

MaxBotix® Inc.

“Creating vision for the future”

Terms and Conditions of Sale

THIS TERMS AND CONDITIONS OF SALE BECOME THE AGREEMENT (“AGREEMENT”) BETWEEN MAXBOTIX INC., (“SELLER”) AND BUYER FOR THE SALE OF GOODS AND/OR SERVICES DESCRIBED ON THE FACE OF THE SALES ORDER ACKNOWLEDGEMENT (COLLECTIVELY REFERRED TO AS “PRODUCT”). ACCEPTANCE OF BUYER'S ORDER IS CONDITIONAL ON BUYER'S ASSENT TO THIS AGREEMENT. IF BUYER OBJECTS TO ANY TERMS HEREIN, SUCH OBJECTION MUST BE IN WRITING AND DELIVERED TO SELLER WITHIN A REASONABLE TIME, NOT TO EXCEED 10 DAYS OF RECEIPT OF THIS DOCUMENT. FAILURE TO MAKE SUCH A TIMELY EXCEPTION. OR ACCEPTANCE BY BUYER OF ANY GOODS DELIVERED BY SELLER HEREUNDER, SHALL BE CONCLUSIVELY DEEMED ASSENT TO THE TERMS AND CONDITIONS HEREIN. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER WILL NOT BE A WAIVER OF THE PROVISIONS HEREOF.

Technical Assistance, Design Support Services, Product and Product Application Indemnity

The Seller provides technical support on all the Seller's product for our customers, via e-mail and telephone. E-mail is the preferred method of technical support. The Seller responds to this support quickly, typically within one (1) to two (2) business days. Telephone support is also provided Monday through Thursday between the hours of 9:00am and 4:00pm CST, and Fridays between the hours of 9:00am and 11:00am CST. While this support is typically free to all users of our Product, and for the life of our Product, extensive technical support may require time and fees negotiated between the Seller and the Buyer. The Seller reserves the right to deny technical support to any Buyer on any grounds.

BUYER AGREES TO INDEMNIFY AND HOLD HARMLESS THE SELLER OF ALL CLAIMS, WHETHER ARISING IN TORT OR CONTRACT, AGAINST BUYER AND/OR SELLER, INCLUDING ATTORNEY'S FEES, EXPENSES AND COSTS, ARISING OUT OF THE APPLICATION OF THE SELLER'S PRODUCT TO BUYER'S DESIGNS AND/OR PRODUCT, OR SELLER'S ASSISTANCE IN THE APPLICATION OF THE SELLER'S PRODUCT.

You the Buyer understand and agree that you are personally responsible for your use or inability to use the Product, your reliance upon any information or recommendation provided by Technical Assistance and Design Support Services Personnel. The Seller offers its Technical Assistance and Design Support Services solely as a convenience to The Seller's customers. The Seller's Technical Assistance and Design Support Services personnel strive to provide useful information regarding the products. The Seller does not guarantee that any information or recommendation provided is accurate, complete, or correct, and the Seller shall have no responsibility or liability whatsoever in connection with any information or recommendation provided, or your reliance on such information or recommendation. You are solely responsible for analyzing and determining the appropriateness of any information or recommendation provided by the Seller's Technical Assistance and Design Support Services Personnel, and any reliance on such information or recommendation is at your sole risk and discretion.

The Seller's Product are not authorized for use in safety-critical applications (such as life support) where a failure of the Product would reasonably be expected to cause severe personal injury or death. Buyers represent that they have all necessary expertise in the safety and regulatory ramifications of their applications, and acknowledge and agree that they are solely responsible for all legal, regulatory and safety-related requirements concerning their products and any use of the Seller's Product in such safety-critical applications, notwithstanding any applications-related information or support that may be provided by the Seller. Further, Buyers must fully indemnify the Seller and its representatives against any damages arising out of the use of the Seller's Product in such safety-critical applications.

The Seller's Product are neither designed nor intended for use in military/aerospace applications or environments. Buyers acknowledge and agree that any such use of the Seller's Product is solely at the Buyer's risk, and that they are solely responsible for compliance with all legal and regulatory requirements in connection with such use.

The Seller's Product is not designed to be mounted on or in automobiles or similar vehicles. Buyers acknowledge and agree that, if they use any product mounted within vehicles, the Seller will not be responsible for any failure to meet such requirements. Vehicles shall be defined as any machine with land based movement or navigation that has required registration with a government identity, such as the Department of Transportation or equivalent.

The Seller's Product is not designed to be mounted on or in aircraft or similar vehicles. Buyers acknowledge and agree that, if they use any product mounted within vehicles, the Seller will not be responsible for any failure to meet such requirements. Aircraft shall be defined as any flying vehicle that is required to be registered with a government identity, such as the Federal Aviation Administration or equivalent.

You the Buyer agree to indemnify, defend and hold harmless the Seller, its parent companies, subsidiaries, affiliated companies, joint ventures, business partners, licensors, employees, agents, and any third-party information providers against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and reasonable attorneys' fees, resulting from or arising out of your use, misuse, or inability to use the Product, the Seller's, web site, the service, or the content, your reliance upon any information or recommendation provided by the Seller, the Technical Assistance and Design Support Services Personnel, or any violation by you of this Agreement.

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Title and Delivery

All shipments of goods shall be delivered F.O.B. Seller's plant (Brainerd, MN), and title and liability for loss or damage thereto shall pass to Buyer upon Seller's delivery of the goods to a carrier for shipment to Buyer, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

Seller may deliver goods in installments. Shipping dates are approximate only. Seller shall not be liable for any loss or expense, whether by way of contract or tort, (consequential or otherwise) incurred by Buyer if Seller fails to meet the specified estimated delivery schedule because of unavoidable production or other delays.

Product invoiced and held by Seller for any reason shall be at Buyer's risk and expense. Delivery route shall be at the election of Seller unless specifically designated by Buyer and acknowledged in writing by Seller. In no event shall the carrier be deemed an agent of Seller. Should delivery of any or all of the Product (or any other obligation of Seller) be delayed by events beyond Seller's control, whether or not foreseeable, Seller's time for performance shall be extended by the period of delay, or Seller, may, at its option, cancel the order(s) without liability, Buyer remaining liable to pay for shipment(s) already made.

Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or Seller's suppliers, including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Seller has exercised ordinary care in the prevention thereof. Seller may allocate production and deliveries among seller's customers.

Return / Refund Policy for Standard Products of quantities of ninety-nine (99) or less

Acceptance shall be presumed conclusively to have occurred thirty (30) days following delivery of product to Buyer, unless Buyer has accepted the product prior to that date.

All refunds must be directed to the original place of purchase. If you purchased your product from the Seller's web site within the past thirty (30) days, we will refund the purchase price, less shipping and handling costs. Custom Products of any order size are not refundable.

Return / Refund Policy for Custom Products or Product quantities of one-hundred (100) or more

At the time the purchase order is made, custom and volume Buyers are required to order the specific product they desire. It is further expected that custom and volume Buyers have physically verified by test and analysis the product specifically ordered meets the requirements for the Buyer's desired use. Product quantities of one hundred (100) or more are not refundable. Custom Products of any order size are not refundable.

Volume Buyer Inspection and Acceptance for Product quantities of one-hundred (100) or more.

Buyer shall examine the Products as soon as possible after their arrival at Buyer's facility, and in any event not more than thirty (30) days following the Products' arrival at Buyer's facility. Buyer shall notify Seller in writing with respect to missing Products, immediately upon receipt by reference to the accompanying bill of lading, and with respect to Products that are damaged in transit, within twenty (20) days from the date of receipt. The Products shall be deemed to conform to the applicable specifications despite minor discrepancies that are usual in the trade, and Buyer shall not be entitled to abatement of the price for such minor discrepancies. Where the Products are materially non-conforming, the remedies provided in the limited warranty set forth herein shall serve as Buyer's exclusive remedy. All Products shall be deemed accepted unless Seller is notified in writing of any defects within thirty (30) days from the date of receipt.

Limited Warranty

THE FOLLOWING IS IN LIEU OF ALL WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OBLIGATION ON THE PART OF SELLER.

The Seller will issue an RMA (Return Material Authorization) within one (1) year of the purchase of the Product from the Seller or one of the Seller's authorized resellers. Our Technical Support Department must determine that the Product does not function properly and then replacement product will be sent.

Seller, except as otherwise hereinafter provided, warrants its hardware products against faulty workmanship or the use of defective materials, and that such goods will conform to Seller's written specifications, drawings, and other descriptions for a period of one (1) year from the date of shipment or one (1) year from the date of resale by Buyer to Buyer's customers, whichever is first to expire. Seller warrants that at the time of delivery Seller has title to the goods free and clear of any and all liens and encumbrances. These warranties are the only warranties made by Seller and can be amended only by a written instrument signed by an officer of Seller.

This Limited Warranty is void if failure of the products has resulted from accident, abuse, misapplication, improper calibration by Buyer, modifications of the product by Buyer or a third party, or unauthorized maintenance or repair.

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Continued use or possession of goods after expiration of the applicable warranty period stated above shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of Buyer. Seller makes no warranty as to experimental or developmental goods or goods not manufactured by Seller, provided that as to goods not manufactured by Seller, Seller, to the extent permitted by Seller's contact with its supplier shall assign to Buyer any rights Seller may have under any warranty of the supplier thereof.

Seller's warranties are herein above set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of Seller's rendering of technical advice or service in connection with Buyer's order of the goods furnished hereunder.

If the goods furnished by Seller fail to conform to Seller's exclusive limited warranty, Seller's sole and exclusive liability shall be (at Seller's option) to repair, replace or credit Buyer's account for any such goods which are returned by Buyer during the applicable warranty period set forth above, provided that Seller is promptly notified in writing upon discovery by Buyer that such goods failed to conform to this contract with a detailed explanation of any alleged deficiencies; Buyer must obtain a Return Material Authorization (“RMA”) number from Seller before returning any product under warranty to Seller, such goods are returned to Seller, F.O.B. Seller's plant, and Seller's examination of such goods shall disclose to Seller's satisfaction that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, unauthorized repair, improper calibration, or improper testing. If Seller elects to repair or replace such goods, Seller shall have a reasonable time to make such repairs or replace such goods. If, however, Seller concludes that the goods returned are not defective, Buyer will be notified, the product returned at Buyer's expense, and a charge made for examination and testing.

THIS IS THE SELLER'S ONLY LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM, WHETHER ARISING IN TORT OR CONTRACT, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

Changes

Any notice or instruction from the Buyer received subsequent to Seller's acknowledgment, including supplementary information contained in a confirming purchase order, which has the effect of changing the specifications, scope of work, or other terms, will be effective only upon an appropriate adjustment in the price and/or delivery date, and acceptance of any change by Seller in writing.

Termination and Cancellation

Buyer may terminate this contract in whole, or from time to time, in part, upon thirty (30) days advance written notice to Seller. In such event, Buyer shall be liable for termination charges which shall include: a price adjustment based on the quantity of goods actually delivered, and Buyer will pay a cancellation and stocking charge for each unit cancelled equal to 50% of the purchase order item price, and non-standard items built to the Buyer's custom order, Buyer will pay for all cost, direct and indirect, incurred and committed for this contract, together with a reasonable allowance for prorated expenses and anticipated profits.

Assignment

This contract is binding upon and inures to the benefit of the parties and the successors and assigns of the entire business and good will of Buyer, or of that part of the business used in the performance of this contract, but shall not be otherwise assignable, without the prior consent of Seller.

Collection Rights

In the event of any default by Buyer, Seller may invoke any remedy provided by law or by the terms herein stated, and may decline to make further shipments. If Seller elects to continue to make shipments, Seller's actions shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies for any such default.

In the event Seller resorts to a third party or to litigation in order to collect amounts due Seller, Buyer agrees to pay costs of collection for amount owed to Seller, including, but not limited to, collection fees, attorney's fees, court costs, and interest in the amount of 1% per month (12% per annum), from the date the amount is due.

Legal Compliance

Buyer, at all times, shall comply with all applicable federal, state and local laws and regulations. Export of the products covered by this quotation or acknowledgment may be subject to export license control by the U.S. government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the U.S. including the Export Administration Act and regulations promulgated there under.

Intellectual Property

Seller intends to utilize proprietary information and manufacturing process (“Proprietary Information”) in manufacturing the Product and in discharging its other responsibilities hereunder. Buyer acknowledges and agrees that, as between the parties hereto, the Proprietary Information is proprietary to Seller and constitutes a trade secret under the Uniform Trade Secrets Act as adopted in the State of Minnesota. Buyer will acquire no rights to use and/or disclose the Proprietary Information by virtue of the utilization of Proprietary Information in the Products manufactured or sold to Buyer hereunder.

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All designs, drawings, manuals, instructions, software, process programs and text in any format provided to Buyer by Seller are the sole property of Seller or its licensors, are protected by copyrights and international laws regarding copyrights, and may not be mechanically or electronically duplicated, reverse engineered or reproduced without Seller's express written consent.

Compliance with the EU RoHS Directive

The Seller declares that to the best of its actual knowledge, Products labeled as RoHS compliant will be in compliance with the provisions of the EU RoHS Directive. This declaration is provided to facilitate Buyer's compliance with that Directive, and does not in any way expand upon or modify the Seller's obligations under these Terms and Conditions of Sale.

Patents

Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any goods manufactured and supplied by Seller to Buyer constitute direct infringement of any duly issued United States patent and Seller shall pay all damages and costs finally awarded therein against Buyer, provided that the Seller is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance (at Seller's expense) necessary to defend or settle said suit or proceeding. Seller shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification (s), or from a combination with, an addition to, or a modification of the goods after delivery by Seller, or from use of the goods, or any part thereof, in the practice of a process. Seller's obligations hereunder shall not apply to any infringement occurring after Buyer has received notice of such suit or proceeding alleging the infringement unless Seller has given written permission for such continuing infringement.

If any goods manufactured and supplied by Seller to Buyer shall be held to infringe any United States patent and Buyer shall be enjoined from using the same, Seller will exert its reasonable efforts, at its option and at its expense, (i) to procure for Buyer the right to use such goods free of any liability for patent infringement or (ii) to replace such goods with a non-infringing substitute otherwise complying substantially with all requirements of this contract or (iii) refund the purchase price and the transportation costs of such goods.

If the infringement by Buyer is alleged prior to completion of delivery of the goods under this contract, Seller may decline to make further shipments without being in breach of this contract, and provided Seller has not been enjoined from selling said goods to Buyer, Seller agrees to supply said goods to Buyer, at Buyer's option, whereupon the patent indemnity obligation herein stated with respect to Seller shall reciprocally apply with respect to Buyer. If any suit or proceeding is brought against Seller based on a claim that the goods manufactured by Seller in compliance with Buyer's specifications and supplied to Buyer directly infringe any duly issued United States patent, then the patent indemnity obligations herein stated with respect to Seller shall reciprocally apply with respect to Buyer.

The sale of the items ordered hereunder does not grant or convey or confer upon Buyer upon Buyer or Buyer's customers, or upon anyone claiming under Buyer, a license express or implied under any patent rights of Seller covering or relating to any combination, machine or process in which said item might be or are used.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

Substitutions and Modifications of Goods

Seller reserves the right to make corrections, modifications, enhancements, improvements, and other changes to its products and services at any time and may modify the specifications of goods designed by Seller, and substitute goods manufactured to such modified specifications for those specified herein, provided such goods substantially conform to this Agreement.

Applicable Law and Forum

The validity, performance and construction of this contract shall be governed by the laws of the state (Minnesota) in which Seller resides, as shown on the face hereof and such state shall be the only jurisdiction in which any suit may be brought against Seller regarding any dispute arising of this transaction.

Severability of Terms

If any phrase, clause or provision shall be declared void, the validity of any other provisions shall not be affected thereby. The captions or headings are for convenience only and are not intended to limit or define the scope or effect of any provision of these Terms and Conditions.

Modification

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SALE OF THE GOODS DESCRIBED ON THE FACE HEREOF, AND NO ADDITION TO OR MODIFICATION OF ANY PROVISION OF THIS CONTRACT SHALL BE BINDING UPON SELLER UNLESS MADE IN WRITING AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF SELLER LOCATED AT SELLER'S APPROPRIATE ORDER ENTRY LOCATION.

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