

## TERM AND CONDITIONS OF SALE AND SUPPLY

1. **GENERAL.** All orders for products supplied by Marketing Assistance, Inc. ("Marketing Assistance") shall be subject to these Terms and Conditions Of Sale ("Conditions"). All transactions shall be governed by the laws of the Commonwealth of Massachusetts. No modifications hereto will be binding unless agreed to in writing by Marketing Assistance and Marketing Assistance hereby expressly rejects all additional, different or contrary terms and conditions. These Conditions are of a continuing nature and shall apply equally to all future orders and shipments, whether explicitly, stated or not until such time as Marketing Assistance agrees to new Terms and Conditions in writing and signed. THESE CONDITIONS OF SALE SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN THE BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN THE BUYER'S ORDER. No term or condition of the Customer's order additional or different from these Conditions Of Sale shall become part of any contract unless explicitly agreed to in writing by Marketing Assistance. Retention by the Customer of any Products delivered by or for Marketing Assistance, Receipt of the Customer of any Services performed by Marketing Assistance or payment by the Customer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Conditions. Marketing Assistance's failure to object to any provision contained in any communication from the Customer shall not be construed as a waiver of these Conditions nor as an acceptance of any such provision.

2. **CUSTOMER.** The term "Customer," as used herein, means the first distributor, resale dealer, original equipment manufacturer or first end-user customer that purchases the Marketing Assistance products and not any subsequent purchaser or user.

3. **WARRANTY CLAIMS.** Products carry the manufacturer's warranty starting on the date of shipment to the Customer from Marketing Assistance. Marketing Assistance OFFERS NO WARRANTY ITSELF and acts solely as a manufacturer's agent to handle warranty claim information and facilitate warranty transactions.

In the event that a product proves to be defective, Marketing Assistance's sole obligation shall be, to present defective product and/or information on a warranty claim to the product's manufacturer for approval of the warranty claim. If the product's manufacturer approves the warranty claim, the repaired or replacement product will be shipped CPT Customer's destination facilities, freight prepaid by manufacturer and/or Marketing Assistance.

When a claim is approved, manufacturer and/or Marketing Assistance shall pay standard lowest cost freight charges for return to Customer. Any non-standard or additional freight charges shall be for Customer's account. Return of any defective product for warranty service requires return of the entire appliance with the production batch number clearly visible, together with evidence of billing and shipping numbers.

No employee, agent or representative of Marketing Assistance has the authority to waive, alter, vary or add to the terms hereof without the prior written approval of an officer of Marketing Assistance. It is expressly agreed that (a) this section constitutes the final expression of the parties' understanding with respect to the warranty and (b) this



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section is a complete and exclusive statement of the terms of the warranty. Marketing Assistance shall have no obligation under the warranty set forth above in the event that:

(a) The Customer fails, within the warranty period to notify Marketing Assistance in writing and provide Marketing Assistance with evidence satisfactory to Marketing Assistance of the alleged defect within five (5) days after it becomes known to the Customer;

(b) Product manufacturer's warrantee conditions apply for products sold under these Conditions.

(c) Items manufactured by other parties but installed in or affixed to products sold by Marketing Assistance are not warranted by Marketing Assistance and bear only those warranties, express or implied, which are given by the manufacturer of such items, if any.

THE WARRANTY CLAIM INFORMATION SET FORTH ABOVE IS INTENDED SOLELY FOR THE BENEFIT OF THE CUSTOMER AND DOES NOT APPLY TO ANY THIRD PARTY. ALL CLAIMS MUST BE MADE BY THE CUSTOMER AND MAY NOT BE MADE BY ANY THIRD PARTY. THIS WARRANTY MAY NOT BE TRANSFERRED OR ASSIGNED, IN WHOLE OR IN PART, BY THE CUSTOMER FOR ANY REASON WHATSOEVER. ANY SUCH ATTEMPTED TRANSFER OR ASSIGNMENT SHALL BE NULL AND VOID.

Marketing Assistance, MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF USE AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF Marketing Assistance FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE, REPAIR OR PERFORMANCE OF THE PRODUCTS.

Marketing Assistance SHALL NOT BE RESPONSIBLE FOR NOR HAVE ANY FINANCIAL RESPONSIBILITY FOR UNINSTALLING, INSTALLING, REPLACING OR REPAIRING ANY OTHER PRODUCTS OR APPLICATIONS.

PRODUCTS SOLD BY Marketing Assistance ARE NOT INTENDED FOR NOR SUITABLE FOR AERONAUTIC OR AEROSPACE APPLICATIONS. IN THE EVENT CUSTOMER KNOWS OF OR INTENDS SUCH USE, IT MUST SO ADVISE Marketing Assistance FOR A CUSTOM ORDER FOR SPECIALLY MANUFACTURED PRODUCTS, IF AVAILABLE.

**4. MODIFICATIONS.** Marketing Assistance reserves the right, without notice to the Customer, to (a) change the specifications of any product, (b) improve a product in any manner that Marketing Assistance deems necessary or appropriate and (c) discontinue the manufacture of any product.

**5. PURCHASE ORDERS.** All quotations and prices from Marketing Assistance are subject to change until a purchase order has been accepted by Marketing Assistance. The Customer will submit purchase orders for the products to Marketing Assistance in

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writing, whether by mail, telefax or eMail which shall set forth, at a minimum: (a) an identification of the products ordered, (b) prices for such products, (c) quantities, (d) requested delivery dates and (e) shipping instructions and shipping addresses.

**6. ACCEPTANCE OF ORDERS.** (a) All purchase orders received from the Customer are subject to acceptance by Marketing Assistance in writing (b) ACCEPTANCE IS CONDITIONED UPON CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS AND PRODUCT MANUFACTURER'S WARRANTY TERMS AS WELL AS Marketing Assistance's WARRANTY CLAIM TERMS SET FORTH IN SECTION 3 HEREIN.

**7. MODIFICATION OF ORDERS.** No accepted purchase order shall be modified or canceled except upon the written agreement of Marketing Assistance and the Customer. Mutually agreed cancellations shall be subject to reasonable charges based upon expenses already incurred by Marketing Assistance and commitments made by Marketing Assistance. Mutually agreed change orders shall be subject to all provisions of these Terms and Conditions of Sale.

**8. PRICE INCREASES.** Marketing Assistance may increase its prices for the products. Increased prices for products shall not apply to purchase orders accepted prior to the effective date of the price increase unless such orders provide for delivery more than three (3) months after the date of acceptance of the order.

**9. PRICING AND DELIVERY TERMS.** All products are delivered Ex Works Marketing Assistance's warehouse facility in Massachusetts, or such other facility as Marketing Assistance may designate. Orders are then shipped per Marketing Assistance's choosing at lowest cost standard freight rates. Marketing Assistance shall have no further responsibility for the products and all risk of damage, loss or delay shall pass to the Customer Ex Works. In the event Customer issues special shipping instructions, Customer shall be responsible for such and any additional expenses caused thereby and may be asked to prepay such or accept collect shipment.

**10. PAYMENT TERMS.** For repeat Customers ordering quarterly or more frequently, Net 30 days. All orders will be shipped either prepaid by the Customer or C.O.D., at Marketing Assistance's option, unless the Customer has established a previously approved credit line. If Marketing Assistance approves a credit line for the Customer, all payments shall be due within thirty (30) days of the date of the invoice. If any invoice is not paid in full within such thirty (30) day period, then finance charges shall be assessed at the rate of one percent (1%) per month (twelve percent (12%) per year). If such rate is deemed to be usurious at anytime, it shall be reduced to the maximum rate permitted by applicable law. Marketing Assistance may stop or withhold shipment of products if the Customer does not fulfill its payment obligations. If Marketing Assistance is insecure about payment for any reason, Marketing Assistance may require full or partial payment in advance and as a condition to the continuation of its delivery of products.

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Customer shall not deduct, offset or otherwise withhold full and prompt payment by reason of any credits or claims for credits or other claims without the express written consent of Marketing Assistance.

Customer shall be responsible for any sales, use, value-added or other excise tax on the products.

**11. SECURITY INTEREST.** Unless and until the products are paid for in full, Marketing Assistance reserves a purchase money security interest in them to secure the unpaid balance of the purchase price. The Customer hereby grants to Marketing Assistance a power of attorney, coupled with an interest, to execute and file on behalf of the Customer all necessary financing statements and other documents required or appropriate to protect the security interest granted herein.

**12. ACCEPTANCE OF PRODUCTS.** The Customer will conduct any incoming inspection tests as soon as possible upon arrival of the products, but in no event later than ten (10) days after the date of receipt. Any products not rejected by written notice to Marketing Assistance within such period shall be deemed accepted by the Customer and Marketing Assistance shall not be liable for any additional costs, expenses or damages incurred by the Customer, directly or indirectly, as a result of any shortage, damage or discrepancy in a shipment.

### **13. LIMITATION OF REMEDIES.**

(a) Marketing Assistance SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING THE CUSTOMER WITH PRODUCTS.

(b) IN NO EVENT SHALL Marketing Assistance's LIABILITY INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, EVEN IF Marketing Assistance HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. **14. MADE-TO-ORDER PRODUCTS.** Marketing Assistance reserves the right to revoke and amend any price quotations offered to the Customer for made-to-order products, provided that such price quotations have not been accepted by the Customer prior to the date of revocation or amendment.

**14. SPECIFICATIONS.** Marketing Assistance reserve all rights of trademark, ownership, copyright and other industrial property rights to any trade or service names, specifications, technical data, drawings, illustrations, catalogues, models, documents and sales literature that it owns. Customer may not make use of any such or in any manner reproduce such without the express written consent of Marketing Assistance.

**16. REGULATORY LAWS AND STANDARDS.** Marketing Assistance makes no representation that its products conform to state or local laws, ordinances, regulations, codes or standards except as may be otherwise agreed to in writing by Marketing Assistance.

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It is the policy of Marketing Assistance to comply fully with the export laws and regulations of the United States government and / or applicable laws and regulations of other countries. Unless otherwise specifically agreed upon between the parties in writing, Marketing Assistance's products are intended for use within the USA in conformity with all legal requirements therein. See supplemental Terms and Conditions for Mexico and Canada. Customer represents and warrants that it is purchasing products for use in the United States in compliance with the laws of this country and that there will be no re-export or diversion contrary to such laws, including but not limited to the Export Administration Act Regulations and the International Traffic in Arms Regulations. Diversion contrary to these laws is prohibited. Customer is aware that "export" includes not only the shipment of products abroad, but also technical data which is deemed an export by its mere disclosure or transfer to a foreign national, even if within U.S. borders. Customer shall be solely responsible for obtaining any licenses or other official authorizations that may be required by any country of importation and/or under the Export Administration Act or other applicable legislation or regulations including, but not limited to, the Department of Defense or Department of State regulations. Customer shall also advise Marketing Assistance of any such license applications or requested authorizations.

Some of the Products Marketing Assistance sells have a manufacturer requirement that they must be used exclusively for civilian, non-military purposes. Such products are also not intended for any life-support and critical systems or nuclear applications. Written approval must be given by Marketing Assistance for any Product sold for military use. Exceptions, e.g. mine sweeper applications, must be agreed to by Marketing Assistance in writing. Their resale to any embargoed country or prohibited or barred person or entity is also not permitted. Customer represents and warrants that its purchase and use of the Products shall not violate these restrictions. No warranty shall apply to any unintended use and Marketing Assistance disclaims any liability with respect to such use. Any violation of these limitations by Customer shall result in the immediate termination of all business relations between the parties. Upon demand by Marketing Assistance, Customer shall supply Marketing Assistance with clear documentation and evidence that Customer has not violated these obligations and limitations of use.

Marketing Assistance and Customer are Independent Contractors and not principal and agent. Nothing construed or contained in these Terms and Conditions shall be construed to create a partnership, dealership, reseller, agency, employment or joint venture relationship. Without limiting the generality of the foregoing, Customer is not authorized to make, and shall not make, any representations on behalf of, or which are binding upon, Marketing Assistance and shall take no actions on behalf of, or which are binding upon, or creating any liability under export laws and regulations for Marketing Assistance. The status of Marketing Assistance and its personnel and any subcontractors is and will be that of independent contractors, and no such personnel or subcontractors will, at any time or for any purpose, be deemed employees or agents of Customer.

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17. **SIZES AND WEIGHTS.** Marketing Assistance's products are made only in the sizes and to the specifications set forth in its website, represented manufacturers' websites, catalogs and other literature. If any alteration is requested, such altered product will be treated as a made-to-order item. Marketing Assistance assumes no responsibility for typographical errors which may appear in its or the manufacturers we represent websites or literature, and cannot accept alteration charges caused by such errors. Freight allowances will be determined at the time of shipment and shall be based on actual shipping weight.

18. **SYSTEM DESIGN.** Responsibility for system design to ensure proper use and application of products sold by Marketing Assistance's within their published specifications and ratings rests solely with the Customer.

19. **PRODUCT RETURNS.** Returns of property delivered and non-defective products is only permissible with the prior written consent of Marketing Assistance at Customer's expense and Marketing Assistance shall have the right to charge a restocking fee to cover administrative, inspection and repacking costs. No products shall be returned unless undamaged, unused, and in their original unopened packaging. Returns are only entitled to a credit note for other purchases and not for repayment and all freight charges shall be deducted. All costs for modification of specially made products shall also be deducted.

### 20. CHOICE OF LAW AND JURISDICTION.

(a) This agreement, including any purchase order, terms and conditions or other documents relating to or forming part of the purchase order shall be governed by the internal laws of the Commonwealth of Massachusetts, excluding its conflict of laws principles. The UN Convention on the International Sale of Goods is specifically waived and excluded.

(b) All disputes between the parties shall be exclusively adjudicated by the Federal and State courts in Massachusetts and each party hereby consents to the in-personam jurisdiction of said courts and venue. Each party waives any claim of forum-non-convenience. In consideration for entering into this agreement each party irrevocably waives its right to trial by jury.

(c) Enforcement of any legal or equitable judgment or order may be had in any court of competent jurisdiction.

21. **FORCE MAJEURE.** Any delay or failure of Marketing Assistance to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of Marketing Assistance and without its fault or negligence, such as by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, unavailability of raw materials, energy or transport and strikes. During the period of such delay or failure to perform by Marketing Assistance, Marketing Assistance shall provide Customer with



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notice of such delay (including a description of the cause of the event or circumstance, an estimate, if possible, of the duration of the delay and a statement regarding the remedial steps that are being undertaken to resume performance. If requested by Customer, Marketing Assistance shall, within ten (10) business days of the request, provide adequate assurances that any delay shall not exceed sixty (60) days. If the delay lasts more than sixty (60) days or Marketing Assistance does not provide adequate assurance that the delay will cease within sixty (60) days, Customer may immediately cancel the purchase order without liability to Marketing Assistance.

### 22. FINAL AGREEMENT

The purchase order, these terms and conditions and all documents specifically annexed thereto or referred to therein are a full and final statement of the terms of the agreement and all prior or contemporaneous discussions or writings shall not be deemed part of this agreement.

#### **Marketing Assistance U.S. INC**

65 Sprague Street, Boston, MA 02136 Phone: (508)544-1250

E-mail: [info@MarketingAssistance.com](mailto:info@MarketingAssistance.com)

#### SUPPLEMENTAL TERMS AND CONDITIONS FOR SALES TO CUSTOMERS IN MEXICO

##### **Export, export control regulations and final use**

1. According to our business philosophy and company policy our products are intended solely for use within the scope of national and international legal obligations and to serve sustainable development in the world. Our products must therefore be used exclusively for civil applications, and may not be used in whole or in part in military applications, or be exported for a use of this kind. Their re-sale to embargoed countries or to Barred Persons is also not permitted.
2. The customer assures, by way of an independent promise of guarantee, that all products on its premises or on the premises of the final customer are used exclusively in civil applications and not in military applications, that our products will not be exported to embargoed countries or supplied to Barred Persons and that our products will not be used or exported in such a manner that they do not comply with legal or governmental authorization procedures or prohibitions.
3. The customer is aware that the use of our products, in their entirety or in part, on the customer's premises or on the premises of the final customer for military purposes, or in embargoed countries or by Barred Persons is not only subject to the reservation of statutory powers but is hereby expressly prohibited by the contract. In the event of violations we shall be entitled to rescind the contract, and we expressly reserve the right to assert further claims and in particular damage claims.

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4. We shall be entitled, at any time after giving prior notice, to inspect the customer's compliance with its legal and contractual obligations within a reasonable period of time. If we have sufficient suspicions that it has failed to comply with such obligations, the customer shall be obliged to furnish us without delay with all information necessary to review compliance with said prohibition. If the customer has its own doubts regarding its compliance with the foregoing obligations or regarding compliance by the final customer, it shall notify us immediately thereof in writing. Exceptions to the above mentioned obligations, e.g. mine sweeper applications, need explicit permission in writing by Marketing Assistance.

5. We shall be entitled to withhold our services if the customer infringes an obligation stated in the foregoing paragraphs or if sufficient suspicions regarding non-compliance or our own doubts of the customer exist.

6. Besides the foregoing obligations, the customer shall ensure at any time at its own expense that it has the export and customs authorization that may be needed for exporting products purchased from us. We shall not be liable for the legitimacy of exporting the products and their compliance with legal and technical regulations of the importing country. The customer hereby holds us harmless from and against any claims and claims for compensation in this respect.