

# SALES AGREEMENT



# MULTIVAC

## TERMS AND CONDITIONS OF SALE

*The equipment, parts, accessories, technical data, services and other materials (herein referred to as the "Goods") offered for sale to customer (herein referred to as "Customer") by Multivac Canada Inc. (herein referred to as the "Company") will be sold upon the following terms and conditions.*

### 1. General:

- (a) Notwithstanding any prior quotations, correspondence, conversations, agreements, purchase orders or similar instruments relative to the Goods, the Terms and Conditions of Sale and the Sales Agreement to which these Terms and Conditions are attached are the only terms and conditions applicable to the sale of the Goods.
- (b) All purchase orders submitted by Customer must be in writing. ANY AND ALL TERMS OR CONDITIONS SET FORTH IN A PURCHASE ORDER OR OTHER COMMUNICATION FROM CUSTOMER THAT ARE DIFFERENT FROM, IN ADDITION TO OR IN CONFLICT WITH THE TERMS OF THIS SALES AGREEMENT ARE OBJECTED TO BY THE COMPANY AND SHALL NOT BE EFFECTIVE OR BINDING UNLESS SPECIFICALLY ACCEPTED IN WRITING BY TWO OFFICERS OF THE COMPANY.
- (c) None of the Terms and Conditions of Sale herein may be added to, modified, superseded or otherwise altered except by a written instrument signed by an officer of the Company and delivered by the Company to Customer.
- (d) The acceptance of any price quotation issued by the Company is expressly limited to the terms of such quotation, including all the Terms and Conditions of Sale herein contained, and the transmittal by Customer of a purchase order in response to any such price quotation shall constitute an acceptance of such quotation and these Terms and Conditions of Sale, provided that the purchase order agrees with such quotation with respect to (i) the description of the Goods to be furnished by the Company as shown on the face thereof, (ii) the quantity, (iii) the purchase price to be charged and (iv) the delivery terms.
- (e) Unless otherwise stated, reference to days in these Terms and Conditions of Sale means a business day in Toronto, Ontario.

### 2. Invoicing and Payment; Grant of Security Interest:

- (a) The purchase price and terms of payment shall be as set forth in the Sales Agreement. The Company reserves the right to demand security or full payment of the purchase price from any Customer, including, without limitation, delivery by Customer of an irrevocable letter of credit (in form and substance satisfactory to the Company) delivered to the Company at the time of acceptance of this Sales Agreement. At the option of the Company, for Customers whose credit has been approved in advance by the Company, terms of payment for certain sales designated by the Company shall be by wire transfer of funds to be made to the Company's bank account upon Customer's receipt of the Company's invoice.
- (b) If payment is not made in accordance with the terms of the Sales Agreement, in addition to all other legal rights available to the Company at law or in equity, the Company shall be entitled to (i) charge Customer, effective from the date payment becomes due, interest per annum at the prime rate as published from time to time by The HSBC Bank plus 3 percentage points on the unpaid balance (but not to exceed the highest lawful rate of interest under applicable law), (ii) withhold shipment of any Goods due to Customer until such payment is made and (iii) exercise its rights in connection with any security granted by Customer to the Company or exercise its rights in connection with any letter of credit delivered by Customer to the Company. Customer shall pay all costs of the Company, including, without limitation, reasonable legal fees on a solicitor/client basis and court costs, incurred by it in collection of past due amounts from Customer. All payments by Customer shall be in lawful currency of Canada unless otherwise agreed to by the Company.
- (c) Customer shall not be entitled to set off any amount owing at any time.
- (d) To the extent any portion of the purchase price of the Goods is not paid in full prior to delivery of such Goods, Customer hereby grants to the Company a security interest in the Goods described in this Sales Agreement and the proceeds thereof to secure payment of any portion of the purchase price remaining unpaid and all other amounts owing by Customer to the Company. Customer irrevocably authorizes the Company or its designee to file such financing statements pursuant to applicable personal property security legislation with respect to the Goods as the Company may deem appropriate.

### 3. Delivery; Shipment; Risk of Loss:

- (a) Unless otherwise agreed in writing, all Goods are shipped at the Company's option via ocean freight, either ex-works, the Company's facility in Toronto, Ontario, or delivered duty paid (DDP) named place of destination. Upon delivery to the named place of destination, title shall pass to Customer, and Customer shall assume all risk and full responsibility for any loss, damage deterioration and corrosion of the Goods. Customer is responsible for all inland freight charges including, without limitation, insurance, handling, shipment and delivery costs, unless prior written agreement with the Company is otherwise made. Customer shall promptly reimburse Company for any such charges directly paid by Company.
- (b) Unless otherwise agreed to in writing by the parties, the Company is authorized to make partial shipment of the Goods. Each partial shipment shall be deemed a separate sale, and invoices shall be rendered and payment shall become due therefore in accordance with these Terms and Conditions.
- (c) Customer shall give written notice to the Company of any claim for shortage, error in shipment, or error in charges within thirty (30) days after receipt of the Goods, or such claim shall be deemed waived.
- (d) In the event Customer fails or refuses to accept any delivery of the Goods, in whole or in part, the Company shall have the right to dispose of such Goods in a commercially reasonable manner, at a commercially reasonable price. Customer agrees to pay to the Company the difference, if any, between the price of the Goods set forth on the face hereof and the price obtained by the Company less any and all incidental damages.
- (e) Any delivery dates communicated to the Customer, either verbally or in writing, including in this Sales Agreement, are only approximate and the Company is not responsible for any damages, losses or costs of any kind including, but not limited to, loss of revenues or profits incurred as a result of late delivery of the Goods.

### 4. Installation:

If installation by the Company is a part of this Sales Agreement, the Company shall make available to Customer for an appropriate period of time as determined by the Company a qualified service person to install the Goods. A qualified person shall be available to instruct Customer's employees in operation and preventive maintenance of the Goods for a reasonable period as determined by the Company not to exceed 5 consecutive business days. Customer is expected to provide a qualified maintenance person during the entire installation. It is Customer's responsibility to uncrate and locate Goods in final position, and make available adequate utilities. Installation and instruction services shall be available to Customer during the 90-day period following Customer's written confirmation to the Company that: (a) the Goods are in place at Customer's plant, (b) adequate utilities extended to the connection point on the Goods are available for the Goods and (c) adequate and sufficient materials and supplies necessary for the operation of the Goods are readily available at Customer's plant. Instruction of the final connections will also be provided by Company's qualified service person(s). These services will be scheduled in accordance with the availability of qualified service persons of the Company. In addition to the foregoing installation services, qualified service persons of the Company can be scheduled through Multivac's Customer Service Department for personal consultation at Customer's Plant at the Company's prevailing daily rate plus reasonable travel and lodging expenses which shall be paid by Customer.

### 5. Force Majeure:

Any failure or delay by the Company or Customer hereunder, other than failure of or delay in payment for any of the Goods delivered to Customer, shall be excused from liability for the time and to the extent such failure or delay is caused by force majeure or any other cause not within the reasonable control of the affected party thereto or the Company's suppliers experiencing such difficulty. The term "force majeure" shall include, without limitation, acts of God and the public enemy, the elements, fire, explosion, accidents, acts of terrorism, breakdowns, labor disputes, embargoes and any other public disturbance, inability to obtain materials, supplies, permits or transportation facilities, damage to equipment or production or storage facilities, or act or omission by a third party not controlled by the party experiencing such difficulty and any laws, orders, rules, regulations, acts, restraints of any governmental authority, civil or military. Upon occurrence of any failure or delay included within the terms of this Paragraph 5, the party experiencing such difficulty shall promptly notify the other party, and shall make every reasonable effort to remedy the cause of such failure or delay or find alternative means for performance. Notwithstanding the foregoing, settlement of strikes, lockouts or other labor disputes shall be exclusively within the discretion of the party hereto experiencing such difficulty.

### 6. Warranty:

- (a) Except as otherwise stated herein, the Company warrants the Goods to be free from defects in material and workmanship for a period of the lesser of 12 months after commencement of installation or 4,000 operational hours of the Goods; provided, however, that such period shall not exceed eighteen (18) months following transfer of title of the Goods (the "Warranty Period"). The above warranty does not apply to:
  - (i) Goods repaired or modified without the Company's prior written consent or contrary to the Company's instructions;
  - (ii) Goods subjected to improper handling, storage, installation, sanitation, operation or maintenance, including, without limitation, installation, use or application of Goods or any part thereof contrary to the Company's instructions, use of improper consumables, unsuitable facilities for operation, or chemical, electro technical or electrical conditions, or severe temperatures;
  - (iii) Any item which is purchased by the Company as a component part of the Goods (such components may be covered by the warranty of their respective manufacturers, but are not covered by the Company's warranty);
  - (iv) Any damage or deterioration to Goods alleged to be in breach of a specific warranty contained in this Agreement which can reasonably be prevented or minimized by

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Customer pending repair or replacement of the Goods in accordance with any applicable warranty;

(v) Any component part of the Goods furnished by Customer;

(vi) The design of any Goods or part thereof prepared from designs or instruction furnished by Customer or its agents or representatives;

(vii) Any defect in Goods or parts thereof sold in a used or reworked condition; or

(viii) Any normal wear or tear to Goods or parts.

**(b) THE WARRANTIES SET FORTH ABOVE ARE COMPLETE AND ARE IN LIEU OF AND CUSTOMER HEREBY WAIVES, ALL OTHER CONDITIONS, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED BY STATUTE, USAGE, CUSTOM OF THE TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

(c) The liability of the Company under its above warranty and in all respects is expressly limited to the repair or replacement, at the Company's sole option, of Goods which breach the above warranty within the Warranty Period. The Company's obligation to repair or replace Goods covered by the above warranty is in lieu of any claim against the Company of any nature for damages. Any claim of breach of warranty by Customer must be made in writing within ten (10) days after the discovery of such alleged breach or the Company shall have no liability for such claim. The Company shall have the right to inspect the Goods claimed to be in breach of warranty and shall have the right to determine the existence and the cause of such alleged breach. The Customer shall grant to the Company reasonable time and opportunity to determine the necessary steps for making repairs or supplying replacements. Where such time and opportunity are refused, the Company becomes automatically released from its obligations under the above warranty and any other remedy of the Customer.

(d) The Customer is solely responsible for any risk associated with the infringement by the Goods of any intellectual property rights. In the event of any claim of infringement, the Customer will, upon receipt of written request from the Company, immediately cease using the Goods that are the subject of the alleged infringement.

**7. Technical Documents:**

Unless otherwise agreed to in writing by the Company, the Customer shall in no event be provided with manufacturing drawings of the Goods or the dies for the Goods, notwithstanding the Customer's request in a purchase order or otherwise to be provided with such drawings.

**8. Operation of the Goods:**

The Company will provide the Customer with a manual of operation and maintenance of the Goods, as well as safety instructions. The Customer shall not permit anyone to operate or otherwise come into contact with the Goods, unless the Customer has ensured that the person has read and understands the manual and the safety instructions and further understands how to operate and/or perform maintenance on the Goods.

**9. Limitation of Liability and Indemnity:**

(a) The Company shall not be liable to the Customer in contract, tort (including, without limitation, negligence), any other theory of liability and/or under any warranty or otherwise for: (a) the quality, life, handling or other required specifications of the products that are packaged using the Goods; (b) damages or accidents resulting from the Customer's, the Customer's employees' and/or any contractors', independent contractors', agents' or other persons on the premises': (i) failure to observe the operating and safety instructions for the Goods or (ii) any act or omission concerning the improper handling, storage, installation, sanitation, operation and/or maintenance of the Goods; or (c) for any direct, indirect, incidental, punitive, special, exemplary or consequential damages (including, without limitation, any damages resulting from loss of use, loss of product, cost of capital, loss of goodwill, loss of business opportunity, business interruption, loss of revenue, overhead and/or profits, loss of savings, cost of procurement of substituted goods, loss of any contract that may be suffered by the Customer or for any matter arising out of or in connection with the use or inability to use the Goods) regardless of whether such damages were foreseeable and whether or not the Company was advised of the possibility thereof. For greater certainty, the Customer irrevocably and unconditionally waives with respect to the Sales Agreement and the Goods, to the fullest extent permitted by law, all of the rights, benefits, conditions, warranties and protections, express, implied or statutory, given by the *Sale of Goods Act* or equivalent legislation, if any.

(b) In the event of any claim or claim over against the Company in respect of the Goods, once delivered to the Customer as contemplated herein, the Customer shall indemnify and hold harmless the Company for all such claims or claims over for any reason whatsoever.

**10. Delegation – Assignment:**

Customer's rights and obligations hereunder shall not be delegated or assigned without the Company's prior written consent.

**11. Taxes:**

Any sales, use or other taxes assessed on or incurred in the sale or lease of the Goods are not included in this Sales Agreement, unless specifically indicated therein, and are payable by Customer. The Company shall be under no obligation to pay any such taxes. In the event the Company, in its sole discretion, pays any such taxes, Customer shall promptly reimburse the Company for any of the foregoing charges directly paid by the Company.

**12. Governing Law:**

These Terms and Conditions of Sale shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein without regard to conflict of laws provisions. For purposes of any action brought as a result of or related to this Agreement, the Customer hereby consents to, and waives any objections to the exclusive jurisdiction of the courts of Ontario at the Company's election. The Customer further consents and waives any objection that venue of any action brought as a result of or related to this Agreement shall be proper in the above-named courts.

**13. Severability:**

In the event any one or more of the Terms and Conditions of Sale contained herein shall be held invalid, illegal or unenforceable in any respect by a court, such invalidity, illegality or enforceability shall not affect the other Terms and Conditions of Sale stated herein; provided, however, that the remaining Terms and Conditions of Sale can be reasonably construed together without the provision declared invalid, illegal, or unenforceable.

**14. Effect of Waiver:**

Failure of the Company to enforce any or all of the Terms and Conditions of Sale herein in a particular instance or instances shall not constitute a waiver or preclude later enforcement.

**15. Cancellation – Modification:**

(a) Once accepted by the Company, an order for Goods cannot be canceled by Customer without written approval from the Company. Acceptance of cancellation will be predicated upon Customer's payment of a cancellation charge to be determined by the Company.

(b) The Company reserves the right to modify the design of any goods sold by the Company without obligation or prior notifications to Customer and the Company is not obligated to so modify Goods previously or subsequently sold.