



# Mechatronic Solutions

## Terms and Conditions

The following Terms and Conditions (“Terms”) apply to the Quotation (the “Quotation”) provided by Mechatronic Solutions Inc. (“MSI”) to the client identified in the Quotation (“Client”).

1. The Quotation as well as these Terms contain the commercial terms and conditions of the agreement between Client and MSI. The Quotation is valid for 30 days from the date set forth on the cover of the Quotation. Any terms or conditions originating with Client are superseded by these Terms and expressly rejected by MSI and shall not be or become part of the contract between Client and MSI.
2. If Client decides to proceed with the project outlined in a Quotation, Client shall issue a Purchase Order or other order document (an “Order”). All Orders are subject to acceptance by MSI in writing. Once an Order is placed by Client that is consistent with the Quotation, and such Order is accepted in writing by MSI, these Terms, the Quotation and the Order will constitute a valid and binding contract between Client and MSI.
3. MSI will provide the services and deliverables (collectively, the “Deliverables”) that are specifically set forth in the Quotation. If Client wishes to make any changes to an accepted Quotation, Client will provide MSI with a proposed change order specifying the desired changes in the requirements and Deliverables (the “Change Order”). Client acknowledges that any changes to an accepted Quotation may require increased work by MSI, necessitating a reasonable adjustment in the cost, schedule, or both. If both MSI and Client accept the proposed Change Order in writing, the terms of the Change Order shall become part of the contract between the parties and shall prevail over the applicable Quotation to the extent they are inconsistent. MSI reserves the right to use the services of sub-contractors, agents and suppliers.
4. MSI shall deliver the Deliverables at the time and in the manner specified in the Quotation. MSI shall not be responsible for any delays in delivering the Deliverables that are caused by Client’s delay, failure of Client to timely perform any of its obligations or lack of Client’s response in delivering materials or information needed for project completion. At the time that each Deliverable has been completed, MSI shall provide Client with such Deliverable along with a written invoice indicating completion of the project. Upon delivery of the Deliverable and invoice, Client shall have 14 days to notify MSI of any deficiencies in the Deliverables by written notice. Such written notice shall specify the particular aspects of the Quotation for which the Deliverable does not satisfy. MSI shall proceed in a commercially reasonable manner to correct any such deficiencies, if they so exist. Once such deficiencies have been corrected (if any), MSI shall resubmit the Deliverable to Client for final delivery. FAILURE TO PROVIDE NOTICE WITHIN 14 DAYS OF RECEIPT OF THE DELIVERABLE AND INVOICE SHALL CONSTITUTE ACCEPTANCE OF THE DELIVERABLE AND SHALL PRECLUDE CLIENT FROM LATER RAISING ANY CLAIM OF DEFICIENCY.

### **Mechatronic Solutions Inc.**

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5. Upon final payment by Client of all amounts due to MSI, MSI shall grant to Client a nonexclusive, worldwide, perpetual, personal, royalty-free and nontransferable license (the “License”) to use the Deliverables. The License is subject to the following limitations: (a) the Deliverables shall not, in any manner, be copied or duplicated, except for Client’s own internal use for backup or system security; (b) Client shall not, directly or indirectly, change, modify, expand or edit the Deliverables in any way. In the event that Client changes, modifies, expands or edits the Deliverables in any way, all warranties and indemnities made by MSI in these terms shall immediately terminate; and (c) Client shall promptly report any suspected malfunctions or defects in the Deliverables to MSI. Unless otherwise provided in the Quotation, MSI shall retain all ownership rights to all intellectual property relating to the Deliverables. The parties agree and acknowledge that none of the Deliverables are or shall be construed as “works made for hire” under the U.S. Copyright Act, 17 U.S.C. Sec. 101.

MSI does not grant any license or warranty to Client for any third party hardware or technology incorporated in the Deliverables. MSI may assist Client in obtaining from the applicable third party vendor a license or warranty to use such third party hardware or technology at Client’s sole expense and responsibility. Client hereby grants MSI a nonexclusive, worldwide, perpetual, personal, royalty-free and nontransferable license to any and all technology owned by Client, or owned by a third party and licensed to Client, necessary for MSI to design, develop, test, operate, enhance and maintain the Deliverables.

ALL DELIVERABLES SHALL BE PROVIDED ON AN “AS IS, WHERE IS” BASIS. MSI DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND OR NATURE WITH RESPECT TO THE SERVICES PERFORMED OR DELIVERABLES DELIVERED, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL THIRD PARTY PROVIDED PRODUCTS OR SERVICES DELIVERED OR RECOMMENDED TO CLIENT BY MSI UNDER THIS AGREEMENT ARE WITHOUT WARRANTY OF ANY KIND FROM MSI. MSI DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND OR NATURE WITH RESPECT TO SUCH THIRD PARTY PROVIDED PRODUCTS OR SERVICES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT’S ONLY WARRANTY FOR SUCH THIRD PARTY PROVIDED PRODUCTS OR SERVICES ARE THE APPLICABLE MANUFACTURER’S WARRANTIES, IF ANY.

6. Prices and payment terms are set forth in the Quotation. Prices are subject to change without notice. Unless otherwise specified in the Quotation, terms of payment are net 30 days from date of invoice. Client agrees to provide credit references upon request before orders are accepted by MSI. All Orders should reference the Quotation number at time of order or may be subject to a price adjustment or refusal of acceptance. MSI reserves the right to correct pricing if an error was made by MSI and Client has a right to cancel the Order if Client does not agree to adjusted pricing. Any errors contained in MSI’s invoice must be brought to the attention of MSI within 5 days of Client receiving an invoice or Client waives all rights with respect to such error. In addition to any other remedies that may be available to MSI, any balance that is not paid in full in accordance with these Terms shall be subject to interest at the lesser of 1.5% per month or the highest amount permitted by law. Client is responsible for and shall pay or reimburse MSI for all taxes, assessments and other governmental charges, however designated, imposed by any governmental authority (except MSI’s net income taxes) associated with the execution or performance of this Quotation.

7. All shipments of Deliverables (if any) are EXW the applicable manufacturer’s location, unless otherwise set forth in the Quotation. Orders may contain shipping, handling and insured value charges. These charges will be prepaid and added to invoice unless otherwise agreed in writing by MSI. The parties recognize that delivery dates are approximate and that in no event shall MSI be held liable for any damages or expenses caused by delays in delivery of any Deliverables. The acceptance of the Deliverables by Client shall constitute a waiver of all claims for delay. Any error with any Deliverable shipment should be brought to the attention of the MSI by the Client within 5 days of receipt of shipment or Client waives all rights with respect to such error.

8. Client understands and agrees that the Deliverables are being specifically created for Client and that any cancellation of an accepted Order shall result in cancellation charges. Any attempt to cancel or refuse delivery of the Order or change the Deliverables (collectively referred to herein as “Cancellation”) without MSI’s consent will be a breach of contract and may be subject to Cancellation charges. Unless otherwise specifically provided in the Quotation or by mutual written agreement, Client agrees to pay Cancellation charges in an amount equal to the full Quotation price of services and Deliverables that are finished or in process at the time of Client’s Cancellation. In addition, any postponement of delivery of Deliverables by Client by more than 90 days shall be deemed a Cancellation of the order and shall be subject to these Cancellation charges.

9. Client will indemnify and hold MSI and its subsidiaries, parents and other affiliated entities, and their equity owners, directors, employees and agents (collectively, together with MSI, the “Affiliates”) harmless from and against any and all liabilities, losses, damages, claims, costs, causes of action and expenses, including but not limited to the costs of defense and attorneys’ fees, suffered, paid or incurred by any of the Affiliates, whether or not suit is filed, arising out of, resulting from or connected with, in whole or in part, (a) Client’s misconduct, negligence, acts or omissions, or breach of these Terms, (b) any third party Deliverables or services provided pursuant to the Quotation that are defective or misapplied by Client or Client’s customers; (c) Client’s use or application of the Deliverables; or (d) the infringement by the Deliverables of any third party intellectual property or proprietary right of any kind.

10. THE EXCLUSIVE REMEDY AGAINST MSI FOR ANY DAMAGES WHATSOEVER TO CLIENT ARISING OUT OF OR RELATED TO DELIVERABLES OR ANY SERVICES PROVIDED PURSUANT TO A QUOTATION SHALL BE LIMITED TO THE TOTAL FEES PAID BY CLIENT TO MSI UNDER SUCH QUOTATION DURING THE 12 MONTHS PRECEDING THE EVENTS GIVING RISE TO THE LOSS. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF DATA, LOSS OF PROFITS OR LOSS OF REVENUE, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, STRICT LIABILITY, TORT OR OTHER LEGAL OR EQUITABLE THEORY.

11. This Agreement shall be interpreted and governed by the laws of the State of Minnesota, without application of its conflict of law provisions. Any and all disputes relating to this Agreement, its interpretation, execution, enforcement or arising from the dealings between Client and MSI, which are not settled by mutual, good faith negotiation, shall be dealt with under the exclusive jurisdiction and venue of the state and federal courts located in the State of Minnesota, to the exclusion of all other courts. Each party expressly agrees to submit to the jurisdiction of such courts.

If the performance of the Quotation or these Terms or any obligation hereunder (except the payment of monies due hereunder) is prevented, restricted or interfered with by reason of any event or condition beyond the reasonable control of such party (including, without limitation, acts of State or governmental action, international or domestic terrorism, riots, disturbance, war, strikes, lockouts, slowdowns, prolonged shortage of energy or other supplies, epidemics, fire, explosion, flood, hurricane, typhoon, earthquake or other act of God), the party so affected shall be excused from such performance, only for so long as and to the extent that such a force prevents, restricts or interferes with such party’s performance and provided that the party affected gives notice thereof to the other party and uses diligent efforts to remedy such event or condition.

This Agreement constitutes the entire agreement between Client and MSI with respect to the subject matter hereof and supersedes any and all previous or contemporaneous agreements and understandings with respect to the subject matter hereof. MSI reserves the right to change any rates and any of these Terms at any time upon written notice to Client. All notices or other communications that are required by these Terms to be made in writing may be made by email or other electronic delivery method.