



TERMS AND CONDITIONS AND LIMITED WARRANTY
(Also available at <https://www.mshs.com/termsandconditions.htm>)

I. Applicability

These Terms and Conditions and Limited Warranty (hereinafter, the “Terms”) shall apply to all contracts, including, but not limited to, contracts for the furnishing or performing of services, parts, and/or technical and engineering services (hereinafter, the “Services,” “Parts”, and “T & E”) between Motor-Services Hugo Stamp, Inc. (hereinafter, “MSHS”) and its purchasers or customers (hereinafter, the “Buyer”). These Terms, together with the purchase order of MSHS, and any written agreement signed by both MSHS and Buyer (hereinafter, collectively, the “Parties”), shall constitute the entire and complete agreement between the Parties (hereinafter, the “Contract”). No other terms, including any terms and conditions that Buyer may purport to apply from written communications (including emails), trade, custom, practice, or course of dealing shall be included in the Parties’ Contract, unless such terms and conditions are set forth in a formal written agreement or addendum signed by the Parties. The Services, Parts, and/or Software specified in the Contract shall hereinafter be referred to as the “Job.”

II. General Provisions

MSHS’s performance of the Job pursuant to the Parties’ Contract is expressly conditioned upon the acceptance of these Terms and the other provisions of the Contract by Buyer without any modification. Acceptance by Buyer of MSHS’s performance or Buyer’s performance, whether partial or full, under the Contract shall be deemed to be Buyer’s irrevocable acceptance of these Terms and all other provisions of the Contract.

Specifications. The quantity, quality, and description of the services, parts, or software furnished by MSHS pursuant to the Contract shall be those specified by MSHS in its proposal.

Payment and Price. Prices quoted and availabilities stated by MSHS are valid for ten (10) calendar days, unless another time is specified in writing by MSHS. Payment is due upon Buyer’s receipt of the invoice. Local fees and/or taxes shall be the sole responsibility of Buyer and no deduction, set-off, or offset shall be made to the invoiced amount. Buyer shall make all payments in full within thirty (30) days of receipt of the invoice (or within thirty (30) days of any other monetary obligation being due). Past due amounts shall accrue interest at a rate of 1.5% per month or the highest rate permitted by law, whichever is less. Time is of the essence. In addition to any other remedy available to MSHS under the Contract, MSHS’s obligations and continued performance under the Contract shall be contingent upon receipt of full payment by Buyer (including any interest).

Ownership of Work Product. To the extent that Job includes data, components, designs, utilities, objects, processes, tools, models, and specifications owned or developed by MSHS prior to

or independent from the Parties’ Contract (hereinafter, “Proprietary Components”), MSHS shall retain ownership of such Proprietary Components. Provided that Buyer has paid all amounts due to MSHS whether invoiced or not by MSHS, MSHS hereby grants Buyer a limited, non-exclusive license to use such Proprietary Components. Parts and Software developed or prepared specifically for Buyer shall be deemed to be works made for hire if agreed-to in writing by MSHS. Otherwise, such Parts and Software shall be Proprietary Components. For purposes of this section, there shall be a presumption that any Software, data, components, designs, utilities, objects, processes, tools, models, and specifications furnished by MSHS are Proprietary Components. MSHS acknowledges that all materials, drawings, models, specifications, and other documents supplied by Buyer (“Buyer’s Materials”) and all rights in Buyer’s Materials are and shall remain in the possession of MSHS until Buyer has paid all amounts due to MSHS whether invoiced or not by MSHS.

Services and Acceptance. MSHS shall perform all Services pursuant to the Contract with reasonable skill and care, using adequate materials and employing sufficiently qualified labor. Buyer shall notify MSHS of any claimed default in MSHS’s performance within five (5) calendar days of MSHS completing the Job. Buyer’s failure to promptly (i.e. no later than five (5) calendar days) notify MSHS in writing of any claimed default in MSHS’s performance shall be deemed to be Buyer’s acceptance of MSHS’s performance under the Contract, shall be conclusive proof of MSHS’s complete and satisfactory performance, and shall waive any right that Buyer may have had to reject MSHS’s performance of the Job.

Delivery. To the extent that the Contract includes Parts, Parts are delivered EXW (Incoterms 2020) to MSHS’ facilities, or such other location as identified in the proposal (“Delivery”). Title to Parts will pass from MSHS to Buyer upon Delivery. **MSHS DOES NOT OFFER OR PROVIDE ANY INSURANCE ON THE SHIPMENT OF PARTS.** Shipping, delivery, and performance dates are estimates only, calculated from the date of receipt of Buyer’s order. MSHS shall not incur any liability, direct or indirect, because of or as a result of any delays in meeting such dates or schedules. MSHS may charge Buyer a storage fee in the amount of \$100.00 per day for each day that Delivery is delayed by Buyer.

Cure Period. In the event that Buyer promptly notifies MSHS of any claimed nonconformity or default in MSHS’s performance of the Job and MSHS is proved to have caused such non-conformity or default, MSHS shall have an opportunity to cure such nonconformity or default within thirty (30) calendar days of its receipt of the written notice by Buyer, unless such non-conformity or default is of such a nature that it would be impossible to cure same within thirty (30) calendar days, in which case MSHS shall have a reasonable time to cure, provided it diligently proceeds with correcting and curing such non-conformity or default).

TECHNICAL & ENGINEERING

Return of Parts. Any returns of Parts in accordance with the provisions of any proposal shall be subject to a 25% restocking fee. No return of any Parts pursuant to this provision shall be accepted with respect to specially-ordered Parts, and MSHS shall have no obligation to accept any attempted return of Parts unless it agrees in writing to accept the return and provides a returned-goods authorization number, which number must accompany the returned Products.

Change Orders. All change orders must be sent to MSHS in writing before work is performed. If MSHS agrees to Buyer's change order request, MSHS will either (i) revise the exiting purchase order, or (ii) issue a new purchase order.

III. LIMITED WARRANTY

SERVICES

SUBJECT TO THE CONDITIONS, EXCLUSIONS, AND LIMITATIONS BELOW, MSHS WARRANTS THAT IT SHALL PERFORM ALL SERVICES IN ACCORDANCE WITH INDUSTRY STANDARDS. THIS LIMITED WARRANTY SHALL BE EFFECTIVE FOR A PERIOD OF ONE (1) YEAR BEGINNING UPON MSHS'S FURNISHING OF THE SERVICES OR REDELIVERY OF THE VESSEL TO BUYER, AS APPLICABLE (THE "SERVICES WARRANTY PERIOD").

THIS LIMITED WARRANTY FOR SERVICES IS IN LIEU OF ALL OTHER WARRANTIES AND MSHS DISCLAIMS, AND BUYER WAIVES, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED.

PARTS

SUBJECT TO THE CONDITIONS, EXCLUSIONS, AND LIMITATIONS BELOW, MSHS WARRANTS THAT IT HAS GOOD TITLE TO THE PARTS, FREE FROM ALL LIENS AND ENCUMBRANCES, AND THAT IT HAS THE RIGHT TO SELL THE PARTS.

MSHS HAS NO INVOLVEMENT IN THE DESIGN OR MANUFACTURE OF THE PARTS. THEREFORE, WITH RESPECT TO PARTS, MSHS DISCLAIMS, AND BUYER WAIVES SOLELY AGAINST MSHS, ALL WARRANTIES WITH RESPECT TO THE PARTS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. BUYER SHALL LOOK SOLELY TO THE MANUFACTURER'S WARRANTY FOR ANY CLAIM OF DEFECT WITH ANY PART. MSHS HEREBY ASSIGNS ALL WARRANTIES OF THE MANUFACTURERS OF PARTS TO BUYER, TO THE EXTENT THAT SUCH WARRANTIES ARE ASSIGNABLE.

SUBJECT TO THE CONDITIONS, EXCLUSIONS, AND LIMITATIONS BELOW, MSHS WARRANTS THAT (A) FOR PARTS USED IN T & E, IT HAS GOOD TITLE TO THE PARTS, FREE FROM ALL LIENS AND ENCUMBRANCES, AND THAT IT HAS THE RIGHT TO LICENSE TO BUYER ANY SOFTWARE, PROGRAM, OR CODE DESCRIBED IN THE PROPOSAL; AND (B) THE T & E WILL SUBSTANTIALLY PERFORM TO THE SPECIFICATIONS OF THE CONTRACT FOR A PERIOD OF SIXTY (60) DAYS BEGINNING UPON MSHS'S FURNISHING OF THE T & E (THE "T & E WARRANTY PERIOD").

THIS LIMITED WARRANTY FOR SOFTWARE IS IN LIEU OF ALL OTHER WARRANTIES AND MSHS DISCLAIMS, AND BUYER WAIVES, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

CONDITIONS, EXCLUSIONS, AND LIMITATIONS

UPON DISCOVERY OF A DEFECT, BUYER SHALL NOTIFY MSHS IN WRITING WITHIN THIRTY (30) CALENDAR DAYS AFTER THE SOONER OF (I) DISCOVERY OF THE DEFECT; OR (II) THE TIME AT WHICH THE DEFECT(S) SHOULD HAVE BEEN DISCOVERED THROUGH REASONABLE DILIGENCE, BUT IN NO EVENT ONE YEAR AFTER THE SALE OF SUCH SOFTWARE. TIME BEING OF THE ESSENCE, BUYER'S FAILURE TO NOTIFY MSHS OF THE DEFECT WITHIN THE TIME PROVIDED IN THIS SECTION SHALL MAKE THIS LIMITED WARRANTY VOID.

MSHS'S LIABILITY UNDER THIS LIMITED WARRANTY SHALL BE LIMITED TO, AT MSHS'S OPTION, THE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE OF THE DEFECTIVE PART OR SOFTWARE. MSHS SHALL NOT BE RESPONSIBLE FOR ANY LABOR OR DELIVERY COSTS OR EXPENSES INCURRED IN REPAIRING OR REPLACING ANY PARTS OR SOFTWARE. ANY REPAIR DONE DURING THE WARRANTY PERIOD, WILL NOT EXTEND THE SERVICES WARRANTY PERIOD OR SOFTWARE WARRANTY PERIOD.

NO EMPLOYEE, REPRESENTATIVE, DEALER, OR AGENT OF MSHS OTHER THAN ITS CEO OR SERVICE DELIVERY DIRECTOR IS AUTHORIZED TO MODIFY, EXTEND, OR IN ANY WAY CHANGE THIS LIMITED WARRANTY. ANY PURPORTED CHANGE TO THIS LIMITED WARRANTY MUST BE IN WRITING AND SIGNED BY EITHER THE CEO OR SERVICE DELIVERY DIRECTOR.

THIS LIMITED WARRANTY SHALL NOT BE ASSIGNABLE AND SHALL NOT INURE TO ANY THIRD

PARTIES, EXCEPT AS OTHERWISE SPECIFICALLY REQUIRED BY APPLICABLE LAW.

THIS LIMITED WARRANTY IS EXPRESSLY CONDITIONED UPON THE FULL AND TIMELY PAYMENT BY BUYER OF ALL MONIES DUE UNDER THE CONTRACT. BUYER'S FAILURE TO TIMELY MAKE THE FULL, AGREED-TO PAYMENT SHALL RESULT IN A WAIVER OF BUYER'S RIGHT TO SEEK ANY RELIEF PURSUANT TO THIS LIMITED WARRANTY.

UPON NOTIFYING MSHS OF ANY DEFECT, BUYER SHALL PROVIDE MSHS WITH THE BILL OF SALE, INVOICE, OR DOCUMENTATION THAT CONSTITUTES THE CONTRACT BETWEEN BUYER AND MSHS. BUYER'S FAILURE TO PROVIDE THE REQUIRED DOCUMENTATION SHALL ENTITLE MSHS TO DEEM THE LIMITED WARRANTY VOID.

IN NO EVENT WILL MSHS'S AGGREGATE LIABILITY UNDER THIS LIMITED WARRANTY EXCEED THE PURCHASE PRICE UNDER THE CONTRACT.

NOTWITHSTANDING ANY OF THE ABOVE PROVISIONS, THIS LIMITED WARRANTY DOES NOT APPLY TO OR COVER ANY DEFECT, BREAKAGE, FAILURE, OR DEFICIENCY ATTRIBUTABLE TO, RESULTING FROM, OR CAUSED BY ANY OF THE FOLLOWING: (A) IMPROPER USE, HANDLING, STORAGE, OR MAINTENANCE BY ANY PARTY OTHER THAN MSHS; (B) CONDITIONS OUTSIDE OF (OR BEYOND) THE DESIGN LIMITATIONS OF THE SOFTWARE; (C) ACCIDENTS OUTSIDE OF THE CONTROL OF MSHS; (D) INTENTIONAL OR NEGLIGENT ACTS, VANDALISM, RIOTS, OR CIVIL DISORDER; OR (E) ACTS OF GOD, GOVERNMENTAL ORDERS, FIRE, OR OTHER CASUALTY.

IN THE EVENT THAT, AFTER MSHS' INSPECTION OF A PROSPECTIVE WARRANTY CLAIM, MSHS DETERMINES THAT (I) THERE IS NO DEFECT IN THE PRODUCT OR SERVICES, OR (II) THE DEFECT WAS NOT CAUSED BY MSHS, THEN BUYER WILL BE INVOICED FOR ALL COSTS AND EXPENSES INCURRED BY MSHS DURING THE INSPECTION OF THE PROSPECTIVE WARRANTY CLAIM.

IV. Limitation of Liability

MSHS shall not be liable, directly or indirectly, in contract, tort, or otherwise, to the Buyer, charterers, underwriters, lienholders, or any other party in interest, for any damage to the vessel, its appurtenances, cargo, equipment, or movable stores, or for any consequence thereof, unless such damage is caused solely by MSHS's gross negligence or intentional tort. Notwithstanding anything else to the contrary in these Terms, MSHS's liability shall not exceed the quoted price on the Contract.

MSHS shall not be liable for any special, indirect, or consequential damages resulting from or arising out of its performance under the Contract, including, but not limited to, alleged defects covered by the Limited Warranty.

Buyer agrees to indemnify, defend, and hold harmless MSHS with respect to all liabilities to any third-party in excess of the amounts stated in this Section.

In no event shall MSHS be responsible for any damages resulting from delays caused by Buyer's failure to perform Buyer's obligations under the Contract, including, but not limited to, providing MSHS with access to the vessel.

V. Vessel Warranties

Buyer warrants that a valid and current U.S. Coast Guard Certificate of Financial Responsibility (Water Pollution) (Form CG-5358-10) shall be kept in force at all times while MSHS is furnishing repairs, parts, or services pursuant to the Contract, along with any other warranties that are required or customary for the work described in the Contract.

Default

Buyer shall be deemed in default upon the occurrence of any one or more of the following events, "Event(s) of Default": (i) if any payment of any sum due to MSHS is not paid promptly when due, with or without notice; (ii) if a petition is filed by or against Buyer (or vessel's owner) seeking or acquiescing in any reorganization, arrangement, liquidation, dissolution, or similar relief under any laws relating to bankruptcy or insolvency; (iii) if any information, warranty, or representation by Buyer shall prove to be incorrect or false; or (iv) if Buyer fails to perform any non-monetary obligation under the Contract, including, but not limited to, giving MSHS access to the vessel. Upon an Event of Default, MSHS, at its option, may declare all unpaid monies immediately due and payable, discontinue performing the Job, and/or demand adequate assurances of performance by Buyer.

Furthermore, should Buyer's failure to perform his/her/its obligations under the Contract, which failure requires MSHS to expend additional money not initially contemplated by the Contract in order to complete the Contract (i.e. storage fees, travel expenses, re-hiring of technicians), Buyer shall be liable for such expenses and MSHS shall be authorized to suspend its performance of the Contract until Buyer pays said expenses.

Nothing herein shall be deemed to constitute a waiver of MSHS's rights to and under maritime lien law, or any other remedy that may be available under applicable law to MSHS.

In any dispute between the Parties for collection of monies owed by Buyer under the proposal or invoice, MSHS shall be entitled to recover from Buyer all of MSHS's costs of collection, including, but not limited to, reasonable attorneys' fees and expenses. In all other disputes, each Party shall bear its own attorney's fees and expenses.

VI. Miscellaneous

Force Majeure. MSHS shall not be liable in any event for any loss, damage, or delay caused by any force majeure, including, but not limited to strikes, labor difficulties, supply chain disruptions, accidents, delays in delivery of materials, acts of God, war, restraint of trade, government action, pandemic, pathogenic outbreak, tropical storms, hurricanes, or other extreme weather event. In no event shall any force majeure excuse Buyer's monetary obligations under the Contract.

Amendment and Anti-Waiver. Any changes, additions to, or modifications of these Terms or the Contract shall be binding only when in writing and signed by an authorized representative of MSHS. Furthermore, no provision of these Terms or the Contract shall be deemed to have been waived by MSHS unless such waiver be in writing and signed by an authorized representative of MSHS, nor shall any custom, practice, or course of performance in the enforcement of any provision be construed to waive or lessen the right of MSHS to insist upon performance by Buyer in strict accordance with said provision.

Jurisdiction, Venue, Choice of Law. The Contract shall be deemed to have been fully executed and performed within the State of Florida. Furthermore, the Parties expressly consent to the jurisdiction of the Florida courts for any dispute arising from or related to the Contract. The courts of Broward County, Florida shall be the exclusive and mandatory jurisdiction for the adjudication of any dispute arising from or related to the Contract. The Contract shall be controlled by and construed under the laws of the State of Florida (excluding any conflict of law rules) and, should there be no conflict or should no law in the State of Florida exist with respect to a particular issue, then United States federal maritime law (excluding any conflict of law rules) shall control, particularly with respect to remedies available to MSHS. The UNCITRAL Convention on Contracts for the International Sale of Goods (CISG) shall not apply to the Contract and shall not control, nor be used to construe the Contract.

WAIVER OF JURY TRIAL

BOTH BUYER AND MSHS HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE BETWEEN THE PARTIES AND IN ANY DISPUTE DIRECTLY OR INDIRECTLY ARISING FROM OR RELATING TO THE CONTRACT, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, AND AGREE THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MSHS ENTERING INTO THE CONTRACT.

Severability. In the event that any provision of these Terms or the Contract is determined to be invalid, illegal, or otherwise unenforceable for any reason, such determination shall not affect the validity of any remaining provisions, which shall be deemed enforced to the fullest extent possible without the unenforceable provision.

Export Compliance. Buyer understands that Services, Parts, and Software may be subject to export control laws of the United States, including but not limited to: (a) U.S. export laws governing the export, transfer, or re-export of U.S. manufactured products, and products containing U.S. components, software, or technology as set forth in the U.S. Export Administration Regulations (EAR), 15 C.F.R. §§ 734, 736; (b) U.S. export regulations and laws restricting U.S. companies and their foreign affiliates and subsidiaries from doing business with certain embargoed countries and entities as set forth in the U.S. Foreign Asset Control Regulations (FACR), 31 C.F.R. §§ 500 et seq.; and (c) the International Traffic in Arms Regulations, 22 C.F.R. §§ 120 et seq. Buyer will not export or re-export any Services, Parts, or Software in violation of the export laws of the United States or any other applicable jurisdiction. MSHS may cancel the Contract if Buyer fails to provide any import and export documents requested by Seller, or if Seller has reason to believe that Customer will not otherwise comply with the requirements herein.

Notice. All notices and other communications under, or in connection with, the Contract will be effective when given in writing by hand delivery, registered or certified mail, overnight courier service, or email. The address and email details for notices to each party will be as set forth in the proposal.