Customer's request, MTS will provide advice and quotations for additional safety devices such as protective shielding, warning signs and methods of restricting access to the Product.

**19. NATURE OF BREACH.** Liability for material breach under the terms set forth herein shall arise only after written notice is sent to the breaching party and cure of alleged breach is not initiated by breaching party within ten (10) business days of receipt of notice.

**20. SITE PREPARATION AND CONDITION FOR SERVICES.** If applicable, prior to the date specified in the quotation or statement of work for the performance of Service, Customer will (a) obtain and pay for all governmental or third party consents, permits, approvals, licenses and public and private easements necessary for MTS' unrestricted access to any site or location needed for performance of the Services and delivery of the Product, and (b) notify MTS in advance of any requirements including all local laws, regulations and/or ordinances to which MTS is or will be required to comply in the rendering of Services and in the supplying of Product hereunder. Customer shall be solely responsible for preparation of the site, at which MTS will perform the Services, to the specifications and in accordance with the time schedule stated in the quotation or statement of work. Customer warrants to MTS that each such site is in compliance with all applicable health and safety regulations and is free from all asbestos and hazardous contamination or pollutants.

**21. CUSTOMER'S DEFAULT.** MTS may, upon written notice to Customer, cancel any or all orders or agreements effective immediately if: (a) in MTS' opinion, Customer's financial condition deteriorates to be detrimental to MTS' interest hereunder; (b) Customer fails to perform any obligations under these terms and such failure is not remedied within fifteen (15) calendar days after notice has been given to Customer; (c) Customer fails to pay in accordance with any invoice payment terms; or (d) any change occurs in the direct or indirect ownership of Customer if, in MTS' opinion, such change may be detrimental to MTS' interest hereunder. Any cancellation pursuant to this Section will be in addition to and will not be exclusive of or prejudicial to any other rights or remedies at law or in equity available to MTS.

**22. INTELLECTUAL PROPERTY INFRINGEMENT.** If any MTS Product becomes the subject of a claim of infringement of any copyright or patent, MTS shall, at its option and expense, either: (a) modify it to make it non-infringing; (b) settle such claim by procuring for Customer the right to continue using the Product; or (c) defend Customer against such claim provided that the Customer gives MTS prompt written notice of all facts and circumstances necessary or desirable for a proper defense of the claim. MTS will not be responsible for any settlement made without its written consent

**23. ASSIGNMENT/WAIVER.** Either party may assign its rights and obligations under this Agreement with written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any such assignment or delegation without such consent shall be void. A waiver of any default hereunder or of any term or condition of this Agreement and order shall not be deemed to be a waiver of any other default or any other term or condition.

**24. SURVIVAL.** The following sections survive termination, cancellation or expiration of this and related agreements: 9, 10, 11, 13, 15, 16, 17, and 18.

**25. SEVERABILITY.** If any provision of this Agreement is declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby, unless the deletion of such provision or provisions results in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.