

**MOTION INDUSTRIES, INC.**  
**STANDARD TERMS AND CONDITIONS FOR PURCHASES**  
*Revised 6/27/2018*

**1. TERMS AND CONDITIONS/ACCEPTANCE:** These terms and conditions control Motion Industries, Inc.'s (hereinafter "Motion") purchases of goods and services from any supplier, distributor, manufacturer, or retailer (hereinafter "Supplier"). In the event of any conflict between the terms and provisions or any purchase order (hereinafter "Order"), invoice, or any other contracts, exhibits, representations or agreements (whether written or oral), the terms set forth herein shall control. These terms and conditions may not be waived or modified except as specifically set forth in writing by Motion. By accepting any Order from Motion, Supplier acknowledges these terms and conditions and agrees that they are incorporated by reference into any Order, and Supplier agrees to comply with all the terms and conditions set forth herein. Supplier also acknowledges that these terms and conditions shall apply to all of Motion's divisions and subsidiaries.

**2. PRICING:** Supplier shall furnish the goods or services in strict accordance with the price and delivery schedule stated in the Order. TIME IS OF THE ESSENCE with respect to all of Supplier's performance hereunder. Unless otherwise stated, prices on invoices include all charges for inspection and packaging. Prices shall remain fixed from the time of the acceptance of the Order through the completion of each Order.

**3. PAYMENT:** Supplier shall issue invoices only after delivery of the goods and/or completion of the services ordered by Motion in the Order. Invoices shall include the Order number, part numbers, the Motion facility in question, description of the goods or services, quantities, unit price, applicable taxes, and extended totals. Supplier shall clearly indicate on all invoices any line-item charges for applicable federal, state and municipal sales taxes or any other taxes appropriate for the transaction at issue.

Supplier agrees to invoice Motion no later than one hundred eighty (180) days after shipment of goods or performance of the services set forth in the Order. Motion will not be obligated to make payment against any invoices submitted after such period. Motion may reject any invoice for noncompliance with any of the provisions of this paragraph. Motion shall issue payment within ninety (90) days after its receipt of a correct and conforming invoice (which includes all supporting documentation). Payment is deemed made when Motion's check is mailed or Motion's EDI funds transfer is initiated. If for any reason Motion had made payment for goods or services that were subsequently rejected, such payment shall be refunded by Supplier within ten (10) days after Motion's request therefore or, at Motion's option, said payment shall be deducted from any other or subsequent payments due or to become due to Supplier.

**4. SET-OFF; RECOUPMENT:** Motion shall have the right at any time to set off from any invoice any amount owed by Supplier to Motion.

**5. WARRANTY:** IN ADDITION TO ANY WARRANTY IMPLIED BY LAW, SUPPLIER WARRANTS FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF ACCEPTANCE OF THE GOODS BY MOTION THAT: (A) ALL GOODS OR SERVICES PROVIDED HEREUNDER ARE NEW, OF THE GRADE AND QUALITY SPECIFIED, FREE FROM DEFECTS IN DESIGN, MATERIAL AND WORKMANSHIP AND ARE OF A QUALITY OF WORKMANSHIP; (B) SUPPLIER HAS GOOD AND MARKETABLE TITLE TO THE GOODS AND SERVICES AND HAS CONVEYED SUCH TITLE TO MOTION FREE FROM ANY ENCUMBRANCES, LIENS, SECURITY

INTERESTS OR OTHER DEFECTS IN TITLE; (C) THE GOODS OR SERVICES PURCHASED HEREUNDER CONFORM TO APPLICABLE SPECIFICATIONS, DRAWINGS, SAMPLES AND OTHER DESCRIPTIONS, IF ANY, REFERENCED HEREIN; AND (D) THE GOODS OR SERVICES PURCHASED HEREUNDER ARE MERCHANTABLE AND SUITABLE FOR THE PURPOSES INTENDED. All warranties set forth herein shall survive any inspection, delivery, acceptance, payment, expiration or early termination of an Order, and such warranties shall run to Motion, its successors, assigns, customers and any end users of the goods. Any goods repaired or replaced and services re-performed shall be warranted for the remaining period of the one (1) year term, or six (6) months, whichever is longer.

In the event of a breach of any warranty set forth above for goods or services provided under any Order, Supplier agrees to repair or replace at its own expense all said goods or services. Payment for and inspection, tests, acceptance or use of the goods furnished hereunder shall not affect Supplier's warranty obligations, and such warranties shall survive inspection, tests, acceptance and use.

**6. REMEDIES/NON-WAIVER:** Motion's remedies provided herein are cumulative and in addition to any other or further remedies provided by law or in equity. Any waiver by Motion of Supplier's breach of an Order or any term or condition set forth herein must be in writing and shall not operate or be construed as a waiver by Motion of any subsequent breach by Supplier. Any delay or omission in exercising any right, power or remedy pursuant to a breach or default by Motion shall not impair any right, power or remedy that Motion may have with respect to that or any other future breach or default.

**7. FORCE MAJEURE:** Motion shall not be responsible for any delay in its acceptance of the goods or services or for any loss or damage which is incurred or suffered by Supplier in relation to any Order as a result of a strike, lockout or other industrial disturbance, act of public enemies, any government action, any civil or military action, insurrection, riot, landslide, hurricane, drought, fire, earthquake, explosion, flood, storm, act of God, or any other cause or event not reasonably within Motion's control. Supplier shall immediately notify Motion in writing if its performance hereunder is delayed due to any such event and Motion may either (a) extend the time of performance, or (b) terminate the uncompleted portion of the Order at no cost to Motion.

**8. INDEMNITY:** Supplier shall indemnify, defend, and hold Motion and its parent company, divisions, subsidiaries, affiliated entities and employees harmless from and against all liability, loss, costs, attorney's fees and expenses, and damages (collectively, "Losses"), resulting from or arising out of (i) any claim that the goods or services are defective, negligently designed or manufactured in any manner, or otherwise determined to be the cause of injury or death to persons, or damage to property, or both; (ii) any claim that the goods or services or the manufacture, sale or labeling of the goods or services fails to comply with any governmental requirement, or the labeling on any goods, or on or within the packaging for any goods (including any instructions or warnings thereon), is inadequate in any manner; (iii) any claim that the goods should have been recalled pursuant to any governmental requirement; (iv) Supplier's negligence or willful misconduct in supplying the goods or services; (v) any claim that the goods or services violate or infringe on any patent, trademark, copyright or other intellectual property right; or (vi) any claim, action, suit or proceeding by any person, firm, governmental agency or corporation resulting from or arising out of (i) through (v) above.

**9. RELATIONSHIP BETWEEN PARTIES:** The relationship between the parties hereto is that of independent contractors. Nothing in an Order shall be construed as creating any partnership, joint venture, or agency between the parties.

**10. ASSIGNMENTS:** Supplier shall not assign, delegate or subcontract this Order or any obligations hereunder without Motion's prior written consent. Any such attempted assignment or delegation without Motion's prior written consent shall be void and have no force or effect and, at Motion's option, shall be cause for Motion's termination of any or all Orders.

**11. INSPECTION; ACCEPTANCE:** Supplier, at its cost, shall inspect all goods prior to shipment to Motion and all services prior to completion. If requested by Motion, Supplier shall immediately provide Motion with a copy of the inspection results or other related records. Motion reserves the right to conduct its own inspection and testing wherever such goods or services are located. If Motion conducts such inspection or testing on Supplier's premises, Supplier shall provide, without additional charge, all reasonable facilities and assistance for such inspection and tests. Final inspection and acceptance by Motion shall be at the Motion location designated in this Order unless otherwise specified in this Order.

In the event that the goods do not conform with the Order or the terms and conditions set forth herein, Motion may, at its election (in addition to any other remedies set forth in these terms and conditions or available under common law, statute, or otherwise): (a) reject and refuse delivery or return the nonconforming goods at Supplier's expense to Supplier for full credit; or (b) unless directed otherwise by Supplier, undertake reasonable commercial efforts to sell such non-conforming goods and pay Supplier the price obtained from the sale of such goods, less any expenses or damages incurred by Motion in selling same and any damages resulting from the nonconformance; or (c) (in the event of services) require Supplier, at Supplier's sole expense, to re-perform or repair the services to make the services conforming.

**12. DELIVERY/TITLE/RISK OF LOSS:** Unless otherwise noted on the Purchase Order or stipulated in a Purchasing contract, Goods shall be shipped by Supplier F.O.B. Destination, Freight Prepaid, and services shall be performed at the Motion location specified on the Order. Supplier agrees to utilize Motion's preferred freight carriers whenever possible. Regardless of FOB terms of sale, title and risk of loss shall pass and acceptance of goods shall take place when such goods have been delivered to Motion's specified destination and passed Motion's inspection and test. Motion reserves the right to specify a different delivery location after the Order has been placed. Supplier shall enclose a packing list for all shipments showing the Order number, Supplier's name, and the exact quantity and description of goods shipped. Supplier shall not charge Motion for boxing, crating, handling damages, carting, storage or other packaging or hauling requirements. All packaging must meet commercial standards and accepted industry practices to ensure against damage to and for full protection of the goods.

If delivery or performance is not made within the time stated in the Order (or, if no time is stated, within a reasonable time), Motion may, in addition to Motion's other rights and remedies, purchase the goods elsewhere or retain substitute performance of the services, charge Supplier for any resulting expense, loss or damage and/or cancel the applicable Order.

**13. DEBIT MEMO POLICY/BILLING DISPUTES:** Supplier acknowledges Motion's right to issue a debit memo to remedy any disputes related to pricing, quantities delivered, freight charges or any other discrepancy. Supplier has 90 days from receipt to respond to the debit memo. Any dispute or

disallowance should be email to the AP department. If the debit has not been disputed within the 90 days, Supplier must honor the debit, and Supplier agrees that is will waive any right to dispute said debit memo, regardless as to the validity of the claims.

Supplier agrees to attempt to reconcile all charges, invoices, costs, expenses or other amounts due from Motion in writing within 180 days of the date of the initial invoice or 180 days after the transaction or occurrence at issue, whichever is earlier. Supplier agrees that if it does not bring said charges, invoices, costs, expenses or other amounts due from Motion to Motion's attention in writing within said time frame, Supplier agrees that it thereby waives any rights associated with said claims, regardless as to the validity of the claims.

**14. COMPLIANCE WITH LAWS:** Supplier shall comply with all national, state, and local statutes, laws, ordinances and regulations governing the manufacture, transportation, import, export and the sale of goods and services anticipated in any Order.

**15. TERMINATION:** Motion may terminate any Order without penalty by giving notice to Supplier, effective immediately upon such notice, on the happening of any one or more of the following events: (a) breaches any term or condition set forth herein or set forth on any Order; (b) any applicable statutes, laws, ordinances and regulations prevent full compliance with any Order by Supplier or Motion; or (c) commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization or similar laws of any jurisdiction by or against Supplier, or if any order shall be made or any resolution passed for the winding up, liquidation or dissolution of Supplier, or if a receiver is appointed for Supplier or its property. Additionally, Motion shall have the right at any time without cause to terminate all or any part of an undelivered portion of any Order, effective upon written notice to Supplier, provided that Motion shall be responsible for Supplier's actual and direct out-of-pocket costs reasonably incurred in reliance on the Order until the date of such termination (but Motion shall have no liability to Supplier or any third parties for consequential, indirect, special or exemplary damages based upon said Order termination, even if Motion is advised of the possibility of the same).

**15. CHOICE OF LAW/MISCELLANEOUS:** The Order and these terms and conditions constitute the entire agreement of the parties with respect to the matters hereto. The Order and these terms and conditions and shall be governed by the laws of the State of Alabama, without regard to conflict of law principles. Each party agrees to perform all further acts and execute, acknowledge, and deliver any documents reasonably necessary, appropriate or desirable, to carry out the provisions of the Order and these terms and conditions. Every covenant, term, and provision of the Order and these terms and conditions shall be construed simply according to its fair meaning and not strictly for or against any party. If any one or more of the provisions of the Order or these terms and conditions shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby.