

## Terms and Conditions

Except as otherwise agreed by Masterclock, Inc, or its affiliates and/or subsidiaries (“Seller”) in writing, the following terms and conditions (“Agreement”) will apply to all orders received and all sales made by Seller.

**1. GENERAL:** The terms and conditions set forth herein as well as any terms and conditions printed on the face of Seller’s order acknowledgment constitute the sole and entire agreement between Seller and the buyer (“Buyer”) of goods and/or services from Seller with respect to the subject matter hereof. Any term or condition in any printed form of Buyer, including but not limited to any order, confirmation or other document, which is in any way inconsistent with or in addition to the terms and conditions hereof is hereby expressly rejected, and Seller’s acceptance of any offer or order of Buyer is hereby expressly made in reliance on Buyer’s assent to all terms and conditions hereof. If Buyer objects to any of the terms or conditions hereof, such objection must be made in writing and received by Seller within ten (10) calendar days after placing a purchase order. Failure to so object shall be conclusively deemed to be acceptance of the terms and conditions hereof. Seller’s failure to object to any term or condition in any oral or written communication from Buyer, whether delivered before or after the date hereof, shall not constitute an acceptance thereof or a waiver of any term or condition hereof. Electronic commerce transactions between Buyer and Seller will be solely governed by this Agreement, and any terms and conditions on Buyer’s internet site will be null and void and of no legal effect on Seller. All correspondence pertaining to this order, or to any of the terms and conditions covered by this order, will be in the English language. Goods are provided pursuant to Seller’s part numbers.

**2. TAXES, CUSTOMS FEES, TARIFFS, DUTIES:** Except as otherwise expressly stated herein, the prices do not include federal, state or local sales, use, goods and services, excise or other similar taxes applicable to goods or services involved in this transaction. All such taxes shall be paid by Buyer, unless Buyer provides Seller with evidence satisfactory to Seller of exemption from such taxes. When Seller is required by law or regulation to collect such taxes, Seller will add such taxes to the sale price of the goods or services. All import Customs Fees, Tariff’s & Duties, etc. are the responsibility of the Purchaser.

**3. PRICES:** The sale price(s) for goods delivered hereunder (“Products”) are accepted as stated on Seller’s order acknowledgment and will include the cost of Seller’s usual factory tests and inspections. The prices set forth herein are not subject to trade or other discounts. All quotations of Seller expire thirty (30) calendar days from the date given. The price to Buyer for any Products shall be the applicable published price or valid quote in effect at the time of order entry. All prices are subject to change without notice and may be subject to any increase which may be in effect on the date of shipment. Except as otherwise expressly stated herein, any service calls or other service work performed by Seller

shall be at Buyer's expense in accordance with Seller's standard rates for such services. Buyer acknowledges that the pricing of the Products and services and the other terms of this Agreement have been set based on the sections of this Agreement providing for an agreed allocation of the risk for any defective Products or services between the parties. Buyer further acknowledges that the pricing and terms would have been different if there had been a different allocation of the risk.

#### **4. DELIVERY, TITLE PASSAGE AND INSURANCE:**

**(a) Delivery:** Delivery or shipping dates are approximate only and merely represent Seller's best estimate of the time required to make delivery or shipment. Time is not of the essence with respect to the transaction(s) covered by this Agreement, except with respect to Buyer's obligation to make all related payments. Seller's obligations hereunder will be dependent upon Seller's ability to obtain the necessary raw materials. Seller will not be liable for any loss or expense (incidental, indirect, economic, consequential or otherwise) incurred by Buyer as a result of any delay in delivery for any reason other than arbitrary refusal by Seller to perform. Seller reserves the right to make partial deliveries and ship approximately forty (40) calendar days in advance of shipping date. Lead time on orders and rescheduling are governed at Seller's discretion.

**(b) Title Passage for Sales:** Except as otherwise expressly stated herein, all deliveries hereunder will be FCA Seller's by Buyer for Seller's account will be promptly remitted to Seller in U.S. Dollars. Any insurance policies purchased, whether by Buyer or Seller, will be for the benefit of Seller, whether or not Seller is named as an insured in such policies, until title and risk of loss or damage to the Products pass to Buyer. Where possible, all insurance policies will provide that they are for the benefit of Seller and Buyer "as their interests may appear."

**5. BUYER'S FINANCIAL CONDITION:** This Agreement and all shipments made hereunder shall at all times be subject to the approval by Seller of Buyer's financial condition. If the financial condition of Buyer at any time becomes unsatisfactory to Seller, in Seller's sole discretion, or if Buyer fails to make any payment when due, in addition to any other rights Seller may have, Seller may defer or decline to make any shipment or shipments hereunder or may condition any such shipment upon receipt of satisfactory security or cash payments in advance.

**6. PAYMENT TERMS:** Except as otherwise expressly stated herein, Seller shall invoice Buyer at the time of shipment of each installment on payment terms of cash in advance, except where open account credit is established and maintained to Seller's satisfaction, in which case payment terms shall be net thirty (30) calendar days from date of shipment. All payments shall be in U.S. Dollars. Buyer shall make all payments as provided herein without regard to whether Buyer has made or may make any inspection or use of any Products. No discounts or setoffs shall be made by Buyer against any invoices unless approved in advance by Seller. Any invoiced amount which is not paid when due may bear interest at

the rate of one and one-half percent (1.5%) per month or the highest rate then permitted by law, whichever is less, until paid in full. Seller reserves the right to exercise any of its lawful remedies if Buyer does not make payments when due. Buyer shall promptly reimburse Seller for all costs and expenses, including reasonable attorneys' fees, incurred by Seller in collecting sums due it hereunder.

**7. SECURITY INTEREST:** Buyer hereby grants to Seller a security interest in all Products and all proceeds and products thereof until all amounts due or to become due hereunder have been paid. Any repossession and removal of Products shall be without prejudice to any of Seller's other remedies at law or in equity. Buyer agrees, at any time and without further consideration, to do or cause to be done, executed and delivered, all such further acts and instruments (including without limitation financing statements appropriate for filing) as Seller may reasonably request in order to perfect Seller's security interest.

**8. FORCE MAJEURE:** Seller shall not be liable for delay in performance or nonperformance of any of its obligations hereunder, in whole or in part, if such performance is rendered impracticable by the occurrence of any contingency or condition beyond the control of either Seller or Seller's suppliers, including without limitation war, sabotage, embargo, riot, terrorism, or other civil commotion, failure or delay in transportation, act of any government or any court or administrative agency thereof (whether or not such action proves to be invalid), labor dispute (whether or not involving Seller's employees), accident, fire, explosion, flood, earthquake or other casualty, shortage of labor, fuel, energy, raw materials or machinery or technical failure. If any such contingency or condition occurs, Seller may allocate production and deliveries in any reasonable manner and may include in such allocation any regular customers, whether or not then under contract, and Seller's own requirements. If, as a result of any such contingency, Seller's performance is delayed by more than six (6) months, the prices set forth herein shall be subject to appropriate adjustment by Seller.

**9. LIMITED WARRANTY:** Subject to Masterclock, Inc. warranty as stated at <http://www.masterclock.com/support/warranty/>

**10. SEVERABILITY CLAUSE:** Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of The United States of America or the State of Missouri, such invalidation of such part or portion of this Agreement should not invalidate the remaining portions thereof, and they shall remain in full force and effect. It is further agreed that if part of the Agreement is determined invalid, either party may open negotiations solely with respect to a substitute for such Article, Section, or portion, within two (2) weeks after a ruling has been made.



## QUESTIONS? CONTACT US:

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