



## METALFORMING, INC. TERMS AND CONDITIONS OF SALE

The following Terms and Conditions of Sale ("Terms and Conditions") apply to the sale of equipment and, if applicable, the provision of any related services by Metalforming, Inc. ("MFI") to Customer. Customer is more particularly identified in MFI's Quotation (including, if applicable, any Annexes or Exhibits thereto) (collectively, the "Quotation"). "Party" refers to MFI or Customer and "Parties" refers to MFI and Customer. Any equipment sold shall be referred to herein as the "Equipment." Any related services shall be referred to herein as the "Services."

### 1. EXCLUSIVITY OF MFI'S TERMS AND CONDITIONS.

**a. Offer to Sell Only Pursuant to Quotation and These Terms and Conditions.** MFI's Quotation constitutes an offer to sell only pursuant to the terms of the Quotation, including these Terms and Conditions, but excluding Performance Estimates as defined herein. MFI specifically rejects any different or additional terms that may have been previously discussed or proposed by the Parties, or are now or hereafter proposed by Customer, any lender or leasing company, or are contained in a purchase order, order confirmation or other documents prepared by Customer or any lender or leasing company.

**b. Customer's Acceptance Only Pursuant to Quotation and These Terms and Conditions.**

Customer and MFI agree that, by Customer's instructing MFI to proceed, Customer accepts MFI's offer pursuant only to the terms of the Quotation, including these Terms and Conditions, but excluding Performance Estimates. Customer agrees that if it submits a purchase order, order confirmation or other document with different or additional terms and conditions, such terms and conditions will be of no effect, even if such documents purport to be conditioned upon acceptance of such different or additional terms.

**c. Entire Agreement.** Customer and MFI agree that MFI's Quotation, and these Terms and Conditions, but excluding Performance Estimates, constitute the entire agreement of the Parties. MFI's Quotation, and these Terms and Conditions, but excluding Performance Estimates, supersede all prior negotiations, discussions, promises, agreements, representations or undertakings by and between the parties. Customer agrees that, in purchasing any Equipment or Services, it has not relied upon any promise, agreement, representation or undertaking, other than what is contained in the Quotation, including these Terms and Conditions, but excluding Performance Estimates. The Quotation, including these Terms and Conditions, but excluding Performance Estimates, will hereinafter sometimes be collectively referred to as the "Agreement."

### 2. SAFETY.

**a. Compliance with Applicable Standards.** The Equipment is built to standards used by each particular manufacturer (in most instances, CE standards). Applicable safety standards vary by location. Customer will advise MFI of any governmental safety regulations or industry standards applicable to the Equipment for Customer's location or which Customer desires the Equipment to meet. In the event any applicable or desired safety regulations or industry standards require the modification and/or certification of the Equipment, Customer is responsible for all costs for such modification and/or certification and will pay such costs. In the event such costs are incurred by MFI, they will be billed to Customer at MFI's cost.

**b. Customer's Safety Obligations.** Customer shall fully comply with all operating and maintenance instructions and warnings for the safe operation of the Equipment, whether provided orally or in writing, including, but not limited to, in operation and maintenance manuals furnished with the Equipment or at other times or available online ("Manuals"). Customer will only allow the Equipment to be operated by trained operators at least eighteen (18) years of age familiar with the operating instructions and warnings associated with the operation of the Equipment. Training must be provided by MFI or an authorized representative designated by MFI, either in person or by remote video or computer link. Customer will not allow persons other than trained operators to be in the immediate vicinity of the Equipment while it is in operation. Customer will not disable or alter any safety features of the Equipment, including, but not limited to, any safety programming in any control system, and will not remove any warnings on the Equipment without MFI's prior express written permission. Customer will operate the Equipment only as permitted by OSHA or other safety legislation and regulations applicable to Customer's industry and machine type.

### **3. INSTALLATION.**

**a. General Installation.** Except when Customer Installation is permitted as provided herein, the Equipment must be installed by MFI or an authorized third-party installer designated by MFI. Initial training will be provided in conjunction with the installation. The sales price does not include installation and training by MFI or the authorized third-party installer unless specifically stated to the contrary in MFI's Quotation. Customer will sign off on MFI's installation report or training report certifying by name the employees who have received training. MFI will bill Customer separately for installation and training at MFI's then applicable hourly rates, plus travel and out-of-pocket expenses, which will be billed at MFI's cost as incurred in U.S. Dollars unless specifically stated to the contrary in MFI's Quotation. Customer shall pay MFI's bill for installation and training charges within thirty (30) days of Customer's receipt of MFI's bill or as otherwise stated in the Quotation.

**b. Customer Installation.** For certain types of Equipment, and only if approved by MFI in the Quotation, installation and training may be done by the Customer working with MFI by remote video or computer link ("Customer Installation"). When Customer Installation is permitted, Customer will utilize experienced personnel at least eighteen (18) years old familiar with the operation and maintenance of similar types of equipment. Customer Installation shall be scheduled with MFI, and MFI technicians will work with the experienced Customer personnel by remote video or computer link. In completing the installation, Customer's personnel shall follow any oral or written instructions provided by MFI prior to or during installation (including, but not limited to, those that may be in Manuals). Customer shall sign off on an installation report provided by MFI confirming that the installation has been completed pursuant to MFI's oral or written instructions (including, but not limited to, those that may be in Manuals). Customer assumes full responsibility for proper installation pursuant to MFI's oral or written instructions (including, but not limited to, those that may be in Manuals). Customer shall defend, indemnify and hold MFI (and its present or former officers, directors, employees, agents and representatives) harmless from any and all claims (including, but not limited to, claims by Customer's employees or agents), demands, loss, and costs (including, but not limited to, attorney's fees, expert fees and other costs of litigation) arising out of or relating to Customer's installation; provided, however, that such defense, hold harmless and indemnity obligations shall not apply to claims caused by the sole negligence of the indemnitee. The cost for MFI's participation in Customer Installation shall be billed in the same manner as stated for General Installation or as specified in the Quotation.

#### **4. LIMITED WARRANTY.**

**a. Statement of Limited Warranty.** During the Warranty Period, MFI warrants that the Equipment shall conform to the description expressly stated in the Quotation (but specifically excluding Performance Estimates) and that the Equipment, as delivered, will not contain defects in materials or workmanship. MFI will repair or replace, at MFI's sole option and subject to the terms, conditions and limitations stated herein, any parts or components of the Equipment not conforming to the Limited Warranty. This Limited Warranty is expressly subject to the remaining terms, conditions and limitations hereof, including, but not limited to, the limitation of remedies and disclaimer of warranties stated below. Failure to have the Equipment installed by MFI or a third-party installer specifically authorized by MFI shall void this Limited Warranty except for Customer Installations approved by MFI and conducted as provided herein.

**b. Warranty Period.** The Warranty Period is the earlier of (i) one (1) year, or (ii) 2000 hours of operation of the Equipment, running from the date of installation of the Equipment; provided, however, if Customer for any reason delays installation for more than thirty (30) days after the date of delivery, the Warranty Period shall run from the date that is thirty (30) days after the date of delivery.

**c. Warranty Procedure; Exclusive Remedy.**

i. **Notice to MFI.** Customer must promptly notify MFI of any claim of breach of warranty during the Warranty Period, and, in any case, within thirty (30) days of the date the basis for the claim first appears.

ii. **Repair or Replacement.** In the event of a covered warranty claim, MFI shall, at MFI's sole expense, repair or replace the applicable part or component thereof so that the deficiency is corrected. The decision of whether to repair or replace a particular part or component shall be at MFI's sole discretion. Replacement parts or components are delivered by standard ground delivery unless Customer requests expedited shipping in which case Customer shall pay expedited shipping costs.

iii. **Implementation of Repair or Replacement.**

1) **Parts or Components That Can Be Installed by Customer.**

a) In the event the warranty claim involves a replacement part or component that can be readily installed by Customer, MFI shall deliver the part or component to Customer for installation by Customer. MFI personnel shall be available to assist by telephone, or, at MFI's discretion and subject to availability, by remote video or computer link.

b) MFI may sometimes send a replacement part or component to Customer in troubleshooting an issue. In the event that installation of the replacement part or component does not resolve the issue, Customer shall return the replacement part or component to MFI securely packed in its original packing material or equivalent. MFI shall bear the cost of return shipping by standard ground delivery, unless MFI specifies another method, in which case MFI shall bear cost of return shipping by such other method.

c) Any parts or components that are replaced shall be securely packed by Customer and shipped to MFI by standard ground shipping (unless otherwise specified by MFI) within ten (10) days of replacement. Returned parts shall be MFI's property. MFI shall bear the cost of return shipping by standard ground delivery, unless MFI specifies another method, in which case MFI shall bear the cost of return shipping by such other method.

d) In the event Customer fails to return a part or component that has been replaced as provided above, Customer shall pay for the replacement part or component at MFI's list price and the cost of shipping for the replacement part or component.

e) In the event inspection of a returned part or component by MFI reveals that it was not subject to replacement under the Limited Warranty, Customer shall pay for the replacement part or component at MFI's list price, shipping of the replacement part or component to Customer, and shall bear the cost of return shipping of the replaced part to MFI.

**2) Other Warranty Claims.**

a) For warranty claims that cannot be resolved by Customer's replacement of a part or component provided by MFI, or by videoconference, MFI shall dispatch service personnel to Customer's facility to affect the repair or replacement at MFI's sole expense. However, if it is determined that the work was not in fact covered by the Limited Warranty, Customer shall pay for the service work at MFI's service rates in effect at the time the work is performed, and travel and out of pocket expenses which shall be billed at MFI's cost.

b) In some instances, MFI may direct or agree to have service work for covered warranty claims performed by a third-party. Customer may not engage a third-party to perform warranty work without MFI's prior express written permission. If Customer proceeds without obtaining MFI's prior permission, Customer shall be responsible for all third-party charges and such third-party work shall void the Limited Warranty.

**d. Exceptions to the Limited Warranty. The Limited Warranty does not cover the following:**

i. **Performance Estimates.** The Quotation may include Performance Estimates. Performance Estimates are best guess indications of possible performance, time for performance, and other matters pertaining to the performance of the Equipment based on general experience, testing, analysis, or review by MFI or the manufacturer while the Equipment is not under load. Performance Estimates are estimates only, and DO NOT CONSTITUTE OR CREATE AN EXPRESS OR IMPLIED WARRANTY, CONDITION, OR COVENANT TO CUSTOMER, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Customer agrees that it may not rely on Performance Estimates in deciding to purchase Equipment or Services, and that any Performance Estimate is not part of the basis of the bargain of the Parties;

ii. **Performance.** THERE IS NO WARRANTY OR GUARANTEE REGARDING THE PERFORMANCE CAPABILITIES OF THE EQUIPMENT UNLESS STATED IN WRITING IN A SEPARATE DOCUMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF MFI AND CUSTOMER ENTITLED "LIMITED PERFORMANCE WARRANTY." If there is a Limited Performance Warranty, it will include agreed performance criteria, performance test procedures and conditions, and exclusive remedies. THE LIMITED PERFORMANCE WARRANTY, IF ANY, IS SUBJECT TO THE DISCLAIMER OF WARRANTIES AND THE LIMITATIONS OF REMEDIES CONTAINED HEREIN;

iii. **Wear Parts.** Parts or components that have a normal useful life shorter than the Warranty Period or which are replaceable during the course of normal scheduled maintenance. Examples include, but are not limited to, tooling, knives, blades, filters, lights, consumables, or parts or components made of rubber;

iv. **Third-Party Parts and Equipment.** Equipment, parts or components obtained from sources other than MFI ("Third-Party Equipment"). The Limited Warranty also does not cover deficiencies, damages or defects to MFI-supplied Equipment, parts or components that are caused by Third-Party Equipment unless the use of Third-Party Equipment is approved in writing by MFI;

v. **Deficiencies Due to Failure to Follow Operating and Maintenance Instructions and Good Operating Practices.** Deficiencies, damages or defects caused by Customer's failure to operate or maintain the Equipment, parts or components as instructed by MFI, whether orally or in writing, or as stated in the Manuals, abuse of the Equipment, or due to Customer's failure to operate and maintain the Equipment consistent with good industry operating practices, including, but not limited to, failure to keep the Equipment dry, clean, under roof and in a proper environment (proper maintenance may include more frequent maintenance procedures than specified in Manuals depending on the environment in which the Equipment is kept);

vi. **Deficiencies Due to Non-Approved Service.** Deficiencies, damages, or defects caused by service not performed by MFI if such service was not approved in advance by MFI in writing;

vii. **Customer Actions Prior to Installation.** Deficiencies, damages, or defects resulting from Customer applying electricity or air to the Equipment prior to installation by MFI or prior to permitted Customer Installation as provided herein;

viii. **Non-MFI Installation.** Any deficiencies, damages, or defects in the event the Equipment is not installed by MFI or an authorized third-party installer designated by MFI except in the event of permitted Customer Installation as provided herein; or

ix. **Improper Customer Installation.** Any deficiencies, damages or defects caused by Customer's failure to follow MFI's oral and written instructions (including, but not limited to, instructions contained in Manuals) for Customer Installation when Customer installation is permitted as provided herein.

**e. Exclusive Remedy:** Limitation of Remedies. The repair or replacement remedy provided above is Customer's sole and exclusive remedy. MFI SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES. The provisions of this Limited Warranty are also subject to the General Remedy Limitations set forth in the Terms and Conditions.

**f. DISCLAIMER OF OTHER WARRANTIES AND CONDITIONS.** THIS LIMITED WARRANTY IS MFI'S SOLE AND EXCLUSIVE WARRANTY FOR THE EQUIPMENT OR ANY RELATED SERVICES. THERE ARE NO OTHER WARRANTIES OR CONDITIONS. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER AGREEMENTS, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, WHICH ARE HEREBY DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, OR ANY IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY OR CONDITION OF NON-INFRINGEMENT.

**g. Non-Transferable.** This Limited Warranty extends only to Customer and is non-transferable.

## **5. CUSTOMER SOLELY LIABLE FOR PRODUCTS MADE WITH THE EQUIPMENT.**

Customer is solely and exclusively liable for any products it makes using the Equipment. In the event that any claim is made against MFI with respect to any products made by Customer with the Equipment, Customer shall defend, indemnify and hold harmless MFI and its present or former officers, directors, employees, and other representatives from any and all claims, damages or loss relating to products made by Customer with the Equipment, including attorney's fees and costs of litigation, except that such defense, indemnity and hold harmless obligations shall not apply to claims, damages or loss arising from the sole negligence of the indemnitee.

## **6. DELIVERY.**

### **a. Orders within the United States and Canada.**

i. **Standard U.S. and Canadian Delivery.** Except as otherwise provided herein, the Equipment for orders within the United States and Canada shall be delivered to Customer at MFI's facility at 100 International Drive, Peachtree City, Georgia 30269, U.S.A. Title to the Equipment and risk of loss for the Equipment pass to Customer upon making the Equipment available at MFI's facility for pickup by Customer or Customer's designee or carrier. Customer is responsible for hoisting, loading, rigging, insuring and transporting the Equipment to Customer's place of business at Customer's sole expense. Customer assumes all risk and liability for loss, damage or injury to persons or to property including, without limitation, claims arising out of the hoisting, loading, delivery, transportation, storage, handling, use or possession of the Equipment sold to Customer once title to the Equipment passes to the Customer.

ii. **U.S. and Canadian Delivery: Direct Shipment.** Some larger Equipment (including, but not limited to, Schroeder, Sen Fung, Jorns, and larger Schlebach machines) for orders within the United States and Canada cannot be made available for delivery at MFI's facility in Peachtree City, Georgia. In such instances, the Equipment will be shipped to a port of unloading determined by MFI. MFI shall arrange for hoisting, loading, and rigging at the port of unloading, and transporting the Equipment from the port of unloading to Customer's place of business or other designated location through third parties. Customer is responsible for unloading and handling the Equipment at Customer's place of business or other designated location, including, without limitation, placing the Equipment in the location where it is to be installed, and all hoisting, rigging, and handling necessary for such purposes, and all costs associated therewith. In such instances, title to the Equipment and risk of loss pass to Customer when the Equipment is made available to Customer for unloading at Customer's place of business or other designated location. All hoisting, loading, rigging and transportation charges incurred by MFI shall be billed by MFI to Customer at MFI's cost and shall be paid by Customer within thirty (30) days of the date of MFI's invoice. Customer acknowledges that any quotation for hoisting, loading, rigging and transportation charges provided by MFI in advance of billing is for Customer's information only and is not a fixed price, and that all such charges will be billed at actual cost.

iii. **U.S. and Canadian Delivery: Customer Requests MFI to Arrange Delivery.** For Equipment ordinarily to be delivered at MFI's facility in Peachtree City, Georgia, Customer may request MFI to arrange for delivery to Customer's location in the United States or Canada. In such instances, MFI shall arrange for hoisting, loading, rigging, and transporting the Equipment to Customer's place of business or other designated location through third parties. Customer is responsible for unloading and handling the Equipment at Customer's place of business or other designated location, including, without limitation, placing the Equipment in the location where it is to be installed, and all hoisting, rigging, and handling necessary for such purposes, and all costs associated therewith. In such instance, title to the Equipment and risk of loss pass to Customer when the Equipment is made available to Customer for unloading at Customer's place of business or other designated location. All hoisting, loading, rigging and transportation charges shall be billed by MFI to Customer at MFI's cost and shall be paid by Customer within thirty (30) days of the date of MFI's invoice. Customer acknowledges that any quotation provided by MFI for hoisting, loading, rigging and transportation charges in advance of billing is for Customer's information only and is not a fixed price, and that all such charges will be billed at actual cost.

**b. Orders Outside the United States and Canada.** For orders to countries other than the United States or Canada, the Equipment shall be shipped from the manufacturer (or from MFI, at MFI's discretion) to a port of unloading in Customer's country to be determined by MFI. Customer shall pay for freight and insurance charges in transporting the Equipment from the manufacturer or MFI to the port of unloading, which shall be billed separately at MFI's actual cost, as incurred in U.S. Dollars. Customer is also responsible for arranging for hoisting, loading, rigging, and transporting the Equipment from the port of unloading to Customer's place of business or designated location and all costs associated therewith. Customer is also responsible for unloading and handling the Equipment at Customer's place of business or other designated location, including, without limitation, placing the Equipment in the location where it is to be installed, and all hoisting, rigging, and handling necessary for such purposes, and all costs associated therewith. Title to and risk of loss pass to Customer when the Equipment is made available to Customer for unloading at the port of unloading.

**c. Insurance for Loss During Transit.** MFI is responsible for procuring insurance for damage to or destruction of the Equipment during transit from the manufacturer's plant to the specified point of delivery until the time of transfer of risk of loss. Following the transfer of risk of loss, Customer is responsible for insuring the Equipment.

**d. All Billing in U.S. Dollars.** Unless expressly agreed by MFI in writing to the contrary, all transportation and related charges for which Customer is responsible shall be billed in U.S. dollars. Costs incurred by MFI in other currencies shall be billed in U.S. dollars at then current exchange rates including any foreign transaction fees or similar charges.

## **7. CUSTOMER'S DUTY TO INSPECT UPON DELIVERY.**

Customer shall inspect the Equipment upon delivery for any damage. Any damages must be written by Customer on the bill of lading. Any damages must be photographed, along with the transportation vehicle in which the Equipment arrived.

## **8. NO DAMAGES FOR DELAYED DELIVERY.**

MFI strives to provide accurate information about lead and delivery times. However, lead and delivery times are dependent upon many variables outside the control of MFI. CUSTOMER AGREES THAT MFI SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR DELAYED DELIVERY OF THE EQUIPMENT. Customer agrees that any time stated for delivery in the Quotation is an estimate only.

## **9. PAYMENT.**

Customer agrees to pay to MFI the sales price and any other payments as specified in the Quotation, together with applicable taxes and duties, at the dates specified in the Quotation or as otherwise mutually agreed in writing by Customer and MFI. If no payment dates are set forth in the Quotation, payment in full is due upon delivery. For orders for delivery outside the United States or Canada, payment in full is required before shipment of the Equipment.

## **10. PAYMENT SECURITY; SUSPENSION.**

**a.** To the extent Customer owes MFI any payment obligations at the time of passing of title, Customer grants to MFI, effective immediately upon passing of title, a continuing first priority purchase money security interest in Customer's right, title and interest in and to the Equipment, and all proceeds thereof, to secure any and all of Customer's indebtedness or payment obligations to MFI. Customer will execute all financing statements and other instruments, agreements and documents, which MFI may request, relating to the assurance of payment of all Customer's obligations to MFI. All expenses, costs and charges incurred by or on behalf of MFI in connection with enforcing MFI's rights under

the security interest in the event of Customer's failure to pay outstanding amounts due, including, but not limited to, all expenses of taking possession of, repairing, protecting, insuring, preparing for disposition, realizing, collecting, selling, transferring, delivering or obtaining payment for the Equipment, shall be added to the outstanding amounts owed by Customer to MFI.

b. In the event Customer fails to make any payment due prior to delivery, MFI may, at its discretion, suspend delivery. In the event of such suspension, Customer is liable for any costs reasonably incurred by MFI as a result thereof, including, but not limited to, any costs of storage and related insurance, and costs associated with alternative transportation arrangements. MFI may also take any actions permitted by applicable law.

## **11. TAXES, DUTIES AND TARIFFS.**

The sales price for the Equipment and any rates for Services do not include any federal, state, or local taxes, duties, fees, or charges that may result from the sale of the Equipment or the provision of any Services (including, without limitation, any sales, use and excise taxes). For sales within the United States, the sales price does include duties for importing the Equipment from its country of origin into the United States. For sales outside the United States, the sales price and the rates for Services do not include any taxes, duties, fees, or charges that might be imposed by foreign governments or their subdivisions that result from the sale of the Equipment or the provision of any Services (including, without limitation, any Canadian federal, provincial, or local sales, harmonized sales taxes, use, goods and services taxes or excise or value-added taxes). For sales outside of the United States, unless otherwise specified in the Quotation, the sales price does not include any taxes, duties or charges associated with clearing the Equipment for export from its country of origin (or, if the Equipment has been imported into the United States, from the United States), nor any taxes, duties or charges associated with importing the Equipment into the country of its final destination. Except as specifically provided to the contrary herein, all taxes, duties, fees and other governmentally imposed charges of any nature shall be paid by Customer. If applicable law requires MFI to collect or pay any such taxes, duties, or charges, Customer shall, as may be applicable, pay the amount of such taxes to MFI for remittance to the appropriate governmental authorities, or reimburse MFI for the amount of such taxes paid by MFI. For greater certainty, and without limiting the generality of the foregoing, in the event that any government imposes or applies new tariffs or duties on the Equipment, or upon materials and components utilized in manufacturing the Equipment after the date of the order, the sales price shall be correspondingly increased to account for such tariffs or duties, regardless of the percentage increase of the sales price.

## **12. CONFIDENTIALITY.**

Customer shall maintain the confidentiality of and not transmit to any third parties the Quotation or any of the following if provided by MFI to Customer (including, but not limited to, information that may be provided by Equipment manufacturers): Designs, drawings, plans, schematic sketches, photographs, renderings, performance data, specifications, or software. In addition, MFI may also designate other information in writing "confidential," and such information shall be subject to the provisions hereof. The confidentiality obligation shall apply for a period of five (5) years from the date of this Agreement, except that, for information that is a trade secret of MFI or the Equipment manufacturer, the obligation shall continue for so long as the information remains a trade secret. Customer further agrees that all such information is MFI's property (or that of the Equipment manufacturers) and to return all such information to MFI upon MFI's request, except that Customer may maintain a single copy of such information on a confidential basis if necessary for Customer to operate and maintain the Equipment. This provision shall not apply to any information that is in the public domain.



### **13. NO COPYING OR REVERSE ENGINEERING; RIGHTS TO DEVELOPMENTS.**

Customer shall not, without MFI's prior written consent, copy, duplicate, or reverse engineer all or any part of the Equipment, nor shall Customer cause or permit any third-party to do any of the foregoing. Customer shall not sell, lease, give or transfer the Equipment to any competitor of MFI. All inventions, developments, and improvements pertaining to the Equipment, whether by MFI or by joint efforts of the parties, shall be MFI's exclusive intellectual property (or, as may be applicable, the relevant Equipment manufacturer) and Customer hereby irrevocably assigns and agrees to assign (and shall undertake to assure that its employees, agents, representatives and contractors, as necessary, assign and agree to assign) any title, right or interest it, he, or she has or may have in such intellectual property to MFI (or, if applicable, the relevant Equipment manufacturer). Customer further agrees to execute (and, as necessary, have its employees, agents, representatives and contractors execute) any and all further assignments or other documents necessary for MFI (or, if applicable, the Equipment manufacturer) to seek patent, copyright, trademark, or other legal protection with respect thereto.

### **14. CUSTOMER'S FURTHER OBLIGATIONS.**

**a. Testing.** In the event of any demonstration or testing of the Equipment, including, but not limited to, any run-off testing (if applicable), Customer shall provide all necessary supplies and suitable raw materials necessary for the operation of the Equipment.

**b. Location.** Customer is responsible for providing a suitable location for installing the Equipment which shall be ready prior to the date of scheduled installation. The location shall be suitable for the Equipment and its operation and shall include a level, balanced foundation sufficient to withstand the load of the Equipment, all necessary electrical and air connections, a dry and suitable environment, and anything else reasonably needed for the operation and maintenance of the Equipment.

**c. Operation of Equipment at Customer's Facility.** Customer is responsible for supplying all labor, power, raw materials, consumables, and general maintenance necessary to operate and maintain the Equipment at Customer's facility whether during testing or during normal operations.

### **15. CHOICE OF LAW.**

This Agreement and any additional terms to which the parties may subsequently agree shall be governed by and construed under the law of the State of Georgia without reference to conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods ("CISG") is expressly excluded from this Agreement.

### **16. DISPUTE RESOLUTION.**

**a. Prescription.** Any action for breach of warranty, breach of contract, or for other claims arising under or relating to this Agreement or the Equipment, or any Services provided by MFI, must be commenced no later than one (1) year after the cause of action has accrued.

**b. Exclusive Venue.** Any claim or dispute of any type or nature arising out of or relating to this Agreement or the Equipment, or any Services provided by MFI, and regardless of the legal theory on which it is based (including, without limitation, breach of contract, breach of warranty, fraud in the inducement, negligence, strict liability, intentional tort, or breach of any statutory duty or condition) or the relief sought (including, without limitation, damages or equitable relief) shall be brought solely and exclusively in the Georgia courts located in Fayette County, Georgia, or the United States District Court for the Northern District of Georgia, Newnan Division. Customer hereby consents to the personal jurisdiction and venue of said courts. Customer waives, to the maximum extent permitted by law, any defenses of lack personal jurisdiction, improper venue, or inconvenience of the forum as to any claims brought in said courts.

## **17. GENERAL LIMITATIONS OF REMEDIES.**

**a.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY TYPE, SUCH AS, WITHOUT LIMITATION, LOST PROFITS, LOST OR DIMINISHED PRODUCTION, COST OF EXCESS POWER OR COST OF EXCESS LABOR, DUE TO ANY CLAIM OR DEMAND ARISING OUT OF OR RELATING TO THE SALE OF THE EQUIPMENT, THE EQUIPMENT, OR THE PROVISION OF SERVICES BY MFI TO CUSTOMER REGARDLESS OF THE LEGAL THEORY ON WHICH IT IS BROUGHT (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, FRAUD IN THE INDUCEMENT, NEGLIGENCE, STRICT LIABILITY, INTENTIONAL TORT, OR BREACH OF ANY STATUTORY DUTY OR CONDITION). THE PARTIES EXPRESSLY AGREE THAT MFI'S PRICING AND OTHER TERMS ARE BASED ON THE ENFORCEABILITY OF THIS LIMITATION, AND THAT THIS LIMITATION SHALL BE ENFORCED REGARDLESS OF WHETHER A REMEDY PROVIDED UNDER THESE TERMS AND CONDITIONS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING, THIS LIMITATION SHALL NOT APPLY TO MFI'S RIGHT TO COLLECT PAYMENT FOR INCIDENTAL AND CONSEQUENTIAL COSTS INCURRED DUE TO SUSPENSION FOR CUSTOMER'S NON-PAYMENT, OR TO RECOVERY OF INCIDENTAL AND CONSEQUENTIAL COSTS INCURRED BY MFI IN EXERCISING RIGHTS FOR CUSTOMER'S FAILURE TO PAY FOR OR TAKE DELIVERY OF THE EQUIPMENT OR CUSTOMER'S FAILURE TO BE PREPARED FOR INSTALLATION, OR TO CUSTOMER'S EXPRESS INDEMNIFICATION OBLIGATIONS TO MFI HEREUNDER.

**b.** EACH PARTY'S TOTAL LIABILITY TO THE OTHER SHALL, TO THE FULL EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES EXCEED THE SALES PRICE FOR THE EQUIPMENT (AND, IF APPLICABLE, SERVICES) AS STATED IN THE QUOTATION, EXCEPT THAT THIS LIMITATION SHALL NOT APPLY TO CUSTOMER'S EXPRESS INDEMNITY OBLIGATIONS HEREUNDER. THIS LIMITATION SHALL NOT APPLY TO CLAIMS BASED ON A PARTY'S WILFULL MISCONDUCT OR GROSS NEGLIGENCE. THIS SUBPARAGRAPH AND THE DAMAGES LIMITATION CONTAINED IN THIS SUBPARAGRAPH APPLY ONLY TO CLAIMS BETWEEN THE PARTIES AND NOT TO CLAIMS BY THIRD PARTIES AND DO NOT CONSTITUTE AND SHALL NOT BE CONSTRUED TO CONSTITUTE AN INDEMNITY PROVISION IN FAVOR OF EITHER PARTY INDEMNIFYING A PARTY FOR THIRD-PARTY CLAIMS RESULTING FROM THAT PARTY'S SOLE NEGLIGENCE. THE PARTIES EXPRESSLY AGREE THAT MFI'S PRICING AND OTHER TERMS ARE BASED ON THE ENFORCEABILITY OF THIS LIMITATION, AND THAT THIS LIMITATION SHALL BE ENFORCED REGARDLESS OF WHETHER A REMEDY PROVIDED UNDER THESE TERMS AND CONDITIONS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## **18. MISCELLANEOUS.**

**a. No Assignment.** Neither Party may assign its rights or delegate its duties under this Agreement without the express written consent of the other Party.

**b. Modifications.** This Agreement may not be modified except by a writing signed by authorized representatives of MFI and Customer.

**c. No Joint-Venture, etc.** This Agreement, or the purchase and sale of the Equipment or the provision of any Services by MFI to Customer shall not create, and shall not be construed to create, an agency, partnership, or joint venture relationship between the parties. Neither Party shall have any authority to bind the other Party in any transaction, or to make any contract, promise, representation, warranty, undertaking, or obligation of any type on behalf of the other Party.

**d. Waivers and Consents.** All waivers and consents by Customer or MFI shall be in writing. No waiver or consent by MFI or Customer of any breach or anticipated breach of any provision hereof by the other Party shall be deemed a waiver of any other contemporaneous, preceding or succeeding breach or anticipated breach, whether or not similar.

**e. Severability.** Customer and MFI agree that it is their mutual intention that the Agreement should be enforced as written, and that each provision should be, to the maximum extent permitted by law, found to be valid and enforceable. Should any provision of the Agreement be declared invalid or unenforceable for any reason, the remaining provisions shall be unaffected and shall continue in full force and effect as if prepared with the invalid or unenforceable portion eliminated.

**f. Construction.** The provisions of the Quotation and these Terms and Conditions shall be construed consistently whenever it is reasonable to do so. In the event of a direct conflict between the provisions of the Quotation and the provisions of these Terms and Conditions, the provisions of the Quotation (excluding Performance Estimates which are not part of the Agreement) shall control. This Agreement shall not be construed against either Party based on any rule of construction, including, but not limited to, based on the contention that a Party drafted all or any part of the Agreement.

**g. Force Majeure.** MFI shall be excused for delay in delivery or from performance of any other obligations under this Agreement and/or may suspend performance of this Agreement without any liability to Customer in the event and to the extent of any occurrence, matter, abnormality, contingency or cause which affects MFI's ability to provide or ship the Equipment or provide the Services or to comply with its other obligations under this Agreement and that is beyond MFI's reasonable control, including, but not limited to: acts of God, war, acts of terrorism, acts of piracy, civil strife, mobilization, riot, strike, lockout, work stoppage or other labor difficulties (whether at MFI or the manufacturers of the Equipment or at subcontractors or sub-suppliers of MFI or manufacturers of the Equipment), fire, extreme weather or other natural disaster, epidemics, pandemics, explosion, accident, delays of carriers or transport, loss in during shipment; embargoes, inability to obtain suitable and sufficient labor or raw materials, acts or orders of governments or governmental priorities, (each, a "Force Majeure" event). In the event of a Force Majeure event, the time for performance shall be suspended for a time equal to the Force Majeure event, plus a reasonable time to resume and ramp up performance and after which performance of the Agreement shall resume. In the event a Force Majeure event exceeds one-hundred and eighty (180 days), MFI may, at its sole option, terminate the Agreement. In the event of termination, MFI will refund any payments received from Customer under the Agreement.