

## **M C L, INC.**

### **TERMS AND CONDITIONS OF SALE**

The Terms and Conditions of Sale contained herein (the “Agreement”) constitute the entire agreement between M C L, Inc. (“Seller” or “M C L”) and the party which places a purchase order with M C L (“Buyer”) and shall control all purchases of Products (as hereinafter defined) by Buyer from M C L. M C L will not be bound by any terms of Buyer’s purchase order unless expressly agreed to in writing by M C L. No form of acceptance except M C L’s written or electronic acknowledgment provided to Buyer or M C L’s commencement of performance shall constitute valid acceptance of Buyer’s purchase order; any such acceptance is expressly conditioned on Buyer’s assent to the terms hereof and the exclusion of all additional or different terms except as may be set forth in a written agreement expressly superseding these terms. Buyer shall be deemed to have assented to the terms hereof, whether or not previously received, upon accepting delivery of anything shipped by M C L. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms hereof and M C L hereby gives notice of its objection to any additional or different terms proposed by Buyer in its purchase order or any other documents.

#### **1. PRODUCTS**

1.1 “Product(s)” shall mean any products identified on (a) Seller’s proposals or quotations or (b) Seller’s acknowledgments of a purchase order. In the event of any inconsistency between (x) the proposal or quotation and the acknowledgment or (y) the purchase order and the acknowledgment, the acknowledgment shall control.

1.2 Seller shall give Buyer prior notice of proposed alterations to any Product which Seller deems necessary to comply with applicable safety standards and/or governmental regulations, or to make a Product non-infringing with respect to any patent, copyright or other proprietary interest. If Buyer does not consent to any such alteration within fifteen (15) days following the receipt of notice, Seller shall have the right, by written notice to Buyer, to consider the Order to have been canceled pursuant to the provisions of Paragraph 5.2 below.

#### **2. ORDERS**

2.1 Buyer shall purchase Products by issuing a written purchase order (the “Order”) signed by an authorized representative, indicating specific Products, quantity, unit price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certificates, if applicable, and any other special instructions. Any contingencies contained on such order are not binding upon Seller. Seller will accept or reject orders according to its then-current procedures. All Orders are subject to acceptance in writing by Seller at its corporate headquarters.

2.2 Any notice or instruction from Buyer received subsequent to Seller’s acknowledgment 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 the written acceptance of any such change by Seller.

2.3 The shipment of an Order to Buyer or consignee located outside the United States may be subject to the issuance of a license or other permit by the United States Commerce Department, United States Department of State and/or other United States department or agency; acceptance of all such Orders is conditioned upon and subject to the issuance of such license and/or permit; in the event that Seller is unable to obtain such license(s) or permit(s), Seller may cancel such Order and shall have no further liability to Buyer.

### 3. PAYMENT AND RISK OF LOSS

3.1 If the Order requires consignment and/or delivery by Seller to a place(s) located outside the United States, unless otherwise agreed to in writing by Seller, payment shall be made in U.S. dollars by Buyer either by (a) irrevocable confirmed letter of credit advised and confirmed through Seller's then current primary Bank or any prime New York bank, with drafts drawn on and payable at New York bank at sight (Buyer is to provide bank with debit authorization); or (b) by bank draft, four (4) weeks prior to shipment. In all other cases, unless indicated on Seller's quotation, acknowledgment or invoice or otherwise agreed to in writing by Seller, the payment terms shall be net thirty (30) days from the date of shipment and payment shall be made in U.S. dollars.

3.2 If the Order requires consignment and/or delivery by Seller to a place(s) located outside the United States, unless otherwise agreed to in writing by Seller, title to and risk of loss for the Product(s) shall pass from Seller to Buyer, "FCA Seller's warehouse" (as defined in International Chamber of Commerce, Inocotems 2000), 501 South Woodcreek Road, Bolingbrook, Illinois pick up and loading charges for the account of Buyer. In all other cases, unless otherwise agreed to in writing by Seller, title to and risk of loss for the Product(s) shall pass from Seller to Buyer, "FOB Seller's warehouse", 501 South Woodcreek Road, Bolingbrook, Illinois.

3.3 Notwithstanding Section 3.2, if shipment of any Product is delayed at Buyer's request, Seller may invoice Buyer for such Product and risk of loss of such Product will pass to Buyer on the date that Seller is prepared to make shipment to Buyer.

3.4 Unless otherwise agreed to in writing by Seller, Buyer shall be responsible for insuring the Products at and after the time it assumes the risk of loss.

3.5 Unless otherwise stated in writing by Seller, all prices quoted are exclusive of any tax, duty, or other fee of any nature, imposed upon this transaction by any Federal, state or local government of the United States and/or foreign government authority; all such taxes, duties, customs and other fees shall be paid by Buyer and are in addition to the price quoted or invoiced (unless Buyer shall present an exemption certificate acceptable to the taxing authorities); in the event Seller is required to prepay any such tax, duty, custom or other fee, Buyer will reimburse Seller therefor promptly upon request.

3.6 Buyer hereby acknowledges and agrees that Seller shall retain a purchase money security interest in all Products sold hereunder and in all proceeds from their resale by Buyer to secure payment by Buyer of the purchase price. Buyer further acknowledges and agrees that Seller

shall retain such purchase money security interest in addition to all other remedies at law. In the event of a failure by Buyer to perform in a timely manner any obligation of Buyer to Seller, the Buyer hereby agrees to assemble all secured collateral for the defaulted obligation and make such collateral available to Seller at a place reasonably convenient to both parties. In the event Buyer disposes of any such collateral, any proceeds from such disposition shall be applied to the amount of Buyer's outstanding obligation as provided by law. Buyer hereby authorizes Seller to file one or more financing and continuation statements, and amendments thereto, in order to secure Seller's interest in the Products purchased hereunder without the signature of Buyer where permitted by law. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Products purchased hereunder or any part thereof shall be sufficient as a financing statement where permitted by law.

3.7 If at any time Buyer is delinquent in the payment of any invoice or is otherwise in breach of any obligation to Seller, Seller may, at its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any Order or may, at its option, require Buyer to prepay for further shipments. Late charges of one and one-half percent (1.5%) per month or the maximum amount permitted by law, whichever is less, on any sums not paid by Buyer when due shall be due and payable at the option of Seller.

#### **4. SHIPPING AND DELIVERY**

4.1 Shipping dates will be established by Seller upon its receipt and acceptance of an Order from Buyer.

4.2 Unless Seller receives and acknowledges written shipping instructions from Buyer regarding shipment thirty (30) days prior to the delivery date, Seller may select and engage on Buyer's behalf third parties, including U.S. domestic and international forwarder(s) and carrier(s), for the handling transportation, clearance and delivery of the Products. Seller shall use reasonable care in making such selection but shall have no liability for the means, route, and procedure to be followed by such third parties. The selection by Seller of a particular company shall not mean that Seller warrants or represents that the company will properly perform such services and Seller shall not be responsible for any delays or damages caused by such third parties, nor shall such third parties be considered to be an agent of Seller. In the event Seller pays or is required to pay or prepay any fees or charges related to these services, Buyer shall promptly reimburse Seller therefor.

4.3 All shipments provided for hereunder may be made in a single delivery or in lots, at the discretion of Seller.

#### **5. CANCELLATION**

5.1 In the event that either party defaults in any of the terms, conditions, obligations, undertakings, covenants, or liabilities set forth herein, the other party shall give the defaulting party written notice of such default. If the defaulting party does not remedy such default within ninety (90)

days following receipt of written notice thereof, the party giving notice may cancel the Order by providing the defaulting party with a written notice of cancellation. In addition, either party may cancel the Order by providing written notice to the other party in the event the other party becomes insolvent, files a petition for bankruptcy under any chapter of the U.S. bankruptcy laws, enters into any arrangement or composition with creditors, or goes or is put into liquidation, or, in the case of the Buyer, is unable to meet its debts as they become due. Except as provided in Paragraph 2.3, cancellation of the Order shall not relieve either party from its obligations hereunder which shall have accrued prior to such cancellation. Cancellation by Buyer of the Order pursuant to this article shall be Buyer's sole and exclusive remedy for any breach by Seller.

5.2 Except as provided in Paragraph 5.1, Orders accepted by Seller can only be canceled by Buyer with the mutual agreement of Buyer and Seller. In the event an Order is agreed to be canceled, Buyer will be liable for no less than the sum of (i) the sales price of all finished goods, (ii) the total cost of all work in process and all raw materials purchased for the Product, including long lead time and/or bulk material, (iii) a reasonable profit with respect to unfinished goods and (iv) any other obligations, liabilities, expenses and/or costs incurred by Seller in connection with the Order (including, but not limited to, any administrative, freight and restocking costs and expenses). In no event will Buyer's liability under this section exceed the total value of the canceled portion of the Order.

5.3 If the Products are being purchased to complete a U.S. Government contract which can be and is terminated for the government's convenience, Buyer will give prompt notice to Seller of the termination thereof and will promptly reimburse Seller in accordance with the provisions of the termination article of such government contract. In addition, Buyer shall be liable for, and include in any such reimbursement amount, all of Seller's costs incurred in connection with, arising out of or otherwise associated with the cancellation of the Order for the government's convenience, including, without limitation, administrative costs and expenses incurred in connection with the preparation and processing of all documentation in connection therewith.

## **6. LIMITED WARRANTY**

Notwithstanding any other provision hereof, Seller's sole and exclusive obligations and Buyer's sole and exclusive remedy for the Products sold hereunder are set forth in the Seller's warranty which is attached hereto and made a part hereof.

## **7. PATENT INDEMNITY**

7.1 Seller will defend any claim, suit or proceeding brought against Buyer so far as it is based on a claim that any Product supplied hereunder infringes an existing patent (as of the effective date of this Agreement) within the United States, if notified promptly in writing of the claim and given full authority, information, and assistance for the defense. If such claim has occurred, or in Seller's opinion is likely to occur, Buyer agrees to permit Seller, at Seller's option and expense, either to

procure for Buyer the right to continue using the Product or to replace or modify the same so that it becomes non-infringing, or, if neither of the foregoing alternatives is reasonably available, remove the Product and refund Buyer the price thereof as depreciated or amortized by an equal annual amount over the lifetime of the Product as established by Seller.

7.2 Seller has no liability for any claim based upon the combination, operation, or use of any Product supplied hereunder with equipment, devices, or software not supplied by Seller, or for any claim based upon alteration or modification of any Product supplied hereunder.

7.3 Buyer shall defend and hold Seller harmless against any and all costs, expenses, judgments, liabilities and losses for alleged infringement of any patents or other proprietary rights which result from Seller's compliance with Buyer's designs, specifications or instructions.

7.4 Notwithstanding any other provisions hereof, Seller shall not be liable for any claim based on Buyer's use of the Products as shipped after Seller has informed Buyer of modifications or changes in the Products required to avoid such claims and offered to implement those modifications or changes, if such claim would have been avoided by implementation of Seller's suggestions.

7.5 The foregoing states the entire obligation of Seller and Buyer's sole remedy with respect to infringement of proprietary rights. The foregoing is given to Buyer solely for its benefit and in lieu of, and Seller disclaims, all warranties, conditions or other terms concerning non-infringement with respect to the Products.

## **8. EXPORT LICENSING REQUIREMENTS AND IMPORT PERMITS**

8.1 If the Order requires consignment and/or delivery by Seller to a place(s) located outside the United States, Seller shall obtain all U.S. export licenses, permits and/or approvals required by the United States government. Buyer shall be responsible for providing in a timely fashion complete and accurate information requested by Seller or any United States government agency necessary to obtain such license, permit or approvals and Buyer shall notify Seller promptly, in writing, of any changes in information or circumstances previously provided to Seller. Buyer acknowledges that Seller may rely on all statements made by Buyer in connection with this Order and Buyer will indemnify and hold Seller harmless for any fines, penalties forfeitures and/or damages of whatever nature incurred by Seller based upon its reliance on Buyer's statements. Notwithstanding Paragraph 2.3 above, in the event that a license cannot be obtained as a result of information which is not timely provided and/or is inaccurate and/or has changed, Seller shall have the right to treat the Order as canceled by Buyer and subject to the terms of Paragraph 5.2 above.

8.2 In all other cases, unless otherwise agreed to in writing by Seller, Buyer shall provide to Seller an "end-user statement" and Buyer shall be responsible for obtaining any required export licenses, permits and/or approvals prior to the export of the Products from the United States.

8.3 Except as agreed to in writing by Seller, Buyer shall solely be responsible for obtaining any and all licenses, permits, approvals, etc., required for importation of the Products into a foreign country and/or compliance with its laws.

**9. DATA AND INTELLECTUAL PROPERTY RIGHTS**

9.1 Any technical data or information which Seller discloses to Buyer is and shall remain proprietary to Seller and shall be protected by Buyer in the same manner as Buyer protects its own confidential information but with no less than a reasonable degree of care. Buyer agrees not to disclose any such data to any third party, including its affiliates, nor to use it for any purpose other than as intended by Seller.

9.2 Nothing shall be deemed to transfer to either party any right or license of any kind in any of the other party's intellectual property.

**10. TOOLS AND DIES**

Any fixtures, dies or tools for which Seller may pay and charge to Buyer's account in connection with Buyer's Order shall not become Buyer's property unless otherwise specifically agreed in writing. All such equipment may be used by Seller for any purposes, whether with respect to Buyer or otherwise, and/or be disposed of in Seller's sole discretion.

**11. LIMITATION OF LIABILITY; LIMITATION ON BRINGING ACTION**

**11.1 THE AGGREGATE CUMULATIVE TOTAL LIABILITY FOR WHICH SELLER IS OBLIGATED TO PAY BUYER HEREUNDER, WHETHER FOR BREACH OF WARRANTY OR CONTRACT, INDEMNIFICATION HEREIN, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL NOT EXCEED THE PAYMENT MADE TO SELLER IN CONNECTION WITH THOSE PRODUCTS PURCHASED UNDER THE ORDER WHICH GAVE RISE TO SUCH LIABILITY.**

**11.2 NO ACTION SHALL BE BROUGHT BY BUYER FOR ANY BREACH BY SELLER MORE THAN ONE (1) YEAR AFTER THE OCCURRENCE OF THE CAUSE OF ACTION THEREFOR.**

**12. CONSEQUENTIAL DAMAGES WAIVER**

**IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR LOST DATA, OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**13. U.S. GOVERNMENT CONTRACTS.** In the event the Product or services being acquired hereunder are to be used in making parts or equipment to be furnished to the U.S. Government under a government contract then:

13.1 If Buyer so advises Seller prior to the commencement of work, Seller will attempt to comply with the applicable requirements of such governmental contract to the extent they do not increase Seller's costs for completing the Order.

13.2 Unless otherwise stated, the Products or services being purchased are "commercial items" (48 C.F.R. §52.202-1) under the Federal Acquisition Regulation ("FAR"). Accordingly, the following clauses shall apply: (i) Equal Opportunity (E.O. 11246) 48 C.F.R. §52.222-26; (ii) Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a)) 48 C.F.R. §52.222.35; and (iii) Affirmative Action for Workers with Disabilities (29 U.S.C. §793) 48 C.F.R. §52.222-36.

13.3 If such Products or services are not a commercial item, the following FAR and Defense Federal Acquisition Regulation Supplement ("DFARS") clauses set forth in Attachment A are incorporated by reference, but only to the extent that (a) Buyer's contract with its buyer includes such clauses, and (b) either (i) the flow-down of such clauses to Buyer's vendors is required by law or (ii) if not required by law, then only to the extent provided for in Attachment A.

13.4 Except as otherwise noted, where the terms "Contracting Officer" and "Contractor" appear in the text of the FAR and DFARS clauses, such terms shall mean the "Buyer" and "Seller" respectively. References in such clauses to the "Government" shall remain as stated. All references in such clauses to "Contract" shall mean the terms of this Agreement. Under no circumstances, however, will Buyer have access to confidential or proprietary information of Seller.

13.5 If a dispute is one that involves Seller and falls within the disputes clause of Buyer's prime contract with the U.S. Government, Buyer, at the request of Seller, will request promptly a final decision of the Contracting Officer for such prime contract, which decision, if, and to the extent, it is finally binding upon Buyer under such prime contract, shall in turn be binding upon Buyer and Seller hereunder; provided, however, that (i) Buyer shall provide Seller with a copy of such decision within twenty (20) days from the date of its receipt by Buyer, and (ii) if Seller disagrees with such decision, and if Buyer elects not to appeal such decision on its own behalf, Seller shall have the right to take a timely appeal of such decision on its own behalf in Buyer's name. Buyer will lend reasonable assistance in connection with such appeal by Seller. Seller shall control the prosecution of such appeal and shall bear all costs thereof. Seller shall keep Buyer informed of the progress of any such appeal by forwarding to Buyer copies of all pertinent documents.

#### 14. **FORCE MAJEURE**

In addition to any excuse provided by Sections 2-613 through 2-615 of the Uniform Commercial Code, or by any other applicable law, Seller shall be excused from any liability, loss or damage to Buyer or any other person or party for failure to manufacture or deliver, or any delay in delivery, arising from any events beyond Seller's control regardless of whether or not they were foreseeable by either party when the Products were ordered. Such uncontrollable events include, but are in no way limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, accidents, Government priorities or regulations, quarantine restrictions, acts of Buyer, strikes, labor stoppages, labor disputes, differences with workman decrees, delays in transportation, and

shortages of cars, fuel, labor or materials.

## 15. GENERAL TERMS

15.1 The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of [Illinois] as if performed wholly within the state and without giving effect to the principles of conflict of law. Except as provided above, any controversy that cannot be settled directly between Buyer and Seller shall be settled by binding arbitration in [Chicago, Illinois] in accordance with the rules then prevailing of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof, with no right of appeal therefrom.

15.2 No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of this or any other right under this Agreement.

15.3 Neither this Agreement nor any rights under this Agreement, other than monies due or to become due, shall be assigned or otherwise transferred by Buyer (by operation of law or otherwise) without the prior written consent of Seller. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.

15.4 In the event that any of the terms of this Agreement become or are declared to be illegal by any court of competent jurisdiction or arbitrator(s), such terms shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.

15.5 Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

15.6 This Agreement, including the Warranty referenced herein, constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement, and there are no understandings, agreements, representations, conditions, warranties, or other terms, express or implied, which are not specified herein. This Agreement may only be modified by a written document executed by authorized representatives of Seller and Buyer.

**ATTACHMENT A**

<b><u>Notes</u></b>	<b><u>FAR Clause</u></b>	<b><u>Title</u></b>
	52.203-6	Restriction on Subcontractor Sale to the Government
	52.203-7	Anti-Kickback Procedures
	52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
	52.203-12	Limitation on Payments to Influence Federal Transactions
	52.204-2	Security Requirements
	52.211-15	Defense Priority and Allocation Requirements
	52.214-26	Audit and Records - Sealed Bidding
	52.214-28	Subcontractor Cost or Pricing Data Modifications - Scaled Bidding
(1)	52.215-2	Audit and Records - Negotiation
(2)	52.215-10	Price Reduction for Defective Cost or Pricing Data
(3)	52.215-11	Price Reduction for Defective Cost or Pricing Data - Modifications
	52.215-12	Subcontractor Cost or Pricing Data
	52.215-13	Subcontractor Cost or Pricing Data - Modifications
	52.215-14	Integrity of Unit Prices
	52.215-15	Termination of Defined Benefit Pension Plans
	52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pension (PRB)
	52.215-19	Notification of Ownership Changes
	52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation
	52.222-26	Equal Opportunity
	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans
	52.222-36	Affirmative Action for Handicapped Workers
	52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
	52.227-1	Authorization and Consent

**ATTACHMENT A (Continued)**

	52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement
	52.227-11	Patent Rights-Short Form
	52.227-12	Patent Rights-Long Form
	52.227-13	Patent Rights-Acquisition by the Government
	52.230-2	Cost Accounting Standards
	52.230-3	Disclosure and Consistency of Cost Accounting Standards
	52.230-6	Administration of Cost Accounting Standards
	52.243-1	Changes - Fixed Price
(4)	52.245-2	Government Property (Fixed-Price Contracts)
	52.245-17	Special Tooling
	52.245-18	Special Test Equipment
	52.246-23	Limitation of Liability
	52.246-24	Limitation of Liability-High Value Items
	52.247-63	Preference for U.S. Flag Air Carriers
	52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels
(5)	52.249-2	Termination for Convenience of the Government (Fixed Price)
(6)	52.249-8	Default
	252.203-7001	Special Prohibition on Employment
	252.211-7000	Acquisition Streamlining
	252.225-7009	Duty-Free Entry-Qualifying Country End Products and Supplies
	252.225-7014	Preference for Domestic Specialty Metals, Alternate I - EXCEPTION TAKN TO THIS PROVISION - SEE NOTES ON PAGE A-3
	252.225-7026	Reporting of Contract Performance Outside of the United States
(7)	252.227-7013	Rights in Technical Data - Noncommercial Items
(7)	252.227-7015	Technical Data - Commercial Items
	252.227-7016	Rights in Bid or Proposal Information

## NOTES

- (1) The Words “Contracting Officer or Representatives of the Contracting Officer” shall mean only the bonafide employees of the U.S. Government and expressly excludes Buyer or Buyer’s non-governmental representatives.
- (2) In Subparagraph (a) item (3), delete the word “accordingly” and substitute the words “... by an amount notto exceed the amount of the defect at Seller’s price level.”
- (3) In Subparagraph (b) item (3), delete the word “accordingly” and substitute the words, “... by an amount notto exceed the amount of the defect at Seller’s price level.”
- (4) A separate maintenance agreement shall be entered into between Buyer and Seller for other than routinemaintenance requirements.
- (5) Buyer shall terminate the Order only in the event Buyer’s Order is terminated for the government’sconvenience.The words “Contracting Officer” shall not mean “Buyer.”
- (6) Any recovery under this article shall be limited to reprocurement costs. In paragraph (b) after the words“services” add the following:“Reprocurement costs shall be applicable only to that portion of the Order terminated in whole or part fordefault. Said costs will not exceed 1% of the original sales value of that portion terminated for defaultand will be remitted upon proper justification of the aforementioned costs by the Buyer to Seller. This clause sets for the Buyer’s sole and exclusive remedy and Seller’s sole liability in the event the Orderwith Seller is terminated for default.”
- (7) For orders issued to MCL which impose the requirements of Department of Defense Federal Acquisition (DFARS) clause 252.225-7014, ALT I “Preference for Domestic Specialty Metals” exception is hearby taken to this DFARS provision. MCL Inc. is presently working to impliment a compliance program. However at the present time, we cannot certify that the products deliverable against this order are fully compliant with this provision.
- (8) Except as otherwise expressly agreed to in writing by Seller, all data pertaining to manufacturinginspections and/or testing, methods, processes or techniques and/or computer software or other datadeveloped by Seller, which is deemed proprietary and utilized under the Order, shall remain the soleproperty of Seller and Buyer further waives any claim to such data or intellectual property.

# WARRANTY

## 1. WARRANTY TERMS

M C L warrants to the original Buyer that each of the Products, when shipped, will be free from defects in material and workmanship, and will perform in accordance with applicable specifications, from the date of original shipment for the period specified in Section 2 of this warranty. M C L's obligation is limited to, at its option, repairing or replacing Products (except tubes) that prove to be defective in material and/or workmanship, and/or do not perform in accordance with applicable specifications (in each case as determined by M C L), and are returned to M C L during the warranty period. Tubes are covered by the respective manufacturer's warranty which applies from the date of shipment of the Product from M C L. Products returned by the Buyer based on warranty claims must be sent to M C L, at 501 South Woodcreek Road, Bolingbrook, Illinois 60440 (or to such other address as to which M C L shall have given notice to the Buyer), in accordance with M C L's return procedures set forth in Section 8 of this warranty.

Although M C L may review specifications for the Products submitted by the Buyer or identified in the Buyer's order, responsibility for the correctness and feasibility of such specifications for the intended application of the Products is the responsibility of the Buyer. The Buyer further agrees that M C L shall not be liable under any warranty applicable to the Products or for any defect or nonconformity in the Products if the Buyer's specifications are faulty or improper. Notwithstanding anything herein to the contrary, in the event any Product returned to M C L is determined by M C L to meet the applicable specifications or to be not defective or otherwise not covered by this warranty, then the Buyer will be responsible for the payment of all costs of inspection, testing, evaluation, repair and shipment. Products sold by M C L shall not be considered defective or non-conforming to the Buyer's order if they (a) satisfactorily fulfill the performance requirements that were (i) provided by the Buyer to M C L or (ii) as published in M C L's product specification literature, or (b) are in accordance with any written or verbal agreement between the Buyer and M C L, or (c) are in accordance with samples approved by the Buyer. M C L makes no warranty whatsoever in respect to accessories or parts not supplied by it.

**THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, ORALLY OR IN WRITING, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.**

## 2. WARRANTY COVERAGE

The applicable warranty period shall commence on the date of shipment from M C L to the Buyer and extend for the period shown below following the date of shipment. Upon beginning of the applicable warranty period, all Buyer's remedies shall be governed by the terms stated or referenced in this warranty document. In-warranty repaired or replacement products or parts are warranted only for the remaining unexpired portion of the original warranty period and the repair or replacement of Products under warranty does not extend the original warranty period. Warranty returns must first be authorized in writing by M C L pursuant to M C L's return procedures set forth in Section 8 of this warranty. M C L reserves the right to make changes in any of its products without incurring any

obligation to make the same changes on previously delivered products.

**TYPE OF PRODUCT**

**TERM OF WARRANTY**

LOW AND MEDIUM POWER TRAVELING WAVE TUBE CATALOG INDOOR RACK MOUNT AMPLIFIERS, WITH RF OUTPUT OF LESS THAN 1000 WATTS, INCLUDING REDUNDANT SYSTEMS (“LOW & MEDIUM POWER INDOOR AMPLIFIERS”)	36 MONTHS
LOW AND MEDIUM POWER TRAVELING WAVE TUBE CATALOG OUTDOOR HUB MOUNT AMPLIFIERS, WITH RF OUTPUT OF LESS THAN 1000 WATTS, INCLUDING REDUNDANT SYSTEMS	24 MONTHS
HIGH POWER TRAVELING WAVE TUBE CATALOG AMPLIFIERS, WITH RF OUTPUT OF GREATER THAN 1000 WATTS, INCLUDING REDUNDANT SYSTEMS	24 MONTHS
KLYSTRON CATALOG AMPLIFIERS, INCLUDING REDUNDANT SYSTEMS	24 MONTHS

[For purposes of this warranty, a “CATALOG” item shall only include items specifically listed in M C L’s product catalog on the date of shipment of such item from M C L to the Buyer, and shall not include any special order items.]

[Notwithstanding anything else stated herein, traveling wave tubes incorporated into LOW & MEDIUM POWER INDOOR AMPLIFIERS are covered under this warranty for the same period as the particular amplifier within which such traveling wave tubes are incorporated; provided however that such warranty (i) only covers traveling wave tubes that are not otherwise covered by the respective tube manufacturer’s warranty and (ii) is subject to all of the limitations set forth in this warranty.]

**3. SHIPPING; ON-SITE WARRANTY REPAIRS**

As a condition to the warranties provided for herein, the Buyer shall prepay the shipping charges for all Products returned to M C L for repair and shall be responsible for all insurance, packing, crating, handling and other transportation costs in connection therewith. Unless otherwise agreed to in writing by M C L, when any Product is returned to M C L for repair, the Buyer shall be responsible for all damages resulting from improper packing, crating or handling, and for any loss in transit, notwithstanding any defect or nonconformity in the Product. M C L will pay the return shipping charges to the Buyer with respect to Products that prove to be defective in material and/or workmanship, and/or do not perform in accordance with applicable specifications (in each case as determined by M C L), except that the Buyer shall be responsible for return shipping charges with respect to [(i) rack mountable hardware returned from outside the United States or (ii) any Product returned in a non-wooden crate from outside the United States.]

If, in M C L's sole judgment, a repair or replacement requires on-site evaluation or service by M C L's representatives, the costs of travel, lodging and meals of M C L's representatives shall be at the Buyer's expense.

#### 4. WARRANTY LIMITATIONS

Any loss, damage, and/or malfunction relating in any way to shipping, storage, or accident will not be covered under this warranty.

**ABUSE, ALTERATION, MISUSE, NEGLIGENCE, FAILURE TO USE PRODUCTS UNDER NORMAL OPERATING CONDITIONS OR WITHIN RESPECTIVE SPECIFIED RATINGS, FAILURE TO USE PRODUCTS ACCORDING TO ANY OPERATING INSTRUCTIONS PROVIDED BY M C L, LACK OF ROUTINE CARE AND MAINTENANCE AS INDICATED IN ANY OPERATION OR MAINTENANCE INSTRUCTIONS, FAILURE TO USE OR TAKE ANY PROPER PRECAUTIONS UNDER THE CIRCUMSTANCES, AND ANY REPAIR, DISASSEMBLY, ALTERATION, MODIFICATION OR REPLACEMENT OR ATTEMPT TO DO THE SAME BY ANY PERSON OTHER THAN AN AUTHORIZED REPRESENTATIVE OF M C L, WITHOUT THE PRIOR WRITTEN AUTHORIZATION BY M C L, VOIDS THIS WARRANTY IN ITS ENTIRETY AND M C L SHALL HAVE NO FURTHER OBLIGATIONS TO THE BUYER UNDER ANY WARRANTY OF ANY KIND WHATSOEVER.**

Tubes are only covered by the respective tube manufacturer's warranty and are not in any way covered under this warranty. M C L reasonably will assist Buyer in processing its claim against the tube manufacturer's warranty during the term of this warranty.

M C L shall not be required to make any repair or replacement or to perform any other obligation at any time during which any payment to M C L is past due (thirty (30) days from date of invoice unless otherwise specified on M C L's invoice) on Products needing warranty service.

#### 5. LIMITATION ON LIABILITY

**M C L'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY M C L FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH IS THE SUBJECT OF THE CLAIM OR DISPUTE. IN NO EVENT SHALL M C L BE LIABLE, WHETHER IN CONTRACT, IN TORT, UNDER WARRANTY, IN NEGLIGENCE OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND WHATSOEVER, HOWSOEVER CAUSED. M C L IS NOT RESPONSIBLE FOR ANY CONSEQUENTIAL OR OTHER DAMAGE TO ANY PERIPHERAL EQUIPMENT RESULTING FROM THE USE OF M C L EQUIPMENT. THE MISUSE OR MISAPPLICATION OF M C L EQUIPMENT IS NOT COVERED UNDER WARRANTY. THE PRICE STATED FOR THE PRODUCTS IS BASED UPON AND IN CONSIDERATION FOR LIMITING M C L'S LIABILITY AS HEREIN PROVIDED.**

6. **WARRANTY CLAIMS**

The Buyer shall inform M C L's Customer Service Department immediately upon any failure occurrence or if the Buyer discovers any defect during the warranty period. M C L reserves the right to reject any warranty claim not promptly reported.

7. **REPLACEMENT PARTS**

At M C L's option, it may furnish warranty replacement parts to the Buyer before the defective part is returned to and received by M C L. If M C L furnishes such parts in advance, the Buyer understands and agrees that it will return the replaced defective parts to M C L within thirty (30) days after M C L's advance shipment. In the event the defective parts are not returned and received by M C L within this thirty (30) day period, the advance replacement parts shall be deemed not furnished under warranty and Buyer agrees to pay M C L's invoice for all such advance shipment replacement parts at the current selling price.

8. **RETURN PROCEDURE**

Before any Product is returned for repair, a return material authorization number must be issued by an M C L Customer Service Representative. The Model Number and Serial Number of the Product, together with a full description of the failure, must be given to the Representative.

9. **NON-WARRANTY REPAIR SERVICES**

[In the event a Product returned to M C L (pursuant to Section 8 of this warranty ) is determined by M C L, in its sole discretion, not to be covered by this warranty (a "Non-Warranty Product"), then M C L shall provide the Buyer with an estimate for the repair of the Non-Warranty Product. In the event a Non-Warranty Product is repaired by M C L, M C L warrants to the Buyer that the repaired parts of the Non-Warranty Product, when shipped, will be free from defects in material and workmanship, and will perform in accordance with applicable specifications, for a period of ninety (90) days from the date of return shipment to the Buyer; provided however that such ninety (90) day warranty is limited to the repaired parts of the Non-Warranty Product and is subject to all other limitations set forth in this warranty.]

10. **NONASSIGNABILITY**

The limited warranties set forth herein are made only to the Buyer and may not be transferred or assigned to any other person without M C L's express written consent.

11. **GOVERNING LAW; ARBITRATION**

All matters regarding this warranty shall be interpreted in accordance with the laws of the State of Illinois, excluding choice of law provisions thereof, and any controversy that cannot be settled

directly shall be settled by arbitration in Chicago, Illinois in accordance with the rules then prevailing of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof with no right of appeal therefrom.