

McGAN Technology, LLC  
STANDARD TERMS & CONDITIONS OF SALE

The following terms and conditions (the "Terms and Conditions") apply to all quotations and sales of products (collectively, the "Products") by McGan Technology, LLC (McGAN) to its customers (each a "Customer" or "Buyer" or "Customer/Buyer"). References to a "Party" or to the "Parties" herein shall mean either McGan Technology, LLC or CUSTOMER/BUYER or each of them together. By ordering or accepting any Products from McGan Technology, LLC, CUSTOMER/BUYER agrees to be legally bound as follows:

**Prices/Quotations:** Unless otherwise specified in a written statement signed by McGan Technology, LLC, no price quote (Quotation) by McGan Technology, LLC, including, without limitation, a budgetary quote rendered in connection with any preliminary request for information, shall be binding. Any binding price quote given by McGan Technology, LLC shall be effective for thirty (30) days, unless otherwise specified in a written statement signed by McGan Technology, LLC. Prices are otherwise subject to change without notice and do not include installation, freight or taxes. Further, prices quoted relate only to the goods referenced and do not include intellectual property, industrial property, or patent rights of any kind, nor shall they include any additional product testing or certification other than McGan Technology, LLC' standard tests and/or certification.

**Terms of Payment:** McGan Technology, LLC will invoice CUSTOMER for Products upon shipment. All payments owed by CUSTOMER to McGan Technology, LLC including, without limitation, payment for the purchase price of Products purchased, applicable taxes, applicable freight charges, cancellation charges and price adjustments for failure to purchase forecasted quantities of Products are payable in US Dollars and will be due thirty (30) days after the invoice date unless other arrangements have been made and agreed to in writing by a duly authorized officer of McGan Technology, LLC.

**Service Fee:** If payment is not timely, McGan Technology, LLC shall be entitled, in addition to other legal rights and to the rights and to the extent permissible by applicable law, to a service fee of 1-1/2% per month (18% per annum) on any unpaid balances to cover additional administrative costs of collecting such balances.

**Taxes:** Prices are exclusive of any taxes. BUYER agrees to pay any applicable taxes, duty surcharges, fees or similar charges however imposed.

**Cancellation or Change:** The Buyer may cancel or change its order for standard product(s) within sixty (60) days prior to the scheduled ship date by written notice to, and written agreement from, McGan Technology, LLC and only if orders are cancelled or changed before being converted into finished product. Orders for products which are not listed in McGan Technology, LLC' current catalogue (including but not limited to, semi-custom application specific products, or other semi-custom product(s), or other semi-custom product(s) which have special markings or which have received special testing or which are specially made for Buyer) may not be cancelled or returned except under the provisions of a prior written agreement between McGan Technology, LLC and Buyer which will set forth the cancellation charges to be paid by Buyer in the event of such cancellation. If such agreement is not in place, the charges shall be payment of McGan Technology, LLC cancellation charges and all outstanding invoices (including service charges, inventory charges, etc). Buyer may be liable for all costs of raw materials ordered by McGan Technology, LLC for this process and other orders made by McGan Technology, LLC at the time of cancellation plus an overhead charge of not more than (40%) forty percent of the cost of said raw materials, any existing work in process for this order, plus a minimum administrative fee of (20%) twenty percent of the selling price of any unshipped parts ("cancellation charges").

**Deductions and Late Payments:** BUYER shall not make deductions of any kind from any payments due McGan Technology, LLC, unless a credit memorandum has been issued by McGan Technology, LLC to BUYER. McGan Technology, LLC may accept any partial payment without prejudice to its right to recover any remaining balance or to pursue any other remedy provided herein, in any agreement executed by the parties, or under applicable law. No payment by BUYER to McGan Technology, LLC of any lesser amount than that due to McGan Technology, LLC shall be deemed to be other than a payment on account, and no endorsement or statement on any check or on any letter or other writing shall create an accord and satisfaction or create any right of any kind in favor of BUYER.

**Acceptance of Orders:** All orders are subject to approval and acceptance by McGan Technology, LLC. Orders will be accepted only upon the understanding that the terms and conditions herein shall be applicable. Unless McGan Technology, LLC so agrees in writing, any terms and conditions appearing in BUYER's order contrary to those stated herein are deemed waived by BUYER. After an order has been accepted, it may be modified or canceled only upon the written agreement of McGan Technology, LLC.

**Credit Approval:** BUYER's orders will be accepted subject to credit investigation and approval, and delivery may be withheld on accepted orders without any liability on the part of McGan Technology, LLC if, in its opinion, the BUYER's ability to pay for the products on these terms and condition is in doubt. Any remittance received from or for the account of BUYER may be accepted or applied by McGan Technology, LLC against any indebtedness owing by BUYER without prejudice to or the discharge of the remainder of such indebtedness, regardless of any conditions, provisions or notations appearing on such remittance. After delivery, if McGan Technology, LLC brings legal action to collect amounts due and owing by BUYER, BUYER agrees to pay for all attorneys' fees and costs incurred by McGan Technology, LLC in such action.

Shipment

**Delivery:** All delivery, shipment and/or freight terms for the goods referenced in this agreement are F.O.B. McGan Technology, LLC' warehouse. Delivery to the carrier shall constitute delivery to the BUYER; all products are shipped at BUYER's risk. When BUYER does not provide specific shipping instructions, McGan Technology, LLC will use its discretion as to routing of shipment, based on the lowest rate medium of transportation. No freight allowances will be given on special express shipments without prior written consent of McGan Technology, LLC. McGan Technology, LLC will not be liable to BUYER for damages of any kind or character by reason of any failure to fill orders, delay in shipment or delivery or any error in the filling of orders regardless of the cause thereof.

**Partial Shipments:** Unless otherwise specified, McGan Technology, LLC may make partial shipments and each shipment shall be deemed a separate sale. BUYER shall accept and pay for each shipment regardless of any prior or subsequent failure to deliver any other shipment.

**Shipping Weights:** Shipping weights are approximate, are shown for BUYER's convenience only, and are not guaranteed.

**Allocation:** In the event of product shortages, McGan Technology, LLC shall have the right to allocate the available supply to its customers on a case-by-case basis in a manner deemed equitable by McGan Technology, LLC under the particular circumstances. McGan Technology, LLC shall have the right, at its option, to cancel any back orders (even if they have been accepted previously by acknowledgment, partial shipment or otherwise), provided the same have been outstanding for a minimum of thirty (30) days. Any resubmitted orders shall be subject to McGan Technology, LLC's then current pricing.

**Acceptance:** BUYER shall diligently inspect product upon arrival at specified destination and shall within five (5) business days notify McGan Technology, LLC as to any conditions which exist, that prevent BUYER's acceptance of product. Failure to notify McGan Technology, LLC of any such condition shall result in acceptance of the products by BUYER.

**Damage In Transit:** All products are shipped at BUYER's risk. McGan Technology, LLC's responsibility ceases upon the delivery of the products in good order to the carrier. Claims against the carrier are to be filed by the BUYER.

**Substitution:** McGan Technology, LLC reserves the right at any time to replace or substitute products and packaging provided such replacement or substitution will not result in additional cost to BUYER and will not adversely affect operational performance of products.

**Excusable Delay:** McGan Technology, LLC is not responsible or liable for any delays or any failure to perform due to unforeseen circumstances or causes beyond McGan Technology, LLC' control, when such delay or failure is due, directly or indirectly, to acts of God, war (including civil war), riots, embargoes, acts (whether sovereign or contractual) of civil or military authorities, acts of any government, major change in economic conditions, fires, floods, explosions, the elements, epidemics, quarantine restriction, strikes, lockouts, plant shutdowns, slowdowns, accidents, shortage of energy, materials, component parts, labor or delays of suppliers or subcontractors. In the event of an excusable delay, McGan Technology, LLC shall promptly notify the BUYER of such delay and an equitable adjustment shall be made in delivery schedules and any other affected terms and conditions.

#### **Returned Products**

**Returned Products:** Products cannot be returned without the prior written approval (RMA) of McGan Technology, LLC. If products which are returned with McGan Technology, LLC' written approval are in McGan Technology, LLC' opinion salable, credit will be issued at the original net invoice price, less the actual cost of restocking, as determined McGan Technology, LLC, but in no event will the restocking fee be less than 15% of the original new invoice price. Return product, which is damaged, used, or otherwise not in salable condition, will not be eligible for credit.

#### **General**

**Limitation of Liability:** McGan Technology, LLC' liability for any and all claims of any kind, including negligence, for any loss or damage arising out of, connected with or resulting from McGan Technology, LLC' performance or breach of the terms hereof shall, in the aggregate, not exceed the purchase price of the particular product. IN NO EVENT SHALL McGan Technology, LLC BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF PERFORMANCE OF OR FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER, WHETHER OR NOT McGan Technology, LLC HAD BEEN ADVISED OF, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

**Waiver:** Waiver by McGan Technology, LLC of any breach of these provisions shall not be construed as a waiver of any other breach.

**Financial Information:** From time to time, if and when requested by McGan Technology, LLC, BUYER shall furnish McGan Technology, LLC with any financial statements or additional information as McGan Technology, LLC may deem necessary to determine BUYER's financial condition. McGan Technology, LLC may withhold shipments until such information is received.

**Assignment:** None of BUYER's rights under these terms shall be assigned or otherwise transferred by the BUYER to any other person or entity whether by operation of law or otherwise, without McGan Technology, LLC' prior written approval.

**Law and Arbitration:** These terms are governed by the laws of the state of Connecticut and the Parties expressly exclude application of the United Nations Convention on Contracts for the International Sale of Goods. Any controversy or claim arising out of or relating to these terms or the breach hereof shall, at McGan Technology, LLC' option (i) be litigated in the courts of the state of Connecticut or any federal court sitting therein (and BUYER (a) consents to the non-exclusive jurisdiction of such court; (b) waives any objection that it may now or hereafter have to personal jurisdiction or to the venue of any such suit or any such court or that such suit is brought in an inconvenient court; and (c) waives personal service of any and all process upon it, and consents that all such service of process may be made by messenger, certified mail or registered mail directed to BUYER at the address set forth in McGan Technology, LLC' records); or (ii) be finally settled by arbitration in Middlesex County, Connecticut in accordance with prevailing commercial rules of the American Arbitration Association. In the event of McGan Technology, LLC' selection of arbitration to settle any such controversy or claim, the parties shall have the rights to take depositions and obtain discovery regarding the subject matter of the arbitration as if the subject matter of the arbitration were pending in a civil action before a Superior Court of the state of Connecticut. Pending decision by the arbitrator(s), the parties shall diligently proceed pursuant to the terms and conditions hereof. The award of the arbitrator(s) shall be final, binding and conclusive on the parties hereto and their successors and assigns. Judgment upon an arbitration award hereunder may be entered in any court having jurisdiction thereof or application may be made to any court for individual acceptance of the award or an order of enforcement, as the case may be. The prevailing party in any arbitration or in any action at law or in equity brought to enforce any arbitration award will be entitled to receive its reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.

**Entirety of Agreement:** Except for any agreement, which may be executed by the parties with respect to the subject matter hereof, these terms are intended as a complete and exclusive statement of the terms and conditions of their agreement. No other terms and conditions, whether contained in BUYER's purchase order, shipping release or elsewhere that are inconsistent with, additional to, or different from the terms and conditions herein shall be binding upon McGan Technology, LLC unless specifically agreed to by McGan Technology, LLC in writing.

**Assent:** Receipt by BUYER of acceptance of the order or receipt of the products without prompt objection to the terms and conditions herein set forth constitutes acceptance by BUYER of these terms and conditions.

**Warranties:** McGan Technology, LLC warrants that all goods sold are free of any security interest. McGan Technology, LLC makes no other representations or implied warranties, and specifically makes no implied warranties of merchantability or fitness for purpose unless otherwise agreed in writing by an authorized representative of McGan Technology, LLC. Products sold hereunder are not intended for use in or in connection with a nuclear facility.

**Severability:** If any provision of these Terms and Conditions is held by a court of competent jurisdiction to be unenforceable for any reason, the remaining provisions hereof shall be unaffected and remain in full force and effect.

**Modification of Terms & Conditions:** No terms and conditions other than those stated herein, and no agreement or understanding in any way purporting to modify these terms or conditions shall be binding on McGan Technology, LLC without the written consent of a duly authorized officer of McGan Technology, LLC.

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