

## **MAGNETIC SEAL CORP.**

### **TERMS AND CONDITIONS OF SALE**

**1. APPLICABILITY.** This Terms and Conditions of Sale constitutes the entire agreement between Magnetic Seal Corp., a Rhode Island corporation (“MSC”) and the buyer (“Buyer”) for the purchased products (the “Products”) described in any applicable purchase order accepted by MSC (each, an “Order”). Except to the extent expressly agreed to by MSC in a writing signed by an authorized officer of MSC, any different, conflicting or additional terms contained in an Order, Order acknowledgment, sales agreement or other document shall be void. MSC shall not be deemed to have waived any provision of this Terms and Conditions of Sale by failing to object to provisions that may appear on, be incorporated by reference in, or attached to an Order. MSC hereby reserves the right to accept each Order, and each acceptance shall be conditional upon the acceptance by Buyer of this Terms and Conditions of Sale. Any revised and follow-on orders accepted by MSC shall be deemed to be an Order and subject to this Terms and Conditions of Sale. MSC’s acknowledgement of receipt of the revised or follow-on orders shall not constitute acceptance.

#### **2. PRODUCT PRICES**

2.1 Determination of Price. Product prices shall be those set forth in an applicable quote provided by MSC. MSC reserves the right to correct any pricing mistakes that deviate from the pricing set forth in any quote. Subject to any changes requested by Buyer, each Order will be billed at the quoted price for sixty (60) calendar days from the date of such quote, and thereafter at the price in effect at the time of shipment, which may be changed from time to time by MSC with written notice to Buyer. MSC may charge certain additional non-recurring set-up, routine maintenance and refurbishment charges for tooling, as well as charges for the construction of new tooling. The price quoted by MSC to Buyer is based on the volume levels previously communicated by the Buyer to MSC; if volume levels decrease, additional tooling set-up charges may apply and shall be paid by Buyer before any subsequent orders are processed by MSC. Prices quoted and orders accepted are also subject to change due to increases in costs of manufacture, processing, or wages, resulting from the operations of any Federal, State, or municipal law or regulatory measure hereafter adopted and/or due to increased costs of labor, services or materials. All quotations are made and each Order is accepted subject to approval by MSC’s credit department.

2.2 Taxes. Prices also do not include applicable taxes, including but not limited to excise, sales or use taxes. Any taxes (other than taxes due on MSC’s net income) that are payable on transactions hereunder shall be the sole responsibility of Buyer. MSC reserves the right to invoice Buyer for any such taxes that are or may become payable by MSC. Each Order is subject to increase sufficient to compensate for any tax, excise, duty or levy hereafter enacted and imposed by any government authority, or for any expenses or charges due to war, hostilities, or other disorders, domestic or foreign, whereby the cost of the production or sale of articles to which such prices apply shall be increased.

### **3. TERMS OF PAYMENT, PURCHASE MONEY SECURITY INTEREST**

3.1 Terms. All payments to MSC for purchase of Products due hereunder shall be made within thirty (30) days of the invoice date from MSC; provided, however, that the invoice date shall not be prior to the date the invoiced Products are shipped to Buyer. All payments due hereunder shall be tendered in United States currency (drawn on a US Bank is required).

3.2 Late Payment. In all events, time shall be of the essence with regard to Buyer's payment obligations to MSC hereunder. Any amount not paid by Buyer when due under these Terms and Conditions of Sale shall accrue interest at the lower of one percent (1%) per month or the highest legal rate allowed under applicable law. The right of MSC to receive such interest payments shall be in addition to any other rights or remedies of MSC hereunder with respect to such nonpayment, including suspension or termination of any or all outstanding purchase orders provided by Buyer in accordance with Section 10.

3.3 PMSI. MSC shall have a purchase money security interest in all Products until the complete purchase price and all additional costs and charges are paid by Buyer and may make third party notification or any filing deemed appropriate to protect and perfect such interest.

### **4. ACCEPTANCE OF ORDERS, SHIPMENT OF PRODUCTS, ACCEPTANCE OF PRODUCTS**

4.1 Acceptance. MSC will not be bound by any Order for the Products placed by Buyer until such Order has been accepted by MSC. Upon MSC's acceptance of an Order by way of written Order confirmation, such Order shall constitute a binding agreement of MSC to sell and ship, and of Buyer to purchase and tender payment for, the Products specified. Such Order confirmation shall specify an estimated shipping date for the ordered Products.

4.2 Inconsistent Terms in an Order. In the event any terms or conditions contained in Order made by Buyer and accepted by MSC are inconsistent with, or in addition to, the terms of these Terms and Conditions of Sale, such inconsistent or additional terms or conditions in the Order shall be null and void and shall not be binding on MSC.

4.3 Shipping of the Products. MSC shall ship to Buyer the Products or components thereof set forth in an accepted Order to Buyer within a reasonable time after MSC's acceptance of such Order; provided, however, that the parties understand and agree that estimated dates for shipping are provided to Buyer on the basis of MSC's best estimate and are not guaranteed. Without limiting the foregoing, Buyer acknowledges that (a) lead times will vary according to manufacturing and other conditions, (b) any and all shipping dates shall be approximate and non-binding, and (c) any and all shipping dates shall be computed from the date that an Order is accepted by MSC. Buyer specifically acknowledges that the Products contain components manufactured by third parties (the "Third Party Components") and that lead times may be negatively impacted by situations outside the control of MSC, including but not limited to inability to obtain, or late shipments of, Third Party Components.

- (a) MSC will use reasonable means to comply with any packaging, loading, or bracing requests made in writing by the Buyer, however that any additional costs due to the compliance to such requests shall be deemed extra charges to be paid by the Buyer.

4.4 Terms of Shipment. Unless the parties agree otherwise, MSC shall have the right to select the carrier(s) and routing of shipment. Products sold herein are sold F.O.B. MSC's

place of business. Buyer assumes all responsibility for payment of freight and risk of loss, and all costs associated therewith, which freight charges and other costs may not be reflected in the prices. MSC may, at its option, prepay freight and seek reimbursement from Buyer. MSC's obligation to ship the Products shall be fully and completely discharged, and ownership, legal title (subject to applicable security interests), and all risk of loss or damage shall immediately pass to Buyer at the time that the Products are delivered by MSC to the carrier. Buyer shall be responsible for obtaining all necessary transportation licenses and permits, at Buyer's expense, unless this responsibility is assumed in writing by MSC.

4.5 Acceptance. Unless Buyer provides MSC written notice within five (5) business days of delivery, which notice shall, if at all, be provided on MSC's standard return material authorization and be subject to the terms thereof, Buyer shall be deemed to have accepted the Products.

## **5. INSTALLATION**

5.1 Buyer shall install the Product utilizing an installer meeting or exceeding appropriate industry standards, and such installation shall be made in strict conformance with any installation guidelines provided by the MSC.

5.2 In furtherance and not in limitation of the indemnification obligations of Buyer otherwise set forth in these Terms and Conditions of Sale, Buyer shall indemnify and hold harmless MSC and its officers, directors, agents, employees, shareholders, legal representatives, successors and assigns, and each of them, from and against any and all claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, judgments, losses, damages, costs, charges, attorneys' fees, and other expenses of every nature, kind and character incurred or suffered by reason of any and all claims in connection with the manner of performance by Buyer of any service, installation, maintenance, or repairs of Products or other products manufactured by MSC.

## **6. LIMITED PRODUCT WARRANTY**

6.1 Warranties. MSC hereby makes the following limited warranties ("MSC Warranties"):

The Product has a 90 day warranty from the point of sale that the Product was manufactured in a workmanlike manner in accordance with applicable industry standards and conforms to the expressed mechanical and manufacturing specifications for such Product. UNLESS OTHERWISE AGREED BY MSC IN WRITING, SUCH WARRANTY AS TO CONFORMITY TO THE SPECIFICATIONS RUNS ONLY TO BUYER AND IS NON-TRANSFERABLE AND NON-ASSIGNABLE EITHER DIRECTLY, INDIRECTLY, OR BY OPERATION OF LAW, AND ANY SUCH PURPORTED OR ATTEMPTED TRANSFER OR ASSIGNMENT SHALL BE NULL AND VOID. If a Product fails the foregoing limited warranty, Buyer shall prepare a return material authorization ("RMA") number request from to MSC in the form prescribed by MSC, and return the failed Products in accordance with the RMA. MSC will, in its sole discretion and upon verification of the failure: (i) repair the Product, or (ii) replace the Product, or (iii) refund the original purchase price paid to MSC by you for the Product. If MSC elects to repair or replace the Product instead of refunding the original purchase price paid to MSC, this will not result in a new warranty or new warranty terms or in an extension of the time periods applicable to the original limited warranty.

The foregoing limited warranty shall be void to the extent it is reasonably determined by MSC, without limitation, that the claimed failure was a result of improper use, installation, handling,

storage, or maintenance of the Product.

6.2 Exclusive Warranties. THE MSC WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL MSC BEAR THE COSTS OF REMOVAL AND/OR REINSTALLATION OF NON-CONFORMING GOODS.

6.3 Component Materials. IN ADDITION TO AND WITHOUT LIMITING THE FOREGOING, MSC HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE COMPONENT MATERIALS, ANY ADDITIONAL MANUFACTURING PROVIDED BY VENDORS, ANY INSTALLATION PROVIDED BY INSTALLER OR BUYER, AND ANY ALTERATIONS NOT PERFORMED BY MSC. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT ITS SOLE SOURCE OF REMEDY FOR ANY FLAW OR DEFECT IN THE ADDITIONAL MANUFACTURING IS AND SHALL BE THROUGH SEPARATE THIRD PARTY ACTION WITH OR AGAINST, OR PURSUANT TO WARRANTIES SUPPLIED BY, THE MANUFACTURER OF THE COMPONENT MATERIALS OR APPLICABLE VENDORS.

6.4 Buyer Specifications. IN ADDITION TO AND WITHOUT LIMITING THE FOREGOING, BUYER ACKNOWLEDGES AND AGREES THAT MSC CANNOT WARRANT THE PERFORMANCE OF PRODUCTS AS A RESULT OF ANY BUYER-PROVIDED SPECIFICATIONS OR ALTERATIONS. IN PARTICULAR, BUYER SHALL BE FULLY RESPONSIBLE FOR ANY DEFICIENCIES IN PERFORMANCE OF THE PRODUCTS RESULTING FROM SPECIFICATIONS PROVIDED BY BUYER OR ITS AGENTS.

6.5 Limited Liability. THE LIABILITY OF MSC, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH MSC'S LIABILITY IS CLAIMED, AND IN NO EVENT WILL MSC BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE, THAT ARISE IN CONNECTION WITH THE PRODUCTS OR IN CONNECTION WITH EITHER MSC'S FAILURE TO DELIVER OR ITS LATE DELIVERY OF THE PRODUCTS (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF THE PRODUCTS AND LOSS OF PROFITS).

6.6 Acknowledgment. BUYER ACKNOWLEDGES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES AVAILABLE TO BUYER AT LAW OR IN EQUITY.

6.7 Limitation on Deductions. Buyer hereby agrees that, in making any and all payments to MSC under the terms of these Terms and Conditions of Sale, no deductions for warranty or any such other claims against MSC shall be made unless Buyer receives from MSC prior approval of the validity of such a claim; any costs for shipping defective Products to MSC shall be borne by MSC.

6.8 No Further Warranties. To the extent that Buyer sells the Product, individually or as part of an integrated system, Buyer shall be solely responsible, and shall indemnify and hold MSC harmless in accordance with Section 7 against any damages or costs relating to, any

warranty given to the extent such warranty expands or otherwise falls outside the scope of the warranty granted herein.

## **7. INDEMNIFICATION.**

7.1 The Buyer shall defend, indemnify and hold harmless MSC, its directors, officers, employees, shareholders and agents and all of their respective successors and permitted assigns (the "Indemnified Parties"), from and against any and all suits, claims, actions, liabilities, losses, damages, costs and expenses (including, but not limited to, interest, penalties, reasonable attorneys' fees and other expenses of litigation) and causes of action of whatsoever kind (collectively referred to as "Claims") which may be incurred by, asserted against, or recoverable from any Indemnified Party arising out of or relating to any of the following:

- (a) The breach by Buyer of this Agreement; or
- (b) claims or theories of infringement or violation of patents, trademarks, trade names, trade secrets, copyrights, or the like when based in whole or in part directly or indirectly, on specifications provided by Buyer; or
- (c) the gross negligence or willful misconduct of Buyer or its personnel;

7.2 MSC shall have the right at its discretion and sole cost to be represented by its own counsel and to participate in the defense of any action in which an Indemnified Party is named as a party defendant, and the MSC's prior written approval will be required for any settlement that reasonably can be expected to require a material affirmative obligation of or result in any ongoing material liability to an Indemnified Party.

## **8. TECHNICAL DATA, ADVICE; SPECIFICATIONS.**

Any technical data, production data, production estimates, design and performance figures, mechanical properties, advice, drawings, and specifications furnished by MSC with respect to the Products and the use of the Products is given without charge, and MSC assumes no obligation or liability for any damages, consequential, incidental, special, liquidated, punitive, or otherwise for such data, estimates, figures, advice, drawings, and specifications given or results obtained irrespective of whether the claims or actions with respect to such are based upon contract, tort, negligence, strict liability, warranty, contribution, indemnity, infringement, statute or otherwise. All of such data, estimates, figures, properties, advice, drawings, and specifications shall be given and accepted at Buyer's risk. Any such data, estimates, figures, properties, advice, drawings, and specifications are given to Buyer for use only in connection with the Products, and may not be used for any other purpose, and shall not be disclosed by Buyer or its agents or employees without the written consent of MSC.

## **9. CHANGES, TERMINATION OR CANCELLATION.**

9.1 After Buyer's acceptance hereof, MSC shall have the right to change, terminate, or cancel any Order because of any circumstances set forth in Section 10 hereof, or other circumstances which may be deemed by MSC to require reallocation of production or delivery

by MSC, including but not limited to the effect of any changes in laws, ordinances, regulations, directives, or administrative or other governmental actions, the compliance with which MSC shall deem to require such change or cancellation. No such change or cancellation by MSC shall be deemed to be a breach of any provision, term, condition, or covenant hereunder or in any Order.

9.2 After acceptance of an applicable Order, the Order shall not be changed, terminated, cancelled, or modified by Buyer nor shall Buyer hold up releases of goods manufactured or processed except with MSC's written consent, which consent shall be deemed to be conditioned upon compliance with the terms and conditions hereof and the agreement of Buyer to indemnify MSC against all resulting loss.

9.3 Insistence by Buyer upon cancellation or suspension of manufacture, processing, shipment, or delivery or failure to furnish data or specifications when requested or required, may be treated by MSC as a breach of contract.

## **10. BUYER'S RESPONSIBILITY, ANTICIPATORY BREACH, AND DEFAULT IN PAYMENT.**

10.1 If MSC has any reasonable doubt as to Buyer's ability to fulfill its obligations hereunder, or if Buyer fails to timely pay MSC in accordance with the terms hereof, MSC may decline to make any further shipment or delivery hereunder or pursuant to any Order.

10.2 In addition to the foregoing, in the event of anticipatory breach by Buyer or if the financial condition of Buyer at any time does not, in the reasonable judgment of MSC, justify continuance of the work to be performed by MSC hereunder on the terms of payment originally specified, MSC may require full or partial payment in advance or provide for other credit conditions and, in the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, MSC shall be entitled to cancel any Order and work then outstanding and Buyer shall reimburse MSC for any losses, expenses, and charges incurred as a result thereof.

10.3 If Buyer shall fail to make payments on this or any other agreement between Buyer and MSC in accordance with the applicable terms, MSC may, in addition to any other options it may have by law or otherwise, defer further production and shipments until such payments are made or, at its option, cancel any applicable Order with respect to the remaining Product to be delivered. If pursuant to this provision, MSC shall defer any production or shipments or cancel in whole or in part any Order, Buyer shall be liable for an reimburse MSC for all losses, expenses, and damages, including any and all direct and consequential damages, incurred by MSC as a result of such deferral or cancellation.

## **11. OTHER TERMS**

The Products may be subject to further restriction or terms and conditions as specifically set forth in the invoice therefore including, without limitation, export restrictions and terms specific to military uses of the Product. Such additional terms and conditions are incorporated herein by reference.

## **12. INDEPENDENT CONTRACTOR RELATIONSHIP**

12.1 Buyer agrees that, with respect to all matters relating to these Terms and

Conditions of Sale, Buyer shall be deemed to be an independent contractor and shall bear all of its own expenses in connection with these Terms and Conditions of Sale. Buyer acknowledges that it is not a partner, joint venturer, franchisee, or agent of MSC. Buyer shall have no authority, whether express or implied, to assume or create any obligation on behalf of MSC nor shall Buyer issue or cause to be issued any quotations or draft any letters or documents over the name of MSC.

### **13. FORCE MAJEURE AND AVAILABILITY OF MATERIALS**

13.1 Force Majeure. Except for Buyer's payment obligations to MSC, neither party will be in default in the performance of its obligations under these Terms and Conditions of Sale if such performance is prevented or delayed because of war, hostilities, revolution, civil commotion, riot, strike, labor dispute, lack or failure of transportation facilities, epidemic, fire, wind, earthquake, storm or flood, use of any law, order, proclamation, regulation or ordinance of any government, or of any subdivision thereof, because of Acts of God or for any other cause, whether similar or dissimilar to those enumerated, that is beyond the reasonable control and without the fault or negligence of the party whose performance is affected (any such act is hereinafter called "Force Majeure").

13.2 Notice of Event of Force Majeure. In each instance of Force Majeure, the party whose performance is affected shall give the other party written notice thereof no later than five (5) days after having knowledge of the circumstances of Force Majeure or as soon as circumstances otherwise permit. Such notice must include a brief description of the events or circumstances constituting Force Majeure and an estimate of the anticipated delay in performance caused thereby. Not later than five (5) days after knowledge of the cessation of any such continuing events or of circumstances constituting Force Majeure, the party whose performance was affected shall give the other party written notice of the date of such cessation. However, no occurrence of any such event is to be construed to prevent the other party from canceling or terminating these Terms and Conditions of Sale in accordance with the provisions of Section 13 hereof.

### **14. ENTIRE AGREEMENT; AMENDMENT**

These Terms and Conditions of Sale, together with the applicable Order and, as applicable, Installer Terms and Conditions or any Reseller Terms and Conditions, contain the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written or oral negotiations and agreements between

them regarding the subject matter hereof. These Terms and Conditions of Sale may be amended only by a writing signed by both of the parties.

#### **15. SEVERABILITY**

If any provision of these Terms and Conditions of Sale is determined to be invalid or unenforceable by a court of competent jurisdiction, (a) such provision shall be deemed to be severable from the remainder of these Terms and Conditions of Sale and shall not cause the invalidity or unenforceability of the remainder of these Terms and Conditions of Sale in such jurisdiction and (b) the entire Agreement shall remain enforceable in every other jurisdiction.

#### **16. NO IMPLIED WAIVERS**

The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at any later time nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of such provision.

#### **17. ATTORNEYS' FEES**

If any legal proceeding is brought for the enforcement of these Terms and Conditions of Sale, or because of an alleged breach, default or misrepresentation in connection with any provision of these Terms and Conditions of Sale or other dispute concerning these Terms and Conditions of Sale, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that proceeding, in

#### **18. SECTION REFERENCES**

Any reference in these Terms and Conditions of Sale to a section or subsection shall be deemed to include a reference to any subsidiary sections thereof whenever the context requires.

#### **19. CAPTIONS**

The captions of the sections, subsections, and subsidiary sections of these Terms and Conditions of Sale are included for reference purposes only and are not intended to be a part of the Agreement or in any way to define, limit, or describe the scope or intent of the particular provision to which they refer.

#### **20. GENDER**

Masculine, feminine, and neuter terms shall be interchangeable (and shall include a corporation, a partnership, or another entity), and shall be singular and plural, where context makes a change of gender or number appropriate.

#### **21. GOVERNING LAW**

These Terms and Conditions of Sale shall in all respects (including, but not limited to, all matters of interpretation, validity, performance, and the consequences of breach) be construed,



governed, and enforced in accordance with the internal laws (excluding all conflicts of laws rules) of the State of Rhode Island, as from time to time amended and in effect, and any applicable federal laws of the United States of America, as from time to time amended and in effect. Each party hereby consents to the exclusive jurisdiction of the state courts of the State of Rhode Island, and the United States District Court for the such district, in all matters arising out of these Terms and Conditions of Sale. Each party consents to service of process by certified mail, return receipt requested at the U.S. Address. Any suits, actions, or other legal proceedings arising hereunder shall be brought only in the Federal or State courts located in the State of Rhode Island. Each of the parties hereby consents to the personal jurisdiction of each such court in any suit, action or proceeding and waives any objection which it may have to the personal jurisdiction or venue of such suit, action or proceeding in such court.