

Terms & Conditions of Sale

1. **THESE TERMS CONTROL:** Any potential customer ("Customer") may be required to (i) complete a Credit Application and Security Agreement ("Credit Application"), which will be provided to Customer by Magnum Venus Products, Inc. ("MVP") upon request, and (ii) receive confirmation of credit approval from MVP. If MVP, in its sole discretion, determines that Customer's credit becomes unsatisfactory or it has reasonable grounds for insecurity, MVP reserves the right, upon notice to Customer, to demand adequate assurance of due performance from Customer and/or terminate any purchase order with no liability to MVP. BY SIGNING THE CREDIT APPLICATION OR ACCEPTING THE INVOICE (THE "INVOICE") TO WHICH THESE TERMS & CONDITIONS OF SALE (THESE "TERMS") ARE ATTACHED, CUSTOMER CONFIRMS THAT THESE TERMS SHALL GOVERN ALL PURCHASES OF PRODUCTS OR MATERIALS PROVIDED TO CUSTOMER BY MVP ("GOODS"). GOODS ARE EXPRESSLY SUBJECT TO THESE TERMS AND ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS SET FORTH IN A PURCHASE ORDER OR SIMILAR COMMUNICATION RECEIVED FROM CUSTOMER ARE OBJECTED TO AND SHALL NOT BE BINDING UPON MVP UNLESS SPECIFICALLY AGREED TO IN WRITING BY AN AUTHORIZED CORPORATE OFFICER OF MVP. NO EMPLOYEE OR AGENT OF MVP HAS THE AUTHORITY TO MODIFY THESE TERMS VERBALLY. MVP OBJECTS TO AND REJECTS ANY TERMS BETWEEN CUSTOMER AND ANY OTHER PARTY, AND NO SUCH TERMS, SHALL BE A PART OF OR INCORPORATED INTO THESE TERMS OR ANY PURCHASE ORDER UNLESS AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF MVP.

2. **PRICING:** Customer agrees to pay the prices listed on the Invoice, and to be responsible for additional applicable shipping and handling charges, taxes, duties, and charges for import and export licenses and certificates. All prices quoted by MVP or indicated in the Invoice are subject to change without notice. In order to be corrected, any discrepancies in pricing or quantities of Goods must be reported by Customer within thirty (30) days of the date of the Invoice.

3. **PAYMENT:** All orders will be payable in advance or C.O.D. until MVP has satisfactorily completed any necessary investigation of Customer's credit. If Customer's credit is approved, payment terms will be 30 days net from the date of the Invoice or upon such other terms approved by MVP in writing. If Customer fails to make any payment when due, MVP reserves the right to suspend performance. Customer agrees to pay a charge on all amounts past due at the rate of 1 1/2% per month (18% per year) or the maximum lawful rate, whichever is less. The waiver of a finance charge or any portion thereof shall not be deemed to be a waiver of any future finance charges. In the event of non-payment, MVP may turn over the right to collect any unpaid amounts to a third party for collection. MVP may apply payments to any outstanding invoices unless Customer provides specific payment direction.

4. **TITLE AND RISK OF LOSS OR DAMAGE:** As to Goods delivered directly by MVP, title and risk of loss or damage passes to Customer upon delivery at the place Customer receives possession. All other sales of Goods are F.O.B., point of shipment, and Customer takes title and assumes responsibility for risk of loss or damage at the point of shipment for such sales.

5. **QUOTATIONS:** All quotations provided by MVP expire thirty (30) days from the date of the quotation unless otherwise noted on the quotation, even if Customer uses a quotation to submit a job or project bid to any other party.

6. **ASSIGNMENT:** Customer's rights and responsibilities under these Terms may not be assigned by Customer without the express written consent of MVP, which may be withheld in MVP's sole discretion.

7. **RETURN OF GOODS:** Customer must request permission to return Goods in advance and MVP will only give Customer credit for returned Goods if MVP has, in advance, granted Customer permission to return such Goods. If permission to return particular Goods is granted by MVP, MVP shall accept the return of such Goods, if made within a period of fifteen (15) days following shipment, for exchange or refund of the purchase price for such Goods; provided, however, that the Goods must be unused and are subject to a 15% restocking charge, which may be increased or decreased, in MVP's sole discretion, depending on the reason for such return. Any Goods which are special ordered by Customer may not be returned, and any such Goods which are returned to MVP are subject to a cancellation fee of 100% of the cost of the Goods. Goods shall be deemed accepted by Customer (and cannot thereafter be returned), if Customer fails to object to the Goods within fifteen (15) days after the Goods are received by Customer.

8. **CANCELLATION:** Customer may cancel any purchase of Goods prior to shipment of the Goods upon payment to MVP of reasonable and proper cancellation charges, provided, however, that any Goods which are special-ordered are subject to a cancellation fee of 100% of the cost of the Goods if Customer desires to cancel the order.

9. **CHANGE IN CUSTOMER'S FINANCIAL CONDITION:** MVP reserves the right to cancel any agreement to provide Goods to Customer or to require full or partial payment in advance, without liability to MVP, in the event of: (i) insolvency of Customer; (ii) the filing of a petition in bankruptcy by or against Customer; (iii) the appointment of a receiver or trustee for Customer; (iv) the execution by Customer of an assignment for benefit of creditors; (v) a past due payment on any previous shipment of Goods to Customer by MVP; or (vi) MVP, in its sole discretion, determines that Customer's financial condition has adversely changed. MVP reserves the right to cancel Customer's credit at any time for any reason.

10. **CUSTOMER'S PLANS AND SPECIFICATIONS:** MVP does not guarantee that the Goods it sells conform to any of Customer's plans, specifications, or intended use. Customer is solely responsible for verifying MVP's interpretations of any such plans and specifications, and it is Customer's sole responsibility to assure that Goods will be acceptable for Customer's intended use. When MVP offers substitute Goods, Customer is solely responsible for confirming the acceptability of such Goods for such proposal.

11. **DELIVERY:** All contract dates and timelines begin upon receipt by MVP of a purchase order and the payment of any required down payment. Notwithstanding anything else to the contrary, delivery dates given in advance of actual shipment are approximate and not guaranteed, and MVP shall not be liable for any penalty or damages for late delivery. If Goods are held or stored beyond the delivery date for the convenience of Customer, such Goods shall be so stored at the risk and expense of Customer.

12. **EXCUSABLE DELAYS:** Notwithstanding anything else to the contrary, MVP shall have no liability if its performance is delayed or prevented by causes beyond its reasonable control, including, without limitation, acts of nature, labor disputes, government priorities, transportation delays, insolvency or other inability to perform by any manufacturer, vendor, or other third party that provides products to MVP for resale to Customer or other customers ("Vendor"), or any other commercial impracticability. In the event of any such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of delay.

13. **WARRANTIES, DISCLAIMERS, AND LIMITATIONS:** (a) **LIMITED WARRANTY:** MVP warrants that all Goods sold shall mechanically operate as specified by MVP in writing and shall be free from faults in respect to materials and workmanship for a period of twelve (12) months from the date of the Invoice. MVP also warrants that the Goods shall, upon payment in full by Customer for the Goods, be free and clear of any security interests or liens. Customer's exclusive remedy for breach of such warranties with respect to any Goods shall be limited to MVP's repair or replacement of such defective Goods. MVP shall have no responsibility for reimbursing repair or replacement costs incurred by Customer in connection with defective Goods, unless MVP has first given Customer written authorization to incur such charges. This warranty applies only to Goods properly used

and maintained and does not apply to any Goods which are misused or neglected, or which have been installed, operated, repaired, altered or modified other than in accordance with instructions or written authorization provided by MVP. This warranty does not apply to any Goods not manufactured by MVP, and Customer's sole warranty with respect to such Goods shall be that of MVP's Vendor, if any.

(b) **VENDOR'S WARRANTIES:** MVP shall assign to Customer any Vendor's warranties or remedies provided to MVP by such Vendor.

(c) **INTELLECTUAL PROPERTY INFRINGEMENT:** MVP DISCLAIMS ANY AND ALL WARRANTIES OR INDEMNIFICATIONS AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS. MVP SHALL, IF GIVEN PROMPT NOTICE BY CUSTOMER OF ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT WITH RESPECT TO ANY GOODS SOLD HEREUNDER, REQUEST THE APPLICABLE VENDOR TO GRANT FOR CUSTOMER SUCH WARRANTY OR INDEMNITY RIGHTS AS SUCH VENDOR MAY CUSTOMARILY GIVE WITH RESPECT TO SUCH GOODS.

(d) **LIMITATIONS:** OTHER THAN THE LIMITED WARRANTY PROVIDED ABOVE, MVP PROVIDES CUSTOMER WITH NO OTHER WARRANTY WITH RESPECT TO THE GOODS, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED OR BY STATUTE. MVP SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

14. **LIMITATIONS OF LIABILITY:** TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, MVP'S TOTAL LIABILITY TO CUSTOMER, CUSTOMER'S CUSTOMERS OR TO ANY OTHER PERSON, RELATING TO ANY PURCHASES GOVERNED BY THESE TERMS, FROM THE USE OF GOODS FURNISHED BY MVP TO CUSTOMER, OR FROM ANY ADVICE, INFORMATION OR ASSISTANCE PROVIDED BY MVP (BY ANY METHOD, INCLUDING A WEB SITE), IS LIMITED TO THE PRICE OF THE GOODS GIVING RISE TO THE CLAIM. MVP SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PENAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LABOR COSTS, LOSS OF EFFICIENCY, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED GOODS, DAMAGE TO ASSOCIATED GOODS, LATENESS OR DELAYS IN DELIVERY, UNAVAILABILITY OF GOODS, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES OR SERVICES, DOWNTIME, OR CLAIMS FROM CUSTOMER'S CUSTOMERS OR OTHER THIRD PARTIES. IF MVP FURNISHES CUSTOMER WITH ADVICE OR OTHER ASSISTANCE WHICH CONCERNS ANY GOODS SUPPLIED HEREUNDER, OR ANY SYSTEM OR EQUIPMENT IN WHICH ANY SUCH GOODS MAY BE INSTALLED, AND WHICH IS NOT REQUIRED PURSUANT TO THESE TERMS, THE FURNISHING OF SUCH ADVICE OR ASSISTANCE WILL NOT SUBJECT MVP TO ANY LIABILITY, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS.

15. **CUSTOMER'S USE OF GOODS:** Notwithstanding anything else herein to the contrary, MVP does not make any warranty with respect to, and shall not be liable for any deficiencies in the quality or quantity of finished products produced by Customer.

16. **EXPORTS:** If Goods are sold for export, MVP's International Terms & Conditions of Sale shall also apply to the sale of such Goods. Export orders are not valid unless confirmed in writing by MVP. Customer, and not MVP, is responsible for compliance with all export control rules and regulations. Customer shall not name MVP as shipper or exporter of record in connection with the export of any Goods purchased from MVP.

17. **INSTALLATION:** Installation of the Goods is the responsibility of Customer, unless otherwise indicated in the Invoice.

18. **PAYMENT RESTRICTIONS:** Except for pre-approved credit arrangements, MVP will not accept third-party payments, cashiers' checks, money orders or bank drafts. MVP accepts only (i) checks imprinted with Customer's name; (ii) wire transfers originated in Customer's account; (iii) letters of credit with Customer as account party; and (iv) credit or debit cards in Customer's name. Payment must be made by a single instrument in the amount indicated on the Invoice.

19. **GOVERNING LAW:** These Terms and all disputes related to it shall be governed by the laws of the State of Texas in the United States of America, without giving effect to its conflict of law rules.

20. **JURISDICTION AND VENUE:** Customer hereby irrevocably submits to the exclusive jurisdiction of the state courts of the State of Texas for the purpose of any suit, action, or other proceeding related to, arising out of or based upon these Terms or in any way related to, arising out of or involving sale of Goods hereunder. The parties hereby consent to service of process by registered mail at the address to which notice is to be given. The exclusive venue for any proceeding under these Terms shall be solely in Brazos County, Texas.

21. **GENERAL:** Any representation, affirmation of fact and course of dealing, promise or condition in connection therewith or usage of trade not contained herein, shall not be binding on MVP. If any provision hereof shall be unenforceable, invalid or void for any reason, such provision shall be automatically voided and shall not be part of these Terms and the enforceability or validity of the remaining provisions of these Terms shall not be affected thereby.

22. **NOTICES:** All notices, requests, payments, instructions, or other documents to be given hereunder shall be in writing or by written telecommunication, and shall be deemed to have been duly given if (i) delivered personally (effective upon delivery), (ii) mailed by registered or certified mail, return receipt requested, postage prepaid (effective five business days after dispatch), (iii) sent by a reputable, established courier service that guarantees next business day delivery (effective the next business day), or (iv) sent by facsimile or electronic mail (effective upon the first business day after receipt of the facsimile or electronic mail in complete, readable form). Notices to Customer shall be addressed as provided on Customer's Credit Application, if applicable or to the address shown on the Invoice, and notices to MVP shall be addressed to: Magnum Venus Products, Inc., P.O. Box 306107, Nashville, Tennessee 37230-6107, Attn: Customer Notice Department (or as may be otherwise indicated, from time to time, to Customer by MVP).

23. **STATE CONTRACTING LANGUAGE.**

For clarification, Texas A&M University is entering into this Agreement as a member of The Texas A&M University System, an agency of the State of Texas.

Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: "Under Section 231.006, Texas Family Code, the MVP or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

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Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, MVP agrees that any payments owing to MVP under this Agreement may be applied directly toward certain debts or delinquencies that MVP owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Prohibited Bids and Agreements. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Texas Government Code requires the following statement: "Under Section 2155.004, Texas Government Code, the MVP certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Public Information. MVP acknowledges that Customer is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Customer's written request, MVP will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to Customer in a non-proprietary format acceptable to Customer. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which Customer has a right of access. MVP acknowledges that Customer may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

Force Majeure. Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

Dispute Resolution. The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and MVP to attempt to resolve any claim for breach of contract made by MVP that cannot be resolved in the ordinary course of business. MVP shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Texas A&M University, who shall examine MVP's claim and any counterclaim and negotiate with MVP in an effort to resolve the claim.

Franchise Tax Certification. If MVP is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then MVP certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that MVP is exempt from the payment of franchise (margin) taxes.

Products and Materials Produced in Texas. MVP agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Agreement, MVP will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

Loss of Funding. Performance by Customer under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, Customer will issue written notice to MVP and Customer may terminate this Agreement without further duty or obligation hereunder. MVP acknowledges that appropriation of funds is beyond the control of Customer.

Prompt Payment Act. Payment from Customer will be due thirty (30) days from the date Customer receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

State Auditor's Office. MVP understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. MVP agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. MVP will include this provision in all contracts with permitted subcontractors.

Non-Waiver. MVP expressly acknowledges that Customer is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Customer of its right to claim such exemptions, privileges, and immunities as may be provided by law.

MVP Certification regarding Boycotting Israel. Pursuant to Chapter 2270, Texas Government Code, MVP certifies MVP (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. MVP acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

MVP Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, MVP certifies MVP (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. MVP acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Conflict of Interest. By executing and/or accepting this Agreement, MVP and each person signing on behalf of MVP certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by Customer or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

ACCEPTED & AGREED:

Magnus Venus Products, Inc

Name

President & CEO

Title

March 7, 2019

Date

Texas A&M University

Name

ROBERT C. BOUNDS

Title

DIRECTOR, PROCUREMENT SERVICES

7 MAR 2019

Date