

MMI TEXTILES, INC., AN OHIO CORPORATION is a value added reseller of textile related materials. These General Terms and Conditions of Sale ("General Terms") of MMI Textiles, Inc., an Ohio corporation, and its subsidiaries and affiliates ("Seller") shall apply to all sale of: (1) Items, all manufacturer, supplier, vendor, service provider or licensor goods, services or products distributed or resold by Seller, including, but not limited to, textile related materials, documentation, media, consulting services, installation services, warehouse services, support and/or maintenance services, engineering and any other third party services, including any manufacturer's customization and/or alternations to its products ("Item"); (2) Services, all value added services performed to Buyer's specifications by Seller or its subcontractors on Items ("Services") and (3) Products. All Items sold to buyer by Seller, regardless of whether Seller adds value-added Services are collectively referred to as "Products." All of Seller's manufacturers (including original equipment manufactures), suppliers, vendors, service providers and/or licensors are collectively referred to as "Suppliers" and individually as a "Supplier."

These General Terms are subject to any additional terms contained in any agreement, statement of work, amendment, addendum or other writing signed by Seller and each such writing, together with these General Terms of the Agreement, is deemed to incorporate these General Terms as if fully set forth therein. All orders are subject to approval by Seller at its corporate headquarters in Cleveland, Ohio. Any amendment, waiver or other alteration by Seller shall be effective only if made in a writing signed by a designated officer or director of Seller.

**1. Entire Agreement.** Notwithstanding any different or additional terms or conditions contained in Buyer's purchase order or other communication, Seller accepts Buyer's order only on the condition that Buyer expressly accepts and assents to the terms and conditions contained in this Agreement. In the absence of Buyer's acceptance hereof, Seller's commencement of performance or Seller's acknowledge of Buyer's purchase order, shall be for Buyer's convenience only and shall not be construed as Seller's acceptance of any of Buyer's terms. Any confirmation by Buyer that states different or additional terms shall operate as an acceptance of these terms, but Seller hereby objects to and reject such different or additional terms and any such different or additional terms shall be deemed to be material alterations and notice of objection to them is hereby given. In addition, Buyer's acceptance of any Products shall be deemed to be acceptance of all of the terms and conditions stated in this Agreement. Seller hereby objects to any additional, contradictory or different terms contained in any initial or subsequent order or communication from Buyer pertaining to the Products, including, but not limited to, any indemnification or compliance warranty provisions. Any notice by Buyer objecting to these terms must be in writing separate from any form purchase order. Seller's failure to object specifically to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions contained in this Agreement.

**2. Payment.** Unless otherwise specified, invoices are due and payable net thirty (30) days from date of invoice. Buyer's outstanding unpaid balances shall be subject to a finance charge of one and one-half percent (1-1/2%) per month until paid in full (or such lower rate as may be the maximum permitted by law). Buyer shall also pay Seller's cost of collection (including reasonable attorneys' fees). Payments received may be applied by Seller against any obligation owed by Buyer to Seller. Seller may refuse or delay shipments if Buyer fails to pay promptly any payments due Seller. Any authorized early payment discounts must be taken at the time of invoice payment and will be calculated from the invoice date to the date payment is received by Seller. To secure the payment of the purchase price of the Products sold hereunder, Buyer grants Seller a purchase money security interest in all Products sold hereunder whether constituting equipment, inventory, fixtures and/or general intangibles, including all accessions to and replacements thereof, and all proceeds thereof to perfect or continue the security interest created by this Agreement. Seller shall have all of the rights and remedies of a secured party under the Uniform Commercial Code, which remedies shall be cumulative and not exclusive.

**3. Price & Taxes.** Unless otherwise specified all prices are F.O.B. point of origin. Written quotations are valid for thirty (30) days from issuance. Seller may increase the price of any products ordered by Buyer but not yet shipped by Seller if Seller's cost for such Products has been increased by Seller's Supplier. Seller may increase its quoted price by a percentage equal to the percentage of increase in Seller's cost for the Products and Buyer agrees to pay such increased price in accordance with this Agreement. Prices do not include and Buyer shall pay all sales, use, services, excise, tariffs, duties or similar taxes or changes unless Buyer provides Seller with valid tax exemption certificates.

**4. Delivery.** Unless otherwise specified Products are shipped F.O.B. point of origin. Title to and risk of loss shall pass to Buyer upon delivery of Products to carrier. Buyer shall pay all freight, handling, delivery, special packing and insurance charges for shipments of Products. Choice of carrier and shipping method and route shall be at the election of the Supplier or Seller. Seller and/or Supplier shall have the right to deliver all Products covered hereby at one time or in partial shipments form time to time, within the agreed time for delivery. Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of Seller, including, but not limited to, force majeure, acts of God, acts or omissions of Supplier or Buyer, acts of civil or military authorities, fire, strikes, power surges or outages, epidemics, quarantine restrictions, flood, natural disasters, riot, war, delays in transaction or inability to obtain necessary labor, materials or supplies. In the event of any such delay, the set date of delivery, if any, shall be extended for a reasonable period, or, the delivery may be canceled at Seller's option.

**5. Acceptance.** Upon receipt of Products, Buyer agrees to inspect and/or test the Products. Such inspection or testing shall be completed promptly and in no event later than ten (10) days after delivery of the Products. The Products shall be deemed accepted by Buyer unless Buyer provides Seller, within ten (10) days of the initial inspection period, a written notice specifying all defects or discrepancies in the quality or quantity of Products.

**6. Cancellation.** All cancellation of orders shall be subject to the terms and conditions of the Supplier(s). In the event that a cancellation of an order is permitted by the terms and conditions of the Supplier(s), Buyer may cancel orders only upon thirty (30) days written notice and written consent of Seller. If Seller consents to the cancellation of an order for Products, in Seller's discretion, Buyer shall pay Seller, any Supplier's restocking fee and reasonable cancellation charges on an amount not less than fifteen percent (15%) of the canceled order. If Buyer requests an accelerated delivery date, and such accelerated delivery is permitted by the Supplier(s), Seller will use its commercially reasonable efforts to meet such request. If Buyer requests a delayed delivery date and such delayed delivery is permitted by the Supplier(s), the rescheduled delivery date, may not be greater than sixty (60) days later than the original delivery date. Any extra cost incurred by Seller to meet Buyer's request for rescheduling/cancellation will be Buyer's responsibility.

**7. Returns.** To the extent that returns are permitted by the Supplier(s), Buyer may only return Products with Seller's consent. To the extent any returns are permitted by the Supplier(s) and Seller consents to such return, Buyer shall return Products in accordance with Seller's instructions in their original package and in good condition, without alteration.

**8. Warranty and Warranty Limitations.** Buyer acknowledges that Seller acts solely as a third party distributor of the Items and that Supplier of Items is solely responsible to Buyer. Seller and third parties for all defects, breaches, liability, claims, damages, obligations, and costs and expenses related to Items (whether legal or equitable claims). Buyer agrees to look solely to Supplier for all Claims whether arising from breaches of Supplier's warranty or otherwise and for any maintenance, support, repair or replacement or other remedy with respect to the terms. Seller transfers to Buyer any transferable warranty and indemnity made to Seller by Supplier of the Items to the extent transferable and permitted by law. Seller makes no representation, covenant or warranty with respect to the extent or enforceability of the Supplier's warranty or indemnity. Seller warrants that Services will be performed in a workmanlike manner and will substantially conform to the agreed to specifications at the time of performance. Unless otherwise expressly agreed in writing by Seller, Seller warrants its Services for a period of ten (10) days from the date of completion of said Services and/or shipment of Products to Buyer. Seller does not warrant results or achievements of Services and Seller is not responsible for the work or activity of any non-Seller employed personnel. **SELLER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY OF THE PRODUCTS OR THE FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE OR USE OF BUYER AS WELL AS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARISING BY ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, ANY IMPLIED WARRANTY OR NON-INFRINGEMENT AND, AS TO SOFTWARE, ANY WARRANTY OF TITLE. SELLER FURTHER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE CONFORMANCE OF THE PRODUCTS WITH ANY REQUIREMENTS OR SPECIFICATIONS PROVIDED BY BUYER, UNLESS THE CONFORMANCE WITH SUCH REQUIREMENTS OR SPECIFICATIONS HAS BEEN SPECIFICALLY AGREED TO BY SELLER IN WRITING.** Buyer's sole and exclusive remedy for nonconforming Products shall be, at Seller's option, the replacement or repair of Items or reperformance of Services at Seller's cost or Seller's refund of purchase price. No repair, replacement or reperformance shall extend any warranty period.

**9. Limitation of Liability.** IN NO EVENT SHALL SELLER'S LIABILITY ARISING IN CONNECTION WITH OR UNDER THIS AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT LIABILITY, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) EXCEED THE PURCHASE PRICE OF THE PRODUCTS.

**10. Limitation of Damages.** BUYER SHALL IN NO EVENT BE ENTITLED TO AND SELLER SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, PROMOTIONAL, AND OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION AND/OR LOSS OF CUSTOMERS. FURTHER, BUYER AGREES THAT SELLER SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY CLAIM, LOSS, DAMAGE, LIABILITY OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE INTERRUPTION OR LOSS OF THE SERVICE OR USE THEREOF ARISING FROM ANY OTHER REASON OR CAUSE WHATSOEVER.

**11. Intellectual Property.** Seller shall have no liability or obligation in connection with any claims of infringement to any patent, trademark, copyright, trade secret or other proprietary right or information.

**12. Advice.** If technical advice is offered or provided in connection with the sale of any Products it is provided as an accommodation to Buyer, without charge, and Seller does not warrant and has no responsibility or liability whatsoever for the content of or use of such advice.

**13. Compliance with Laws.** Buyer represents and warrants that Products will not be used, resold, transferred, exported or reused in any way by Buyer in violation of any laws, regulations of any federal, local, state or other governmental entity including export/import controls imposed by the U.S. Government and Buyer agrees to indemnify, defend and hold harmless Seller and any of its Suppliers with regard to its obligations in this subsection.

**14. Disputes.** All disputes under this Agreement concerning the Products not otherwise resolved between Seller and Buyer shall be resolved in a court sitting within the State of Ohio, Cuyahoga County, and Buyer consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts. No action, regardless of form arising out of, or in any way connected with, Products may be brought by Buyer more than one (1) year after the cause of action has accrued.

**15. General.** All agreements, covenants, conditions and provisions contained herein shall apply to and bind the assignees and successors in interest of Buyer. This Agreement is not assignable by Buyer without Seller's prior written consent. Facsimile signatures or other reliable means of authentication by which the Buyer signifies its assent to this Agreement shall be effective to bind Buyer to the terms hereof. The waiver by Seller of any breach or default in any payment shall not be deemed to be a waiver of any later breach or default. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or of any other remedy at any time. If any provision or portion of this Agreement is held to be invalid, illegal, unconscionable or unenforceable, the other provisions and portions hereof shall not be affected. The headings used herein are for the convenience of the parties only and shall not affect the construction or interpretation hereof. Any clerical errors are subject to correction. This Agreement shall be governed by the laws of the State of Ohio.