

TERMS AND CONDITIONS FOR COMMERCIAL SERVICES

1. **SERVICES.** Customer engages Managed Facilities Solutions, LLC dba Managed Facility Solutions (“MFS”) as an independent contractor, and MFS agrees to act as an independent contractor to Customer to provide, arrange, and/or perform certain services. The services are defined in MFS’s project specific statement of work, quote, bill of lading, or proposal (collectively, “**SOW**”) and, upon written acceptance of any such SOW, issuance of a purchase order or other similar document, or acceptance of the services by Customer, these terms and conditions become binding upon the parties (the “**Services**”). All SOWs, change orders, bills of lading, and any other related documents and the Services provided are subject to these terms and conditions, whether such documents, if any, refer to these terms and conditions. In addition, if Services are provided prior to a change order being signed, Customer acknowledges and agrees that such Services shall be subject to these terms and conditions. Customer acknowledges and agrees that MFS may use affiliates and third parties to perform some of the Services hereunder. MFS’s use of any affiliates and third parties shall not relieve MFS of responsibility for performance of the Services. Customer represents that it is in lawful possession of the Inventory and that there are no existing liens or encumbrances on the Inventory. As used herein, the terms “**Product**”, “**Equipment**”, “**Inventory**” and/or “**Items**” collectively and individually mean furniture, fixtures, equipment, cartons, supplies, and material and non-material items or information handled by MFS or deposited with MFS. Customer agrees that all receipts and bills of lading issued by MFS shall be non-negotiable instruments.
2. **REGULATORY AUTHORITY.** MFS is licensed as a Motor Carrier of Property by the Federal Motor Carrier Safety Administration. As a licensed Motor Carrier of Property, MFS provides transportation in interstate and intrastate commerce. MFS may act in its capacity as a Motor Carrier of Property and/or warehouseman.
3. **TERM AND TERMINATION.** Either party may terminate these terms and conditions at any time upon thirty (30) days advance written notice to the other. Notwithstanding the foregoing, the following constitute a material default and either party may terminate these terms and conditions immediately by giving written notice to the other party if: (i) all or a substantial portion of the other party’s assets are transferred to an assignee for the benefit of creditors; (ii) a receiver, trustee in bankruptcy, or person with similar powers, has been appointed with respect to the other party; or (iii) the other party is generally not paying its debts as they become due. It shall be a material breach if Customer fails to pay MFS’s invoices within fifteen (15) days after the date due and payable under these terms and conditions.
4. **TRANSFER OF TITLE.** Customer may desire, as a means of recycling, destroying or otherwise discarding certain old or used Inventory (the “**Goods**”), to tender, in writing, to MFS all right, title and interest in the Goods. Customer acknowledges and agrees that by tendering all right, title and interest in the Goods to MFS, Customer (i) shall not have any claim or right to the Goods and (ii) is waiving all claims of ownership, possession, loss, damage, destruction, liquidation, conversion or profits from the sale of the Goods. Customer represents and warrants to MFS that it is authorized to deliver all right, title and interest in the Goods to MFS and, except as expressly prohibited by Customer, MFS may sell, use, donate, give away or otherwise dispose of the Goods as MFS elects in its sole and absolute discretion.
5. **INDEMNIFICATION; AND LIMITATION OF LIABILITY.**
 - a. Except as otherwise provided in this Section 5 with regard to loss or damage to Inventory, MFS agrees to indemnify, defend and hold Customer harmless from and against any and all third-party claims, liabilities, losses, damages, injuries or expenses to the extent caused by a material and uncured breach of these terms and conditions by MFS or MFS’s negligence or intentional misconduct.
 - b. Customer agrees to indemnify, defend and hold MFS harmless from and against all claims, liabilities, losses, damages, injuries or expenses to the extent caused by any material breach by Customer of these terms and conditions or Customer’s negligence or intentional misconduct. In addition, if Customer requests MFS to handle any Inventory that is owned by a third party, including, but not limited to, Customer’s employees or Customer’s clients, Customer shall indemnify, defend and hold MFS harmless from and against all damages, liability, claims, losses and expenses (including reasonable attorney fees) that are in excess of MFS’s contractual limitation of liability as selected by Customer and as documented in the SOW.
 - c. Customer acknowledges and agrees that the maximum liability of MFS for loss of, or damage to, Inventory is the lesser of (i) the actual loss or damage to the Inventory, which is measured by the reasonable cost to repair; (ii) the replacement cost of the Inventory as of the commencement of Services; (iii) sixty cents (USD 0.60) per pound per adversely affected Inventory item; or (iv) \$2,500 per SOW (“**Standard Cargo Coverage**”). MFS’s standard of care for Inventory shall be as determined under applicable state law and shall not be increased by any term of these terms and conditions. Notwithstanding the foregoing, Customer may choose to purchase MFS’s enhanced coverage, which coverage shall be subject to an extra charge and shall apply only if requested by Customer and confirmed by MFS, as documented in the SOW and under which MFS assumes responsibility for all risks of physical loss and/or damage to the Inventory unless specifically excluded herein and requires that Customer declare one hundred percent (100%) of the replacement value of the Inventory prior to commencement of Services (“**Enhanced Cargo Coverage**”). For purposes of clarity, MFS shall not have any liability for loss or damage to Goods and Customer shall not include the value, if any, of the Goods in any declaration of value(s) made by Customer hereunder.
 - d. The maximum recovery under Enhanced Cargo Coverage in all events is the lesser of: (i) the actual loss or damage to the Inventory, which will be measured by the reasonable costs to repair; (ii) the replacement cost of the Inventory as of the commencement of Services; or (iii) the value declared for the Inventory. Enhanced protection under Enhanced Cargo Coverage shall apply exclusively while the Inventory is in the care, custody and/or control of MFS, to include periods of transit, storage, packing, repacking, consolidation, deconsolidation, preparation, loading, unloading, distribution and/or redistribution operations as may be applicable. Enhanced Cargo Coverage results in MFS assuming responsibility for the Inventory as to all risks of physical loss or damage except the specifically excluded risks set forth below. Enhanced Cargo Coverage also includes MFS accepting responsibility for the following extra unanticipated costs and charges: (1) costs of destruction of damaged Inventory; (2) cost of expedited transportation for time-sensitive replacement parts for damaged Inventory; and (3) cost of surveying, testing, sorting and segregation of Inventory claimed for eligible loss and/or damage. Any costs and charges must be first approved by MFS in writing in order to be compensable by MFS.
 - e. MFS’s liability and/or responsibility under these terms and conditions shall never extend to: (i) mechanical and/or electrical derangement unless there is evidence of external damage to Inventory; (ii) breakage, scratching, denting, chipping, staining, rusting, discoloration, and/or wearing and tearing of used Inventory unless MFS does a pre-shipment survey and packs the Inventory; (iii) shortage from any shipment of used Inventory unless inventoried and packed by MFS; (iv) loss or damage arising from improper packing if not packed by MFS; (v) loss or damage arising from the negligence, act or omission of Customer, the owner, and/or shipper of the Inventory or anyone acting on their behalf, respectively, including, but not limited to, lack of proper service or preparation for storage or transport; (vi) concealed damage or shortage without physical evidence of tampering; (vii) any act of God or force majeure event (as that term is commonly defined), war, act of public enemy (including cyberattacks) or public authority, riots, or assailing thieves (acts of God *will* be covered if Enhanced Cargo Coverage is purchased), (viii) defect or inherent vice of Inventory (including susceptibility to damage because of atmospheric conditions such as temperature and humidity or changes therein); (ix) loss of or damage to excluded commodities itemized below and/or loss or damage to intangible Inventory, information represented by, stored on, or contained in any electronic Inventory, including any loss of data, personal health information, or personally identifiable information; (x) loss due to mold, mildew, insects, moth, vermin, including sickness, disease or other health condition; (xi) any customer fines, customer chargebacks, or monetary penalties of any loss extending beyond the direct physical loss or damage to Inventory; or (xii) any loss or damage beyond MFS’s control and/or for which MFS has no liability under law.

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- f. The liability and/or responsibility of MFS for loss or damage to Inventory shall comprise the aggregate and collective liability of MFS, its affiliates, subcontractors, engaged vendors and agents to the extent participating in the performance of Services.
- g. The following commodities are not eligible for Services, shall not be tendered for Services, and shall not be subject to any compensable claim: (i) any extraordinary valuable effects such as artwork, musical instruments, rare books, precious stones/metals, specimens, and biological materials; and (ii) any item having intangible and/or subjective value such as data, information, manuscripts, plans, documents, negotiable instruments, or currency.
- h. In no event shall MFS be liable for any consequential, special, incidental or punitive damages, including, but not limited to, loss of profit, revenue, overhead, inconvenience, use, contract, lease or production or increased costs arising out of or relating to these terms and conditions or the Services provided hereunder.
- 6. COMPENSATION.**
- a. Customer will pay MFS the fees, plus applicable sales tax, set forth in the SOW and change orders, if any. Unless otherwise communicated to Customer and contingent on Customer's creditworthiness, payment is due within fifteen (15) days after the date of the corresponding invoice. Customer shall pay a late charge of 1.5% per month on the unpaid account balance. If Customer pays an invoice by credit card, then an administrative fee of 3.0% of the invoiced amount will be added to the amount due, which additional amount Customer agrees to pay. The fees are subject to increase annually. Customer acknowledges and agrees that it shall reimburse MFS for all reasonable expenses incurred by MFS if Customer cancels or reschedules Services less than forty-eight (48) hours prior to the scheduled start date. MFS may immediately suspend all Services hereunder and refuse to grant Customer access to Inventory if the account of the Customer is not paid in accordance with these terms and conditions.
- b. Customer acknowledges and agrees that it shall be responsible for additional charges resulting from changes in the schedule, SOW and/or site conditions. All such changes shall be documented by a change order signed by an authorized Customer representative. Customer acknowledges and agrees that any Customer representative can sign change orders, to which Customer agrees to be bound. Customer acknowledges and agrees that change orders and charges related thereto constitute a payment obligation of Customer to MFS, regardless of when the change order is signed, either before or after the modified Services are performed.
- c. Customer acknowledges and agrees that MFS is the sole owner of any software which is used by MFS in its provision of Services including, but not limited to, databases which contain a listing or itemization of the Inventory, information related to the Services, and/or other relevant site conditions, information, and data. Customer does not acquire any right or interest in or to any such software or electronic databases and any utilization or access to MFS's software is expressly contingent upon Customer (including any of Customer's employees) acknowledgment and acceptance of MFS's standard EULA.
- 7. LIEN.** MFS shall have a possessory, statutory warehouseman's and/or carrier's lien on all Inventory placed with MFS for storage, transportation and/or handling for all lawful charges for Services, inclusive of any applicable miscellaneous charges and expenses in relation to the Services and/or Inventory.
- 8. CLAIMS.** MFS shall not be liable for loss or destruction of, or damage to, Inventory, unless the presence of damage to Inventory is notated by Customer on the delivery documentation and a claim is made in writing within ten (10) days after the date the Inventory was delivered or demand thereof is refused. Customer acknowledges and agrees that it bears the burden of proving that Inventory was damaged while in the care, custody and control of MFS. Before MFS will process a claim asserted under these terms and conditions, Customer must supplement its claim filing with documentation which evidences that MFS has been paid in full for all Services rendered. If claims are not timely submitted and/or if Customer fails to pay in full for Services, Customer's right to file a claim is effectively waived. MFS reserves the right to verify claimed loss or damage by a surveyor at MFS's expense, including the right to test, sort and segregate Inventory. In the event of damage and payment for Inventory at replacement cost, MFS shall be entitled to physical possession and ownership of the damaged Inventory for purposes of salvage. Legal action relating to a timely submitted claim must be brought within two years from the date of claim submission, or the right to pursue legal action shall be effectively waived.
- 9. FORCE MAJEURE.** MFS shall be excused from liability and/or performance of Services or in any aspect of these terms and conditions when prevented from doing so because of fire, flood, earthquake or other act of God or Customer, explosion or other casualty, accident, strike, labor dispute, inability to procure parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency, cyberattack, or any other act or condition beyond the control of MFS.
- 10. ASSIGNMENT; AMENDMENTS; MERGER; INTERPRETATION.** Customer shall not assign these terms and conditions without the express written consent of MFS. These terms and conditions constitutes the entire understanding of the parties and these terms and conditions may only be modified by a written change order or amendment signed on behalf of each party by an authorized representative. Any additional documents or purchase orders issued by either party shall be deemed to be for convenience purposes to comply with internal billing and documentation requirements and no such additional documents or any terms contained therein shall be binding on the parties. Customer acknowledges that MFS may desire to use Customer's name in MFS's marketing endeavors to indicate that Customer is doing business with MFS. Customer agrees that MFS can use Customer's name in such a manner; provided, however, that all marketing endeavors that do more than simply identify Customer as doing business with MFS must receive Customer's prior written consent. If a court of competent jurisdiction or a governmental authority should hold that any clause contained herein is unenforceable, then these terms and conditions shall be deemed amended or modified to exclude such clause and the remainder of these terms and conditions shall continue in full force and effect. No waiver by MFS of any breach by Customer shall be held to be a waiver of any other or subsequent breach. All rights conferred by these terms and conditions, shall be binding upon, inure to the benefit of, and be enforceable by or against the respective successors and permitted assigns of the parties hereto. MFS and Customer agree that the rule of construction that a contract be construed more strictly against the drafter shall not be applied in interpreting these terms and conditions.
- 11. JURISDICTION; VENUE; AND NOTICE.** The terms and conditions shall be construed in accordance with the laws of the state of California, excluding (i) its choice of law provisions and (ii) the United Nations Convention on Contracts for the International Sale of Goods. The parties agree that the appropriate state and federal courts situated in Santa Clara County, California shall be the exclusive forums for any legal controversy arising in connection with these terms and conditions. The parties hereby irrevocably and unconditionally consent to the exclusive jurisdiction of such courts for such purposes. Should any dispute arise out of or relate to these terms and conditions, the prevailing party shall be entitled to reimbursement by the other party of all attorney's reasonable fees and costs incurred, including fees and costs incurred on appeal. Any notice required or permitted hereunder shall be sent registered or certified mail, or by reputable national overnight courier, with delivery evidenced by written confirmation, to the addresses set forth in the SOW. In the case of MFS, all notices shall be copied to Attn: Legal Department, 128 Component Drive, San Jose, CA, 95131.