

## **SALES, FREIGHT, AND WARRANTY TERMS AND CONDITIONS**

**Sales Tax.** MSCO is required to charge applicable state and local tax on every item for which sales tax exemption certification has not been provided. When ordering please indicate clearly which items are tax exempt.

**Payment Terms.** For customers with established credit, terms are net thirty (30) days from date of shipment. If credit is not established, please include payment with order or purchase through Visa, MasterCard, or American Express. Cash or anticipation discounts are not allowed. All payments must be in U.S. dollars. MSCO shall have the right of set-off and deduction for any sums owed. If customer fails to make payment within thirty (30) days, MSCO may defer shipments until such payment is made, or may, at its option, cancel all or any part of unshipped order.

**Credit Balance.** Customer agrees that any credit balances issued will be applied within one (1) year of its issuance. IF NOT APPLIED OR REQUESTED WITHIN ONE (1) YEAR, ANY BALANCE REMAINING WILL BE SUBJECT TO CANCELLATION, AND MSCO SHALL HAVE NO FURTHER LIABILITY.

### **FREIGHT POLICY**

**Shipping Charges.** Unless otherwise stated, freight and shipping fees will be charged for shipments to a Customer's place of business anywhere in the contiguous United States, using a carrier of our choice. Other terms apply to Alaska, Hawaii, Puerto Rico, and export orders. Contact your local branch for further information. Any extra charges incurred for additional services, such as customer's carrier, must be paid by the customer. Items backordered from an order qualifying for prepaid shipping charges will be shipped prepaid. Title and risk of loss pass to customer upon tender of the shipment to the common carrier. If product is damaged in transit, customer must file claim with the carrier.

### **MSCO LIMITED WARRANTY**

**WARRANTY DISCLAIMER.** NO WARRANTY OR AFFIRMATION OF FACT, EXPRESS OR IMPLIED IS MADE OR AUTHORIZED BY MSCO. MSCO DISCLAIMS ANY LIABILITY FOR PRODUCT DEFECT CLAIMS THAT ARE DUE TO PRODUCT MISUSE, IMPROPER PRODUCT SELECTION OR MISAPPLICATION; ANY DESCRIPTION DOES NOT EXPRESS OR IMPLY A WARRANTY THAT THE PRODUCTS ARE MERCHANTABILITY OR FIT FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT MSCO IS NOT THE MANUFACTURER OF THE PRODUCTS. TO THE EXTENT LEGALLY POSSIBLE MSCO TRANSFERS THE MANUFACTURER'S WARRANTY TO THE CUSTOMER.

**LIMITATION OF LIABILITY.** ANY LIABILITY FOR CONSEQUENTIAL AND INCIDENTAL DAMAGES IS EXPRESSLY DISCLAIMED. MSCO'S LIABILITY IN ALL EVENTS IS LIMITED TO, AND SHALL NOT EXCEED, THE PURCHASE PRICE PAID TO MSCO.

**Prompt Disposition.** MSCO will make a good faith effort for prompt correction or other adjustment with respect to any product, which proves to be defective within warranty

period. Before returning any product, write or call the MSCO branch from which the product was purchased, giving date and number of original invoice, and describing defect. Returns must be authorized, in writing, by MSCO.

#### **ADDITIONAL TERMS**

**Force Majeure.** MSCO shall not be liable for any delay in or impairment of performance resulting in whole or in part from acts of God, labor disruptions, shortages, inability to procure product, supplies or raw materials, severe weather conditions, or any other circumstances or cause beyond the control of MSCO in the conduct of its business.

**Cancellation.** Any cancellation must be approved by MSCO in writing, and may be subject to restocking and other charges.

**Assignment.** Customer shall not assign any order or any interest therein without the prior written consent of MSCO. Any actual or attempted assignment without MSCO's prior written consent shall entitle MSCO to cancel such order upon notice to customer.

**Electronic Data Interchange.** If MSCO and customer have mutually agreed to use an Electronic Data Interchange (EDI) system to facilitate purchase and sale transactions, customer agrees: that it will not contest (i) any contract of sale resulting from an EDI transaction under the provisions of any law relating to whether agreements must be in writing or signed by the party to be bound thereby; or (ii) the admissibility of copies of EDI records under the business records exception to the hearsay rule, the best evidence rule or any other similar rule, on the basis that such records were not originated or maintained in documentary form. MSCO and customer will negotiate and agree on technical standards and methods to use in making EDI purchases, and will use proper security procedures to protect EDI records from improper access. The business records maintained by MSCO regarding EDI purchases made by customer shall be controlling.

**Modification of Terms.** MSCO's acceptance of any order is subject to customers' assent to all of the terms and conditions set forth in MSCO's acknowledgement, and customer's assent to these terms and conditions shall be presumed from customer's receipt of MSCO's acknowledgement, or from customer's acceptance of all or any part of the goods or services ordered. No addition or modification of terms and conditions shall be binding upon MSCO unless agreed to by MSCO in writing. If a purchase order or other correspondence contains terms or conditions contrary to the terms and conditions contained in MSCO's acknowledgement, MSCO's acceptance of any order shall not be construed as assent to any additional terms and conditions, nor will that constitute a waiver by MSCO of any of the terms and conditions contained in MSCO's acknowledgement

**Complete Agreement.** The terms and conditions in MSCO's forms, acknowledgements, quotations, invoices and catalog sales terms and conditions are incorporated hereto by reference and constitute the entire and exclusive agreement between customer and MSCO.

**Materials of Trade.** Customer represents that it is purchasing goods as its “materials of trade” as defined in the Hazardous Materials Regulations in Title 49 of the Code of Federal Regulations. It further represents that the goods shall be used in direct support of its business, which is not transportation, and that such goods shall not be resold or transported in a vehicle other than one owned by itself.

**Waiver, Choice of Law and Venue.** The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition will not constitute a waiver of that right or excuse any subsequent nonperformance of any such term or condition by the other party. All transactions shall be governed by the laws of the State of Alabama. Customer hereby agrees that jurisdiction of any claims arising out of a transaction with MSCO shall be in the Circuit Court of Colbert County, Alabama or the United States District Court in Alabama Northwest District. Customer waives any defense based on inappropriate venue or forum non convenien.

**No Third Party Benefit.** The provisions stated above are for the sole benefit of the parties hereto, confer no rights, benefits or claims upon any person or entity not a party hereto.

**OSHA Hazardous Substance & Alabama Proposition 65 Product Information.** Material Safety Data Sheets (MSDS) for OSHA defined hazardous substances and a list of products known by the state of Alabama to cause cancer or reproductive harm are available at your local MSCO branch, or by contacting MSCO, 200 Appleton Avenue, Sheffield, AL 35660 U.S.A. The information and recommendations contained on the MSDS supplied by the manufacturer is considered to be accurate and reliable. MSCO, however, makes no warranty with respect to the accuracy of the information or the suitability of the recommendations. MSCO disclaims any and all liability to any user.