

Terms of Purchase

Effective Date: January 1st 2025

This **Terms of Purchase** agreement governs the transactions between **EMS Group Americas, LLC** ("Buyer") and its suppliers ("Supplier"). By accessing this document on our website or engaging in transactions with Buyer, Supplier acknowledges and accepts the terms outlined herein. These terms are governed by the laws of Harris County, Texas, USA.

This document may be updated at any time without notice, and it is the Supplier's responsibility to review the latest version available on Buyer's website. Accessing or continuing business after updates constitutes acceptance of the revised terms.

1. Acceptance

Unless otherwise agreed in writing, this Purchase Order (PO), including referenced documents such as drawings, specifications, and releases, constitutes the entire agreement between Buyer and Supplier. It supersedes all prior agreements and is considered accepted upon Supplier's commencement of work, shipment of products, or written acknowledgment. Any variation or additional terms proposed by Supplier are rejected unless explicitly agreed upon in writing by Buyer.

2. Buyer's Commitment

Buyer agrees to purchase specified products or services at the price and quantity stated in this PO or within a release issued by Buyer's office location.

3. Price

Supplier warrants that the prices provided are no less favorable than those extended to other customers under similar conditions. Any reductions offered to other customers must also apply to Buyer. Prices are all-inclusive, and no additional charges will be accepted without Buyer's prior written consent.

4. Delivery

Time is of the essence. Supplier agrees to adhere to delivery schedules specified in this PO. Delays may result in Buyer expediting shipments at Supplier's expense.

5. Changes

Buyer reserves the right to modify specifications, delivery schedules, and other terms by notifying Supplier. Price adjustments will be negotiated if changes materially affect Supplier's costs, except where changes are required due to non-conformance or breach by Supplier.

6. Non-Solicitation

Supplier agrees not to directly or indirectly solicit, engage, or hire Buyer's employees, customers, suppliers, or contractors for a period of three (3) years from the termination of their business relationship with Buyer, unless explicitly approved in writing by Buyer.

6. Inspection/Testing

Payment for parts, products, or services, or inspection or testing performed by Buyer, does not constitute acceptance or relieve Supplier of its obligations under this Purchase Order. Buyer reserves the right to inspect any parts, products, or services provided and may reject any items that, in Buyer's judgment, are defective or non-conforming. Rejected parts or products will be returned at Supplier's expense, and Buyer may charge Supplier for all costs associated with inspection, return, and any related expenses. Buyer may require Supplier to correct, replace, or re-perform any previously rendered non-conforming, negligent, or unworkmanlike services at Supplier's expense, including the reimbursement of any related damages. Nothing in this PO relieves Supplier from its obligations of testing, inspection, and quality control.

7. Warranties

Supplier warrants that all parts, products, and services provided under this Purchase Order, at the time of delivery and throughout the **Warranty Period**, will:

- (a) Conform to specifications, Buyer's Restricted Materials List, samples, models, drawings, descriptions, and standards;
- (b) Be packaged, marked, and labeled as per Buyer's instructions;
- (c) Be new, merchantable, fit for their intended purposes, safe, and free from defects in materials, assembly, workmanship, and design;
- (d) Comply with all applicable laws and regulations, including, but not limited to, the Fair Labor Standards Act of 1938 and relevant federal and state rules;
- (e) Be performed in a competent, workmanlike manner and in accordance with industry standards (for services); and
- (f) Be free and clear of any liens, encumbrances, and claims of intellectual property infringement.

The **Warranty Period** is defined as the longer of:

- (i) Eighteen (18) months from the date of first use of the products or acceptance of products or services, whichever is later; or
- (ii) Eighteen (18) months from the date of incorporation of parts into Buyer's finished products or the warranty period Buyer provides to its third-party customers, whichever occurs later.

All warranties shall survive inspection, testing, acceptance, expiration, or termination of this PO. Supplier agrees to cover Buyer for any loss, damage, or expense resulting from breach of warranty.

8. Indemnification

Supplier agrees, at its own expense, to protect, defend, indemnify, and hold harmless Buyer and its successors, assigns, agents, and customers from all claims, damages, losses, costs, and expenses (including attorneys' fees) arising from:

- (a) Any actual or alleged infringement or misappropriation of intellectual property or trade secrets related to the manufacture, use, or sale of parts, products, or services;
 - (b) Any actual or alleged death, injury to persons, property damage, or other loss resulting from defective or non-conforming parts, products, or services, breach of warranty, negligence, or intentional misconduct, including Buyer's failure to warn due to Supplier's parts or products; or
 - (c) Any violation of laws, statutes, or regulations by Supplier.
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9. Insurance

Supplier agrees to maintain at its expense, commercial liability insurance that:

- (a) Names Buyer as an additional insured;
- (b) Provides primary coverage against any injuries, damages, or losses arising from defective or deficient parts, products, or services, including products-completed operations hazard coverage; and
- (c) Includes combined coverage of at least **\$5,000,000 per occurrence**.

This insurance shall be primary and non-contributory with Buyer's insurance policies. Supplier must furnish a valid certificate of insurance annually or upon request by Buyer.

10. Consumer Product Safety

Supplier must immediately notify Buyer if:

- (a) Any parts, products, or services fail to comply with applicable consumer product safety rules;
- (b) Any defect is discovered that poses a risk to public safety or creates a regulatory obligation for Buyer to issue a warning or recall; or
- (c) Any product contains chemicals harmful to health or the environment, or requires labeling or warning under applicable laws.

Supplier will reimburse Buyer for all costs associated with recalls or regulatory violations.

11. Tooling

(a) For tooling designed, manufactured, installed, or made ready by Supplier, Supplier must provide construction drawings and specifications for Buyer's approval before manufacturing. Payment for tooling will be withheld until Buyer confirms its compliance with specifications and functionality.

(b) Tooling or other property provided or paid for by Buyer remains Buyer's exclusive property and is to be used solely for Buyer's production. Buyer may request the return or removal of tooling at any time, and Supplier must comply promptly and ensure the tooling is in the same condition as received, reasonable wear and tear excepted.

(c) Supplier must not use or pledge Buyer's tooling as collateral and waives all statutory or other liens on such property.

12. Independent Contractor

Buyer and Supplier are independent contractors. This Purchase Order does not establish an agency, partnership, or joint venture, nor does it grant either party the authority to bind or create obligations on behalf of the other.

13. Intellectual Property

All inventions, designs, drawings, CNC programs, fixture drawings, simulations, technologies, improvements, processes, copyrights, trademarks, or similar creations ("Intellectual Property") that Supplier creates or develops in connection with this Purchase Order (PO) for the benefit of Buyer shall be the sole and exclusive property of Buyer. Supplier hereby assigns to Buyer all rights, title, and interest in such Intellectual Property, including as necessary, a perpetual, worldwide, non-exclusive, paid-up, royalty-free license for Buyer to use it. Supplier agrees to execute any documents or take further actions necessary to perfect Buyer's ownership rights under this clause.

14. Confidentiality and Non-Use

Supplier agrees not to sell, disclose, or provide to any party other than Buyer any parts or products made in accordance with Buyer's drawings, designs, or specifications, or any items that include or are made using Buyer's Intellectual Property. Supplier shall maintain the confidentiality of, and not disclose or permit the use of, any parts, products, designs, specifications, Buyer property, Intellectual Property, or any information concerning Buyer's business, operations, or activities ("Confidential Information"), except to the extent necessary for Supplier to fulfill its obligations under this PO. Supplier acknowledges that breach of this

confidentiality provision would cause irreparable harm to Buyer and entitles Buyer to seek injunctive relief in addition to any other remedies available under the law.

15. Force Majeure

A delay or failure to perform any obligations under this PO shall be excused if caused by extraordinary events beyond the control of the non-performing party and without its fault or negligence, including acts of God, fires, floods, windstorms, explosions, natural disasters, wars, sabotage, or other similar occurrences. Raw material or labor shortages are not considered force majeure events. The affected party must promptly notify the other party in writing, explaining the reason for the delay and taking all reasonable efforts to mitigate the impact. Supplier is required to provide a written notice of force majeure to Buyer at the earliest possible opportunity.

16. Termination

(a) **For Cause:** Buyer may terminate this PO or any order or release immediately for cause if Supplier:

- (i) Fails to deliver parts/products/services on time;
- (ii) Delivers defective or non-conforming goods or services;
- (iii) Fails to provide reasonable assurances of future performance upon request; or
- (iv) Violates the Supplier Code of Conduct.

Additionally, Buyer may terminate if Supplier becomes insolvent, files for bankruptcy, assigns assets for the benefit of creditors, or is unable to pay debts as they mature. In such cases, Buyer is not liable to Supplier for any payment, and Supplier is liable to Buyer for all damages sustained due to Supplier's breach or default.

(b) **Without Cause:** Buyer may terminate this PO or any order without cause by providing notice to Supplier. Upon such termination, Supplier shall immediately cease all work and ensure its suppliers and subcontractors do the same. Supplier shall be compensated only for work completed prior to the termination date. Claims for such work must be submitted within 30 days of termination and are subject to Buyer's verification. Buyer is not liable for work performed after the termination date, avoidable costs, loss of profits, or cancellation charges.

17. Assignments and Subcontracting

Supplier shall not assign, transfer, or subcontract any right or obligation under this PO without Buyer's prior written consent. Any attempt to do so without such consent shall be null and void.

18. Setoff

Buyer reserves the right to set off or recoup any amounts owed by Supplier to Buyer against any

amounts payable under this PO or other agreements. For this clause, the terms "Buyer" and "Supplier" include their parent companies, subsidiaries, and affiliates.

20. Remedies and Limitations of Damages

Buyer retains all rights and remedies allowed under Texas law in connection with this PO, and such remedies shall be cumulative. In cases where Supplier's breach or failure to deliver goods or services threatens a shutdown of Buyer's operations, monetary damages alone are inadequate, and Buyer is entitled to injunctive relief in addition to all other available remedies. Buyer is not liable to Supplier for indirect, special, consequential, incidental, punitive, or exemplary damages.

21. Governing Law and Jurisdiction

This agreement is governed by the laws of Harris County, Texas. Any disputes will be resolved exclusively in Harris County, Texas, unless arbitration is requested by either party.

22. Updates to Terms

These terms may be updated at any time without notice. Suppliers are encouraged to review the latest version available on Buyer's website. Accessing or conducting business after updates constitutes acceptance of the revised terms.

23. Applicable Law and Dispute Resolution:

This Purchase Order (PO) shall be governed and interpreted in accordance with the laws of the State of Texas, specifically within the jurisdiction of Harris County, without regard to its conflict of law provisions and explicitly excluding the United Nations Convention on Contracts for the International Sale of Goods. Any disputes arising under or relating to this PO shall be resolved exclusively in the state or federal courts located in Harris County, Texas.

If the Supplier is located outside of the United States, disputes shall be resolved by arbitration conducted by the International Chamber of Commerce (ICC) under its Rules of Arbitration upon the request of either party. The place of arbitration shall be in Houston, Texas, and all proceedings and filings shall be conducted in English. The arbitration award shall be final and binding, and judgment may be entered in any court of competent jurisdiction.

Notwithstanding the above, Buyer retains the right to initiate proceedings in any local courts or other relevant authorities where the following disputes arise:

- Claims involving infringement of intellectual property or trade secrets.

- Supplier's improper use of or refusal to return Buyer's tooling or property upon request.
- Supplier's failure to meet supply obligations under this PO.
- Any act or omission by the Supplier that, in Buyer's judgment, causes irreparable harm.

Buyer also retains the right to seek injunctive relief or a mandatory order in any court of competent jurisdiction.

23. Entire Agreement:

This PO, along with any related releases, consignment agreements, or other documents explicitly incorporated into these terms by Buyer, constitutes the entire agreement between Buyer and Supplier concerning the parts, products, or services identified. No prior or contemporaneous representations, agreements, or understandings, whether written or oral, not specifically incorporated herein, shall be binding. Any modifications to this agreement must be explicitly agreed upon in writing by Buyer.

For inquiries or clarifications, please contact:

EMS Group Americas, LLC

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