

(MSC) Material Sciences Corporation
Terms & Conditions of Sale for Package (MSC Supplied Metal)
OR
Engineered Laminate Materials (Buyer Supplied through OEM Resale)

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

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”) supplies the entire material package to Buyer supplied metal through OEM Resale. 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

- A. Buyer supplied metal through OEM Resale must be received with “matching coil length +1/- 1%” for products that will be laminated.
- B. Coatings or lubes on incoming metal must be approved by Seller to ensure they can be removed or cleaned by Seller's processes. As an example, coils with many prelubes are not allowed into Seller's facilities.

5. MATERIAL SPECIFICATION

Quiet Steel[®], Quiet Aluminum[®], MSC Smart Steel[®], MSC Smart Aluminum[®], Sound Trap[®], Magnadamp[®] (collectively, “Seller Engineered Products”) are produced to an internal or Buyer specification. Seller shall

provide products that satisfy the applicable chemical, dimensional, physical and mechanical properties as specified in Buyer's accepted purchase order; provided, however, that Seller will not be responsible for claims of damaged or degraded material as a result of any downstream manufacturing not performed by Seller or any other process that is beyond the control of Seller, including without limitation, over temp E-coat ovens and chemical exposures. All post-processing should be discussed with Seller during the development process.

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. CLAIMS

- A. 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). When defects are over 2% of the incoming weight, 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.
- B. 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. Seller will not honor claims for Seller Engineered Products if coils have been stacked on the laminated coil for storage or transportation.
- C. 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.

8. 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.

9. PERMISSIBLE VARIATION IN SHIPMENT

When there is a continuity of the same substrate, metal thickness, width, coating system and color over a period of time, it is not necessary to follow any policy of undershipping a particular order. When one time purchases are made, or shipments are infrequent, the following privilege of overshipping or undershipping will exist. (Percentages independent of any weight differential caused by thick films(s).)

<u>VARIATION FROM ORDERED QUANTITY</u>	
500 Tons or more	5% over or 5% under
50 Tons to under 500 tons	10% over or 10% under
10 Tons to under 50 tons	15% over or 15% under
5 Tons to under 10 tons	25% over or 25% under
Under 5 tons	50% over or 50% under

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 Buyer is picking up finished materials directly from Seller's facility, Buyer shall have [] 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 \$[].

11. CANCELLATION/REPEAT ORDERS/CHANGES/END OF LIFE

- 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. End of Life –Buyer shall provide adequate notice to Seller so no excess raw materials will be ordered for any program. Any raw materials that have been ordered based on Buyer's forecast that are not shipped will result in cancellation fees and will be invoiced to Buyer.
- D. 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.

- E. 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.
- F. Upon Buyer's default, Seller may, at is 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 the Buyer.

13. WARRANTIES EXCLUDED

- A. 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 ® 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

(Note: Not all MSC Plants have the same processing capabilities)