

# MTS Purchase Order (“PO”) Terms and Conditions

## Page 1 of 1

- 1. Packaging and Delivery.** The items subject of this PO (“Articles”) shall be packed and shipped by Seller (“Vendor” on face of the PO) in accordance with applicable MTS’ instructions and industry standards to ensure that no damage results from weather or transportation. All deliveries shall include a packing list referencing MTS’ PO, indicating the contents of each package, part numbers and drop shipped Articles must additionally reference the originating Seller name. Deliveries are FOB Destination or FOB Installation (if installation is required), freight prepaid and included, unless otherwise specified. Title to the Articles shall pass to MTS when the Articles are delivered to or installed at MTS. Seller will be responsible for damages associated with the failure to meet a delivery schedule or to promptly replace rejected material, including but not limited to the cost to cover. Items shipped in excess of the designated quantity will be rejected and returned at Seller’s risk and expense.
- 2. Invoicing.** MTS shall attempt to make payment net 30 days after receipt of a properly submitted invoice, which must reference MTS’ PO number. Notwithstanding anything in Sellers’ terms, MTS shall not be liable for late fees, credit card fees, collection fees, attorneys’ or audit fees, court fees or any other fee in connection with late payment. Invoices must be sent to [accountspayable@mcts.org](mailto:accountspayable@mcts.org).
- 3. Safety Data Sheet.** Seller agrees to comply with the Hazard Communication Standard (29 CFR § 1910.1200(g)), revised in 2012, which requires that the chemical manufacturer, distributor, or importer provide Safety Data Sheets (formerly Material Safety Data Sheets) for each hazardous chemical to downstream users to communicate information on these hazards. MTS requires two (2) copies of any chemical shipped in a five (5) gallon or larger container to be sent with the chemical. Failure to comply may result in MTS rejecting the shipment and returning the items FOB destination freight prepaid.
- 4. Taxes.:** MTS is exempt from federal excise taxes and WI state sales taxes.
- 5. Quality.** New, packaged, warranted parts are expected in all cases. MTS reserves the right to suspend any seller providing grey market parts without prior written approval.
- 6. Inspection.** Articles purchased hereunder are subject to inspection and approval at MTS’ discretion. MTS reserves the right to reject and refuse acceptance of Articles that are damaged or not in accordance with MTS’ instructions, specifications, drawings, and data or Seller’s warranties (express and implied). Items not accepted shall be returned to Seller at Seller’s expense, with no restocking fee. MTS shall be entitled to the cost of cover and other rights and remedies available at law or equity.
- 7. Renewals.** Terms for automatic renewal shall be null and void. Any renewal must be accompanied by an MTS PO.
- 8. Warranty.** Seller warrants that all Articles provided by it (a) shall be of good quality and workmanship and free from all material defects, latent or patent, in design, materials and workmanship, (b) shall conform to all specifications, drawings, samples and other descriptions furnished, specified or adopted by MTS, (c) shall be merchantable and suitable, sufficient, and fit for their intended and particular purpose, and (d) shall be free of all liens and encumbrances and any claim of title by any third party. Seller shall automatically assign or cause to be assigned any manufacturer’s warranties to MTS and such warranties shall run to MTS, its successors, assigns, and customers, and users of the Articles. Unless specifically directed by the warranty, Seller shall not charge MTS for any costs related to the warranty, including but not limited to investigation, shipping, travel for Seller’s employees to MTS site and other related costs. All warranties shall be construed as conditions as well as warranties. All warranty work must be completed in the continental United States.
- 9. Time is of the Essence.** Time is of the essence in performance of this PO. MTS may cancel this order, in whole or in part, without liability to MTS if deliveries are not made at the time and in the quantities specified. Failure of the Seller to adhere to delivery schedules as specified or to promptly replace rejected Articles shall render Seller liable for administrative costs, the cost of cover and any other rights and remedies available at law or equity.
- 10. Indemnification.** Seller agrees to the fullest extent permitted by law to indemnify, hold harmless and defend MTS, Milwaukee County, their employees, officers, directors, agents and assigns from any and against all claims, demands, suits, actions, proceeding whether meritorious or not, and from any liability, loss or expense whatsoever (“Claims”), including reasonable attorneys’ fees or statutory benefits under Workers’ Compensation laws or liability for infringement of intellectual property or propriety rights (collectively “Liabilities”) as a result of issuance of this PO. The aforementioned is inclusive but not limited to Claims resulting from the carelessness, negligence, or intentional acts of Seller, its agents or employees for injuries, including death; for damage to property; for lost revenue; for defects in the goods or services subject of this PO; for failure to comply with specifications or with the express and implied warranties; for violation of any statute, ordinance or administrative order, rule or regulation in the manufacture or sale of the good and services subject of this PO; or for the infringement of any third party intellectual property rights. In the event of any claim, demand, action or proceeding being commenced against MTS due to any of the above matters, MTS agrees to give Seller prompt notice thereof in writing.
- 11. Termination.** MTS reserves the right to cancel all or part of any purchase without penalty and for any reason by giving written notice to Seller at least 5 calendar days prior to scheduled delivery or if the shipment is late. MTS shall have the right to return any products received with no additional fees such as restocking fees.
- 12. Law/Venue.** Milwaukee County, Wisconsin state courts shall be the sole forum for all disputes arising of this PO. The validity, construction, enforcement and effect of this PO shall be governed solely by the laws of the State of Wisconsin. MTS shall not consent to waive a jury trial or to binding arbitration as part of this PO.
- 13. Intellectual Property.** The Seller of the Articles described herein guarantees the Articles were manufactured or produced in accordance with applicable federal labor laws and that the sale or use of the Articles described herein will not infringe on any intellectual property.
- 14. Health and Safety:** Seller agrees to use all commercially reasonable efforts to cause any of its employees and its subcontractors and their employees who provide services under this PO on MTS’s premises to comply with MTS health and safety rules, protocols, and guidelines, including but not limited to vaccination requirements, while providing services on-site at any facility or premises owned, leased, or operated by MTS. Seller agrees that MTS is not responsible for any costs, and will not be invoiced for any incomplete work, if MTS revokes permission for Seller’s or subcontractor’s employees to be on MTS’ property pursuant to policies or procedures to address a health emergency.
- 15. Force Majeure.** Neither party shall be liable for failure to perform its obligations hereunder due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease, a pandemic or other cause beyond the non-performing party’s reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party’s financial condition or negligence). A state, federal or local emergency order presumptively supports invocation of this clause; however, no order is necessary to invoke this clause. Seller shall immediately notify MTS if it believes, or has reason to believe, it will be unable to provide services or goods on this PO.
- 16. Entire Agreement.** This PO, MTS’ Terms and Conditions for POs Using Federal Funds (if federal funds are funding the purchase), Contract(s) executed by MTS, if any, MTS’ Supplemental Terms and Conditions, the Terms and Conditions in any MTS Quote, Bid or RFP, the Response to any MTS Quote, Bid or RFP, and additional documents referenced on the face of the PO, if any, constitute the sole agreement with respect to the subject matter of this PO. In the event of a conflict among the terms or conditions, the order of priority to resolve conflicts shall be in the order listed above. No other documents, terms or changes in pricing shall apply or be incorporated by reference, including those set forth in Seller’s quotes, click-through agreements, order

## **MTS Purchase Order (“PO”) Terms and Conditions**

### **Page 1 of 1**

acknowledgements, invoices, website, service catalogs, brochures, or technical data sheets, unless subsequently agreed to in writing and executed by both parties. Seller acknowledges and agrees that any attempt to negate the Terms and Conditions of this PO is null and void. The sole exception to the forgoing is in the instance that Sellers’ warranty is superior to that set forth in this PO, in which case Sellers’ warranty shall take precedence. By accepting this PO, Seller fully and forever waives any right to claim that this PO does not represent the full and final contract. Terms and Conditions are posted at <https://www.ridemcts.com/business-partners>.