

M.G.M. Electric motors USA, Inc. Terms and Conditions of Sale

1. APPLICABILITY AND SCOPE

These terms and conditions of sale (“Terms”) are the only terms which govern the sale of products (“Products”) by M.G.M. Electric Motors USA, Inc. (“MGM”) for this transaction with the Purchaser of these Products (“Purchaser”). These Terms along with the terms and acknowledgments contained in the Quotation, Invoice, and/or Confirmation of Order sent to Purchaser from MGM shall collectively be referred to as the “Agreement” and shall comprise the entire agreement between the parties, and shall supersede all prior or contemporaneous understandings, agreements, negotiations, representations, warranties, and communications, whether written or oral. These Terms shall prevail over any of Purchaser’s terms and conditions of purchase regardless of whether or when Purchaser has submitted such terms or purchase order. Fulfillment of Purchaser’s order does not constitute acceptance of any of Purchaser’s terms and conditions and does not in any way modify or amend these Terms. MGM objects to any of Purchaser’s differing terms and refuses to proceed thereunder. These Terms may only be amended or modified in a writing which specifically states it amends these Terms and is signed by MGM’s authorized representative.

2. QUOTATIONS

Price quotations by MGM are subject to change without notice. All provided quotations are valid for 15 days unless otherwise agreed in writing by an MGM authorized officer of MGM.

3. TAXES

Prices do not include Sales, Use, Excise, or other taxes payable to any governmental authority in respect of the sale of MGM's Products. The purchaser shall pay the amount of any such taxes or shall reimburse MGM for the amount thereof that MGM may be required to pay.

4. PAYMENTS

Unless otherwise provided, terms of payment are 30 days net from date of invoice for purchasers whose credit is approved. MGM reserves the right to charge interest on any balance outstanding at 4% per month (or fraction thereof) or as MGM shall determine, up to the maximum rate allowed by law, from the date payment is due to the date payment is actually received.

Pro rata payments shall become due as shipments are made. If shipments are delayed by or at the request of the purchaser, payment shall become due when MGM is prepared to make shipment. If the cost to MGM of Products is increased by reason of delays caused by the purchaser, such additional cost incurred by MGM shall be paid by the purchaser.

MGM may, if it deems itself insecure by reason of the financial condition of purchaser or otherwise, require full or partial payment in advance and as a condition to the continuance of production or shipment on the terms specified herein. Increased costs by reason of delay caused by Purchaser shall be paid by Purchaser. In addition to all other available remedies, MGM reserves the right to stop or suspend delivery for nonpayment where such failure continues 10 days after written notice thereof. Purchaser shall not withhold payment for any amounts due and payable by reason of any set-off claim or dispute with MGM.

5. ACCEPTANCE

No order or other offer shall be binding upon MGM until accepted in writing by an authorized officer of MGM.

6. CHANGES

MGM will not accept changes in specification unless such changes are requested in writing and agreed to in writing by an authorized officer of MGM and the purchaser agrees to pay, if necessary, in addition to the original purchase price a sum so set by MGM.

7. CANCELLATION

Any order when placed with and accepted by MGM is not subject to cancellation unless agreed to in writing by an authorized officer of MGM. Cancellations are subject to reasonable charges based upon expenses already incurred and commitments made by MGM.

8. DELIVERY

Any indicated dates of delivery are approximate only, but MGM will attempt to meet them where possible. MGM shall not be liable or responsible nor be deemed to have defaulted or breached this Agreement for delays in manufacturing or delivery or failure to manufacture or deliver due to any event in the nature of force majeure or any cause beyond MGM's reasonable control. MGM will not be bound by any penalty clause contained in any specification or order submitted by the purchaser unless such clause is agreed to in writing by an authorized officer of MGM. Unless otherwise agreed to by MGM, delivery shall be made to MGM's facility and shall be FOB Origin from MGM's facility. Title and Risk of Loss passes to Purchaser upon delivery of the Products.

9. PATENTS

MGM shall indemnify and hold harmless the purchaser against all claims or actions that are instituted against the purchaser on the grounds that the purchaser has infringed the patent rights of others by using, reselling, or promoting the sale or resale of MGM's Products, provided that MGM shall not be obligated hereunder if:

- a) The purchaser fails to give MGM prompt notice of any such claim or actions, or
- b) Such claims or actions against the purchaser are based wholly or in part on the existence or operation of any complete installation or apparatus incorporating MGM's Products as components and which is designed or manufactured by the purchaser or its customers.

10. REGULATORY LAWS OR STANDARDS

Purchaser shall comply with all applicable laws, regulations, and ordinances and shall obtain or maintain all necessary licenses, permissions, authorizations, consents, and permits including complying with all export and import laws and requirements, including Export Control requirements. MGM makes no representation that its Products conform to Province or local laws, ordinances, regulations, codes or standards except as may be otherwise agreed to in writing by an authorized officer of MGM. Purchaser shall notify MGM in the event purchased Products are intended to be sold to any governmental agency or for governmental equipment.

11. LIMITED WARRANTY

MGM warrants all its Products against defects in material and workmanship for a period of one (1) year from the date the Product is placed in service to a maximum of eighteen (18) months from date of shipment. Parts subject to replacement due to operational wear and tear, friction materials and traction elements, are not covered by this Limited Warranty. Notwithstanding the foregoing, any equipment or components of the Products not of MGM's own manufacture and/or specified by the purchaser is sold under only such warranty as the maker thereof gives MGM and MGM is able to enforce, but such items are not warranted by MGM in any way.

Use of Products above rated capacity, misuse, field alterations of Products, damage due to lack of maintenance or improper storage, neglect or accident are also excluded from this Limited Warranty.

This Limited Warranty is effective provided:

- a) The purchaser notifies MGM in writing of the alleged defect immediately after it becomes known to the purchaser; and
- b) no alterations, repairs, or services have been performed by the purchaser or third parties on the Products without written approval of an authorized officer of MGM.

MGM's obligation under this Limited Warranty is limited to the repair or replacement FOB MGM's factory or any part or parts found to be defective in material or workmanship.

MGM shall, in no event, be liable to the user/purchaser under this Limited Warranty, or otherwise, for claims, expenditures or losses arising from operational delays or work stoppages or damages to property or people caused by defective Products or for consequential or indirect damage of any nature whatsoever.

THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

12. ASSIGNMENT

No contract to purchase Products from MGM may be assigned by the purchaser without prior agreement in writing by an authorized officer of MGM.

13. SECURITY INTEREST

Unless and until the Products are fully paid for, MGM reserves a security interest in them to secure the unpaid balance of the price and all other obligations of the purchaser to MGM however arising. The purchaser hereby grants MGM a power of attorney to execute and file on behalf of purchaser all necessary financing statements and other similar documents required to protect the security interest granted herein.

14. DAMAGES; LIMITATION

In the event of breach of this agreement by MGM, the rights of the purchaser are limited to the amount therefore paid to MGM for the Products.

THE PURCHASER SHALL HAVE NO RIGHT TO CONSEQUENTIAL OR INDIRECT DAMAGES, WHETHER FOR INJURES TO PERSON, PROPERTY OR OTHERWISE.

15. DEFAULT

If the purchaser defaults in performing any of its obligations to MGM under this agreement, or any other agreements, MGM may, at its option and without incurring any liability thereby, elect to terminate this agreement or to terminate any or all other agreements with the purchaser or to terminate this agreement together with any or all such other agreements. Furthermore, MGM shall have a right to all damages sustained, including loss of profits.

16. INSOLVENCY

If the purchaser shall be insolvent or cease doing business or be the subject of any proceedings under any bankruptcy, insolvency, reorganization or arrangement statute or law, such act shall at the option of MGM, be deemed a default under this agreement, and MGM may elect to cease performing and cancel this agreement with respect to any Products not delivered or received prior to the election. All of the foregoing shall be without prejudice to recovery by MGM of damages for work performed and for loss of profits and material and Products delivered.

17. MISCELLANEOUS

The provisions of this agreement shall be governed and construed in accordance with the laws of the State of Michigan. These Terms set forth the entire understanding and agreement of the parties hereto in respect to the subject matter hereof, and all prior undertakings between the parties hereto, together with all representations and obligations of such parties in respect to such subject matter, shall be superseded by and merged into this agreement. No provisions hereof shall be waived, changed, terminated, modified, discharged or rescinded, orally or otherwise, except by a writing signed by the party to be charged by any such waiver, change, termination, modification, discharge, or rescission. No waiver of any breach of any provision of this agreement shall constitute an amendment or modification of this agreement, or any provision thereof. If any provision of this agreement shall be held to be unenforceable or inapplicable in any way or respect, such holding shall not affect the enforceability of any other provision of this agreement under any other circumstances. The provisions of this agreement shall bind and inure to the benefits of the parties hereto and their respective heirs, executors, administrators, successors, and (subject to any restrictions on assignment hereinabove set forth) assigns. The parties hereby submit to the sole and exclusive jurisdiction of the state or federal courts of Michigan, USA for all disputes, actions, or proceedings arising out of or related to these Terms.