

# MELINK CORPORATION TERMS AND CONDITIONS

1. Applicability. These terms and conditions of sale (these "**Terms**") are the only terms that govern the sale of the goods ("**Goods**") and services ("**Services**") by MELINK CORPORATION ("**Seller**") to the buyer ("**Buyer**") as indicated on any proposal or sales order (the "**Proposal**").

The Proposal and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

Notwithstanding anything to the contrary contained in this Agreement, Seller may, at any time and without notice, substitute or change materials, parts, product specifications or functional attributes with any products or services provided such substitution or change does not materially affect the nature or scope of the Goods or Services.

2. Price. The price for the Goods and/or Services is set forth in the Proposal and is based on information supplied by Buyer. Seller reserves the right to change the price quoted in the Proposal if it is necessary due to it being provided inaccurate information or in the event the Proposal is not accepted by Buyer within the time frame specified therein. Prices apply only to Goods delivered to, or Services provided in, the continental U.S., unless otherwise noted. Buyer also agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of the Services.

3. Payment Terms. Payment terms are set forth in the Proposal. All invoices not paid within the specified terms may be subject to finance charges equal to the lesser of (i) 1.5% per month or (ii) the highest rate permissible under applicable law. In addition, Seller may withhold further delivery of Goods or Services in the event any invoice is not paid in full in compliance with the payment terms. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

4. Taxes. All prices indicated in the Proposal are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets. Supplier will include all such amounts owed by Buyer to the final invoice unless Buyer provides a proper exemption form.

5. Delivery of Goods; Performance of Services. The Goods will be delivered within 10 business days of Seller's acceptance of the Buyer's purchase order and receipt of all necessary specifications. Requests for delivery of less than 10 business days may be subject to Quick Ship Service Charge not to exceed 5% of the price of the quoted Goods in addition to any UPS Air Freight Charges.

All Goods will be delivered FCA (Incoterms 2010) Seller's facility. Title and risk of loss will pass to Buyer when Seller delivers Goods to the carrier.

Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

Seller shall use commercially reasonable efforts to meet any performance dates to render the Services specified in the Proposal; notwithstanding the foregoing, Buyer acknowledges that any such dates shall be estimates only.

Buyer shall (i) cooperate with Seller in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the

purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; (iii) provide in a timely manner such customer materials or information as Seller may request to carry out the Services and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

6. Inspection and Rejection of Nonconforming Goods. Buyer shall inspect the Goods within 5 business days of receipt and will be deemed to have accepted the Goods unless, during such period, it notifies Seller in writing that (i) the Goods shipped are different than identified in Buyer's purchase order; or (ii) the Goods' label or packaging incorrectly identifies its contents ("**Nonconforming Goods**"). In such event, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith.

7. Limited Warranty. Seller warrants to Buyer that for a period of 3 years from the date of delivery of the Goods ("**Warranty Period**"), that such Goods will be free from defects in material and workmanship.

Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.

**EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED OR OTHERWISE.**

Seller may provide recommendations based on benchmark data provided by Buyer or the industry at large. Such recommendations are not meant to substitute load calculations or other engineering analysis that might be required. In addition, Buyer is responsible for confirming structural, electrical and plumbing requirements to support any equipment recommendations unless specified in the Proposal.

The Seller shall not be liable for a breach of the warranty set forth in this Section 7 if: (i) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (ii) Buyer alters or repairs such Goods without the prior written consent of Seller. Buyer shall permit Seller to inspect any claim of breach of warranty. In the event that Buyer determines any deficiency is the result of any circumstance, cause or event that does not constitute a breach of warranty by Seller, Buyer shall compensate Seller for the cost of all inspection efforts, including an hourly reimbursement of labor and travel expenses, with a minimum charge of at least \$1,750.

In the event of any breach of warranty, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or, if applicable, repair or re-perform the applicable Services or (ii) credit or refund the price of such Goods or Services at the pro rata contract rate. THE REMEDIES SET FORTH IN HEREIN ARE THE BUYER'S SOLE AND EXCLUSIVE REMEDIES AND CONSTITUTE SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE WARRANTIES SET FORTH IN THIS SECTION 7.

8. Limitation of Liability. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT**

**(INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.**

The limitation of liability set forth above shall not apply to liability resulting solely from Seller's gross negligence or willful misconduct.

9. Cancellation. This Agreement and the order becomes a binding legal contract upon acceptance.
- a. **Cancellation Right**. Buyer may cancel this Agreement and such order upon written notice to Seller. Seller may cancel this Agreement and such order upon written notice to Buyer in the event that Buyer fails to comply with any of its responsibilities in support of Seller's performance of the Services as set forth in Section 5.
  - b. **Responsibilities Upon Cancellation**. Upon cancellation, Buyer shall (a) pay to Seller an administrative fee of \$1,750 for processing such cancellation and (b) indemnify and reimburse Seller for all loss or damage resulting from such cancellation, including, without limitation, Seller's direct costs, expenses, overhead and reasonable profits.

10. Confidential Information. All non-public, confidential or proprietary information of Buyer or Seller disclosed to the other, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by the disclosing party in writing. Upon the disclosing party's request, the receiving party shall promptly return all Confidential Information. The disclosing party shall be entitled to injunctive relief for any violation of this Section 10. This Section 10 does not apply to information that is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; or (c) rightfully obtained by the receiving party on a non-confidential basis from a third party.

Seller will retain ownership of and all rights to (1) all data generated by the Goods or Services and (2) all intellectual property embodied in the Goods or Services.

11. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, epidemic, lockouts, strikes or other labor disputes.

12. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section 12 is null and void.

13. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

14. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the courts of the State of Ohio located in the County of Clermont, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any action, proceeding, cause of action or counterclaim arising out of or relating to this Agreement.

15. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.