



GENERAL TERMS AND CONDITIONS
OUTSIDE U.S. CUSTOMER
Customer's delivery destination determines appropriate version of MTS terms

1. GENERAL. The following are the terms and conditions ("Terms") under which MTS Systems Corporation and its affiliates ("MTS") sell and license their Material and Services. All quotations issued by MTS to Buyer ("Buyer") are solely for Buyer's information and each quotation expires 30 days after the date of the quotation unless stated otherwise in the quotation. Notwithstanding the foregoing, if Buyer issues a Purchase Order or reviews, installs and/or uses the Materials and/or Services, Buyer agrees to be bound by these Terms regarding such Materials and Services. Any Purchase Order issued by Buyer is not binding on MTS until MTS issues, at its sole discretion, its written Order Acknowledgment or when MTS begins working to fill such Order after MTS' receipt of such Order. MTS' acceptance of any offer by Buyer is expressly made conditional upon Buyer's assent to these Terms. MTS hereby rejects the inclusion, in any contract that results with Buyer, of any verbal or written terms from Buyer's Purchase Order or other document that are different than or additional to these Terms and Buyer agrees that a binding contract of sale will result that includes only these Terms. MTS' Order Acknowledgment prevails in any conflict with Buyer's Order confirmation when Buyer issues verbal Purchase Orders or instructions to MTS. If these Terms are not acceptable to Buyer, MTS is unwilling to sell and/or license the Materials and/or provide the Services to Buyer. In such event, Buyer must not use or copy the Materials, Buyer must return Materials and any other related items promptly to MTS or to the person who provided them to Buyer, according to the applicable return policy and Buyer must cancel all Services. Any separate written contract between MTS and Buyer shall be deemed to have incorporated these Terms, unless different or additional terms are expressly agreed to by MTS in writing in such contract. No waiver by MTS will be binding on MTS unless it is signed by an officer of MTS.

2. DEFINITIONS. (a) **Material** means the Equipment and/or Software offered for sale or licensed to Buyer at the time of sale but does not include Services; (b) **Equipment** means all hardware of MTS design and manufacture or other manufacturer's equipment offered for sale by MTS to Buyer, including the hardware of computers, electronic controls, products, accessories, machines and systems, but does not include Software or Services; (c) **Software** means computer or processor programs and computer data bases, including software or firmware embedded in semiconductor chips, but does not include Equipment or Services; (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; (e) **Services** means training, telephone and warranty support provided by MTS to Buyer and any services specified in a written quotation issued by MTS for which Buyer has issued a Purchase Order and MTS has issued an Order Acknowledgment, but does not include Material; additional fees may apply to some Services; (f) **Order Acknowledgment** means a document issued by MTS acknowledging its receipt of a Purchase Order and MTS' agreement to supply the Material and/or Services stated therein under the terms stated therein, subject to these Terms; (g) **Purchase Order** means Buyer's document, of any format, including verbal, for the purchase of Material and/or Services, except for all printed terms contained thereon and all additional terms contained therein; (h) **Purchase or Sale** means license whenever used in connection with Software; (i) **Related Documentation** means the operating manuals, charts, tables, written descriptions and handbooks in any medium related to the Software.

3. TERMS OF PAYMENT. Buyer's obligation to pay on time is of the essence of these Terms. Buyer will pay for the purchase of Material and Services according to the terms stated in MTS' invoices and Buyer will pay the full invoiced amount, without setoff or deduction, within the time period stated on such invoice. Invoices for Material may be rendered as shipments are made. Invoices for Services may be rendered in accordance with an established milestone schedule or upon completion of any Services or part thereof. Buyer will pay a service charge on all amounts owed but not paid when due, at the rate of 18% per annum or the highest rate permitted by applicable law, whichever is lower, until paid in full. No discounts are allowed on invoices paid prior to the deadline specified in an invoice. Buyer will pay all invoices in the currency specified in the Order Acknowledgment or MTS' invoices or, when such documents do not specify a currency, Buyer will pay in the currency of the country in which the MTS facility is located which shipped the Material and/or performed the Services. If, in MTS' sole judgment, Buyer's financial condition does not justify continuation of the existing payment terms, MTS may, at its sole discretion, change such terms without notice. Title to all Software shall remain with MTS or its licensors. Until MTS receives payment in full for all amounts owed by Buyer to MTS, Buyer grants MTS a security interest in all Materials shipped for Buyer, on any property or tools of Buyer in MTS' possession and in any product that results from Buyer's alteration of the Material or from the combination of it with other goods, Buyer will not deface, destroy or obscure any identifying mark or packaging on or relating to the Material and Buyer will hold in trust for MTS all Material and altered Material and any proceeds from their sale. Buyer shall sign any instrument reasonably requested for MTS' protection and/or perfection of such security interest. When Buyer is delinquent in its payments to MTS, without prejudice to any other right or remedy available to MTS, Buyer's right to possession of the Material shall expire, Buyer grants MTS and its agents a license to inspect and recover possession of the Material wherever it is located, MTS may declare all amounts owed by Buyer to MTS to be due immediately, MTS may declare Buyer's default under these Terms as a default under any or

all other Purchase Orders, licenses and contracts between MTS and Buyer and cancel any or all such Purchase Orders, licenses and contracts and recover damages accordingly, MTS may suspend shipments to Buyer or cancel the Purchase Orders, licenses and contracts with Buyer, MTS may allocate payments from Buyer in any manner and MTS may recover payment from Buyer for the Material notwithstanding that title to the Material has not passed yet.

4. PRICES. In addition to the price for Material or Services, Buyer will obtain and pay all import and export licenses and permits, custom charges and duty fees, penalties, surcharges, taxes, excises, freight, insurance and other shipping expenses, unless stated otherwise by MTS in writing. The price of Services may be adjusted at any time and in MTS' sole discretion to reflect the impact of: (i) Buyer changes or delays which are outside the scope of Services; (ii) legal/regulatory changes which occur after the issuance of a quotation and/or statement of work for the particular Services; and, (iii) Buyer's failure to perform its obligations.

5. DELIVERY/INSPECTION/ACCEPTANCE/RETURNS. Unless specifically stated otherwise, all deliveries hereunder shall be shipped by MTS from the manufacturing facility of its choice and risk of loss, damage and insurance responsibilities for the Material pass from MTS to Buyer at MTS' shipping location according to the shipping term selected by MTS and title to the Equipment shall pass to Buyer on its acceptance thereof at Buyer's facilities unless otherwise specified in the Purchase Order. Shipment dates for Material and dates for performance of Services are good faith estimates by MTS but are not guaranteed by MTS. MTS is not liable for any liabilities, penalties, direct, indirect or liquidated damages, or charges of any nature during shipment or delivery of Material or due to the late performance of any shipment or Service date. MTS may deliver Material in installments and tender a separate invoice in respect of each installment, in which case each delivery shall constitute a separate contract. Buyer will be deemed to have accepted the Material and Services unless Buyer gives MTS written notice, within 30 days, or any longer period granted by applicable law, (the "Inspection Period") after the date that MTS made the Material or Services available to Buyer for inspection, that Material or Services fail to substantially conform to the Purchase Order, statement of work or quotation (as applicable). If any Service or delivered Material does not substantially conform to the applicable Purchase Order, statement of work or quotation (as applicable) Buyer must give MTS written notice of such nonconformance within the Inspection Period, including proof of purchase, and permit MTS or its representative to inspect such Material or workmanship within 30 days after MTS' receipt of Buyer's notice. Upon verification by MTS of such nonconformity, as Buyer's sole remedy, MTS, at its sole option, will either i) correct such failure, ii) replace such Material with conforming Material, iii) re-perform such Services, at no additional charge (if determined by MTS to be its fault) within a reasonable time, or iv) refund the purchase price Buyer paid for such Material or Service. MTS may require Buyer to ship the nonconforming Equipment to MTS or its representative for inspection, correction or replacement. If Buyer desires or is required by MTS to return the nonconforming Equipment to MTS or its representative, before Buyer may return any Equipment to MTS, Buyer must obtain a return material authorization ("RMA") from MTS and comply with the provisions of the RMA. MTS may refuse delivery of any Equipment returned by Buyer unless such RMA has been issued and provided that Buyer complies with the provisions of the RMA. Buyer will pay all shipping charges for returning any Equipment to MTS. MTS may charge Buyer certain fees for Material returned to MTS including, but not limited to, replacement of packing materials and shipment thereof to Buyer if Buyer no longer has the original packing materials. Any Material returned to MTS without proper authorization will be returned to Buyer at Buyer's risk and expense. **BUYER MAY RETURN MATERIAL TO MTS ONLY AS PROVIDED IN THIS SECTION.** Where Buyer refuses delivery or requests MTS to suspend, delay or deliver in installments or the delivery of the Material is delayed for any reason beyond MTS' control and MTS gives Buyer notice that the Material is ready to be delivered, MTS may treat the contract or contracts as fulfilled by notifying Buyer accordingly and (a) if the Material is in MTS' possession, it may, at Buyer's expense, store them and, if requested by Buyer or at MTS' own discretion, may insure the Material, endorsing MTS' interest on such policy and (b) from the date of sending the notice to Buyer, the risk of loss or damage to the Material passes to Buyer and Buyer's obligation to pay the price arises and MTS may issue its invoices payable under these Terms.

6. MODIFICATIONS OF PURCHASE ORDERS. Buyer may not cancel or change any Purchase Order without MTS' written consent. MTS may suspend performance under or cancel a Purchase Order when it must do so to comply with applicable law, Buyer's creditworthiness has deteriorated or a competitor of MTS acquires Buyer's assets or shares or merges or enters into a joint venture with Buyer. Buyer will pay MTS, at MTS' then-current standard rates, the amount of the increase in price for Material and/or Services regarding any revision requested by Buyer in drawings, designs, specifications, Material, Service, shipment or completion dates or for any partial or complete termination or cancellation of a Purchase Order.

7. DISPUTE RESOLUTION. Any questions, claims, disputes or litigation arising from or related to the making, performance or alleged breach of these Terms, or to any available

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remedies (a "Dispute"), must be resolved as follows: (i) upon written notice of Dispute (the "Notice"), by in-person negotiation between business representatives of the parties who have authority to fully resolve the Dispute; (ii) if, within 60 days after the date of such Notice, the Dispute has not been fully resolved, the parties must participate in binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce and such arbitration shall be conducted by one arbitrator appointed in accordance with such Rules. The arbitration proceedings shall be held in the city of the party that did not initiate the arbitration and shall be conducted in the English language. A party may participate by telephone or videoconference in any arbitration proceeding. The arbitrator will resolve the Dispute within 30 calendar days after selection. The losing party will bear its own costs and expenses of such arbitration and the fees and expenses of the arbitrator. The arbitrator will award to the prevailing party, if any, its reasonable attorney fees and expenses incurred in connection with the Dispute and its resolution, in addition to any other damages, however, the arbitrator may not assess punitive, exemplary or damages beyond the scope of these Terms. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction. Nothing will preclude either party from seeking whatever equitable relief it deems necessary to prevent immediate, irreparable harm to its interests. If any Dispute arises prior to shipment of Material or performance of Services by MTS, MTS may suspend its performance hereunder without penalty until the Dispute is resolved. Upon such resolution, the parties shall proceed diligently with performance.

8. **CHANGES.** MTS, at its sole discretion, may make changes in design and manufacture in any Material and/or Service included in an MTS proposal or related separate contract without incurring any obligation to install such change upon units manufactured for, or delivered to, the Buyer prior to such design change and MTS may discontinue the production and/or offering of any Material and/or Services at any time.

9. **AUDIT RIGHTS.** MTS does not grant audit rights regarding firm-fixed price proposals or contracts. For cost-reimbursement contracts or if Buyer cancels the contract to which these Terms relate, Buyer's audit rights are limited exclusively to data directly in support of the MTS cost-reimbursement proposal or contract termination claim. Any copies of MTS books, records, documents or working papers prepared by Buyer's auditors or other employees shall be inscribed with a "Confidential Information" legend; shall be restricted for access and use only by Buyer's organizational function responsible for requesting the audit; and shall be considered MTS Confidential Information under these Terms.

10. **DAMAGES.** MTS WILL NOT BE LIABLE FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY RESULTING FROM ANY CAUSE WHATSOEVER, WITH THE EXCEPTION OF BODILY INJURIES, DEATH OR DAMAGE TO TANGIBLE PROPERTY TO THE EXTENT DIRECTLY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF MTS, ITS EMPLOYEES, REPRESENTATIVES OR VICARIOUS AGENTS. IN NO EVENT SHALL MTS, ITS EMPLOYEES, REPRESENTATIVES AND VICARIOUS AGENTS BE LIABLE FOR ANY DAMAGES FOR OR RESULTING FROM LOSS OF OR DAMAGE TO DATA, LOSS OF USE, LOSS OF REVENUE, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS AND MTS FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, COLLATERAL OR OTHER SIMILAR DAMAGES REGARDLESS OF THE THEORY OF RECOVERY WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, RESTITUTION, RELIANCE, FAULT UPON CONTRACTING OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF MTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. IF ANY REMEDY HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE, OR IN ANY OTHER EVENT, MTS' TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED \$100,000.00. THIS LIMITATION APPLIES TO ALL MATERIAL AND SERVICES DURING AND AFTER THE APPLICABLE WARRANTY PERIOD. MTS IS WILLING TO SELL AND LICENSE THE MATERIAL AND SERVICES TO BUYER ONLY IN RELIANCE UPON THESE LIMITATIONS. BUYER ACKNOWLEDGES THAT THESE LIMITATIONS CONSTITUTE AN ESSENTIAL PART OF THE BARGAIN UNDERLYING THESE TERMS AND HAVE BEEN REFLECTED IN THE PRICES, FEES AND OTHER CONSIDERATION SPECIFIED IN THESE TERMS AND MTS' PROPOSALS, QUOTATIONS AND OFFERS.

11. **EXPORT.** Buyer and its agents and employees shall comply in all respects with all applicable laws, regulations and interpretations thereof in connection with Buyer's performance under these Terms. This includes, but is not limited to, compliance with all U.S. requirements involving restricted parties and compliance with all U.S. export/re-export control laws and regulations, including compliance with all requirements for export licenses for products, technical data, and product service, compliance with the anti-boycott regulations, and compliance with the Foreign Corrupt Practices Act. Also included are export/re-export restrictions on the sale or transfer of Material or technical data where Buyer has any knowledge or reason to know that the Material or technical data will be used, directly or indirectly, for nuclear proliferation, chemical weapons, biological weapons, or missile technology. Buyer will not disclose, import, export, re-export, or divert any Material supplied by MTS, any system incorporating such Material, 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. Buyer specifically will comply with U.S. export/re-export control regulations which may prohibit the unrestricted transfer of non-public technical data to a person of nationality other than U.S. Buyer's obligations shall survive the termination of any contract that includes these Terms. MTS may suspend performance under the Terms or terminate the related separate contract if Buyer has breached the provisions of this Section or if MTS reasonably believes in good faith that Buyer is not proceeding in compliance with this Section.

12. **UNCONTROLLABLE EVENTS.** Nothing will excuse Buyer from its obligation to pay as required by these Terms. To the extent that MTS determines that a shortage of materials exists in order for it to perform under these Terms, MTS may allocate such materials and the supply of Material and provision of Services among itself and its customers as it deems to be appropriate.

13. **GOVERNING LAW.** The contract that includes these Terms shall be deemed to have been made in the jurisdiction of the principal office of the MTS affiliate that is the seller under these Terms, and shall be construed, interpreted and applied in accordance with the internal laws of that jurisdiction, except that its conflict of law rules shall not apply and except to the extent that such jurisdiction permits the parties to waive various rights and obligations available under its law by agreeing to these specific Terms, in which case these Terms will prevail. The rights and obligations of the parties under these Terms shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods. The parties acknowledge and intend that these Terms are not enforceable under any law by any third party beneficiary.

14. **MTS CONFIDENTIAL INFORMATION AND PROPRIETARY DATA RIGHTS.** Buyer will not disclose to any person or entity any information or data fixed in a tangible medium and marked as the confidential or proprietary information of MTS, or any information disclosed as a result of the parties' discussions, and that should reasonably have been understood by Buyer, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to MTS (hereinafter collectively referred to as "Confidential Information"). Confidential Information may be disclosed in written or other tangible form (including on magnetic media) or by oral, visual or other means. Confidential Information shall expressly include any and all information derived from the Confidential Information, including residual mental impressions of such information. Buyer shall treat such Confidential Information as confidential and proprietary to MTS, prohibit copying and use such Confidential Information only in connection with fulfilling its obligations under these Terms. Buyer 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 Material provided or to make a new product or system, or repair any product or system except as necessary to support the use of any Material supplied by MTS. Buyer will return all Confidential Information to MTS upon completion of such obligations for its use, or upon MTS' request. Buyer's 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 Material 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. Buyer will not reverse engineer any Materials.

15. **PATENT/COPYRIGHT INDEMNITY.** A. If any Material bearing the MTS name, in MTS' opinion, becomes the subject of a claim of infringement of any valid copyright or patent, MTS shall, at its option and expense, either: (i) modify it to make it non-infringing; (ii) settle such claim by procuring for Buyer the right to continue using the Material; or (iii) defend Buyer against such claim. If MTS elects to defend Buyer against such claim, MTS will pay Buyer for any damages actually incurred which are awarded by a court of final jurisdiction, provided Buyer gives MTS prompt written notice of all facts and circumstances necessary or desirable for a proper defense of the claim, MTS is given sole control over the defense of such claim, and Buyer cooperates fully with MTS in the defense of such claim. MTS shall not be responsible for any settlement made without MTS' written consent.

B. If, in MTS' opinion, none of the foregoing alternatives are reasonably available to MTS, then MTS may discontinue the sale or license of the Material. If MTS elects to discontinue the sale or license of the Material, Buyer may receive a prorated refund of the amount that it paid for the Material based on an established prorated period of 5 years from the date that MTS shipped the Material to Buyer, provided that Buyer returns the Material, including any associated media, any printed material, and any "online" or electronic documentation, to MTS.

C. MTS shall have no liability for any claim of patent or copyright infringement based upon: (i) use of the Material in a manner other than for which it was intended; (ii) any infringement, or alleged infringement, of any patent or copyright issued by any country other than a country in

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which MTS has obtained patent or copyright protection; (iii) modifications or changes made to the Material which are not authorized by MTS; (iv) operation of the Material in combination with other products selected by Buyer; (v) MTS' compliance with Buyer's designated designs, material usage or specification furnished by Buyer; (vi) Buyer's use of the Material after notification by MTS to discontinue use of such Material; or (vii) Buyer's use of Material that is not the current version or revision of the Material. In the case of (iii), (iv), (v), (vi) or (vii) above, Buyer shall defend, indemnify and hold MTS harmless against any claim of infringement of any copyright or patent.

D. THE FOREGOING STATES THE FULL LIABILITY OF MTS ARISING OUT OF OR RELATED TO INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT.

16. MTS WARRANTIES.

16.1 MTS Equipment Warranty. MTS warrants from the date of its initial shipment from its facility, that Equipment will substantially conform to MTS' specifications in effect as of the date of MTS' Order Acknowledgment and will be free from defects in materials and workmanship under normal use, given proper installation and maintenance, for the period of time and under the terms and conditions as more particularly set forth in MTS' Equipment warranty document in effect on the date of MTS' Order Acknowledgment. Notwithstanding the foregoing, any productive use of Equipment by Buyer, prior to acceptance, shall commence the warranty period. MTS' entire liability and Buyer's exclusive remedy, whether in contract, tort or otherwise, for any claim related to or arising out of breach of the warranty covering Equipment shall be repair or replacement, at MTS' option. MTS may require Buyer to ship the Equipment to MTS or its representative for inspection, and in such case, Buyer will obtain an RMA pursuant to the RMA process described elsewhere in these Terms. Buyer will issue a Purchase Order and pay MTS for the cost of inspection, testing, shipping, expediting and placing returned Equipment into working condition if such Equipment is not covered by this warranty. MTS will pay cost of shipping repaired or replacement Equipment that is covered by this warranty, via ground transportation of MTS' selection. Buyer will pay MTS for reasonable travel expenses, living expenses, travel time and labor when Buyer requests MTS to perform warranty work on Buyer's premises. Refurbished Equipment may be used to repair or replace the Equipment. Buyer will have no claim to Equipment that was replaced or to the components therein which were replaced. Merely the balance of the original warranty period will apply to any Equipment repaired or replaced under a valid warranty claim. Expendable items (e.g. oil, lamps, seals, filters, printer ribbons) and items subject to normal wear and/or replacement are not covered under this warranty if their failure is the result of normal wear and tear.

16.2 MTS Services Warranty. MTS warrants to Buyer for a period of 90 days after the performance of Services that all Services performed by MTS for Buyer will be performed in a workmanlike manner. MTS' entire liability and Buyer's exclusive remedy, whether in contract, tort or otherwise, for any claim related to or arising out of breach of the warranty covering Services shall be re-performance or credit, at MTS' option.

16.3 Termination of Warranties. The warranties relating to Material covered hereby do not cover defects resulting from: (a) software or hardware interfacing supplied by any person other than MTS; (b) operation outside of the environmental or any other specification for the Material; (c) improper site preparation or site maintenance by any person other than MTS; (d) the relocation, movement or removal from the exact position in which it was initially installed, modification, repair, installation, operation or maintenance, including attempts to do any of the above, by any person other than MTS, except as authorized in writing in advance by MTS or as described in MTS' documentation or instructions or (in the absence of such instructions) as is customary under good trade practice, or if performed by MTS personnel, a MTS certified technician, a subcontractor selected by MTS or at the specific direction of MTS personnel, a MTS certified technician or subcontractor selected by MTS; (e) negligent, abusive or other improper use of the Material; (f) causes external to the Material such as excess, inadequate or interrupted power, including, but not limited to, electrical, mechanical or hydraulic or failure, neglect, water, fire, normal wear and tear, accident, failure to follow supplied user instructions or misapplication of the Material; (g) any virus, worm or Trojan horse; (h) Buyer's further use of the Material or the result of the Services after Buyer gives MTS notice of the alleged breach of the applicable warranty granted under these Terms; (i) to the extent permitted by applicable law, any latent defects in the Materials, to the extent that MTS was not aware of them; (j) calibration or minor maintenance of any Material; or (k) events beyond MTS' control.

16.4 Notice of Warranty Claim. MTS will not be liable for any warranty claim regarding the Material or Services unless Buyer notifies MTS of any claimed defect in any Material or Service within the earlier to occur of 30 days after Buyer's discovery of the defect or 30 days after the expiration of the applicable warranty period and MTS has received the allegedly defective Material or has been permitted to inspect such Material or workmanship within 30 days after MTS' receipt of Buyer's claim. MTS or its representative may inspect the Equipment or workmanship on Buyer's premises.

16.5 Exclusion of Warranties. MTS does not warrant that the operation of the Material or any media on which any Software is contained will be uninterrupted or error-free, that the functions of the Material will meet Buyer's requirements or that the Material or media will operate in combination with other products selected by Buyer for its use. Not all errors in the Software or its media can be corrected or need correction, nor does MTS warrant that all defects in the Software or its media will be corrected. MTS has no control over the conditions under which Buyer uses the Software or media and does not and cannot warrant the results obtained by such use. MTS is not responsible for problems caused by changes in or modifications to the operating characteristics of any computer or operating systems for which the Software is procured by Buyer, nor is MTS responsible for problems which occur as a result of the use of Software in conjunction with any software supplied by any person other than MTS or with a computer which is incompatible with the operating system for which the Software is being procured by Buyer. MTS assumes no liability for equipment, software or services furnished by any person other than MTS nor do these warranties cover any copy of or update to any user manual for the Material nor any supplement or update to the Software, including, but not limited to, any service pack or hot fix supplied by MTS to Buyer regarding the Software after the expiration of the applicable warranty period. No agent, distributor, or representative is authorized to make any warranties on behalf of MTS or to assume for MTS any other liability in connection with any Material or Services. **THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, AND NO WARRANTIES ARE EXPRESSED OR IMPLIED WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF.**

16.6 Exclusive Remedies. THE EXCLUSIVE REMEDIES DESCRIBED IN THESE TERMS WILL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE SO LONG AS MTS IS WILLING AND ABLE TO REPAIR, REPLACE OR REFUND THE PURCHASE PRICE OF WARRANTED MATERIAL AND SERVICES AS PROVIDED HEREIN.

17. LANGUAGE. The English language shall be the governing language for these Terms. All data and documentation furnished in accordance with these Terms shall be in the English language.

18. SITE PREPARATION AND CONDITION FOR SERVICES. Prior to the date specified in the quotation or statement of work for the performance of Service, Buyer 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 Material, and (b) notify MTS in advance of any requirements including all local laws, regulations, ordinances and the like to which MTS is or will be required to comply in the rendering of Services and in the supplying of Materials hereunder. Buyer will 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. Buyer warrants to MTS that each such site is in compliance with all applicable health and safety regulations and is free from all friable asbestos and hazardous contamination or pollutants.

19. BUYER'S DEFAULT. MTS may, upon written notice to Buyer, cancel any or all Purchase Orders effective immediately if: (i) in MTS' opinion, Buyer's financial condition deteriorates to be detrimental to MTS' interest hereunder; (ii) Buyer fails to perform any obligations under these Terms and such failure is not remedied within 15 calendar days after notice has been given Buyer; (iii) Buyer fails to pay for any Purchase Order in accordance with the invoice payment terms; or (iv) any change occurs in the direct or indirect ownership of Buyer 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.

20. ASSIGNMENT. (i) MTS may assign its rights and obligations in whole or in part by giving Buyer written notice thereof but without being obligated to obtain Buyer's consent prior thereto. If MTS so assigns, MTS shall be discharged of any liability pursuant to those Purchase Orders that have been assigned or delegated. Buyer may not assign its rights nor delegate its obligations under any or all of its Purchase Orders unless MTS' written consent is obtained prior thereto and any such assignment or delegation without such consent shall be void. (ii) As it relates to leasing arrangements, notwithstanding anything contained in this provision to the contrary, no later than fifteen (15) calendar days after shipment of Material, Buyer may notify MTS in writing of its designation of a leasing company to finance any Material through a conventional equipment financing lease. In connection therewith, MTS, Buyer and the leasing company must sign an assignment agreement in MTS' usual form. If the foregoing notice is not received by MTS within such period, or such assignment agreement is not executed within fifteen (15) calendar days after such Buyer's notice, then Buyer shall pay the purchase price and all applicable taxes on the due date stated in the original invoice.