



Milpower Source, Inc. Standard Terms and Conditions of Sale – MPSTCS2024.2

These Terms and Conditions of Sale (“Terms”) set forth herein shall apply exclusively to all sales and deliveries of products (“Product”) from Milpower Source, Inc., a corporation formed under the laws of the state of Delaware, with offices at 7 Field Lane, Belmont, NH 03220 (“Supplier”) to its customers (“Purchaser”).

1. APPLICABILITY

Terms and conditions provided by Purchaser that are in conflict with these Terms, or amendments to these Terms, shall not apply unless Supplier, in each individual case, has provided its prior written approval thereto. For the avoidance of doubt, these Terms shall apply exclusively even if Supplier performs delivery to Purchaser without reservations, notwithstanding Supplier’s knowledge of conflicting terms and conditions of Purchaser.

2. ORDERS AND ORDER CONFIRMATIONS

Purchaser’s order for the Products must be in writing. The contract with Purchaser does not come into existence until the written Purchase Order confirmation from Supplier has been received.

Supplier shall without undue delay confirm the order by a written order confirmation for products that are part of Suppliers list of current products. Orders for products that will require modifications or any other changes to its current specifications will be confirmed according to the estimated time required to fulfil Purchaser’s request.

Should the order confirmation not be in compliance with Purchaser’s order, Purchaser must notify Supplier in writing within 14 days of receipt of the order confirmation. If Purchaser fails to provide such notification of non-compliance, Supplier shall not be liable for any incorrectness or delays in the delivery of the Products caused by Purchaser’s delayed or lacking notification to Supplier.

In the event Purchaser notifies Supplier of such non-compliance, Supplier shall, without undue delay send Purchaser a new and correct order confirmation.

3. DELIVERY

Supplier shall make best efforts deliver the Products at the agreed upon delivery date to Purchaser. Supplier’s compliance with the delivery date is

conditional upon Purchaser’s fulfilment of its own contractual obligations, including but not limited to Supplier’s punctual receipt from Purchaser of specifications, documentation, permissions, and advance payments (if applicable). If Purchaser fails such fulfilment, then the delivery date shall be extended accordingly.

All deliveries by Supplier to Purchaser shall be FOB Origin (Incoterms 2022). The risk for the Products shall pass to Purchaser at the time of delivery, even if Supplier agrees to perform additional services, such as arranging of transportation of the Products.

If the Parties have agreed that Supplier shall ship the Products, then Supplier will utilize its own transportation providers including insurance of the Products unless notified otherwise.

In the event that Purchaser does not collect the Products at the agreed date of delivery, Supplier shall arrange for storage of the Products at the risk and expense of Purchaser. Supplier may charge one percent (1%) interest per month, up to the maximum allowed by applicable law, for Purchaser’s failure to accept delivery.

Should Supplier be in a situation where it is not able to fulfil delivery of all Products in an order, Supplier shall be entitled to perform partial delivery of the order, provided that Purchaser is notified in advance of the partial delivery.

4. DELAY

Should Supplier become aware that it will not be able to deliver the Products at the agreed date of delivery, it shall forthwith notify Purchaser thereof in writing and make all efforts to ensure a new delivery date that is acceptable for Purchaser.

If a delivery is delayed due to circumstances for which Supplier is liable and the new delivery date becomes unacceptable for Purchaser, Purchaser may claim default in the delivery provided a written delivery claim is submitted to Supplier.

If delivery is delayed due to circumstances for which Purchaser is liable or which is due to Force Majeure (according to section 10) a new delivery date may be agreed to conditional on Supplier's acceptance.

If Purchaser anticipates that it will be unable to accept delivery of the Products at the agreed date of delivery, it shall forthwith notify Supplier in writing thereof, stating the reasons and, if possible, the time when it will be able to take delivery. If Purchaser fails to take delivery, it shall nevertheless pay any part of the purchase price, which becomes due on delivery, as if delivery had taken place.

Supplier shall be entitled to resell the Products ordered by Purchaser in the event that Purchaser does not take delivery. Supplier shall, however, provide Purchaser with 14 days advance notification of its decision to resell the Products.

5. PRICE AND PAYMENT

All prices quoted by Supplier are NET 30 unless otherwise agreed in writing in advance. Additional costs as applicable, such as shipment, storage, insurance, customs duties will be charged separately and specified in Supplier's invoice.

Supplier reserves the right to adjust the prices for orders when significant events occur that will lead to abrupt increases of materials and components or unfavorably developments in the currency situation. Such price adjustments will be made in writing to Purchaser stating the cause of the adjustment.

Purchaser shall pay Supplier's invoice according to the terms of payment stated in Suppliers sales invoice, order confirmation at 30 days after date of invoice or as otherwise agreed. Purchaser has no right to make deductions in the invoice or to exercise any right of retention, counterclaims or set offs against the invoice. In the event of any overdue payments made by Purchaser, Supplier reserves the right to charge one percent (1%) interest per month to the outstanding invoice or any future invoice, up to the maximum allowed by applicable law.

Supplier may hold back delivery if Supplier, in its sole opinion, suspects that Purchaser may not be able to fulfil its payment obligations or other obligations. Purchaser shall without delay notify Purchaser of such suspension of delivery and the reason therefore. Supplier shall resume delivery if Purchaser provides

adequate assurances for Purchaser's performance of its obligations.

6. CANCELLATION BY PURCHASER

Unless otherwise agreed to in writing by the Parties, or otherwise noted in these Terms, all Orders are NCNR (Non-cancellable Non-returnable).

7. ACCEPTANCE BY PURCHASER

All Products and/or Services provided by Supplier under an Order shall be accepted or rejected by Purchaser within thirty (30) days of receipt of such Products and/or Services by Purchaser at Purchasers premises. If the Products and/or Services are not rejected within this period, or if Purchaser has put any Product to use within this period, then Purchaser will be deemed to have accepted them by default.

8. WARRANTY

Supplier makes a limited warranty to its customers, as identified on the applicable Quote, that for a period of twelve (12) months following delivery (the "Warranty Period"), such product will be free from defects in materials and workmanship and will conform to the specifications for such product (the "Warranty").

A product that is suspected of not conforming to the Warranty shall be reported to Supplier by Purchaser via e-mail, with confirmation that the report has been received, and obtain a Return Material Authorization for such product and the applicable return shipping instructions. The e-mail must be received by Supplier during the Warranty Period and shall contain a written description of the non-conformity in sufficient detail so that Supplier may identify the non-conformity and reproduce it. If Supplier determines that the product is defective, Supplier will, at its option, either: (i) repair the defective product, (ii) deliver an equivalent product to replace the defective part, or (iii) refund the net purchase price actually received by Supplier from Purchaser for the defective product. Purchaser must return the product in its original packaging and pay all charges incurred in shipping the product back to Supplier. In shipping the product back to Supplier, Purchaser assumes all risk of damage or loss in transit. If Supplier determines that the product is defective, Supplier will incur any shipping charges in sending the replacement or repaired product to Purchaser. Replaced or repaired products shall carry a warranty

for thirty (30) days or the remainder of the original warranty, whichever is longer.

Supplier shall not be liable under this warranty and will have no obligation with respect thereto if the alleged defect was caused by any misuse or abuse, or unauthorized attempts to repair, or unauthorized service, or use of the products not in accordance with the documentation or other instructions supplied by Supplier, or improper installation, or by accident, fault, or negligence, fire lightening, or other hazard, or any causes external thereto.

Notwithstanding anything to the contrary herein, the Warranty will not apply if the defect in the product occurred as a result of the following: (i) the products being combined with components, devices or programs not supplied by Supplier and/or installed in Purchaser applications; (ii) a modification, alteration or amendment of the products in any manner whatsoever, except for corrections, enhancements and updates thereto supplied by Supplier; or (iii) any modifications, alterations and/or amendments to the products made in accordance with Purchaser's specifications. Exceeding recommended operating environments voids any warranty.

This Warranty is Purchaser's sole and exclusive remedy for any claim, whether in contract, tort or otherwise, and is in lieu of any other warranty, whether express, implied or statutory, including, but not limited to, any warranty of merchantability, suitability, fitness for a particular purpose or any warranty of non-infringement of the intellectual property rights of third parties. All such warranties are hereby expressly disclaimed.

9. LIMITATION OF LIABILITY

Supplier's liability is, under any circumstance, limited to direct losses, whereby Supplier shall not be liable for indirect, incidental, special, or consequential losses such as, but not limited to, damages due to business interruption, lost profits or lost goodwill, claims of third parties, or injury to person or property, whether based upon breach of contract, negligence, strict liability, tort or other legal theory.

In the event Purchaser or any representative of Purchaser shall alter or modify the Goods without Supplier's prior written consent and any claims are asserted against Supplier by reason of such alteration or modification Purchaser shall defend, indemnify, and hold Supplier harmless against any and all

damages, liabilities, expenses, and costs in connection therewith or resulting therefrom.

In no event shall Supplier's total liability arising from the sale or use of, or inability to use, a product exceed the price paid for such product.

10. FORCE MAJEURE

The obligations of either Party in relation to a sale by Supplier shall be suspended to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the Parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to above whether occurring prior to or after the formation of the contract.

The Party that claims to be in a Force Majeure situation shall notify the other Party in writing without delay when the circumstance starts and when it ends. If Force Majeure prevents Purchaser from fulfilling its obligations, it shall compensate Supplier for expenses incurred in securing and protecting the Products.

Regardless of what might otherwise follow from these Terms either Party shall be entitled to terminate the contract by notice in writing to the other Party if performance of the contract is suspended due to Force Majeure for more than three months.

11. INTELLECTUAL PROPERTY RIGHTS

Purchaser does not and shall not acquire ownership or any rights in Supplier's intellectual property under this order, regardless of when such patents, inventions, and/or technical data, etc. may be or have been issued, conceived, generated, or produced. All Supplier's patents, information, and/or technical data, etc. are reserved by Supplier and the same shall not be reproduced or used by Purchaser for any purpose whatsoever without Supplier's written permission.

No reproduction rights in or to any product are granted to Purchaser by Supplier under any applicable Purchase Order. Any proposal or quotation, drawing, or other information furnished by Supplier is for Purchaser's (or the prospective

Purchaser's) confidential use only and shall not be used to the detriment of Supplier's competitive position. Any documentation or drawings provided by Supplier to Purchaser shall not be used for any other purpose than that for which they were provided and may not without the prior written consent of Supplier otherwise be used or copied, reproduced, transmitted, or communicated to third parties.

12. END USER LICENSE AGREEMENT

For Orders of Products utilizing a RedHat subscription, the End User will be subject to the End User License Agreement found at https://www.redhat.com/licenses/Red_Hat_GPLv2-Based_EULA_20191118.pdf.

13. APPLICABLE LAW

Any disputes arising from the contractual relationships between the Parties shall be governed by Delaware Law, excluding its conflicts of laws principles. This Agreement shall also specifically exclude the application of the UN Convention on Contracts for International Sale of Goods.

All disputes arising out of or in connection with the contract, including disputes on its conclusion, binding effect, amendments, and termination shall be exclusively resolved by the competent courts of Delaware or the United States federal courts thereof.

Additional agreements, provisions, amendments, and supplements to these Terms shall not be valid unless made in writing and signed by both Parties.

By accepting the Purchase Order, Supplier represents and warrants that the Products furnished may have been or will be manufactured and sold in compliance with all applicable Federal, State, and Local laws, ordinances, and regulations.

14. COMPLIANCE WITH LAWS

The Parties shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances.

Supplier will comply with any applicable Federal Acquisition Regulation ("FAR") and Defense Federal Acquisition Supplement ("DFARS") that is a required flowdown to subcontractors of commercial items to be purchased under United States government contracts.

15. EXPORT CONTROL

Both Parties shall comply with all applicable United States and foreign export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774 the Defense Production Act R.S., 1985, c.D.1, and the Export and Import Permits Act R.S., 1985, c.E-19, all provided that such requirements are given to Supplier in writing by Purchaser at the time of Order placement

Each Party shall notify other Party if any use, sale, import or export of Products by the notifying Party to be delivered under this Order is restricted by any export control laws or regulations applicable to the notifying Party.

Each Party shall immediately notify the other Party if the notifying Party is listed in any denied parties list or if the notifying Party's export privileges are otherwise denied, suspended, or revoked in whole or in part by any government entity or agency.

For Orders related to ITAR controlled products, technical data, or services, Purchaser certifies that it is appropriately registered with its country's Department of State as an exporter, manufacturer, and provider of defense services.

For Orders concerning other non-ITAR controlled data, products, or services, Purchaser hereby certifies that it is appropriately registered with its government's Department of State as an exporter, manufacturer, and provider of services pursuant to the Products to be manufactured under this Order.

Each Party shall a) maintain records relating to any controlled export, re-export, or retransfer occurring pursuant to the Order, including but not limited to records of the importation into the destination country, end use, and proof of payment, for a minimum of seven years after the date of the last shipment pursuant to the Order, or for such longer period as required by law and; b) make those records available for inspection by the other Party to the extent required to support export authorizations or otherwise comply with applicable law.

Purchaser shall indemnify Supplier for all liabilities, penalties, losses, damages, costs, or expenses that may be imposed on or incurred by Supplier in connection with any violations of export or import laws that result from the failure of Purchaser to provide and update information that Purchaser is required by applicable law or the contract to provide.

16. ANTI-BRIBERY/ANTI-CORRUPTION

Purchaser covenants that all of its activities under or pursuant to this Agreement shall comply with all applicable laws, rules and regulations including the applicable Anti Bribery and Anti-Corruption laws under the Israeli law and under all applicable foreign laws.

Purchaser represents and warrants that it will at all times act dutifully and in good faith and will comply with all reasonable instructions received by it from Supplier as well as with Supplier Anti-Bribery and Anti-Corruption Policy.

Without derogating from the generality of the above, Purchaser covenants that it has not and will not, directly or indirectly, offer, pay, or authorize the payment of any money, gift, or anything else of value, to (i) any officer, employee, or person acting in an official capacity for any government (including any agency, department, or government-controlled company) or public international organization, (ii) any political Party or Party official, (iii) any candidate for public office, and (iv) any shareholder, director, officer, employee, or agent of any private customer, for the purpose of improperly obtaining, retaining, or directing any business related to this Agreement or to procure any advantage on Supplier's behalf.

Purchaser represents that none of its shareholders, directors, officers, or senior managers is an officer, employee, or representative of any government, public international organization, or political party, or is a candidate for public office, and that Purchaser is not beneficially owned or controlled, directly or indirectly, by any government, public international organization, or political party.

Without derogating from its rights and other remedies, Supplier shall be entitled to, immediately and without notice or cure grace period, terminate the Agreement if it suspects that Purchaser has breached or may breach a breach of this section or any applicable Anti-Bribery and Anti-Corruption laws.

17. INDEMNIFICATION

Purchaser agrees to indemnify, defend and hold harmless Supplier from and against all third party claims, costs, damages, fines, losses and expenses (including reasonable attorney's fees) to the extent that such claims, costs, damages, fines, losses and expenses result, in whole or in part, from: (i) death, personal injury or property damage arising from Purchaser's negligent acts or omissions or willful misconduct; or (ii) any infringement claim arising from any hardware, components, specifications, software, information supplied or any instructions given to Supplier by or on behalf of Purchaser or relates to any modification, combination, enhancement or misuse of the products by Purchaser or other on its behalf; or (iii) use of any Supplier product in combination with Purchaser's or any other Party's product or equipment; or (iv) performance or non-performance of any agreement between Purchaser and a third party.

18. CHANGES

Changes in the terms and conditions of this Agreement may be made only by written agreement of the Parties. If any agreed-upon change causes an increase or decrease in the cost or time required to perform an order, Supplier and Purchaser shall negotiate an equitable adjustment in the price and/or schedule, to reflect the increase or decrease.

19. AMENDMENTS AND WAIVER

No amendment or modification to this Agreement shall be binding upon either Party unless it is in writing and signed by authorized representatives of both Parties. Failure by either Party at any time to enforce any of the provisions of these terms and conditions shall not be construed as a waiver by such Party of any provision or in any way affect the validity of this Agreement or any part thereof. Waiver of any provision of this Agreement shall only be deemed to have been made if expressed in writing by the Party granting such waiver.

20. INSURANCE

Supplier shall provide appropriate limits and coverages of insurance based upon Supplier's standard types and limits of insurance necessitated by the scope of work and consistent with Supplier's experience with similar projects, prevailing market conditions and best industry practices.

21. SEVERABILITY

If any provision of these Terms shall be held to be invalid, illegal, or unenforceable under any statute, regulation, ordinance, executive order, or other rule of law, that provision shall be deemed severed to the extent necessary to comply with such statute, regulation, ordinance, order, or rule. The remaining provisions hereof shall remain in effect.

22. PUBLICITY

Purchaser shall not use any name or trademark of Supplier for use in any of its partnership lists, advertising, promotional, or selling materials or in any other communication without the prior written consent of Supplier. Further Purchaser may not issue any press releases, publications or publicity relating to the Agreement, an Order, or their contents without Supplier's prior written consent.

23. INDEPENDENT CONTRACTORS

Both Parties are independent contractors, and nothing contained in this Agreement shall operate or be construed to constitute either Party as the agent, partner, joint venture, or representative of the other Party. Neither Party will take any action that purports to be done in the name of the other Party and will have no power or authority to obligate or bind the other Party with respect to any obligations with any third parties.

24. ASSIGNMENT

Neither Party may assign any of its rights or delegate any of its obligations under this Agreement (other

than for the purposes of Supplier's corporate reconstruction, reorganization, merger, or analogous proceeding) without first obtaining the written consent of the other Party.

25. LANGUAGE

These Terms are prepared and shall be executed in the English language. Any translation of these Terms into another language shall be strictly for convenience, and the English language shall govern any question with respect to interpretation. All Orders shall be prepared and executed in the English language.

26. SURVIVAL

Notwithstanding the expiration or termination of the Agreement, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or termination shall so survive.

27. ENTIRE AGREEMENT

This Agreement constitutes a complete and exclusive final written expression of all the terms between Purchaser and Supplier. It supersedes all previous understandings, agreements, and negotiations, oral or written, concerning the matters specified herein. Any representations, promises, or warranties made by either Party that differ in any way from the terms of this Agreement shall be given no force or effect. No addition to or modification of any provision of this Agreement shall be binding unless made in writing and signed by both Parties in accordance with section 19 herein.