

**(MSC) Material Sciences Corporation**  
**Terms & Conditions of Sale for Tolling (Buyer Owned Metal)**

**MSC Plants: Elk Grove Village, East Chicago, Walbridge, Canfield, Toronto, Los Angeles**

**1. GENERAL**

The terms and conditions set forth below, along with any specific information stated on any price quotations issued to Buyer (collectively, the "Contract"), are the sole terms and conditions under which Material Sciences Corporation ("Seller") processes Buyer owned material. Any terms or conditions that are additional to or different from those in the Contract, whether in Buyer's confirmation, purchase order, shipping release, quotation request or elsewhere, are void and shall not be binding on Seller unless specifically agreed to in writing by Seller. Notwithstanding any contrary provision in Buyer's confirmation, purchase order, shipping release or quotation request, no action by Seller, including the delivery of goods, the rendering of services or the commencement of work on goods to be specifically manufactured for Buyer, will be deemed an acceptance by Seller of any confirmation, purchase order, shipping release or quotation request with terms different from, or in addition to, those set forth in the Contract. Any notice required or permitted under this Contract shall be in writing and may be given by any reasonable means to the other party.

**2. PRICING**

Buyer shall purchase the goods or services at the prices (and in the currency) set forth in the price quotation(s) issued to Buyer. Seller reserves the right to modify the quoted prices upon written notice to Buyer to account for increases in costs beyond Seller's control, including the costs of raw materials. All quoted prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

**3. DELIVERY**

All shipments are made F.O.B. Seller's plants (unless otherwise specified on a price quotation issued by Seller) and Seller shall not be responsible for transportation charges incurred during shipment or at destination, including, but not limited to, spotting, switching, drayage, demurrage or extra charges for less than truckload shipments to complete an order. Unless otherwise agreed by Seller in writing, shipping, freight, handling, insurance and related costs are sole responsibility of Buyer and will be invoiced to Buyer.

**4. RECEIPT OF MATERIAL**

At the time of receipt of Buyer owned material, all coils will be inspected by Seller for obvious damage. Seller will note any visible non-conformances on the shipping and/or receiving paperwork. To provide protection during storage, Seller will not unwrap coils until time of processing. Any defects or damage that are not detected by Seller at time of receipt, including, but not limited to, rust, dents, improper gauge and/or width, shape problems and surface imperfections, but that are identified during processing of the material will be documented and addressed by Seller at such time. Seller will not be held accountable for defective material identified during processing which falls outside of Buyer's mill agreements. Any coil which enters the coating line will process through the entire line and will not be cut or backed out at the entry section.

Once received, any unprocessed coils removed from Seller's facilities will be assessed a \$75 in/out transaction fee.

**5. WAREHOUSING AND STORAGE**

Seller provides warehouse and storage space for Buyer supplied materials for which orders have been accepted. Seller is not responsible for any corrosion damage to Buyer's inventories stored in Seller's facilities

under normal conditions, or any deterioration of Buyer's inventories in Seller's facilities. Buyer is responsible for the ultimate disposition of any remaining unused portions of raw materials. Seller shall invoice Buyer for storage and handling fees attributed to aged inventory or special services required at the fair market price for such services as determined by Seller in its reasonable discretion. If finished goods are not shipped within sixty (60) days after production, Seller may, in its sole discretion, charge to Buyer a storage fee of \$40 per ton per month unless otherwise agreed to by the parties.

## **6. TERMS OF PAYMENT**

All shipments and deliveries are subject to Seller's prior credit approval of Buyer. Whenever Seller for any reason shall be in doubt as to the ability of Buyer to perform its obligations hereunder or Buyer's credit becomes impaired, Seller may decline to make shipments except on receipt of cash in advance of processing or shipment or upon any other conditions and security satisfactory to Seller. Payment for services rendered or materials shipped by Seller shall be net thirty (30) days from the date of invoice, without deductions, set offs, counterclaims, back charges or any other charge whatsoever, unless otherwise provided in the Contract. Unauthorized payment deductions may cause Seller to withhold future shipments and/or production. Buyer shall make all payments hereunder by check or wire transfer in the currency noted in the invoice.

## **7. INTERNAL & QUALITY YIELD LOSSES**

- A. SELLER'S INTERNAL PROCESSING YIELDS - All goods are sold subject to tolerances recognized by the industry trade practice. Variation in weight and lineal footage measurement by Buyer up to 1% is a permissible variation from invoiced quantities to account for differences in kind, type, location and accuracy of measuring devices. Unless otherwise provided in the Contract, upon completion of processing to Buyer's metal, Seller shall be allowed without cost to itself a shortage between payoff weight processed and finished rewind weight of 3% per master coil (40K), reconciled monthly. Please refer to Tables A for exceptions to the 3% per master coil (40K).
- B. Allowable yield losses are those which are inherent in the continuous coil coating process including, but not limited to, startup trials, coil leads and tails, splices, line stops or other miscellaneous cropping. Seller shall not accept claims for full-coil rejects. Please refer to Section 8.B. for Seller's policy for handling defects within a coil.
- C. BUYER SUPPLIED DEFECTIVE METAL - Seller will notify Buyer if it detects defects which render Buyer's material to be unsuitable for processing. Seller will not be responsible for deviations in physical dimensions of Buyer supplied materials or for material spoilage caused by defective Buyer supplied materials whether such spoilage occurs at Seller's facilities or Buyer's facilities. Seller assumes that Buyer supplied materials are adequate in quality for the end use intended and for processing in Seller's facilities. In this regard, Seller shall be paid full price for production of defective Buyer supplied materials when coating and substrate material are joined through Seller processing, and Seller shall be paid full price for dead head processing defective Buyer supplied material. Downtime or damage to Seller's equipment caused by defective Buyer supplied material will be the financial responsibility of the Buyer.
- D. Buyer must remove defective Buyer supplied metal from Seller's facilities within thirty (30) days of notification. After thirty (30) days such material will be subject to storage fee of \$40 per ton per month unless otherwise agreed to by the parties. Seller shall scrap defective Buyer supplied coils of less than 1,000 lineal feet.
- E. Buyer authorizes Seller at Seller's sole discretion to invoke the use of Seller's in-line tension leveling equipment, where available, to correct Buyer supplied metal shape non-conformances. Seller reserves the right to invoice for tension leveling at current published prices.
- F. Seller may provide additional services including, but not limited to, decanning coils, cutting samples from

coils, testing bare coil properties, shipment of bare unprocessed coils, handling of customer rejected material and finished goods storage. Buyer may contact Seller at the processing location for the costs of such services.

## **8. EXTERNAL YIELD LOSSES**

- A. **SHORTAGES** - If the quantity of any materials received by Buyer shall be less than the quantity shown in the invoice, or if the materials received by Buyer shall have been damaged in transit, Buyer shall give written notice of the shortage or damage to the agent of the delivering carrier to permit the verification of the alleged shortage or damage by the delivering carrier in order to substantiate a formal claim when and if presented and Buyer shall send to Seller at its producing location. Seller shall not be responsible for any damage to materials in transit.
- B. **DEFECTS** - Seller's processes are continuous in nature and intermittent variations or nonconforming surface conditions may occur. It is Seller's policy to cut extensive footage of defective material from the coil thus producing smaller coils that may fall below Buyer's specified minimum coil size. In the event that Buyer has set a minimum coil size, Seller reserves the right to ship 15% of an order at coil weights equal to 50% of Buyer's minimum. Buyer must provide inbound coil sizes which will allow Seller to meet Buyer's specified minimum or maximum coil requirements. If Buyer does not approve removal of defects or smaller coil sizes, Seller reserves the right to note the defects within the coil(s). Buyer must submit a claim to Seller with Seller's coil number and other appropriate claim information (reference section 7.B. Claims). Seller will reimburse Buyer solely for the value of Seller charges originally invoiced to Buyer for the noted defective material. If Buyer does not specify a minimum coil weight, minimum coil weight will be at Seller's discretion.
- C. **CLAIMS** - Claims for defective materials must be presented to Seller within six (6) months after the manufacturing date of such defective materials; provided, however, that claims related to corrosion must be presented to Seller within thirty (30) days after shipment of such materials. The notification to Seller must be in writing and must include the following information for each individual coil or skid containing defective material: photo(s) of the defective material as received at Buyer's facility, the reason for rejection, date of receipt, Buyer's purchase order number, Seller's work order number, Seller's coil or skid number, gauge and width, original coil or skid weight, and reject coil or skid weight. Coil information can be obtained from coil or skid tags affixed to the inside or outside of each coil. Seller reserves the right, upon reasonable request, to review and inspect the defect at Buyer's facility or request that Buyer provide a sample of the defect. Failure by Buyer to give notice of such claims in accordance with this section shall constitute an absolute bar to such claims.
- D. **REMEDIES** – Buyer's remedies for defective product shall be limited, at the sole discretion of Seller, to the replacement of the defective product, reprocessing of the product to prime at Seller's expense or refund of the purchase price paid by Buyer for such product. Seller shall not be liable for special, indirect, incidental, punitive or consequential damages of any kind or nature whatsoever, including without limitation lost profits, and Buyer assumes the risk of these damages, regardless of whether the damages are based on Seller's breach of any of its obligations with respect to the goods or work which are the subject matter of the Contract, the commission of any tort, including negligence or strict liability, or any other legal theory. In no event, shall Seller's liability for damages in respect to goods sold or work done, exceed the purchase price paid by Buyer for the specific materials as to which a claim is made.
- E. Trial orders will be excluded from all of Sections 7 and 8. Seller will make reasonable efforts to yield as much prime trial material as possible, but will not be held accountable for any internal yield losses or external defective material.

## **9. FORCE MAJEURE**

Seller will not be liable for any delay in performance of the Contract or delivery of goods when the delay is caused, directly or indirectly, by events not within Seller's control, including but not limited to, fire, flood or other severe weather conditions, riot, acts of God, war, governmental interferences, strikes, shortage of labor, fuel, power, materials or supplies, or any other cause whatsoever beyond Seller's control.

## **10. SHIPMENTS**

- A. Seller will use reasonable efforts to comply with Buyer's request as to mode and route of shipment, but Seller reserves the right to use an alternate mode of transportation or route of shipment if substantive delay might otherwise occur.
- B. If no packaging, loading or bracing requirements are specified by Buyer, Seller will comply with industry standards for the mode of transportation specified or utilized. If packaging, loading or bracing requirements are specified in Buyer's order, Seller will use commercially reasonable means to comply with such requirements.
- C. If material arrives at Buyer's facility in a damaged condition or should a shortage exist, Buyer must immediately notify the delivering carrier and Seller of such damage or shortage. Any loss during transportation will be for Buyer's account.
- D. If Buyer is picking up finished materials directly from Seller's facility, Buyer shall have sixty (60) days after receiving notice from Seller to pick up the finished materials. If Buyer fails to pick up the finished materials after such time, Seller may, in its sole discretion, charge to Buyer a storage fee of \$40 per ton per month unless otherwise agreed to by the parties.

## **11. CANCELLATION/REPEAT ORDERS/CHANGES**

- A. Cancellation – Upon acceptance of a purchase order and/or Buyer's firm forecast, Seller will order all the necessary raw materials to complete the purchase order or satisfy the firm forecast. If that order or firm forecast is reduced or cancelled at any time after Seller places an order for the raw materials, Seller reserves the right to invoice Buyer for the value of the unused materials and any disposal costs. Seller will use commercially reasonable efforts to divert the unused materials into another application prior to invoicing Buyer.
- B. Repeat Orders - If Buyer indicates repeat orders on a purchase order, but Buyer does not place repeat order(s) prompting Seller to manufacture within 6 months of the acceptance of such purchase order or before material shelf-life is expired (whichever comes first), Seller may invoice Buyer for the value of the remaining unused raw materials and any disposal costs.
- C. Pricing Basis - Seller's pricing is subject to change based on samples, specifications, and/or raw materials. When Buyer cannot provide specifications at time of quotation, Seller may provide estimates based on production efficiencies. If Buyer's order specification differs from Seller's agreed upon quoted requirements, Seller reserves the right to adjust the sale price and terms. This includes, but is not limited to, Buyer's change in required or actual inbound or outbound coil sizes that affect Seller's packaging costs, efficiencies, or yield.
- D. Default. Buyer will be in default if (a) Buyer fails to pay Seller any amount due under the Contract, (b) Buyer fails for a period of five days after receiving written notice from Seller to fulfill or perform any provisions of the Contract (other than the prior provision relating to due date of payments), (c) Buyer becomes insolvent or bankrupt, or a petition therefore is filed voluntarily or involuntarily and not dismissed within 30 days from filing, or (d) Buyer makes a general assignment for the benefit of its creditors, or a receiver is appointed, or a substantial part of Buyer's assets are attached seized under legal process and not released within 30 days thereafter.

- E. Upon Buyer's default, Seller may, at its option, without prejudice to any of its other rights or remedies, and without demand for payments past due, (a) make shipments subject to receipt of cash in advance, (b) terminate the Contract or any outstanding price quotations and declare immediately due and payable any obligations of Buyer for products previously shipped, notwithstanding any other provision in the Contract, (c) demand reclamation, or (d) suspend any further deliveries until the default is corrected, without releasing Buyer from its obligations under the Contract. In any event, Buyer shall remain liable for all loss and damage sustained by Seller because of Buyer's default.

## **12. FAILURE OF SELLER TO ENFORCE RIGHTS**

The forbearance or failure of Seller to enforce any of the terms and conditions of the contract or to exercise any right accruing from any default of Buyer shall not affect or impair Seller's rights in case such default continues or in case of any subsequent default of Buyer, and such forbearance or failure shall not constitute a waiver of other or future defaults of Buyer.

## **13. WARRANTIES EXCLUDED**

- A. EXCEPT AS STATED IN THE INTERNAL PRIME YIELD HEREIN, SELLER MAKES NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE MATERIALS COVERED BY THE CONTRACT, OR AGAINST INFRINGEMENT OF PATENT OR OTHER RIGHTS OF THIRD PARTIES, AND NO STATEMENT OF ANY REPRESENTATIVE OF SELLER SHALL EXTEND THE LIABILITY OF SELLER AS ESTABLISHED AND LIMITED BY THIS PARAGRAPH. SELLER DISCLAIMS ALL WARRANTIES, INCLUDING THE WARRANTY OF TITLE, FOR ANY PRODUCT SUPPLIED BY BUYER.
- B. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED IN THE ACKNOWLEDGEMENT TO BUYER'S ORDER OR CONTRACT. THE IMPLIED WARRANTY OF FITNESS AND ANY WARRANTIES OF MERCHANTABILITY OR WARRANTIES ARISING FROM USAGE OF TRADE ARE EXPRESSLY EXCLUDED AND ARE NOT COVERED BY ANY SUCH ACKNOWLEDGEMENT.
- C. Buyer assumes all risk and liability for results obtained by use of the goods covered by Buyer's order, whether used singly or in combination with other goods and whether or not used in accordance with Seller's recommendations, assistance or instructions.
- D. The exclusion of warranties can be waived or modified only by means of a writing signed by Seller which refers specifically to the exclusion and to Seller's acknowledgement to Buyer's order or contract and which states the date and number of such acknowledgement.

## **14. TITLE AND RISK OF LOSS**

Title to the goods and risk of loss passes to Buyer upon delivery of the goods by Seller to the carrier or, if Buyer has a bill and hold agreement in place with Seller, upon the invoice of finished goods in accordance with such bill and hold agreement.

## **15. OWNERSHIP**

Any technical information disclosed by either Buyer or Seller to the other during the term of the Contract is proprietary to each and may not be used by the other or disclosed by the other to any other entity without the written consent of the owner of such technical information. Any equipment, tools and technical information owned or developed by Seller, including without limitation, patents, trademarks, copyrights, know-how,

coating systems, print designs, test methods and print rolls and other proprietary information, and used for the supply of goods under the Contract shall remain the sole and exclusive property of Seller unless otherwise agreed to in writing with Buyer.

## **16. GOVERNING LAW**

All matters arising out of or relating to the Contract, including the materials being shipped, are governed by and construed in accordance with the laws of the State of Illinois without giving effect to any choice or conflict of law provision. Notwithstanding the foregoing, the laws of the Province of Ontario shall govern all matters arising out of or relating to the Toronto manufacturing facility.

## **17. ASSIGNMENT**

Buyer shall not assign any of its rights or delegate any of its obligations under the Contract without the prior written consent of Seller. Any purported assignment or delegation in violation of this provision is null and void. No assignment or delegation relieves Buyer of any of its obligations under the Contract.

## **18. SEVERABILITY**

If any term or provision of the Contract is determined to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

## **19. CONSENT**

Buyer shall permit Seller to photograph finished product and to use and publish such photographs in Seller's printed and electronic promotional materials. Buyer further consents to receipt and exchange of credit and other information about Buyer, including information contained in this Contract, by Seller with any credit bureau or credit reporting or rating agency or any other parties with whom Buyer has or proposes to have financial dealings with, from time to time. Buyer understands that this information may be used by Seller for the purpose of establishing and maintaining a relationship and offering products or services as permitted by law.

## **20. TRADEMARKS**

Quiet Steel ® Quiet Aluminum ®, MSC ®, Sound Trap ®, MSC Smart Steel ®, MSC Smart Aluminum ® RepliKote ®, Magnadamp ®, ElectroBrite ® and Deco Steel ® are registered trademarks of Seller. Any use or reference of these trademarks must be approved in writing by Seller.

### **Manufacturing Facilities**

MSC Walbridge  
30610 East Broadway  
Walbridge, OH 43465  
419-666-6130

MSC Elk Grove Village  
2250 East Pratt Blvd.  
Elk Grove Village, IL 60007-5995  
847-439-2210

MSC East Chicago  
4407 Railroad Ave.  
East Chicago, IN 43612  
219-378-1930

MSC Canfield  
460 W. Main St.  
Canfield, OH 44406  
330-533-3311

MSC Toronto  
1430 Martin Grove Rd.  
Toronto, ON, Canada M9W 4Y1  
416-743-7980

MSC Los Angeles  
3730 Capitol Dr.  
City of Industry, CA 90601  
562-699-4550

## **Table A: MSC Allowable Shortages Per Processing Pass**

**(Note: This table is not applicable to all Seller Plants due to varying processing capabilities)**

### **1 & 2-Coat Systems:**

<b>Description</b>	<b>Standard Gauge Steel or Aluminum</b>	<b>40,000#+</b>	<b>20K-39K#</b>	<b>10K-19K#</b>	<b>5K-9K#</b>	<b>2K-4K#</b>
Electro-galvanizing	Steel 0.008"-0.078" min;	3%	4%	6%	10%	20%
'Category 1' Single Coat Paint Systems	Steel 0.010"-0.044" min; Aluminum 0.020"-0.063" nom	3%	4%	6%	10%	20%
'Category 1' Double Coat Paint Systems	Steel 0.010"-0.044" min; Aluminum 0.020"-0.063" nom	6%	8%	12%	20%	40%
	<b>Heavy Gauge Steel or Aluminum</b>					
	Steel 0.045"-0.054" min	Add 1% to above standard gauge allowable				
	Steel 0.055" min and above	Add 2% to above standard gauge allowable				
	Aluminum 0.064"-0.089" nom	Add 3% to above standard gauge allowable				
	Aluminum 0.90"-1.24" nom	Add 5% to above standard gauge allowable				
	Aluminum 0.125"-0.160" nom	Add 6% to above standard gauge allowable				

For specialty items or other services, the following allowable adders shall be applied to the above table. Each item is stand alone and shall not be cumulative for total quarterly throughput.

Category 1 Prints (two & three color):	add 2% to above 'Category 1' allowable
Film Laminate:	refer to 'Category 1'
In-line Embosser:	40,000ft minimum order quantity refer to 'Category 1'
Plastisol Products:	refer to 'Category 1'
Multiple-Pass (3-Coat Systems) Steel:	40,000# & Above add refer to 'Category 2'
Multiple-Pass (3-Coat Systems) Aluminum:	<b><u>40,000# &amp; above Total</u></b>
	Alum. 0.064"-0.089" nom 9% allowable
	Alum. 0.90"-0.124" nom 12% allowable
	Alum. 0.125"-0.160" nom 15% allowable
Multiple-Pass (4-Coat Systems) :	special inquiry

### **Processing:**

Slitting, 3/8' total slit trim  
(unless specified):

20' & Above width add 3%

Sell price upcharges apply for orders resulting more than 3/8' total allowable slit trim.