

Morse Watchmans Inc. Terms and Conditions of Purchase

- Parties.** The parties to this Purchase Order ("Order") are **Morse Watchmans Inc.** ("Buyer") and the **Vendor** identified on the face of the Purchase Order ("Seller").
- General.** This Order constitutes Buyer's offer. It becomes a binding agreement upon Seller's acceptance, and Seller's acceptance is hereby expressly limited to the terms of this Order, which acceptance may be either by acknowledgment or by performance. No term or condition in any acknowledgment or other document of Seller which is conflicting, different, inconsistent or in addition to any of the terms of this Order will become part of this Order unless agreed to in writing by Buyer. If for any reason this Order constitutes an acceptance of an offer, such acceptance is expressly made conditional on Seller's assent to the terms and conditions of this Order, and Seller's acceptance, by acknowledgment or performance, will be deemed to constitute such assent, and any conflicting, different, inconsistent or additional terms contained in Seller's documentation are expressly objected to by Buyer. Any deletions, modifications, alterations or additions to the terms and conditions of this Order, to be binding, must be in writing and signed by both Seller and Buyer. Without limiting the foregoing, it is expressly acknowledged that any and all purchase provisions on the face or reverse side of any quotation, proposal or acknowledgment which Seller may send to Buyer in connection herewith are expressly objected to by Buyer and waived by Seller and made inapplicable to any such purchase unless both parties expressly agree in writing to include any such terms and conditions in this Order.
- Shipping.** Seller shall ship all materials or articles furnished hereunder in accordance with shipping instructions provided by Buyer or, if no such instructions are provided, by the route and mode of transportation involving lowest cost. Seller will be liable for any costs, loss, damage, liability (including any costs, loss, damage or liability resulting from delay in receipt of shipments) or excess shipping costs incurred by or for the account of Buyer as a result of Seller's failure to comply with this paragraph. No charge will be allowed for cartage or packing unless specifically agreed to in writing by Buyer. When the terms of delivery are FCA destination, all transportation charges will be at Seller's expense and will be pre-paid.
- Delivery.** The time stipulated for delivery on the face of this Order will be of the essence of this Order. Failure by Seller to complete delivery of the goods herein ordered within the time specified, or within a reasonable time if no time is specified herein, will at the option of Buyer, without liability, in addition to Buyer's other rights or remedies, relieve Buyer of any obligation to accept and to pay for any such goods, and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses attributable to Seller's failure to deliver the goods on such delivery date. Buyer may, at Buyer's option, without incurring any liability: (a) extend the time for delivery; or (b) cancel all or any part of this Order.
- Title and Risk of Loss.** Title and risk of loss passes to Buyer pursuant to the Incoterms listed in the Order. If no Incoterms are listed on the Order, title and risk of loss will transfer to Buyer upon delivery of the goods to the delivery location.
- Quantity and Packaging.** Seller shall deliver the quantities of the goods specified in this Order. If Seller delivers more or less than the quantity of goods specified, Buyer may reject all goods or any excess goods. Buyer will return any such rejected goods to Seller at Seller's risk and expense. If Buyer does not reject the goods and instead accepts the delivery of goods at the increased or reduced quantity, the price for the goods will be adjusted on a pro-rata basis. Seller shall properly pack, mark and ship goods as instructed by Buyer and otherwise in accordance with applicable law and industry standards, and shall provide Buyer with shipment documentation showing the quantity of pieces in shipment, the number of cartons or containers in shipment, Seller's name, the air waybill/bill of lading number, and the country of origin.
- Price.** Buyer shall purchase the goods from Seller at the prices set forth on the Order (the "Price"). The Price includes all packaging, transportation costs to the delivery location, fees, applicable taxes and insurance customs duties required by the applicable Incoterms. No increase in the Price is effective, whether due to increased material, labor, or transportation costs or otherwise, without the prior written consent of Buyer.
- Payment.** The prompt payment discount periods applicable hereto will commence on the date Buyer finally accepts the articles or materials or the date Buyer receives an acceptable invoice therefore, whichever is later.
- Warranty.** Seller warrants all articles and materials delivered hereunder (i) to be free from all defects, including defects in labor, materials, design and fabrication, (ii) to fully comply with all specifications (including any specifications attached to this Order and incorporated herein by reference), drawings, samples or other descriptions furnished and with all applicable laws, regulations and industry standards, (iii) will be merchantable and fit for its intended purpose and (iv) will be free and clear of all liens, security interests, or other encumbrances. All warranties will be construed as conditions, as well as warranties, and will not be deemed to be exclusive. All warranties will run to Buyer, its successors, assigns and customers, and to users of Buyer's products, and will survive acceptance and use of and payment for such articles or materials. Seller shall replace or to correct promptly, without cost to Buyer, any goods not conforming to the foregoing requirements when notified by Buyer at any time after delivery. In the event of Seller's failure to correct or replace such goods as required herein, Buyer may correct or replace such goods and charge Seller the cost thereof.
- Inspection.** All goods to be furnished hereunder are subject to final inspection and testing by Buyer after receipt thereof, and Buyer, in addition to any other rights of Buyer, may reject or revoke acceptance of all or any portion of such goods which fail to conform to the requirements of this Order. If rejected, the goods will be held subject to Seller's instructions, risk and return expense. Upon return of the goods, Seller will promptly refund any payment made by Buyer on account thereof or, at Buyer's discretion and at no cost to Buyer, Seller will repair or replace such goods. Buyer (along with its customers and governmental agencies) may enter Seller's facilities (and those of its approved subcontractors) at reasonable times to inspect (and if applicable test) the facility, goods, materials, records (including without limitation the quality systems) and any property of Buyer covered by this Order. Any inspection or approval at Seller's works or elsewhere during or after manufacture, whether or not such inspection or approval be provided for by the terms of this Order, will be provisional only and will not constitute final acceptance and will not be construed as a waiver of the foregoing right of final inspection and approval or rejection after receipt of the goods by Buyer.
- Changes.** Buyer reserves the right by notice to Seller to make changes to specifications, drawings, delivery date, quantity or shipping instructions applicable to any goods and/or services covered by this Order. Any difference in the price applicable to or the time required for performance of this Order resulting from changes specified in such notice to Seller will be equitably adjusted, and this Order will be modified in writing accordingly. No increase in price or time will be made, however, with respect to any such change relating to materials which are Seller's standard products.
- Proprietary Information.** The term "Proprietary Information" includes any information from Buyer to Seller which is not readily available to Buyer's competitors and which, if known by a competitor of Buyer, might lessen any competitive advantage of Buyer or give such competitor a competitive advantage and also includes, but is not limited to, drawings, samples and specifications received from Buyer or items/deliverables developed by Seller for Buyer. Buyer retains ownership of all Proprietary Information and all documentation which contains Proprietary Information. Seller shall not disclose, duplicate or reproduce any Proprietary Information, nor shall Seller use any Proprietary Information other than in the course of performing its obligations under this Order. Seller shall take all reasonable steps to prevent the disclosure, duplication or reproduction of any information (whether or not marked "Proprietary Information").
- Cancellation for Convenience.** Buyer reserves the right at any time to cancel this Order, in whole or in part, for Buyer's convenience by delivery to Seller of written notice of such cancellation. In the event of such cancellation, Buyer shall pay Seller, as its sole and exclusive compensation under this Order, sums (not including allowance for overhead or profit) actually expended by Seller to procure and/or process such articles or materials at the time of cancellation; provided however, any portion of materials which may be returned for credit or refund by Seller will not be charged to Buyer. In no event will such compensation exceed the value of the work performed.
- Termination for Default.** Any failure by Seller to fully comply with any requirement of this Order, including but not limited to, any failure to meet delivery schedules set forth herein, will constitute a default. Upon Seller's default, Buyer may, at its option and in addition to any other remedies to which Buyer may be entitled, immediately cancel all or any portion of this Order. Seller shall reimburse Buyer for any costs, loss, damage and liability incurred by Buyer by reason of Seller's default. In addition to Seller's failure to comply with any requirement of this Order, Seller will be in default hereof in the event Seller is adjudicated bankrupt, or should make a general assignment for the benefit of creditors, or if a receiver should be appointed in respect of its insolvency, or in the event a voluntary or involuntary petition/proceeding is instituted by or against Seller.
- Force Majeure.** In the event that Buyer or Seller is prevented directly or indirectly from carrying out the provisions hereof by reason of any act of God, war, revolution, strike, labor dispute, riot, earthquake, flood or other cause, existing or future, beyond the reasonable control of the party affected, the party so interfered with, provided prompt notice is given the other party, will be excused from making or taking deliveries to the extent of such interference. In the event such interference extends for a period in excess of 90 days, either party may terminate this Order, whereupon all monies shall be promptly refunded to Buyer.
- Intellectual Property.** Seller shall indemnify, defend and save harmless Buyer and its affiliated entities and each of their officers, directors, employees, agents, customers, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Order and the cost of pursuing any insurance providers incurred by Indemnified Party (collectively, "Liabilities") based on actual or alleged infringement of any patent, trademark, copyright or similar right or misappropriation of trade secrets by Seller in connection with Buyer's use, resale or possession of the goods. In no event shall Seller enter into any settlement without the applicable Indemnified Parties' prior written consent. In addition, in the event that such a claim is or is likely to be made, Seller shall, at its own expense, either: (a) obtain for Buyer the right to continue to use and sell the goods consistent with this Order; (b) modify the goods so they are non-infringing and in compliance with this Order; (c) replace the goods with non-infringing ones that comply with this Order; or (d) at Buyer's request, accept the cancellation and return (at Seller's expense) of infringing goods without Buyer having any cancellation liability and refund to Buyer any amount paid for such infringing goods.
- Indemnification.** Seller agrees to indemnify and hold harmless each Indemnified Party against any and all Liabilities based on actual or alleged defects in material workmanship or design of materials or articles furnished by Seller hereunder. Seller shall defend at its expense all such claims and suits asserted or brought against any Indemnified Party and shall pay all damages, costs, fines and assessments resulting therefrom; provided however, Seller shall not settle any such claim or suit without Buyer's prior written consent. Seller further agrees to indemnify, defend and save harmless each Indemnified Party against any and all Losses arising out of personal injury or loss or destruction to property attributable in any way to the performance by Seller of its obligations hereunder. Without limiting the foregoing, if Seller's work hereunder involves operations by Seller on premises occupied by Buyer or Buyer's customers, Seller shall take all precautions necessary to prevent the occurrence of any personal injury or loss or destruction of property in connection with such operations. Seller shall at all times maintain such liability, property damage, employers' liability and workers' compensation insurance to fully protect the Indemnified Parties against any potential liability with respect to the foregoing, and Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing such insurance coverage.
- Assignment.** Neither this Order nor any interest herein may be assigned or transferred in whole or in part by Seller by operation of law or otherwise without Buyer's written consent, and any attempt at assignment or transfer without such consent will be void. In no event shall Seller subcontract any portion of the work without the express written consent of Buyer and without procuring from such subcontractor a confidentiality and non-disclosure agreement satisfactory to Buyer imposing obligations of non-disclosure and non-use of Buyer's Proprietary Information, except in connection with the subject matter hereof.
- Tooling.** All tooling, including dies, molds, patterns, jigs and fixtures, unless otherwise specifically stated, will be the exclusive property of Buyer and subject to removal for its convenience.
- Liens.** All materials or articles furnished by Seller hereunder will be free of all liens and encumbrances.
- Taxes.** Prices set forth herein include all applicable taxes, excluding sales tax, and such prices will not be subject to change as a result of any change in Seller's tax liabilities.
- Compliance with Law.** Seller shall comply with, and all goods must conform to the requirements of all laws, current codes, ordinances, regulations, etc. of any federal, state or local authority, as the case may be. Seller warrants that the goods or services to be furnished hereunder will be produced in accordance with the applicable provisions of the Fair Labor Standards Act of 1938 as amended.
- Compliance Certificate.** Seller agrees to execute and deliver upon request a certificate of compliance with contract terms certifying Seller's full compliance with each and every requirement imposed upon Seller by this Order and by applicable laws, regulations and industry standards.
- Waiver.** Buyer's failure on any occasion to insist on strict performance of any term or condition hereof will not constitute a waiver of compliance with such term or condition on any other occasion or waiver of default.
- Remedies.** The rights and remedies provided herein will be cumulative and not exclusive and are in addition to any other rights and remedies that Buyer may be provided by law or in equity.
- Entire Agreement.** This Order and any documents referred to herein contain the entire agreement of the parties hereto with respect to the subject matter hereof, and no terms or conditions in any way modifying the foregoing provisions will be binding upon the Buyer unless made in writing and signed by an authorized representative of Buyer. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent, different or conflicting with any of the terms hereof. Without limiting the foregoing, no modification will be affected by the receipt of Seller's acknowledgments, invoices, shipping documents or other forms containing terms and conditions in addition to, conflicting with or different from the terms and conditions set forth herein.
- Governing Law.** This Order will be for all purposes governed and interpreted in accordance with the laws of the State of Connecticut in all respects (except for any conflict-of-law principles that might require the application of some other state's laws) and without reference to the laws of any other state or nation. The application of the UN Convention on Contracts for International Sale of Goods ("CISG") is hereby excluded.
- Severability.** If any term, provision or condition hereof is held to be invalid, void or unenforceable, the remaining terms of the Order will remain in full force and effect and will in no way be affected, impaired or invalidated.
- Set-Off or Counterclaim.** All claims for monies due or to become due from Buyer will be subject to deduction by Buyer for any set-off or counterclaim arising out of this Order or any other contract of purchase or sale between Buyer and Seller.
- Supplier Requirements.** Seller and its approved subcontractors shall comply in all respects with Buyer's supplier requirements and logistics requirements.
- Nonconforming Goods.** In the event Supplier obtains goods, items or materials which are not in conformity with Buyer's specifications, drawings, or other requirements of Buyer or Supplier's warranties hereunder, Supplier shall immediately notify Buyer, in writing, identifying the affected goods, together with the subject matter of the nonconformity. Buyer, in its sole and exclusive discretion, may determine, on a case-by-case basis, that Supplier may use or deliver to Buyer the nonconforming goods; provided, however, that such determination by Buyer will not constitute a waiver of any obligations, warranties or liabilities of Supplier as provided in this Order except with respect to the specific portion of the goods which is the subject of Supplier's written disclosure to Buyer and Buyer's subsequent written consent to use or deliver such nonconforming goods.
- Survival.** Subject to the limitations and other provisions of this Order, Sections 9, 12, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of this Order will survive the expiration or earlier termination of this Order.
- Seller Process Liability.** In the event that any Seller process, including, but not limited to, heat treating, plating and finishing, results in damage, destruction, cosmetic defects to Buyer's products or components, or the degradation or failure of the performance of Buyer's products or components, Seller will be liable for the full value of the Buyer's products or components processed by Seller unless otherwise agreed by Buyer, in writing.
- Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Order will be construed as creating any agency, partnership, franchise, business opportunity, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity will be construed from this Order.