



MORIDEN AMERICA PROCUREMENT TERMS AND CONDITIONS

Moriden America, Inc.

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1. Statement of Acceptance:

The parties do not intend for these General Terms and Conditions ("Terms") to be signed, but rather intend for these Terms to be accepted by the performance of Seller for Buyer. Seller's commencement of work on Goods for Buyer and/or its continuing performance under the Contract shall serve as evidence of and constitute Seller's acceptance of these Terms.

2. Definitions:

(a) "Contract" means the contract made pursuant to any Purchase Order, and all related "Contract Documents", which include any Purchase Order, Supply Agreement, Delivery Order, these Terms, and any special conditions, instructions, or other related documents issued by Buyer.

(b) "Seller" means each party providing Goods to Buyer under the Contract.

(c) "Buyer" means Moriden America, Inc., and/or any of its affiliated or subsidiary companies as currently exist or may be subsequently formed.

(d) "Goods" means any of the following provided or performed by or on behalf of the Seller, including, but not limited to: (i) all items, equipment, tooling, machinery, parts, goods, personal property, software and other intellectual property; (ii) all labor and materials supplied by Seller in connection with or reasonably related to performance by Seller under the Contract; (iii) all specifications, plans or drawings supplied by Seller in connection with or reasonably related to performance by Seller under the Contract; and/or (iv) any services provided by Seller in performing under the Contract, including installation and construction activities.

(e) "Intellectual Property Rights" means any and all tangible and intangible (electronic or written): (i) copyrights and other rights associated with words of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and

(vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

3. Delivery and Billing Instructions:

(a) THE TIME AND DELIVERY OF GOODS AS SPECIFIED IN THE CONTRACT DOCUMENTS IS OF THE ESSENCE. Seller will immediately notify Buyer if Seller's timely performance under the Contract is delayed or is likely to be delayed. Buyer's acceptance of Seller's notice will not constitute Buyer's waiver of any of Seller's obligations.

(b) If any of the Goods are found at any time to be defective in material or workmanship or otherwise not in conformity with the requirements of the Contract, Buyer, in addition to any other rights which it may have under all applicable warranties or otherwise, may at its option correct or have corrected the nonconformity at Seller's expense, or reject and return such Goods and/or discontinue such services at Seller's expense. Such Goods shall not be replaced or continued without written authorization from Buyer. Buyer may accept, without prejudice, a portion of any shipment, and, at its option, have Seller repair or replace any non-conforming portion of the shipment, at Seller's expense. Goods rejected shall be removed promptly by the Seller at its expense and risk.

(c) Unless the Purchase Order or any Delivery Order provides otherwise, partial shipment of Goods will not be allowed, and may be rejected. If the Purchase Order or Delivery Order provides for partial shipments, under written release notices from Buyer, Seller shall make such shipments only as specified in such release notices. ANY QUANTITIES DELIVERED IN EXCESS OF THE QUANTITIES ORDERED OR INCORRECT MAY BE REJECTED AND RETURNED AT SELLER'S COST.

(d) ALL INVOICES SHALL SHOW BUYER'S PURCHASE ORDER OR DELIVERY ORDER NUMBER AND SHALL COMPLY WITH BUYER'S PAYMENT TERMS. In case of progress payment, or payment for authorized partial shipments, under one Purchase Order or Delivery Order, each invoice shall show a billing sequence number in addition to the Purchase Order or Delivery Order number.

(e) ALL SHIPMENTS SHALL BE ACCOMPANIED BY A PACKING SLIP BEARING BUYER'S PURCHASE ORDER OR DELIVERY ORDER NUMBER (and, where applicable, the billing sequence number).

4. Changes and Substitutions:

(a) Seller shall not, at any time, make any changes, additions or deletions in the Goods or prices as described in the Contract Documents, without Buyer's prior written approval. Buyer may make such changes, additions, or deletions only upon written notice to Seller. Seller shall continue its performance of this Contract while such changes, additions or deletions are pending, unless otherwise instructed by Buyer.

(b) If the words "or equal" are used in the Contract Documents with regard to any Goods, any "equals" proposed to be substituted by Buyer must first be approved in writing by Buyer.

5. Packing and Transportation:

Transportation of the Goods shall be made as specified on the face of the Purchase Order or Delivery Order. Packing of the Goods shall be made by Seller in a manner adequate to withstand transportation. Seller shall be responsible for any loss or damage to the Goods caused in whole or in part by improper packing. Marking of the Goods shall be made by Seller in accordance with the Contract Documents or Buyer's reasonable instructions.

6. Technical Services at Buyer's Premises:

Seller shall furnish, upon reasonable request by Buyer, experienced and competent technical representatives to provide technical advice and services about the Goods, at Buyer's premises, on terms specified in the Contract Documents, or agreed written amendments thereto.

7. Acceptance of Goods:

Subject to Buyer's right to give notice of non-conformity within a reasonable time of discovery following delivery of the Goods, and subject to Seller's obligations relating to warranties as provided in Article 9, title to and risk of loss or of damage of the Goods shall be deemed to have passed from Seller to Buyer upon delivery at the F.O.B. point specified on the face of the Purchase Order or Delivery Order.

8. Access to Seller's Premises; Inspection and Testing:

Upon written notice given by Buyer, reasonably in advance of the date requested for access, Seller shall permit Buyer to have access to the premises of Seller, and of any vendors and subcontractors of Seller, for the purposes of determining the progress of the work, observing the condition of the Goods, and inspecting and testing the Goods. Any expediting efforts made by Buyer shall not relieve Seller of any of its obligations as to the time of delivery specified in the Contract Documents; and any inspection or failure to inspect by Buyer shall not relieve Seller of any responsibility or liability with respect to the Goods, nor be interpreted in any way to imply acceptance thereof by Buyer.

9. Seller's Status as Independent Contractor:

The Seller, in its performance of this Contract, is an Independent Contractor, having responsibility for and control over the methods, procedures and other details involved in such performance, and is not an agent of the Buyer. Seller has no power to contract for or act on behalf of the Buyer with relation to any third parties, unless specifically so authorized by the Buyer by a separate writing.

10. Warranties:

(a) Seller represents and warrants that it has the full power to enter the Contract and to perform its obligations under the Contract.

(b) Seller warrants that the Goods supplied by Seller (whether manufactured by Seller) shall conform to and comply with all requirements set forth in the Contract Documents, are new and free from defects in design, workmanship, and material, and are fit and merchantable for their intended use. Seller further warrants that the Goods comply with all specifications established by Buyer for the Goods, and that the Goods will not be altered in any manner to deviate from Buyer's specifications without Buyer's express prior written authorization.

Seller agrees, at its own cost and expense, to be responsible for, and shall indemnify and hold Buyer and Buyer's respective parent companies, affiliated companies, subsidiaries, officers, directors, and employees harmless against, all claims made against Buyer based upon, relating to, or arising out of any claimed defects, of whatsoever nature or kind caused in whole or in part by any such defects in the Goods ordered hereunder. Seller's warranties (and any consumer warranties, service policies or similar undertakings of Seller) shall be enforceable by Buyer's customers and any subsequent owner or operator of the Goods as well as by Buyer.

(c) Seller further warrants that Buyer shall receive good title, free from all liens, encumbrances or other claims, and that all Goods will not infringe, and will be free of any claims of infringement concerning, any Intellectual Property Rights (including, but not limited to, third-party Intellectual Property Rights in the United States, Canada, Australia, the European Union or Japan); any right of publicity or privacy; or any other protected rights of third parties, whether such rights are contractual, statutory or common law (except as to any specifications furnished by Buyer).

(d) The foregoing warranties are in addition to any warranties implied by law, and shall survive inspection, test, acceptance, and payment by Buyer.

(e) In the event of any breach of the warranties contained in (a) above, arising at any time within thirty-six (36) months from the date of Acceptance of the Goods, or within any longer warranty period normally offered by Seller, or available from Seller's vendors, Seller shall, at its own expense, including packing, transportation and other direct costs, promptly make repairs, replacements and/or alterations as may be necessary to cause the Goods to satisfy said warranties, and shall hold Buyer harmless from all damage or expense incurred by Buyer by reason of such breach.

11. Liens

(a) All Goods shall be provided to Buyer free and clear of all liens, claims, security interests and encumbrances (collectively, "Liens").

(b) Upon request of Buyer and as permitted by law, Seller shall provide Buyer with an executed release, satisfaction, or waiver of all Liens.

(c) Final payment to Seller shall not relieve Seller of its obligation to discharge any Lien filed before or after Seller is paid for Goods under the Contract Documents.

(d) To the extent permitted by law, Seller hereby waives and disclaims any security interest, mechanic's lien, or other lien right, whether statutory or otherwise, in favor of Seller related to all Goods purchased from Seller pursuant to the Contract Documents and which come into Buyer's actual or constructive possession prior to full payment by Buyer under the Contract Documents.

(e) Seller agrees to indemnify and hold Buyer harmless from all liability, cost or expense, including any attorneys' fees, to discharge or defend any lawsuit brought to enforce any mechanic's or materialmen's lien, rights or claims to a lien, bond claims, personal liability notices pursuant to Indiana Code § 32-28-3-9, or any other claim for payment relating to labor and/or materials covered by any payment made by Buyer; and/or satisfy any claims or demands arising out of, or directly or indirectly attributable to, Seller or any work performed or supplies furnished by or through the Seller.

12. Force Majeure:

If the performance by either party of its obligations hereunder is prevented, restricted or interfered with by force majeure, which shall mean any cause or circumstance beyond the reasonable control of such party, including but not limited to fire, flood, earthquake, explosion or other casualty or accident; war or other violence; any law, order, proclamation, regulation or ordinance, demand or requirement of any government agency; or any other act or condition whatsoever beyond the reasonable control of such party, delaying or interfering with the activities of such party, then such party shall not be liable for loss or damage, or failure or delay in performing its obligations hereunder, to the extent of such prevention, restriction or interference; provided, however, that such party shall promptly notify the other party of such force majeure and take all reasonable steps to avoid or remove such causes of nonperformance. In such event, both parties shall discuss how to proceed thereafter and make necessary adjustments in the schedule and other matters affected by such force majeure.

13. Strike Protection:

Seller shall promptly notify Buyer of any anticipated occurrence of any labor dispute between Seller and its workers or between Seller's subcontractors and their workers which will affect Seller's production and delivery of Goods. In the event of such anticipated occurrences, Seller shall take all reasonable steps to increase its inventory of finished Goods and to protect its inventory of finished Goods from the effects of any labor dispute. Buyer's acceptance of Seller's notice of labor dispute does not waive any of Seller's obligations under the Contract Documents.

14. Assignment:

Seller shall not assign its rights or obligations hereunder without Buyer's prior written consent. If Seller engages subcontractors and/or independent contractors to perform its obligations hereunder or under the Contract Documents, Seller shall enter into agreements with such subcontractors and/or independent contractors to require such parties to adhere to the Seller's obligations under these Terms and the Contract Documents, including but not limited to, provisions relating to confidentiality and Intellectual Property Rights and Seller shall retain responsibility and liability for any and all acts of such subcontractors and/or independent contractors.

15. Modification/Use of Tooling:

Seller agrees that Goods owned by Buyer, including but not limited to, the information, facilities, tools, jigs, drawings, patterns, dies, molds, and specifications supplied or paid for by Buyer shall be and remain Buyer's property, shall be used only on Buyer's Goods, and shall be held by Seller for Buyer unless directed otherwise. Seller will account for such Goods and keep them in good working condition and fully always covered by insurance without expense to Buyer. Without the prior written consent of Buyer, Seller shall not modify, lease, move, transfer, sell or otherwise dispose of any Goods, including but not limited to, tooling exclusively used and specifically required for the manufacture of Goods for Buyer. Seller shall not use any of Buyer's property for the benefit of any third party without the prior written consent of Buyer. Upon the request of Buyer, Seller shall immediately release and deliver any Goods owned by Buyer to Buyer in accordance with the instructions provided by Buyer.

16. Non-Disclosure:

Seller shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other person or use such information itself for any purpose other than performing under the terms of this Contract and shall not be reproduced in whole or in part or disclosed to any other persons for any other purposes. The confidential requirement shall also apply to information, drawings, patterns, and specifications, or other documents prepared by Seller for Buyer in connection with this Contract. Seller shall provide confidential information only to those of its agents and employees who have been informed of the requirements of this paragraph and have agreed to be bound by them. All confidential information shall be returned promptly upon demand of Buyer. Seller shall ensure that such information is not divulged to any third party except where necessary for the performance of Seller's obligations under this Contract and, in such cases, subject to written undertaking of such third parties of a similar obligation of confidentiality.

Seller shall not advertise or publish the fact that Buyer has entered a contract with Seller nor shall any information relating to this Contract be disclosed without Buyer's written consent.

17. Taxes and Duties:

Buyer shall not be liable for any federal, state, provincial or local taxes, including, without limitation, sales, use, consumption, and value-added taxes unless separately stated in the Contract Documents or when an exemption certificate is furnished, as shown on the Purchase Order. Seller shall bear any tax and duties levied upon the ownership, sale, use, production, or transportation of the Goods in any state of the United States or any other country, including but not limited to sales, use and property taxes (except where an exemption therefrom is granted to Buyer, as shown on the Purchase Order). Seller shall comply with the requirements imposed on Seller by all applicable taxing statutes, including requirements for registration, payment, collection and remittance of taxes, and timely filing of all tax returns.



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Buyer shall deduct or withhold from each payment to Seller all taxes and any other withholdings which Buyer is required by law to deduct or withhold and pay the amount deducted or withheld to the relevant governmental authority as required by law. Buyer may provide Seller a copy of the receipt of payment issued by the governmental authority.

18. Compliance with Law:

(a) Seller and all its subcontractors and their employees and agents shall comply with all applicable laws, regulations, ordinances and other rules of any and all federal, state or local governments which are required to be complied with in the course of performance of this Contract, including, but not limited to, all applicable federal, state and local laws and regulations prohibiting discrimination in employment practices, those pertaining to the manufacture, labeling, invoicing and sale of such Goods, environmental protection, immigration and occupational safety and health. Seller shall provide equal employment opportunities to all employees or applicants for employment, with relation to this Contract, without any discrimination on the basis of race, color, religion, national origin, sex, disability or status as a veteran.

(b) Seller shall procure, at its expense, all necessary permits, certificates, and licenses required by virtue of all applicable laws, regulations, or ordinances in effect at the place where any of the work is to be performed by Seller.

(c) Seller represents and warrants to Buyer that Seller is not a party to any agreement with any third party which is or will conflict with Seller's obligations under this Contract.

19. Termination for Default:

If Seller fails to deliver any Goods within the times specified in the Contract Documents, or breaches or defaults in performance of any of its obligations hereunder, and does not cure such failure, breach or default within fifteen (15) days after delivery of written notice thereof by Buyer, or if Seller becomes insolvent, becomes subject to any voluntary or involuntary bankruptcy procedures, a receiver is appointed over Seller or its property, makes a general assignment for the benefit of creditors, is liquidating, dissolving or ceasing to do business in the ordinary course, or for any other reason becomes unable to perform its obligations hereunder or to its creditors, Buyer thereupon shall have the right to terminate the Contract, without further notice to Seller, in addition to any other rights Buyer may have, and without any liability to Seller, except to make payment for any Goods previously delivered and accepted (subject to set-offs for any damage, loss or expense incurred by Buyer by reason of Seller's default). Seller shall be liable to Buyer, to the extent provided by law, for all loss, damage and expense incurred by Buyer by reason of such default. The rights and remedies of the Buyer provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law under the Contract Documents.

20. Termination at Buyer's Option:

Buyer may, at its sole option, terminate this Contract at any time in whole or in part, without cause, by giving notice to Seller in writing. Upon receipt of such notice, Seller shall promptly discontinue any further performance of the work or the relevant part thereof, except as may be necessary to protect the work completed to date, or as may be requested by Buyer. Upon such termination, Seller shall, upon Buyer's request, deliver to Buyer any or all completed Goods not yet delivered, for which Buyer shall make payment following acceptance, subject to all terms of the Contract; and Seller shall also, upon Buyer's request, return to Buyer all Goods, including but not limited to, drawings, specifications, documents, equipment, machinery, and materials received from Buyer for Seller's use in connection with the Contract. Buyer's sole remaining obligation to Seller shall be to reimburse Seller for its verified costs of work in process, and materials purchased for such Contract and not otherwise usable by Seller, whereupon title to and possession of all such items shall pass to Buyer. Seller shall deliver any claims for reimbursement for such items to Buyer in writing, within thirty (30) days after termination. Unless otherwise agreed to by Buyer in the Contract Documents, Buyer shall not be liable for and shall not be required to make payment to Seller for any claims by Seller related to subcontractor or other third party claims, labor or employee benefit charges, professional or other fees, for loss of anticipated profit, overhead, interest, product development or engineering and design costs, equipment or facilities costs, general and administrative costs, or operating costs of any kind related to the termination of the Contract Documents.

21. Assumption of Risk:

Seller and all subcontractors and their employees and agents shall be subject to and shall conform to Buyer's rules, regulations, policies, procedures, and programs while performing under the Terms or the Contract, including without limitation, those related to safety, security, and environmental management. Notwithstanding the foregoing, Seller assumes all risk of injury, death, sickness or disease to persons or damage to property used or employed on or in connection with performance under these Terms and the Contract, including, without limitation, all risks of injury, death, sickness or disease to persons or damage to property wherever located, arising out of the negligent performance, willful misconduct or breach of these Terms or the Contract by Supplier or its employees, agents or representatives, or employees, agents or representatives of its subcontractors or suppliers.

22. Indemnification:

To the fullest extent permitted by law, Seller agrees to indemnify, save harmless, and defend Buyer and its affiliated companies, and their respective customers, directors, officers, employees and agents, from and against any loss, liability, cost, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including without limitation, all judgments rendered against, and all fines and penalties imposed upon Buyer and any reasonable attorney's fees and any other cost of litigation (hereinafter collectively referred to as "liabilities"), directly or indirectly caused by or arising out of any action or omission under these Terms or the Contract Documents, caused by or attributable to, in whole or in part, by Seller, its employees, agents,

subcontractors, or any party in any way contributing to the performance and prosecution of the work herein

contracted for, including, without limitation, breach of any warranty or product liability or any injuries to persons, including death or damage to property. Seller shall not be required to indemnify Buyer for any such loss, liability, cost, suit, action, or claim for any such loss, liability, cost, suit, action, or claim, caused solely and exclusively by the negligence of Buyer. Seller agrees to expressly waive its immunity, if any, under the applicable workers' compensation law if such immunity may affect this indemnification obligation. Seller shall immediately notify Buyer of any accident or occurrence resulting in injury, death, sickness or disease to persons or damage to or destruction of property.

23. Seller's Insurance:

Seller shall purchase and maintain, at Seller's sole expense, such insurance as will provide sufficient coverage for defense and indemnification for any loss, liability, cost, expense, suit, action, claim, demand, or any other obligation or proceeding which may arise out of or result from Seller's Goods or from Seller's actions or omissions in performance of its obligations under the Terms or the Contract Documents, or by anyone directly or indirectly employed by the Seller, or by anyone for whose acts the Seller may be liable. Such coverage shall include, but not be limited to, worker's compensation insurance (including employer's liability insurance), comprehensive general liability insurance, contractual liability insurance, general automotive liability insurance, property damage insurance, products liability insurance, personal injury insurance (covering liabilities to third parties for bodily injury) and umbrella coverage. Such insurance, excluding worker's compensation insurance, shall include as additional named insured's Moriden America, Inc., and their respective distributors and dealers. Upon Buyer's request, Seller shall provide Buyer proof of such insurance coverage.

24. Arbitration:

Any dispute or claim arising in connection with these Terms, or the Contract Documents shall be settled in good faith by mutual agreement of Buyer and Seller. If the parties fail to reach an agreement, such dispute or claim shall be settled by arbitration upon written demand by either party. The arbitration shall be held in Carmel, Indiana, U.S.A. by one (1) arbitrator in accordance with the rules of the American Arbitration Association. The

award shall be final and binding on both parties hereto and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter.

25. Waiver:

The Buyer's failure to insist upon strict compliance shall not be deemed to be a waiver of any right granted Buyer herein. Buyer shall not be deemed to waive such right unless such waiver is in writing; such waiver shall not constitute a waiver of any other default under this Contract.

26. Severability:

The invalidity in whole or in part of any of these Terms or the Contract Documents shall not affect the validity or enforceability of any other part of these Terms or the Contract Documents.

27. Attorneys' Fees:

If Buyer incurs a loss or liability, because of Seller's actions or omissions under the Contract Documents, including these General Conditions, Buyer is entitled to receive its attorneys' fees and court costs in addition to any other relief it may receive.

28. Governing Law:

This Contract shall be governed by and construed in accordance with the laws of the State of Indiana without regard to conflicts of laws principles. Seller irrevocably consents to the exclusive personal jurisdiction of the state and federal courts in and for Hamilton County, Indiana, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum. Continuing Obligations:

Any provision of these Terms or the Contract Documents which by its nature extends beyond the expiration, termination or cancellation of the Terms or Contract Documents, including but not limited to, Articles 10, 11, 16, 17 and 22, shall remain in full force and effect until fulfilled and/or performed and shall inure to the benefit of and be binding on Seller and Buyer and their respective successors and assigns.

29. Notices:

All notices required under these Terms must be in writing and mailed by first-class mail or a nationwide overnight courier service and sent to the representative of the respective party as specified on the most recent Purchase Order.

30. Entire Agreements; Modifications:

These Terms and the Contract Documents, together with all attachments and referenced documents, constitute the entire agreement between Buyer and Seller and supersede all prior negotiations, representations, and agreements. No modifications of any of these Terms or the Contract Documents shall be effective unless agreed to in writing by both parties. In the event of any inconsistencies or ambiguities between these Terms and any Contract Documents, these Terms shall control, except for provisions in the Contract Documents which, by their express terms, are intended to supersede the corresponding provision in these Terms. If Seller issues an invoice or acceptance form or other similar document, such document shall only be for administrative purposes of identifying Buyer's Contract Documents and Seller's documents shall have no other legal effect.