



MedSCO Fabrication and Distribution, Inc. Terms and Conditions of Sale

Scope. In these terms and conditions (“Terms”) “Seller” means MEDSCO FABRICATION AND DISTRIBUTION, INC. or its affiliated company, Tinco Sheet Metal Inc. and “Buyer” means the person or entity whose order for goods is accepted by Seller. The Terms apply to all, including future, sales of goods and services, as far as not modified or excluded by Seller’s express written agreement. Buyer is deemed to have accepted the Terms when placing an order with Seller. Any terms and conditions contained in Buyer’s documentation, including but not limited to its Purchase Order, shall not be binding on Seller. This applies despite Seller’s knowledge of existing contradictory terms and conditions.

1. Basis of the Sale.

- 1.1. Seller shall sell and Buyer shall purchase the goods by written order of Buyer which is accepted by Seller in an Order Confirmation.
- 1.2. Seller’s employees or agents are not authorized to make any representations concerning the goods or services, unless confirmed by Seller in writing. In entering into this Contract Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.
- 1.3. Any advice or recommendation given by Seller or its employees or agents to Buyer including any advice as to the storage, application or use of the goods or services, which is not confirmed in writing by Seller, is followed or acted upon entirely at Buyer’s own risk, and accordingly, Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 1.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Seller shall be subject to correction without any liability on the part of the Seller.

2. Orders and Specifications.

- 2.1. Buyer shall be responsible to Seller for ensuring the accuracy of the terms of any order, including any applicable submitted specification(s), and for giving Seller any necessary information relating to the goods and/or services within a sufficient time to enable Seller to perform this Contract in accordance with its terms.
- 2.2. If the goods are to be manufactured or any process is to be applied to the goods by Seller in accordance with a specification submitted by Buyer, Buyer shall indemnify Seller against all loss, damages, costs, and expenses awarded against or incurred by Seller in connection with or paid or agreed to be paid by Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Seller’s use of such specification
- 2.3. No order which has been accepted by Seller may be cancelled by Buyer except with Seller’s written agreement.

3. Price of the Goods.

- 3.1. The price of the goods shall be Seller’s quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Seller’s standard price list (the “List Price”) current at the date of acceptance of the order. This price shall be quoted on Seller’s Order Confirmation accepting Buyer’s order.
- 3.2. Except as otherwise stated under the terms of any quotation and unless otherwise agreed in writing between Buyer and Seller, all prices are given by Seller on an ex works basis.
- 3.3. The price is exclusive of any applicable value added, sales, or the tax, which Buyer may be additionally liable to pay to Seller, as well as any freight or insurance cost incurred on delivery. Custom duties, clearance charges, or equivalent duties shall be for the account of Buyer.
- 3.4. While Seller will try to ensure that the price stated in the Order Confirmation is accurate, errors may occur. If Seller discovers an error in the price of the goods or services which Buyer has ordered, Seller will inform Buyer as soon as possible. Buyer may cancel its order within two (2) working days of being informed of an increase in the price of the goods from the price that was indicated on the Order confirmation. If Buyer does not exercise this right of cancellation within two (2) working days, Buyer shall be bound by the new price.

4. Terms of Payment.

- 4.1. Seller shall be entitled to invoice Buyer for the price of the goods on or at any time after delivery of the goods, unless Buyer wrongfully refuses to take delivery of the goods, in which event Seller shall be entitled to invoice Buyer at any time after Seller has tendered delivery of the goods.
- 4.2. Buyer shall pay the price of the goods purchased in full within thirty (30) days after receipt of Seller’s invoice (unless otherwise agreed in writing between the Parties), notwithstanding that delivery may not have taken place and the property in the goods has not passed to Buyer. The time of payment of the price shall be of the essence of this Contract.
- 4.3. Payment shall be made in United States Dollars or such currency as may be agreed by the Parties.
- 4.4. If Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Seller, Seller shall be entitled to:
 - 4.4.1. Cancel this Contract or suspend any further deliveries to Buyer;
 - 4.4.2. Allocate any payment made by Buyer to such of the goods as Seller may think fit; and
 - 4.4.3. Charge Buyer a late charge (both before and after any judgment) on the amount unpaid at the rate of 1.5%/month.
- 4.5. Notwithstanding any other term or condition herein and in particular notwithstanding any period of credit extended to the Buyer, if the balance on Buyer’s account with Seller (being the value of invoices charged to Buyer for which Seller has not received payment) equals or exceeds Buyer’s credit limit with Seller, if any, Seller may, in its sole discretion, refuse to accept further orders from Buyer or refuse to make further shipments of sales to Buyer. Further Seller may, in its sole discretion, refuse to accept orders from Buyer or make sales to Buyer where the value of the goods ordered by Buyer, would, if invoiced to Buyer’s account, cause the balance on such account to equal or exceed such credit limit set by Seller in its sole discretion. Any decision made by Seller in the exercise of its sole discretion as provided for in this sub-clause shall not, and shall not be deemed to, prejudice, limit, hamper or affect any subsequent exercise by Seller of its rights or sole discretion.

5. Delivery.

- 5.1. Unless otherwise agreed in writing, delivery of the goods shall be made by the Seller delivering the goods to a carrier at location of dispatch, by the posting of the good from location of dispatch or by the delivery of the goods to the Buyer at the Seller’s place of business.
- 5.2. Any dates quoted for delivery of the goods are approximate only and the Seller shall not be liable for any delay in delivery of the goods howsoever caused. The goods may be delivered by Seller in advance of the quoted delivery date upon giving reasonable notice to Buyer. Time for delivery shall not be of the essence unless previously agreed by Seller in writing.
- 5.3. Where the goods are to be delivered in installments, each delivery shall constitute a separate contract and the Seller may invoice separately for each installment. Failure by Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by Buyer in respect of any one or more installment shall not entitle Buyer to treat the Contract as a whole as repudiated.
- 5.4. Any claim for shortage in delivery must be notified to Seller in writing within three (3) days of the date of receipt of the Goods by Buyer. A failure to provide such timely notice shall constitute acceptance of the goods in the manner and amount delivered.

6. Risk and Property.

6.1. Risk of damage to or loss of the Goods shall pass to Buyer:

- 6.1.1. In the case of goods to be delivered to Buyer at Seller's place of business or delivered to a carrier at Seller's place of business, at the time when Seller notifies Buyer that the Goods are available for collection or that the goods have been dispatched with a carrier; or
- 6.1.2. In the case of goods to be delivered otherwise than at Seller's premises, at the time of delivery or, if Buyer wrongfully fails to take delivery of the Goods, the time when Seller has tendered delivery of the Goods.

6.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the title in the goods shall not pass to Buyer until Seller has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by Seller to Buyer for which payment is then due. Until such time as the property or the goods passes to Buyer, Buyer shall hold the goods as Seller's fiduciary agent and bailee and shall keep the goods separate from the goods of Guyer and third parties, and shall keep the goods property stored, protected and insured and identified on Buyer's property, but shall be entitled to use the goods in the ordinary course of business. Buyer hereby irrevocably authorizes Seller or its representatives to enter upon Buyer's premises where the goods are stored, or are thought to be stored, for the purpose of repossessing them and, if Seller so chooses, subsequent resale.

7. Warranties and Liability

- 7.1. Except to the extent expressly provided in these Terms, all warranties, conditions or other terms express or implied by statute or law re excluded to the fullest extent permitted by law, including without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement, and suitability.
- 7.2. Any claim by Buyer which is based on any defect in the quality or condition of the Goods or services, or their failure to correspond with specification, shall (whether or not delivery is refused by Buyer) be notified to Seller within seven (7) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within seven (7) days after discovery of the defect or failure. If delivery is not timely/appropriately refused and Buyer does not timely notify Seller, Buyer shall not be entitled to reject the goods and the Seller shall have no liability for such defect or failure and Buyer shall be bound to pay the price of the Goods as if the Goods had been delivered in accordance with this Contract.
- 7.3. If Buyer makes any valid claim in writing to Seller about any of the goods which is based on any defect in the quality or condition of the goods or their failure to meet any written specification previously provided to Seller, Seller shall be entitled to replace the Goods (or the part in question) free of charge for the replacing items or, at Seller's sole discretion, refund to Buyer the price of the Goods (or a proportionate part of the price), an Seller shall have no further liability to the Buyer.
- 7.4. Seller is liable only for defect which appear within twelve (12) months from the date of delivery and under the conditions of operation provided for in this Contract an under the proper use of the Goods.
- 7.5. Except in respect of death or personal injury to the extent caused by Seller's negligence, Seller shall not be liable to Buyer by reason of any representation, warranty, condition or other term, or any duty at law, or under the express terms of this contract, for any consequential, punitive, special, or indirect loss or damage (whether for lost profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of Seller, its employees or agents, or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by Buyer, except as expressly provided in these Terms.
- 7.6. Except for payment obligations, neither party shall be liable or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of the obligations in relation to the goods, if the delay or failure was due to any cause beyond their reasonable control, including, but not limited to any Act of God, explosion, fire, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority, war, civil commotion, insurrection, international sanctions or boycotts, import or export regulations or embargoes, difficulties in obtaining raw materials, labor, fuel, parts or machinery, power failure or breakdown in machinery, labor disputes of whatever nature whether involving employees of Seller or Buyer or of any third party.

8. Cancellation.

- 8.1. If Buyer makes any voluntary arrangement with its creditors, becomes subject to an administration, or goes into liquidation, or if any encumbrancer takes possession of assets or a receiver is appointed; or if Buyer ceases to, or threatens to cease to, carry on business; or Seller takes the reasonable view that any of the events mentioned above is likely to occur and notifies Buyer accordingly, then without prejudice to any other right or remedy available to it, Seller shall be entitled to cancel this Contract without any liability to Buyer, and if goods have been delivered but not paid for, they shall become due and payable immediately.
- 8.2. If Buyer and seller agree to the sale and purchase of a product, which is not supplied under Seller's existing product range but is outlined in Buyer's specifications, then Seller shall be entitled to cancel the contract without any liability whatsoever to Buyer if the Seller is unable to manufacture he requested product in accordance with the supplied specification.

9. General.

- 9.1. The subject matter of this Contract between the Parties shall be treated as confidential by Buyer and shall not be disclosed or used other than by Buyer in performing under this Contract.
- 9.2. Buyer agrees to take any and all necessary steps to assist Seller in perfecting a lien on the goods, including, but not limited to, the following: (1) Buyer will provide accurate information to Seller relating to the location where goods will be used/consumed; (2) the name and address for any General Contractors involved, if any; (3) Buyer will provide Seller with a copy of any Purchase Order(s) or Contract with such General Contractors; and (4) Buyer will provide Seller with such information and other assistance as reasonably request by Seller to perfect, protect, and enforce its liens on the goods provided.
- 9.3. Buyer shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.
- 9.4. Any notice required or permitted to be given by either Party to the other under these Terms shall be in writing and addressed to that other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice.
- 9.5. No waiver by Seller of any breach of this Contract by buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 9.6. If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected thereby.
- 9.7. This Contract and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of the State of California.

9.8. Any sale of goods by Buyer to Seller shall at all times be subject to all applicable export control laws and regulations of the United States, including, but not limited to, U.S. Export Administration Regulations. Buyer agrees and assures Seller that no items, equipment, materials, services, technical data, technology, software or other technical information or assistance furnished by Seller, or any good or product resulting from these, shall be exported or re-exported by Buyer or its authorized transferees, if any, directly or indirectly, unless in accordance with applicable U.S. export laws and regulations. This obligation shall survive any expiration, termination or discharge of any other contractual obligations of Buyer.