

Morgan Scientific, Inc. General Terms and Conditions of Business

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BY PURCHASING GOODS OR SERVICES FROM MORGAN SCIENTIFIC, INC. ("MSI"), YOU, THE CUSTOMER, ACKNOWLEDGE AND AGREE TO THE CURRENT VERSION OF THE MORGAN SCIENTIFIC, INC. GENERAL TERMS AND CONDITIONS OF BUSINESS (THE "CONTRACT"), ACCESSIBLE ON THE MSI WEBSITE AT: <HTTPS://WWW.MORGANSCI.COM/LEGAL/GENERAL-TERMS-CONDITIONS/>, INCLUDING THE TERMS AND CONDITIONS OF THE DOCUMENTS AND OTHER AGREEMENTS THAT ARE INCORPORATED INTO THE CONTRACT, BY REFERENCE. YOU ACKNOWLEDGE AND AGREE THAT MSI MAY REVISE AND UPDATE THE CONTRACT FROM TIME TO TIME AND WILL MAKE SUCH REVISED AND UPDATED VERSIONS OF THE CONTRACT AVAILABLE ON MSI'S WEBSITE, OR OTHERWISE PROVIDE YOU NOTICE OF THEM, AND YOUR CONTINUED BUSINESS WITH MSI SHALL REPRESENT YOUR ACCEPTANCE OF, AND AGREEMENT TO, THE THEN-CURRENT TERMS AND CONDITIONS OF BUSINESS. ANY AGREEMENT MADE BY AND BETWEEN MSI AND THE CUSTOMER SHALL INCORPORATE, AND BE SUBJECT TO, THE TERMS AND CONDITIONS OF THE CONTRACT. ALL OTHER TERMS AND CONDITIONS WHATSOEVER ARE EXCLUDED FROM THE CONTRACT, OR ANY VARIATION THEREOF, UNLESS EXPRESSLY ACCEPTED BY MSI IN WRITING.

1. General

- 1.1. Whereas Morgan Scientific, Inc. provides goods and services to end users, primarily in the area of pulmonary function testing, these General Terms and Conditions of Business are part of each contract entered into between MSI and you, the Customer (each a "Party," collectively the "Parties").
- 1.2. Any agreement made between MSI, and the Customer shall incorporate and be subject to the terms and conditions of the contract herein. All other terms and conditions whatsoever are excluded from the contract or any variation thereof unless expressly accepted by MSI in writing.

2. Establishing the Contract

- 2.1. Quotations by MSI are not offers and may be withdrawn without notice.
- 2.2. Orders may be submitted to MSI for consideration via various means, including but not limited to MSI's standard order form, statement of work, signed quotation (also "quote"), Customer purchase order, or similar ordering document that: (i) sets forth products and services ordered by the Customer and any associated fees, and (ii) has been agreed upon by manual or electronic signatures or agreed through other electronic means or, generally, submitted with clear intent to MSI. The contract with the Customer shall only come about if the Customer order has been confirmed in

- writing by MSI in via order confirmation, sales order, invoice, or similar written or electronic means that clearly indicates MSI's order acceptance or confirmation.
- 2.3. The effective date of the contract shall be the date set forth the order confirmation as per section 2.2.

3. Performance

- 3.1. Each Party shall bear the costs of the Party's performance of the contract and each party shall comply with all federal and state laws and regulations applicable to the Party's performance of the contract.

4. Prices

- 4.1. Unless otherwise agreed in writing by MSI all prices are quoted in United States Dollars.
- 4.2. The Customer shall bear the costs of transport, shipping, customs, packaging, and the like, unless otherwise agreed in writing.
- 4.3. It is the Customer's responsibility to arrange and pay for transport insurance.
- 4.4. If delivery and performance are postponed or delayed at the request or by reason of the Customer, the Customer shall pay all costs and expenses thereby incurred by MSI together with a reasonable charge for storage.
- 4.5. MSI reserves the right to adjust prices because of changes in market conditions, exchange rate fluctuations and the like.

5. Delivery

- 5.1. Except as set forth in any applicable group purchasing organization agreement or elsewhere in this contract, or other duly executed agreements between the Parties, or otherwise agreed in writing, MSI shall: (i) deliver products to the Customer at MSI's shipping dock as soon as commercially reasonable after establishing the contract and applicable requirements herein have been met by the Customer; and, (ii) arrange carriage of the products on the Customer's behalf from MSI's shipping dock to the Customer's facility and, in that case, the Customer shall pay MSI the freight charges that MSI incurs to ship the products.
- 5.2. The delivery period starts with conclusion of the contract, however, no earlier than the receipt of all documentation and information required from the Customer, unless otherwise agreed in writing.
- 5.3. Dates given by MSI for delivery and performance are statements of expectation and shall not be binding. Failure by MSI to meet any such dates shall not entitle the Customer to any damages for loss of profits or of production or any other consequential loss or damage (including but not restricted to loss of contracts, goodwill, or market share) which may be sustained or to treat the contract as repudiated or to rescind it or any related contract.
- 5.4. Partial deliveries are permitted and shall be viewed as independent transactions.

6. Product Inspection, Conformance, and Acceptance

- 6.1. The products should be inspected by the Customer immediately upon receipt. Any defects should be notified without delay in writing. MSI shall have the right, after receiving the notification of defects, to have the alleged defects checked by its own employees or experts. Notification of defects or complaints shall not confer the right

- to withhold payment. In the case of a damage, loss or delay during transport, claims should be directed by the Customer to the carrier within the deadline stipulated. If this does not occur, the Customer shall bear the responsibility for all consequences and damages that result. MSI may, in the case of justified notifications of defects that are correct in terms of form and timing and in the case of defects that are within the statute of limitations, undertake remedies to the products delivered in defective condition. In all other respects the legal status of limitation shall apply.
- 6.2. MSI products shall conform to the specifications of the product documentation. Product documentation means, collectively, the official product operating instructions, release notes and user manuals or technical specifications, technical bulletins, or similar, provided by MSI for the products, in electronic or written form.
 - 6.3. New technology. Diagnostic hardware marked as “Discontinued” is being replaced by new technology of substantially similar or better diagnostic capability, which MSI may substitute at the time of delivery at no additional charge. MSI shall provide the Customer written notice of its intent to substitute, and the Customer reserves the rights to: (i) obtain full specifications, technical information, and Product Documentation; (ii) request demonstration of new technology; and (iii) refuse to accept the substitution. In the case of the latter, the Customer’s Order shall be cancelled, and any monies paid for the discontinued items shall be refunded.
 - 6.4. A product will be deemed accepted by the Customer upon delivery or upon completion of the applicable MSI implementation services, provided that such product functions substantially in accordance with the specifications of its documentation. The Customer may reject a product only if the product fails to function substantially in accordance with the specifications of its documentation.

7. Risk, Title, Traceability

- 7.1. From the time MSI delivers a product until the Customer pays for the product in full, the Customer shall be responsible for any loss of or damage to the product from any cause except for loss caused by MSI’s negligence.
- 7.2. Title in the goods shall not pass to the Customer until payment is received by MSI for the goods, the subject matter of this contract, and there are no other amounts then being outstanding from the Customer to MSI in respect of any other goods supplied by MSI.
- 7.3. Once the goods ordered have been delivered, the Customer shall be responsible for assuming traceability based on the equipment serial number.

8. Terms of Payment

- 8.1. Payment terms, generally. MSI’s payment terms are wholly governed by MSI sales quotations, estimates, and/or invoices unless otherwise expressly accepted by MSI in writing. Terms vary by product category, including, but not limited to payments due: (i) upon order; (ii) in advance; or (iii) upon delivery.
- 8.2. For each product purchased, MSI shall deliver an invoice to Customer that identifies and states the price for each product.
- 8.3. Unless otherwise agreed by MSI in writing, or if a payment date is not otherwise specified, all accounts shall be paid without offset or deduction, within 30 days of the date of the MSI invoice.

- 8.4. The Customer shall make all payments in US dollars, unless otherwise specified, on or before the due date. If the Customer fails to make any payment when due, without limiting MSI's other rights and remedies: (i) MSI may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; and (ii) the Customer shall reimburse MSI for all reasonable costs incurred by MSI in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees.
- 8.5. Taxes. All fees are exclusive of taxes, and You shall pay or reimburse MSI for all taxes arising out of transactions contemplated by this Agreement. If You are required to withhold any tax for payments due, You shall gross up Your payments to MSI so that MSI receives sums due in full, free of any deductions. As reasonably requested, You will provide documentation to MSI showing that taxes have been paid to the relevant taxing authority. "Taxes" means any sales, VAT, use, and other taxes (other than taxes on MSI's income), export and import fees, customs duties and similar charges imposed by any government or other authority. You hereby confirm that MSI can rely on the name and address that You provide to MSI when You agree to the fees or in connection with Your payment method as being the place of supply for sales tax and income tax purposes or as being the place of supply for tax purposes where You have established Your business.
- 8.6. In the case of payment in arrears: (i) MSI shall be entitled to suspend work and postpone the fulfillment of its obligations until such overdue payment is made; and (ii) MSI shall be entitled, but not obligated, to withdraw from the contract and request that the products delivered be returned without delay.
- 8.7. No disputes as to quality or performance of the goods or services shall entitle the Customer to delay payment unless MSI shall agree liability thereon in an agreed sum or shall have been found liable by a Court of competent jurisdiction.
- 8.8. Advance payment. At its own discretion, MSI reserves the right to require advance payment on certain orders ("the advance payment") which shall be due at the time of submitting the order form. In addition, the following terms shall apply to advance payments:
- 8.8.1. If the advance payment is not paid on time, it shall bear interest under section 8.4 above as if MSI had rendered an invoice to the Customer 30 days before the date of MSI's receipt of the Customer's order documentation.
- 8.8.2. Without prejudice to section 18 below in the event that the Customer wrongfully terminates or purports to cancel the contract without the consent of the MSI before MSI has commenced work on the contract, MSI shall be entitled to retain the advance payment as liquidated damages and the parties hereto confirm that such sum and interest as aforesaid is a reasonable pre-estimate of MSI's likely losses in that event.
- 8.8.3. Where MSI has commenced work, the advance payment shall be deemed to be the minimum loss sustained by MSI.

- 8.8.4. The provisions of this section 8.8 may be waived wholly or in part at MSI's absolute discretion without affecting MSI's rights in respect of any other past or future contract with the Customer.
- 8.9. MSI reserves the right to implement a cash discount program so long as the pricing terms are clearly represented to the Customer and provided MSI complies with any applicable laws or regulations.
- 8.10. Third-party processing fees. In the case the Customer has elected to use a third party for the processing of invoices and payments without the expressed written agreement of MSI, MSI reserves the right to: (i) opt out of the use of the third-party processor and do business directly with the Customer; (ii) invoice the Customer for incurred third-party processing fees; and (iii) invoice the Customer administrative fees directly related to MSI's time and expense incurred as the result of third-party processing.

9. Terms of Services and Warranties

- 9.1. Generally, MSI shall warrant to the Customer only specifications and product properties that have been confirmed in writing, providing the Customer has complied with operation conditions as specified in the documentation.
- 9.2. MSI further warrants to Customer, as follows: (i) any technical support or service will be performed in accordance with industry practices, in a professional manner by properly trained and suitably skilled personnel, (ii) MSI is a corporation duly organized and in good standing under the laws of the jurisdiction of its incorporation, with full corporate power and authority to conduct its business in the manner contemplated by this contract and (iii) MSI is not sanctioned or excluded from participating in any federally funded health care programs, as provided in Sections 1128 and 1128A of the Social Security Act, 42 U.S.C. §1320a-7a. MSI shall notify the Customer immediately in the event it becomes sanctioned or excluded from any federally funded health care program(s). Such notification shall include the grounds for sanction or exclusion and the duration thereof.
- 9.3. MSI sells a variety of products and services to its customers, many of which carry their own terms, conditions, and warranty clauses, incorporated by reference below:
- 9.3.1. Limited Product Warranty. The latest version of the Limited Product Warranty can be found at <https://www.morgansci.com/legal/limited-warranty>.
- 9.3.2. Software. MSI's software warranty is part of the End User License Agreement found at <https://www.morgansci.com/legal/end-user-license-agreement/>.
- 9.3.3. Support and Software Maintenance. Software maintenance services and warranty information can be found in the Support and Software Maintenance Services, Supplemental Terms, accessible at <https://www.morgansci.com/legal/software-support-maintenance/>.
- 9.3.4. Professional Services. Professional services terms and warranty information can be found at <https://www.morgansci.com/legal/professional-services-agreement/>.
- 9.4. MSI is primarily a distributor of hardware products manufactured or supplied to MSI by other companies. In many of these cases, MSI's liability may be limited to the liability accepted by MSI's suppliers.

10. Restrictions on Use

- 10.1. The Customer shall use each product only: (i) for Customer's internal use; (ii) in the manner described in the product documentation; and (iii) in accordance with applicable laws and regulations. Customer shall not install or use on a product any software other than software licensed from MSI for use with that product. Customer shall not remove or alter any tags, labels or identifying markings placed by, or on behalf of, MSI on any products or packaging.

11. Product Software

- 11.1. Product software means all MSI-owned software (e.g., application software, embedded or integrated software, interface software, custom drivers). MSI does not sell its software and all title and intellectual property rights in and to the software is owned by MSI. MSI licenses software to the Customer solely pursuant to the terms of the End User License Agreement, incorporated by reference here:
<https://www.morgansci.com/legal/end-user-license-agreement/>.

12. Returns

- 12.1. Warranty returns for defective products. For defective products, warranty returns are governed by the terms of the Limited Product Warranty found at <https://www.morgansci.com/legal/limited-warranty>.
- 12.2. Order fulfillment errors. If MSI makes an error in fulfilling a Customer order, the error will be corrected via replacement or via return exchange, at MSI's discretion. If so requested by MSI, the Customer shall endeavor to cooperate in performing reasonable steps to return of the product(s) sent in error, such as boxing or affixing a return label which shall be issued at MSI's expense.
- 12.3. Elective, non-warranty returns. MSI will accept elective, non-warranty returns of purchased products under the following conditions:
 - 12.3.1. All returns require a return merchandise authorization (RMA) number be obtained from MSI Customer Support.
 - 12.3.2. Returns must occur within 90 days of purchase or have prior written permission.
 - 12.3.3. Returned items must be unused and in the original manufacturer packaging.
 - 12.3.4. Items damaged in transport should be referred to the package carrier of record to file a claim.
 - 12.3.5. All non-warranty returns are subject to a 20% restocking fee.
 - 12.3.6. All non-warranty returns require that shipping be paid by the returning party.
- 12.4. To initiate a non-warranty product return: (i) contact MSI Customer Support at support@morgansci.com or call toll free 1-800-525-5002 to obtain an RMA number; (ii) follow the RMA instructions as provided by Customer Support; (iii) retain the tracking number information of the package.
- 12.5. MSI is not responsible for return items lost or damaged in transport. Please allow 14 days from item receipt to receive an account credit or refund.
- 12.6. Return exceptions that will not be accepted: (i) any single use item that has been opened; (ii) customized or specialty sourced items; or (iii) Items obtained by promotional discount.

13. Liability

- 13.1. To the full extent allowed by law, MSI shall not be liable in contract tort or otherwise for any direct or indirect costs damages or expenses relating to damage to property

or injury or loss to any person, firm or company arising out of or occasioned by an error in design or manufacturer or any defect in or failure of the products or services supplied by MSI or occasioned by reason of any act or omission in its performance of any contract whether of manufacturer, supply, design, repair or otherwise and the Customer shall indemnify MSI in respect of any claims relating thereto.

14. Insurance

- 14.1. MSI shall maintain in full force and effect, at its sole expense, commercial general liability insurance with commercially reasonable limits commensurate with MSI's medical device categories, estimated risk exposure, and pursuant to MSI's Risk Management guidelines.

15. Copyright

- 15.1. Copyright in all original work executed by MSI shall remain the sole property of MSI unless otherwise agreed in writing.
- 15.2. The Customer shall indemnify MSI in respect of any claims costs and expenses arising out of any infringement of patent copyright design or other exclusive right by the company as a result of goods or services supplied to the Customer's specifications.

16. Exclusion of Consequential Damages

- 16.1. Neither party shall be liable to the other party for incidental, consequential or special damages, including, without limitation, loss of business or profits. This section shall not limit a party's right to indemnification from the other party pursuant to section 17.

17. Indemnity

- 17.1. The Customer hereby agrees fully and completely to indemnify MSI in respect of all claims (and any related damages, losses, costs or expenses or like matters) made by any person or body whatsoever (other than MSI itself) for injury to person or property or any other loss or damage caused by or in connection with or arising out of the use of the goods, the subject matter of this contract.

18. Cancellation

- 18.1. Cancellation of the contract requires explicit, written agreement, as well as the Customer's assumption of all expenses incurred by MSI.
- 18.2. Complaints concerning a partial delivery shall not entitle the Customer to cancel the remaining deliveries of an order.
- 18.3. Payment delays, as well as changes in the Customer's situation that might jeopardize payment of the goods, shall entitle MSI to withdraw from the contract at any time. The right to claim compensation for damages is explicitly reserved.
- 18.4. MSI shall be entitled to withdraw from the contract it has entered into, if rendering the services becomes impossible or cannot reasonably be expected due to a change in MSI's circumstances.

19. Confidentiality & Privacy

- 19.1. Except as required by law, neither Party shall disclose to a third party the terms of, or issue any public statement regarding, this contract without the other Party's prior written approval.
- 19.2. The terms of the Morgan Scientific, Inc. Privacy Policy shall apply to this contract, incorporated by reference, and found at <https://www.morgansci.com/legal/privacy>.

20. Customer Policies

- 20.1. MSI and its employees shall comply with customers reasonable security rules, policies and procedures provided in writing and agreed to in advance by MSI ("Customer Policies"). Customer will notify MSI in writing of any material changes to Customer Policies. Any terms of the Customer Policies that are in addition to or conflict with this contract (e.g., terms related to purchase, delivery, payment, termination) will have no force or effect unless adopted via written amendment to this contract signed by each Party.

21. Applicable Terms of GPO Agreement

- 21.1. If a Group Purchasing Organization Agreement ("GPO Agreement") is applicable to a Customer order as of the effective date of this contract and if the GPO Agreement states that identified terms of the GPO Agreement are incorporated into the Customer order related to that product, then the identified terms of the GPO Agreement shall be incorporated into the Customer order related to that product and shall supersede any conflicting terms or conditions applicable to that Customer order related to that product.

22. General

- 22.1. Force Majeure. If a Party is reasonably prevented from performing an obligation of this contract because of fire, flood, wind, earthquake, explosion or other disaster, acts of military authorities, acts of civil authorities unrelated to any violation of the law by the party, war, riot, insurrection, active terrorism or other causes beyond the parties reasonable control (collectively, a "force majeure event") then that Party shall not be in breach of this agreement during the period that Party is prevented from performing that obligation, provided that the party: (i) promptly delivers notice the other Party identifying the force majeure event; and (ii) immediately uses its best efforts to perform the obligation notwithstanding the force majeure event.
- 22.2. Law and jurisdiction. This contract shall be governed by and construed in all respects in accordance with the Commonwealth of Massachusetts. All disputes under or otherwise arising from this contract shall be subject only to the jurisdiction of the laws of the Commonwealth of Massachusetts.
- 22.3. Severance. If any provision or condition herein shall be deemed void for any reason whatsoever but would be valid if part of the wording herein were deleted such condition or provision shall apply with such modification as shall make it valid and effective.
- 22.4. Waiver. The rights and remedies of MSI shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by MSI nor by any failure or delay by MSI in asserting or exercising any such rights or remedies.

- 22.5. Headings. The headings of these Conditions are for convenience only and shall have no effect on their interpretation.
- 22.6. Notice. Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as the party may from time to time notify in writing and shall be deemed to have been served, if sent by post, 48 hours after posting.

23. Legal Status & Contact

- 23.1. Morgan Scientific, Inc. is a privately owned corporation registered in the Commonwealth of Massachusetts, United States of America.
- 23.2. Address: Morgan Scientific, Inc., Attn: VP, Business Operations, 151 Essex St, 8th Flr, Haverhill, MA, 01832; Email: legal@morgansci.com; Website: www.morgansci.com.