

# martec



## TERMS & CONDITIONS

1. This Purchase Order constitutes an offer by Martec International ( "Buyer" ) to Seller to purchase goods or services described upon the terms and conditions herein and shall become a contract upon acceptance thereof either by acknowledgment or performance.
2. Except for delays caused by the Buyer or a Force Majeure ( as defined in section 13 ), time is of the essence with respect to delivery. Upon default by Seller in the time or rate of delivery, Buyer may cancel the undelivered portion thereof or may approve in writing a revised delivery schedule, reserving the right to charge Seller for any loss incurred as a result of the default. Goods shipped in advance of delivery schedule may be rejected or returned by Buyer at Seller's risk and expense. Goods received from carrier are subject to verification after unpacking. Partial delivery is not acceptable unless authorized by Buyer prior to shipment. Accepted partial delivery quantity must be stated clearly on delivery packing slips and invoices. Any delay or expected delay of delivery shall be immediately communicated to Buyer in writing together with the new time of delivery. If the new time of delivery is unacceptable by Buyer, the Buyer is entitled through written notice to Seller, to cancel in part or in full.
3. The Seller Guarantees the proper construction, and good quality of workmanship and materials of the finished goods supplied. Goods that are found by Buyer to be defective in material or workmanship (including goods damaged due to unsatisfactory packaging by Seller) or that do not conform to Buyer's specifications, drawings or previously approved samples will be rejected and returned to Seller at Seller's risk and expense including transportation costs. Buyer will receive full credit for any such goods and/or request replacement of any such rejected goods without additional cost to Buyer.
4. Seller shall supply each product at the prices specified on the Purchase Order. All prices provided will be in U.S. Dollars. Payment shall be made in U.S. Dollars unless otherwise mutually agreed upon by Buyer and Seller. No extra charges of any kind shall be allowed unless specifically provided herein or agreed to in writing by Buyer. Seller shall represent to Buyer that price offered is a "Best Price" and Seller shall not sell comparable products to others at a lower price than that provided to Buyer. If at any time Seller offers a lower price, discount or rebate on said comparable products to any other entity, then an equivalent reduction in price shall apply to all Purchase Orders placed with Seller and unshipped at time of such reduction.
5. Seller shall defend, indemnify and hold Buyer harmless against any and all alleged, actual or threatened liability, claim, loss or damage arising in connection with the possession, handling, use, resale, labeling or return of the Merchandise ordered (if the Merchandise shall include the sale of services, the provision of such services), including but not limited to, patent, copyright and trademark infringement actions, or due to Seller's breaching of its warranties made herein. Seller shall defend every suit which may be brought against Buyer by reason of any of the foregoing, whether meritorious or not, and shall pay all expenses and fees of counsel which shall be incurred in connection with such defense, together with all costs, damages and profits recoverable in every such suit or settlement thereof. If Seller fails to take timely action to defend such a suit, Buyer may defend such suit at Seller's expense. Buyer, in addition to any other rights, may forthwith cancel any unshipped portion of the Order and return prior deliveries to Seller for payment or credit.
6. Buyer shall have the right to make changes to a Purchase Order on written notice to Seller. If said changes cause an increase or decrease in the amount due or in the time required for performance, an equitable adjustment shall be made and the Purchase Order modified in writing.
7. No Purchase Orders may be assigned in whole or in part without Buyer's written consent. Unless agreed to in writing, all tools gauges, designs, drawings, specifications, blueprints, patterns, dies, engineering data or other technical or proprietary information, special appliances and other equipment or material of any description and any replacement thereof, furnished Seller by Buyer, shall remain the property of Buyer. Such property, while in Seller's

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custody or control may be examined by Buyer and shall be maintained in good condition at Seller's expense, shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense in any amount to replacement cost and with loss payable to Buyer.

8. Buyer may cancel any order outstanding with the Seller in whole or in part by written notice if:
  - I. Seller Becomes insolvent or shall make a general assignment for the benefit of creditors, or if a receiver or liquidator for Seller is appointed or if Seller fails to pay its debts as they come due.
  - II. Any Federal or State bankruptcy proceeding is brought by or against Seller.
  - III. Seller shall default in performance or shall fail to make progress in the work so that performance hereunder is endangered. After notice of cancellation, Buyer has the right to require Seller to transfer to Buyer any satisfactorily completed work, any work in progress produced or being produced and any property specifically acquired for the completion of the order. If after cancellation the cost to Buyer for completion of order is in excess of the contracted price, the Seller shall be liable for any such excess over the contracted price.
9. The Seller is under obligation to keep confidential all information and knowledge that may be acquired in connection with this order. Seller is not permitted, without written consent from Buyer, to use his name or any commercial relationship with buyer for the purpose of advertising or as a reference.
10. Buyer's waiver of any condition shall not constitute a waiver of any other condition herein or a waiver of the same or any other conditions with regard to subsequent transactions or parts of transactions covered by this order.
11. If not otherwise noted, terms of payment are sixty ( 60 ) days from the receipt of goods and are subject to satisfactory acceptance of the invoice as it pertains to quantity, quality and price. When terms of payment discounts are offered, the discount period shall commence at the time the invoice is received by the Buyer. The seller agrees not to levy penalty against Buyer for late payment of invoices due.
12. Seller shall, without expense to Buyer, maintain in force for a period of at least two (2) years from the date of the Order, for the mutual benefit of itself and Buyer, general liability insurance, including product liability/completed operations insurance and contractual liability insurance coverage on an occurrence basis in an amount of at least \$2,000,000.00, providing for the investigation, defense and satisfaction (by settlement or otherwise) at no cost to Buyer, of any liability, claim, loss, expense or fee asserted against or incurred by Buyer. Within thirty (30) days after the acceptance by Seller of an Order, Seller shall cause the insurance company issuing such policy to issue a Certificate of Insurance to Buyer confirming that such policy has been issued and is in full force and effect and provides coverage to Buyer as an additional insured covered against Buyer's shared and/or solo fault as required by this Paragraph, and also confirming that before any cancellation, modification, or reduction in coverage of such policy, the insurance company shall give Buyer ten (10) days prior written notice of such proposed cancellation, modification or reduction.
13. Force Majeure - Neither party shall be liable in damages if any delay or default in performing hereunder is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any import/export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. In the event a Force Majeure extends for more than thirty (30) days, this order may be terminated by either party upon written notice thereof to the other.
14. This Agreement and any dispute, controversy or claim arising out of this agreement shall be governed by the laws of the State of New Jersey, and shall be settled finally and conclusively by the courts of the State of New Jersey.