

PROFORMA INVOICE

Mold-Masters DME India Private Limited

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General Terms and Conditions of Business of Mold-Masters DME India Private Limited, Coimbatore, India

1. **Definitions:** "BUYER" means the individual, partnership, firm or corporation to which this order confirmation is addressed. "SELLER" Mold-Masters DME India Private Limited and/or its subsidiary companies. "Product" means any service, drawing, component, equipment or system manufactured or supplied by SELLER pursuant to these terms and conditions of sale.
 2. **Entire Agreement:** The order confirmation of which these terms and conditions are a material part constitutes the entire agreement between BUYER and SELLER and supersedes and shall unless specifically communicated in writing by the SELLER, prevail over any oral undertakings, earlier terms or conditions, statements in catalogues or elsewhere, any terms and conditions issued by BUYER in any purchase order or otherwise and any terms implied by statute. Any trade custom, usage or course of dealing shall not vary any term or condition used herein. Issuance of SELLER's order confirmation quoting BUYER's order reference or number shall constitute evidence of the sales contract and these terms and conditions of sale between the parties and BUYER's acceptance thereof.
 3. **Changes:** BUYER's request for any changes to this contract must be in writing. Changes may result in delays and changes in contract price and will be binding on SELLER only when confirmed in writing duly signed by an officer of SELLER.
 4. **Cancellation:** This order may not be canceled by BUYER in whole or in part except with SELLER's written consent and upon payment by BUYER of all costs incurred by SELLER (at SELLER's then standard shop rate) plus a cancellation charge of fifteen (15%) percent of the total value of the contract. SELLER may, in addition to other rights and remedies, cancel or suspend deliveries under this order and any or every other contract with BUYER, in whole or in part, if (a) any debt due and payable by BUYER to SELLER is unpaid; (b) BUYER has wrongfully failed to take delivery of Product under this order or any other contract with SELLER; or (c) BUYER becomes insolvent, has a receiver appointed, passes a resolution for winding-up, makes a composition or arrangement with creditors or has a receiving order made against it.
 5. **Pricing and Terms:** All prices stated herein are in Indian Rupees, FOB SELLER's plant at #3B, Gandhiji Salai, Nallampalayam Road, Rathinapuri Post, Coimbatore - 641027, Tamilnadu. All shipping, destination charges, levies, duties or taxes based upon price of the Product or its use shall be paid by BUYER. Payment is due in accordance with any applicable progress, advance or other agreed upon payment schedule or, if no such schedule has been agreed to, upon acceptance as specified in paragraph 7 but in no event later than thirty (30) days after date of invoice. If BUYER's financial condition changes adversely, in our judgment, SELLER may cease delivery or production hereunder until satisfactory financial arrangements are made, however the SELLER shall not be held responsible or liable for any monetary loss or liability to the Buyer as result of the SELLER ceasing delivery or production. Interest at the lesser of eighteen (18%) percent per annum calculated and payable monthly or at the lawful maximum rate under applicable laws shall be paid by BUYER of overdue accounts.
 6. **Delivery, Risk of Loss, Title:** Any date, period or rate of delivery stated in this order confirmation shall date from receipt by SELLER of BUYER's written confirmation, shall be subject to receipt of all necessary instructions, licenses, letters of credit, deposit payments and other requirements to be performed by BUYER and is intended by SELLER and acknowledged by BUYER as an estimate only, not giving rise to contractual obligation. Delivery may be delayed at any time due to causes beyond SELLER's control and SELLER reserves the right to effect partial shipments, each of which shall be deemed to be sold under a separate contract and no failure of or delay in delivery of any Product therein shall entitle BUYER to treat this contract as repudiation with respect to remaining Product. Delivery to common carrier shall constitute delivery to BUYER at which time title passes to the BUYER and the risk of loss shall be borne by the BUYER. BUYER shall insure product against loss or damage by theft, fire, water or other casualty. SELLER may file a copy of this agreement and/or separate financing statements or notices of liens, which BUYER agrees to execute upon SELLER's request.
 7. **Acceptance of Product:** Claims relating to quantity, loss of or damage to Product must be made by BUYER within, and will not be accepted by SELLER after fourteen (14) days following the later of delivery of Product to BUYER or any demonstration or acceptance test therefore which has been scheduled and confirmed in writing by SELLER.
 8. **Drawings, Designs and Interface:** Any mold drawings submitted by BUYER to SELLER shall be used by SELLER solely to determine the Product to be recommended and/or provided. SELLER shall have no responsibility for checking correctness of mold design or construction nor the interfacing of Product to BUYER's mold, which must all be determined and approved by BUYER's engineers. And the SELLER shall not be responsible for any defect or failure arising due to BUYER's mould, design, specification or construction.
 9. **Improvements:** SELLER reserves the right to implement design changes to Product that do not change its specifications, without notice to BUYER, and to provide such changed Product in fulfillment of BUYER's order.
 10. **Fitness For Use:** SELLER makes no warranty with respect to the overall design requirements, fitment or performance of any system in which Product may be used.
 11. **Warranty:** SELLER warrants that BUYER, upon payment in full for Product, shall acquire good and clear title to Product, free and clear of all liens and encumbrances created by SELLER. SELLER further warrants Product to be free from defects in workmanship and material under normal use and service, heater elements of nozzles and manifolds to be serviceable without electrical burnout for a period of one (1) year from date of invoice to BUYER. SELLER's entire liability under this warranty to repair or replace, either at the BUYER's plant or FOB SELLER's plant, as determined by SELLER, free of charge any Product which is found during the said warranty period by SELLER's inspection to be defective in workmanship or material is subject to the BUYER promptly notifying SELLER of any alleged defect in the Product, and delivery of the defective Product upon request by the SELLER to the SELLER's plant at BUYER's expense. Product shall not be returned to SELLER for warranty evaluation without prior issuance of an authorization number by SELLER and SELLER shall not be liable for repair work done by the BUYER on his own without reference to the SELLER or costs incurred by BUYER. This warranty shall not be assignable and all claims hereunder must be by BUYER as the original purchaser of the Product. The above warranties will not apply where the BUYER has failed to provide the installation and operating environment prescribed by SELLER, BUYER has used Product for purposes other than those for which it was designed or damage has resulted from wear and tear, abnormal corrosive or abrasive conditions in use, modification or alteration of Product other than by SELLER, accident, disaster (including, but not limited to, fire, flood, water, wind and lightning), neglect or misuse.
- THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESSED OR IMPLIED, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. NO AFFIRMATION OF FACT OR PROMISE MADE BY SELLER, UNLESS CONTAINED IN THE SALES CONFIRMATION, SHALL CONSTITUTE A WARRANTY THAT THE PRODUCT WILL CONFORM TO THE AFFIRMATION OR PROMISE. THE SALES PERSONNEL ARE NOT AUTHORIZED TO MAKE WARRANTIES ABOUT THIS PRODUCT AND CONFIRMATION IF ANY MADE BY SUCH SALES PERSONNEL SHALL NOT BIND THE SELLER. SELLER'S LIABILITY HEREUNDER (WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY TORT OR OTHERWISE) DOES NOT INCLUDE LIABILITY FOR ANY OTHER EXPENSE, INJURY, LOSS OR DAMAGE, WHETHER DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR PRODUCTION, INCREASED COST OF OPERATION, SPOILAGE OF MATERIAL ARISING IN CONNECTION WITH THE USE OF OR INABILITY TO USE PRODUCT FOR ANY PURPOSE, DAMAGE OR LOSS OF OTHER PROPERTY OR EQUIPMENT, INJURY TO PERSONS OR CLAIMS OF CUSTOMERS OF THE BUYER; EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, WITH RESPECT TO WARRANTY CLAIM ON REPLACEMENT AND REPAIRS, SHALL NOT EXCEED THE INVOICED PRICE FOR THE PRODUCT UPON WHICH SUCH LIABILITY IS BASED.
12. **Patents:** SELLER shall defend any suit or proceeding against BUYER claiming that Product made to SELLER's designs constitutes an infringement of any patent, provided that SELLER is notified of such suit in writing within fourteen (14) days and given full and complete authority, information and assistance by BUYER (at SELLER's expense) for the defense of same. BUYER shall not admit liability, make any voluntary settlement or incur any cost or expense in connection with such proceeding without SELLER's written consent or do anything to prejudice SELLER's rights. If Product is, in such a suit, held to constitute an infringement and its use is enjoined, SELLER shall, at its own expense, either procure for BUYER the right to continue using such Product, modify it to become non-infringing, or remove the Product and grant a credit therefor in an amount equal to its depreciated value, as determined by SELLER, acting reasonably. The foregoing states the entire liability and responsibility of SELLER to the BUYER for patent infringement of the Product. The SELLER shall not be responsible for any consequential damages resulting therefrom. SELLER shall have no liability to BUYER hereunder for a patent infringement claim based upon interconnection or use of the Product in combination with equipment or devices not made by SELLER, use in any manner for which the Product was not designed or recommended by SELLER or Product furnished pursuant to BUYER's design and specifications and all products manufactured in accordance with specifications provided by the BUYER. BUYER shall defend, at its expense, any suit against SELLER for alleged patent infringement arising out of such use or supply of Product and indemnify and hold SELLER harmless from and against any and all damages, costs and attorney's fees resulting therefrom.
 13. **Force Majeure:** If either party is delayed or hindered in or prevented from performing any of its obligations under this confirmation by reason of or attributable to any circumstance (other than financial liability) which is beyond the reasonable control of such party, is not caused by any default or act of commission or omission of such party and is not avoidable by the exercise of reasonable effort or foresight by such party (excluding financial inability but including, without limiting the foregoing, strikes or labour or industrial disturbances, acts, orders, legislation, regulations or directives of any governmental or public authorities, acts of public enemies, war, riots, sabotage, blockages, embargoes, shortages of materials or suppliers, shortages of labour, lightning, earthquakes, fire, storms, hurricanes, floods, wash-outs, explosions, act of God and delays caused by any other party), it shall be under no liability to the other in respect of resulting non-performance of such obligation and the time for performing same shall be extended until the operation of the causes preventing, hindering or delaying the performance thereof has ceased.
 14. **Assignment:** This contract is not assignable by BUYER without prior written consent of SELLER. Any attempt to assign any of the rights, duties or obligation of BUYER hereunder shall result in the forfeiture of such rights but duties and obligations hereunder shall continue to bind the BUYER and the assignee.
 15. **Amendments:** This agreement can only be modified by written agreement duly signed by persons authorized to sign agreement on behalf of the SELLER.
 16. **Legal Action:** Any action for breach of this contract must be commenced within one (1) year after the cause of the action has been accrued.
 17. **Governing Law:** In the event of any dispute or disagreement over the interpretation of any of the terms herein contained or any claim or liability, the same shall be referred for arbitration in India. Such reference(s) shall be deemed to be a submission to Arbitration under the Arbitration and Conciliation Act, 1996 or any other law concerning arbitration which may be in force at the relevant time. The venue of arbitration shall be Coimbatore. Subject to the above arbitration clause, the courts in Coimbatore alone shall have jurisdiction to the exclusion of all other courts. It is further agreed that the parties herein will be governed by the laws of India.
 18. **Validity:** In case one or more of the provisions contained in this contract should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Mold-Masters DME India Private Limited

07.01.2010

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Rev 1.0

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