

MM TECHNICS, LP
TERMS AND CONDITIONS OF SALE

NOTICE: THIS TRANSACTION BETWEEN MM TECHNICS, LP (“**SELLER**”) AND BUYER, AND ALL DOCUMENTS PERTAINING TO IT, IS SUBJECT TO AND CONDITIONED UPON THESE TERMS AND CONDITIONS OF SALE (“**TERMS**”) AND THESE TERMS ARE INCORPORATED BY REFERENCE INTO AND ARE A PART OF ALL TRANSACTIONS BETWEEN SELLER AND BUYER.

1. Order Process; Acceptance; Additional or Conflicting Terms.

(a) “**Sales Documents**” include any quotation, proposal, statement of work (“**SOW**”) order confirmation, order acceptance and invoice issued in writing by (including via email) by Seller and signed (including electronically) by an authorized representative of Seller. Buyer’s purchase of Products (defined below) from Seller, and any Services (defined below) Seller provides, will be governed solely by these Terms and the Sales Documents (collectively, the “**Contract**”). In no event will Buyer’s terms in any purchase order or otherwise apply to, nor will Buyer’s proposed additional or different terms modify, the Contract unless Seller expressly includes the proposed terms in the Sales Documents. **Seller hereby objects to and rejects any additional or different terms or conditions proposed by Buyer or contained in any purchase order, commercial document or other correspondence from Buyer, regardless of any knowledge Seller may have of such terms, and such terms will not bind Seller or be applicable to the transaction (even if Buyer’s purchase order is referenced in the Sales Documents).** If any of these Terms conflict with the Sales Documents, the specific terms in the applicable Sales Documents will prevail over these Terms. The applicable terms of any revised or later Sales Document will control over such terms in a prior, similar Sales Document. No other terms or changes, modifications, amendments or waivers of any terms in a Contract will apply to Seller unless in writing and signed by an authorized officer of Seller.

(b) All sales of products and any other goods sold by Seller (individually, “**Product**” and collectively, “**Products**”) and any services (“**Services**”) of Seller are contracts entered into in South Carolina and then only in accordance with the Sales Documents.

(c) Seller will sell Products and provide Services to Buyer in the quantities and at the times set forth in the Sales Documents. Buyer may order Products by submitting written purchase orders that reference Product(s), quantity per Product, and requested delivery date. Buyer may request Services by submitting an SOW at least four (4) weeks prior to the requested performance date describing Services and referencing a performance date. All orders and requests submitted to Seller for Products or Services, are subject to acceptance by Seller and only the terms of the Sales Documents will apply. For Services, each SOW must also be signed by an officer of Ziel Inc. to be effective. Seller’s acceptance may be in writing (such as via an order confirmation), including via email, or by delivery of Products to Buyer or performance of Services for Buyer.

(d) Buyer may not cancel or change a Contract except with the prior written consent of Seller. Seller may change a Sales Document at any time to correct mathematical or clerical errors.

2. Prices; Payment.

(a) All prices for Products and Services will be as specified by Seller in its Sales Documents. If no price has been specified in the Sales Document, the price will be Seller’s standard price in its catalogs or price lists in effect at the time of delivery. All prices from Seller must be in writing and may be changed at any time. Buyer will also reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of Services.

(b) Unless expressly specified otherwise in the Sales Documents, all prices are Ex Works (Incoterms 2010) Seller’s location in Wenden-Altenhof, Germany, or Seller’s facility located in Prosperity, South Carolina (USA), as the case may be, and the prices do not include any sales, use, personal property, excise, transfer or other tax, nor any duties or assessment, arising out of or related to Products, Services, or their respective purchase and sale which may be imposed by any governmental authority, all of which will be the obligation of, and paid by, Buyer. In the event that Seller pays any such tax, duty or assessment, Buyer will reimburse Seller in accordance with the terms of **Section 2(c)** hereof. Buyer is responsible for obtaining and providing to Seller any certificate of exemption or similar document required to exempt any sale from sales, use or similar tax liability.

(c) Unless expressly specified otherwise in the Sales Documents, Buyer will pay all amounts due in full, and without deduction or setoff within thirty (30) days after the date of the invoice, regardless of any dispute or controversy that may arise. Buyer will make all payments under a Contract by wire transfer, cash, credit card, check, or such other payment method as Seller may specify from time to time and in U.S. dollars. Buyer is responsible for all wire transfer and other bank fees. The date of payment will be the date Seller receives payment in full. If at any time, in its sole discretion, Seller has any doubt or concern as to Buyer's financial standing or ability to perform its obligations, Seller may decline to make shipments, except upon receipt of a deposit or other satisfactory security or cash before shipment. Buyer will not withhold, offset or recoup any amounts it owes to Seller under a transaction, Contract, or otherwise against any other amount Buyer claims Seller owes to it.

(d) If Buyer fails to make any payments as and when due or otherwise defaults (i) interest will accrue from the date the payment was due until payment is received in full at the lower of 1.5% per month or the maximum amount allowed by applicable law and (ii) Seller may take any or all of the following actions: (1) suspend performance; (2) terminate a Contract for default; (3) require Buyer to pay the full Contract price and any interest, fees and other charges immediately; and (3) take any other actions or pursue any other rights or remedies under applicable law. Buyer will further reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees and expenses. Failure by Seller to charge interest on late payments or to exercise its other rights and remedies will not be construed as a waiver of any other legal or equitable remedies.

3. Termination or Suspension. Without limiting Seller's other rights and remedies available under a Contract, applicable law or in equity, Seller may suspend or terminate performance and delivery, if: (a) Buyer fails to perform or observe any other obligations under a Contract between Seller and Buyer; (b) there is a change in the control or management of Buyer; (c) Buyer ceases to conduct its operation in the normal course of business; (e) Buyer becomes insolvent or files for bankruptcy or has a bankruptcy proceeding filed against it; or (d) Buyer makes an assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of Buyer's property.

4. Delivery. Unless otherwise stated in Seller's order confirmation, all deliveries of Products are Ex Works (Incoterms 2010) Seller's location in Wenden-Altenhof, Germany or such other location as designated by Seller. The prices do not include any transportation, insurance, packaging or installation costs and Buyer is responsible for all such costs. Seller may make partial or early deliveries. Notwithstanding any requested delivery dates by Buyer, the delivery date in Seller's order confirmation will control. Any shipping or delivery schedule, quotation, forecast or commitment is only an estimate and Seller will not be liable for any delay or failure to deliver all or any part of any order for any reason. Seller will not be responsible for any damage to Products caused by a carrier and Buyer's sole recourse for such damage will be against the carrier.

5. Acceptance.

- (a) Buyer will inspect all Products immediately upon their delivery and prior to use or resale. Immediately and no later than fourteen (14) days after delivery of a Product, Buyer must give written notice to Seller of any claim by Buyer based upon any alleged shortage, defect or discrepancy of Products sold, and the notice must indicate the basis of the claim in detail.
- (b) Seller will inform Buyer when Services are completed, generally by providing Buyer with a written statement of completion (each, a "**Certificate of Completion**"). Buyer will inspect Services immediately upon completion and prior to any use by Buyer of serviced Products. Within ten (10) days after Services are completed, Buyer must notify Seller in writing (by signing and returning the applicable Certificate of Completion if one was provided by Seller): (i) unconditionally accepting Services or (ii) notifying Seller of any claim by Buyer based upon any alleged fault, defect or discrepancy in Services provided and indicate the basis of the claim in detail.
- (c) Buyer's failure to comply within the time specified in this **Section 5** constitutes irrevocable acceptance by Buyer of Products delivered or Services provided and will bind Buyer to pay to Seller the full price of such Products or Services. Products sold will not be returned without Seller's prior written consent and then only in accordance with Seller's then return policies.

6. **Limited Warranty.**

(a) Subject to the provisions in these Terms and in the Sales Documents, Seller warrants that (i) when Products are delivered to Buyer, Products will materially comply with Seller's published specifications for such Products and (ii) when Services are performed, Services will have been performed in a workmanlike manner ("**Limited Warranty**"). Buyer must make (i) any Product Warranty Claim (defined in **Section 8(a)** below) within twelve (12) months after the delivery of a Product or (ii) any Services Warranty Claim (defined in **Section 8(b)** below) within ten (10) days after Buyer is notified that Services are completed (each, a "**Warranty Period**"). The Limited Warranty is conditioned upon Buyer following the claims process then in effect, which Seller may change from time to time. The Limited Warranty is limited to the Buyer only and is non-transferable. Buyer is solely responsible for proper selection of Products and their use and application, and Buyer has tested Products or otherwise determined their suitability for Buyer's intended use.

(b) Any depictions, projections, diagrams, illustrations and other descriptions or other information from Seller or its affiliates, applicable to Products, Services or a Contract, whether included in catalogs or otherwise, are descriptions or approximations only, and do not constitute any specifications, representations, warranties, or guarantees, implicitly or explicitly.

(c) EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY PROVIDED IN **SECTION 6(a)** ABOVE, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, STATUTORY OR OTHERWISE, REGARDING OR RELATING TO PRODUCTS OR SERVICES AND SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO PRODUCTS AND SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(d) No employee, dealer, distributor, sales representative, or any other person or entity is authorized to offer any different or additional warranties or remedies, or to change the Limited Warranty, without the signature of an authorized officer of Seller.

7. **Limited Warranty Exclusions.** The Limited Warranty does not cover: (a) damage to Products during or after delivery; (b) normal wear and tear or items that are expendable; (c) user error; (d) use under circumstances exceeding Seller's specifications or limitations or contrary to any instructions or information from Seller (including those contained in Seller's operating or maintenance manuals as supplemented from time to time by Seller); (e) unauthorized or improper installation, repair, modification or alteration; (f) use of non-original components; (g) Products sold based on Buyer's instructions, design, plans or other non-Seller specifications; (h) failure to provide reasonable and necessary maintenance; (i) improper storage; (j) corrosion, erosion, abrasion or similar causes; and (k) accidents.

8. **Buyer's Limited Warranty Claims.**

(a) Buyer must give Seller written notice of any Products which Buyer alleges do not conform to the Limited Warranty, specifying the alleged non-conformities (each notice, a "**Product Warranty Claim**"). Any Product Warranty Claim must be made within thirty (30) days after Buyer is aware of the alleged non-conformity and, in any event, within the Warranty Period. Warranty Claims after such period are not valid claims. In any event, the Limited Warranty expires when, and no claims may be made after, the Warranty Period ends. Buyer agrees to follow Seller's Warranty Claims process, which may include obtaining from Seller a return authorization number in order to return any Product. If Seller requests it, Buyer will return, at its expense, any alleged non-conforming Product to a location designated by Seller for Seller to verify the claimed defect. Seller will have a reasonable opportunity to evaluate the Warranty Claim, including inspection of Product or part thereof, to determine whether it meets the Limited Warranty.

(b) Buyer must give Seller written notice of any Services which Buyer alleges do not conform to the Limited Warranty, specifying the alleged non-conformities in writing (on the applicable Certificate of Completion if one was provided by Seller) (each notice, a "**Services Warranty Claim**"). Any Services Warranty Claim must be made within ten (10) days after Services are completed. Seller will have a reasonable opportunity to inspect Services, including a site visit, to evaluate the alleged non-conforming Services.

(c) Any Product Warranty Claim or Services Warranty Claim made after the applicable Warranty Period is not a valid claim. In any event, the Limited Warranty expires when, and no claims may be made after, the applicable Warranty Period ends.

(d) For any Products which Seller determines do not conform to the Product Limited Warranty, Seller's sole liability and obligation, and Buyer's sole and exclusive remedy, will be, at Seller's choice, to either repair or replace such non-conforming Product or to refund the purchase price. For any Services which Seller determines do not conform to the Services Limited Warranty, Seller's sole liability and obligation, and Buyer's sole and exclusive remedy, will be, at Seller's choice, to correct or repeat such Services or to refund to Buyer the price Buyer paid for such non-conforming Services.

9. Limitations; Exclusions.

(a) SELLER'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO A CONTRACT, PRODUCTS, SERVICES OR THE USE (OR INABILITY TO USE) ANY PRODUCTS OR SERVICES, WHETHER IN WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT BUYER PAID TO SELLER FOR THE PARTICULAR PRODUCTS OR SERVICES AT ISSUE.

(b) Seller is not responsible for any injury or damage resulting from the use or application of Products or Services, alone or in conjunction with other products.

(c) IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE THEORY OF RECOVERY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Indemnity. Buyer agrees to indemnify, defend and hold harmless Seller and its affiliates, and their respective officers, directors, employees and agents, from any and all claims, actions, suits, damages, liabilities, costs, obligations, and expenses (including attorneys' fees and expenses) arising out of or relating to (a) selection, application, use or incorporation of Products, (b) any processing or modification of Products in any manner by Buyer, its employees, or agents, (c) violation, misappropriation, or infringement of any patent, trademark, copyright or other intellectual property rights of any person or entity arising out of or related to compliance with Buyer's design, specifications or instructions or Buyer's use of a Product with other goods, (d) use of a Product or Services exceeding Seller's specifications, limitations or recommendations, (e) any breach by Buyer of any terms of a Contract, and (f) any violation of law or regulation, intentional or negligent act, or misrepresentation by Buyer, its employees or agents.

11. Insurance. Buyer will maintain commercial general liability, personal injury and property damage insurance policies, including wrongful death coverage, in reasonable amounts consistent with industry standards with a nationally recognized insurance company.

12. No License. Buyer agrees and confirms that Seller's sale of Products and providing Services do not grant to Buyer any license or intellectual property or similar right applicable to or in Products or Services, or in any estimates, projections, drawings, illustrations, calculations, installation instructions or other document or information Seller provides to Buyer, and Buyer waives any and all such rights. Seller retains ownership and control over all intellectual property including patents, trademarks, copyrights and goodwill applicable to or arising out of Products and Services. Buyer will not name or designate any Seller information or Products or Services in any patent application. Buyer may not alter or remove, and will abide by, any patent, trademark, copyright, trade secrets, proprietary or other notices, serial numbers, labels, tags or other identifying marks, symbols or legends contained on or in Products (including containers or packages) or Services.

13. Confidential Information. All confidential or proprietary information ("**Confidential Information**") provided by Seller to Buyer will not be used by Buyer (except as necessary internally for use of Products) and will not be disclosed by Buyer to any person or entity unless the disclosure is agreed to in writing by Seller. Information generally available to the public is not Confidential Information of Seller.

14. Security Agreement. Buyer grants Seller a continuing first priority purchase money security interest in all Products sold or delivered to it and to the proceeds of those Products (collectively, the “**Collateral**”) to secure the full payment of the purchase price of Products and all other obligations of Buyer arising out of a Contract. Buyer authorizes Seller to file on Buyer’s behalf all financing statements, continuation statements and other documents necessary or desirable to establish, perfect, maintain, preserve and enforce Seller’s security interest in the Collateral.

15. Relationship; No Waiver; Severability. Seller is an independent contractor. Nothing in a Contract will be construed as creating a partnership, association or joint venture between the parties. Buyer will have no power or authority to enter into any commitment on behalf of or otherwise bind Seller on any matter including making any representation or warranty on behalf of Seller. No employee of either party will be deemed to be an employee of the other party. No delay or failure by Seller to exercise or enforce any of its rights or remedies under a Contract will be construed as a waiver of such rights or remedies. The express waiver of any right or remedy in a particular instance will not constitute a waiver of that right or remedy in any other instance. If any provisions of these Terms or any Sales Documents are held to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision(s) will be deemed to be severable and these Terms and any Sales Documents will then be construed and enforced in accordance with the remaining provisions.

16. Limitation on Actions. Buyer must commence any action or proceeding that arises out of or relates to a Contract, Seller’s breach of a Contract, Products or Services within the earlier of: (a) one (1) year after the claim or cause of action has accrued; or (b) the period prescribed by applicable statute of limitation or repose. Any action or proceeding Buyer does not commence within such period will be forever barred. The Contract contains Buyer’s sole and exclusive remedies relating to a Contract, Products or Services regardless of the theory of recovery.

17. Force Majeure. Seller will not be liable, and its performance (and delivery dates and delivery periods) will be deemed extended, for any delays or failure to perform directly or indirectly resulting from events and causes beyond its reasonable control, including accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes, storms and epidemics), changes in the law, delays in obtaining or the inability to obtain labor, materials, Products or Services through usual sources at normal prices, or the failure of Seller’s suppliers to furnish parts or other goods.

18. Choice of Law; Venue. The transaction and Contract, and any matter, dispute or controversy arising out of or relating to the transaction, Contract or Products or Services will be governed by South Carolina law, excluding its conflicts of law principles, and the provisions of the 1980 United Nations Convention on the International Sale of Goods (“**UNCISG**”) are expressly excluded. Buyer and Seller agree that the South Carolina State Courts and the United States District Court for the District of South Carolina, will constitute the sole and exclusive judicial forum(s) and venue and, therefore, will have sole and exclusive jurisdiction over the adjudication and resolution of any and all matters, disputes and controversies arising out of or relating to a transaction, Contract, Products or Services; except with respect to Seller’s claim or any action instituted by Seller (a) for equitable or comparable relief including an action for temporary or permanent injunctive relief, (b) for recovery of possession of Products, such as replevin, claim and delivery, attachment or the like or (c) to collect any amounts owed by Buyer.

19. Non-Assignment; Entire Agreement. Buyer may not assign all or any portion of its rights or obligations under a Contract without Seller’s prior written consent, and any attempted assignment without that consent will be void. A Contract contains the entire agreement of the parties relating to the subject matter and supersedes all previous and contemporaneous agreements, understandings, usages of trade and courses of dealing, whether written or oral.

20. Miscellaneous. A Contract will be binding on, and will inure to the benefit of, the parties and their respective successors, heirs and permitted assigns. The section headings are for reference purposes only and will not affect in any way the meaning or interpretation of these Terms. Any consent, approval or agreement required or allowed by Seller may be given or withheld by Seller in its sole discretion and must be in writing and signed by an officer of Seller to be effective. As used herein, the words “including”, “include” and “includes” will be exemplary only, and will not be construed as limiting the word or phrase to which it relates.

The Terms and Conditions of Sale are also available at www.mm-technics.com