



# Terms and Conditions of Sale

The undersigned ("Purchaser") and MultiQuip Inc. ("Seller") agree that in consideration of the covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all sales of goods, including equipment and parts, (collectively "Goods") by the Seller to Purchaser are expressly made subject to the following terms and conditions ("Agreement"):

**1. Payment Terms.** Payment terms are net 30 days for Goods, unless the invoice states otherwise. If payment is made after the due date, Seller may impose a monthly finance charge at of the lesser of 1.5% per month or maximum applicable rate set by law. Seller may submit an invoice to Purchaser for partial shipment(s).

**2. Setoff.** Purchaser shall not, and acknowledges that it will have no right, under this Agreement, any other agreement, document or law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller, whether relating to Seller's breach or non-performance of this Agreement or any other agreement between Purchaser and Seller, or otherwise.

**3. Prices.** Seller has the right, in its sole discretion, to increase the price(s) for the Good(s) before delivery of the Good(s) to a carrier for shipment to Purchaser. Seller will notify Purchaser of the price increase at least 60 days prior to shipment. Purchaser will have 30 days from its deemed receipt of the notice per Section 16 to accept the new price(s) or cancel its purchase of the subject Good(s), which acceptance must be in writing received by Seller by the 30th day per in Section 16. Verbal acceptance will not be accepted, and silence will be deemed to be cancellation. In the event, Purchaser accepts the subject price increase(s), the Seller's Order Confirmation shall be construed as if the increased price(s) were originally inserted therein; and Purchaser shall be so invoiced by Seller, and Purchaser shall pay on the basis of such increased price(s).

**4. Taxes.** Purchaser agrees to pay all governmental (e.g. federal, provincial, municipal, state, city and local) use, sales, excise, value-added, and similar taxes, duties and charges applicable to the sale or use of the Goods sold to Purchaser. Upon request, Purchaser will provide to Seller a copy of its current resale certificate. Purchaser shall not be responsible for any taxes imposed on Seller's income, revenues, gross receipts, personal or real property, or other assets. Taxes incurred on third party shipments are the responsibility of the Purchaser.

**5. Delivery; Title and Risk of Loss.** Title and risk of loss and damage pass to Purchaser upon delivery of the Goods to carrier at Seller's designated facility Terms of shipment are FOB Seller's designated facility or as set forth in Seller's Freight Policy at its website at [multiquip.com/freight-policy](http://multiquip.com/freight-policy) unless otherwise agreed by Seller in writing. All quoted delivery dates are approximate. When any method of shipment other than Seller's regular method is used at the request of Purchaser (e.g. drop shipments, parcel post, express and air shipments), the freight charges and any special handling/packaging charges of carrier will be paid by Purchaser. Seller has the right to change the terms of shipping in its sole discretion, which will be described in its invoice for the sale of the Goods.

**6. Purchase Money Security Interest.** As collateral security for the payment of the purchase price of the Goods, the Purchaser hereby grants to the Seller a lien on and security interest in and to all of the right, title, and interest of the Purchaser in the Goods, wherever located, and

whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase-money security interest under the California Uniform Commercial Code.

**7. Claims; Rejection or Acceptance by Purchaser.** In the event Purchaser does not within 10 days of receipt of Goods (a) notify Seller's Customer Service in writing that the Goods shipped are different that those identified in Purchaser's purchase order or the label or packaging incorrectly identifies its contents ("Nonconforming") and (b) furnish such written evidence or other documentation as required by Seller ("Evidence"), Purchaser will be deemed to have accepted the Goods and waived its right to reject or revoke the acceptance of the subject Goods. If Purchaser duly notifies Seller of any Nonconforming Goods and provides Seller the required Evidence, Seller shall in its sole discretion (i) replace such Goods with conforming Goods, or (ii) credit or refund the price for such Goods, together with any reasonable shipping and handling expenses incurred by Purchaser in connection therewith. Purchaser shall ship, at Seller's expense and risk of loss, the Nonconforming Goods to Seller's designated facility. If Seller exercises its option to replace the Goods, Seller shall, after receiving Purchaser's shipment of Nonconforming Goods, ship to Purchaser at Seller's expense and risk of loss the replacement Goods to the Purchaser's 'ship-to' address. Purchaser acknowledges and agrees that the remedies set forth in this Section 7 are Purchaser's sole and exclusive remedies for the delivery of Nonconforming Goods.

**8. Warranty.** There are no warranties, express or implied, by Seller on Goods except the express limited warranty contained in its New Product Limited Warranty, which can be obtained at [multiquip.com/warranty-terms](http://multiquip.com/warranty-terms).

**9. Depictions of and Changes to Goods.** Depictions of Goods (photos, catalogues, etc.) are not intended and shall not be taken as a precise description of Goods offered for sale. Seller reserves the right to make changes in design, specifications or materials in its discretion without imposing any obligation upon itself to install the same on Goods previously sold.

**10. Defective Goods.** Liability of Seller for defective Goods is strictly limited to, in Seller's sole discretion, repairing or replacing the Goods or crediting Purchaser the purchase price of the defective Goods at the pro rata contract rate upon Seller's receipt of the defective Goods. Under no circumstance will Seller be liable for loss, damage or injury of any nature, whether direct or indirect, consequential or incidental, in connection with or resulting from use of the defective Goods. Purchaser acknowledges and agrees that the remedies set forth in this Section 10 are Purchaser's sole and exclusive remedies and Seller's entire liability for any breach of Seller's New Product Limited Warranty referenced in Section 8.

**11. Cancellation.** An order once placed with and accepted by Seller can be cancelled only with Seller's written consent. Seller may elect to cancel any order or portions thereof at any time, even though previously accepted by Seller.

**12. Returned Goods.** An approved Return Material Authorization (RMA) must be obtained from Seller prior to shipment of return Goods, which approval is in Seller's sole discretion. A copy of the RMA must accompany the return shipment. Goods must be in new and resalable condition in the original package. The following Goods are not returnable: obsolete

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or discontinued Goods; parts with a limited shelf life, (e.g. gaskets, seals, O-rings, or rubber parts); items with an invoice price of less than \$25.00; paints, chemicals, and lubricants; electronic parts and special order Goods. Credit for returned Goods will be issued at net purchase price less 15% restocking charge. Returns will be shipped FOB to Seller's designated location with freight prepaid at Purchaser's expense.

**13. Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in performing any term or condition of this Agreement (except for any obligations of Purchaser to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, or OTHER POTENTIAL DISASTER(S) OR CATASTROPHE(S), SUCH AS EPIDEMICS; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances, such as supply chain interruptions; (h) shortage of adequate power or transportation facilities; and (i) other events beyond the control of the Impacted Party. The Impacted Party shall use diligent, reasonable efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 90 consecutive days following the commencement of the cause of the Force Majeure Event, either party may thereafter terminate this Agreement upon 10 days' written notice.

**14. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE (INCLUDING GENERAL OR SPECIAL DAMAGES FOR LOST PROFITS OR LOSS OF USE) OR CONTINGENT DAMAGES FOR ANY REASON (COLLECTIVELY "EXCLUDED DAMAGES"), WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE AND WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH EXCLUDED DAMAGES. EACH PARTY HERETO DISCLAIMS AND WAIVES ANY LIABILITY OF THE OTHER FOR ANY EXCLUDED DAMAGES.

**15. Compliance with Law.** Purchaser shall comply with all applicable laws, regulations and ordinances. Purchaser shall maintain in effect all licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Purchaser shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Purchaser. Purchaser assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

**16. Notices.** All notices, requests and demands to Seller shall be in writing and shall be deemed received (a) when delivered by hand; (b) when received by the addressee if sent by a recognized overnight courier; (c) on the date sent by e-mail if sent during normal business hours of the recipient, and on the next business day if sent after such normal business hours; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

**17. General Provisions.** The terms and conditions contained herein constitute the entire agreement between the parties and will supersede and prevail over any provisions, terms and conditions contained on any confirmation order, purchase order or any other writing from the Purchaser regardless of when submitted. The rights of the parties will be governed exclusively by the terms and conditions herein and, which by their nature are intended to survive the cancellation or completion of the sale of the Goods, shall continue as valid and enforceable rights and obligations of the parties, as applicable, notwithstanding such cancellation or termination. However, if a written contract signed by both parties is in existence covering the sale of Goods hereunder, the terms and conditions of said contract shall prevail to the extent they are inconsistent with this Agreement. No agent, salesman or any other person has any authority to obligate Seller with regard to any terms or conditions not contained herein. The terms and conditions contained herein may not be modified, changed, amended or waived by Purchaser, unless in writing signed by an authorized representative of Seller. If any term or provision of this Agreement 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 this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**18. Governing Law; Venue; Jurisdiction; Attorneys' Fees.** This Agreement is governed by and construed in accordance with the laws of the State of California, excluding any choice of law rules that may direct the application of another jurisdiction. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. In the event of litigation or other efforts to enforce a party's rights or remedies in connection with this Agreement, it is agreed that venue for such action will be in Orange County, California under California law, and Purchaser expressly consents to the exclusive personal and subject matter jurisdiction and proper venue of the Courts of the State of California and the United States District Court for the Central District of California. The prevailing party therein shall be entitled to recover its reasonable attorneys' fees and costs awarded by the court, including in any action on appeal.

**19. Credit.** Purchaser authorizes Seller to verify bank and trade references and to utilize credit report services to investigate and extend credit.

**20. Electronic Copies of Documents.** The Purchaser agrees that an electronic version of any document(s) signed by the Purchaser and provided to Seller may be substituted for all purposes as though it was an original. Further, transactions consummated through Seller's website will be binding on Purchaser as indicated therein.

**21. Language.** It is the express intent of the parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only. *Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.* In the event these terms and conditions are translated in any other language, the English language version of these terms and conditions and any notice or other document relating to the foregoing shall prevail over any other translation of these terms and conditions if there is a conflict.