

Terms and conditions

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM
ARBITRATION ACT SC CODE §15-48-10**

Limitation of Liability

Marchel's liability is limited to the supply of the merchandise ordered by the customer. In no circumstances shall Marchel's liability exceed the lesser of the value of the merchandise sold as provided in the quotation accepted by the customer, the cost or replacing this merchandise or the cost of repairing this merchandise. Without limiting the foregoing, Marchel will not be liable for any special indirect or consequential damages.

Product Suitability

Marchel cannot guarantee compliance and cannot be responsible for how Products are used or fit in applications. Before purchase and use of a Product, please review requirements and be sure that the Product as well as its installation and use comply with them. Subject to what is already provided for herein, no return, replacement or refund will be accepted for products which (i) have been subject to abuse, misuse, neglect, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to the instructions issued by Marchel, (ii) have been rebuilt, repaired or modified by any person or entity other than Marchel or (iii) have been damaged or lost by the carrier. In addition, MARCHEL MAKES NO OTHER REPRESENTATIONS OR WARRANTIES REGARDING ANY PRODUCT, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM LAW, FROM ANY TRANSACTION, PERFORMANCE, COMMERCIAL OR OTHER USE, ALL THESE WARRANTIES ARE EXPRESSLY DISCLAIMED.

Hazardous Materials Information

For the information of Buyers, Marchel obtains Material Safety Data Sheets ("MSDS") for all the raw materials used in the Products offered for sale by Marchel. Such MSDS are available at Marchel and will be provided to the Buyer of any such Product, upon request, at the time of sale. The information and recommendations contained in the applicable MSDS supplied/prepared by the raw material manufacturer are considered to be accurate and reliable. However, Marchel makes no warranty with respect to the accuracy or reliability of the information or the suitability of the recommendations. Marchel disclaims any and all liability to any user thereof.

Credit

Accounts will be opened only with Companies on approved credit. Marchel reserves the right to decline to make deliveries, except for advance payment, at the sole discretion of Marchel.

Terms of Payment

Unless otherwise expressly provided, terms are Net 30 days from date of invoice.

Interest

Marchel reserves the right to charge interest at the rate of 1-1/2% per month (18% annually) beginning on the first day following the date on which payment is due.

Product Availability and Custom Orders

Products are subject to availability at time of order. Custom order items must meet manufacturer's minimum order quantity requirements at time of order and may require additional shipping time.

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Change or Cancellation

All orders are accepted on the condition that they are not subject to change or cancellation without acceptance by Marchel and Marchel will be reimbursed for all work in process, material, engineering and any other change or cancellation charge incurred on the basis of cost to Marchel including handling and overhead costs.

Tooling

Customers tools:

In cases where the customer supplies the tool, the tool will be kept at Marchel facilities at no charge so long the customer purchased associated goods in the quantities advertised at contract award.

Marchel will maintain the Tool in good condition, reasonable wear and tear expected. A new tool/tooling charge or refurbishing tool charge will be applicable if and when a Tool needs to be replaced or repaired.

The tool will be considered obsolete due to product end of life or non-utilization for a period of 3 consecutive years. Obsolete Tools will be returned to Customer at their expense after the 3-year period.

Marchel's tools

In cases where Marchel will design and fabricate the Tool to the best of its knowledge and based on information of the product provided by the Buyer. The Tool will remain the property of Marchel and the Tool design will remain proprietary information of Marchel. Marchel will test and optimize the Tool to the best of its knowledge to meet the required dimensions. If after reasonable efforts and trials, the required dimensions cannot be achieved, Marchel has the option to cease all work on the Tool. In such case, the Customer agrees to pay Marchel for the design and fabrication of the Tool as invoiced by Marchel.

Marchel does not guarantee application performance and will not be liable for any consequential damages.

Tooling charges must be paid in full before start of production orders using the Tool.

Marchel will maintain the Tool in good condition, reasonable wear and tear expected. A new tool/tooling charge will be applicable if and when a Tool needs to be replaced.

The tool will be considered obsolete due to product end of life or non-utilization for a period of 3 consecutive years. Obsolete Tools will be discarded after the 3-year period.

Guaranteed Payment for Questionable Tooling

If Marchel deems that the manufacture of the product is such that, despite Marchel's best efforts, the tooling produced may not be capable of attaining or sustaining production of a functional product, Marchel will accept a contract for that tooling only on the Buyer's guarantee that the contract will be paid in full regardless of the results.

In all cases :

The Tool is not insured by Marchel against risk or loss due to fire or other such damage unless otherwise specified. The Tool cannot be removed from Marchel's premises. The Tool will remain at Marchel's named locations and cannot be removed at the will of the Customer. The Customer will receive initial samples in agreed upon quantities for dimensional approval. The Tool will be used exclusively for the purpose of the product for the Customer/Buyer of the Tool or for Companies approved by the Buyer.

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Pricing Schedules and Blanket Order Conditions

Pricing Schedules and Blanket Orders are subject to change upon a change in the price of applicable raw materials (as reflected on a recognized trade or commodity pricing tracker or supported by a raw material vendor increase letter) in excess of three percent (3%) from the date of such schedule. Customer agrees to pay for all remaining items on their Blanket order upon expiration of the negotiated blanket order period.

Quantity for Custom Made Items

Marchel will make all the efforts to manufacture and ship the quantities as required on the purchase order but reserves the right to over / under ship by no more than 15% of the purchase order quantity.

Delivery and Force Majeure

Every effort will be made to fill orders within the estimated time. Marchel shall not be responsible for delays or late delivery when caused by acts of God, acts of government, strikes, accidents, carriers, fire, wind and water, war or civil commotion, deliveries of others furnishing material and such delays as occur without fault of Marchel or for causes beyond its control. Without limiting the foregoing, Marchel shall not be liable for special, indirect, or consequential damages caused by a delay or late delivery. Failure to make deliveries at the time designated by the Buyer shall not give the Buyer the right of cancellation nor relieve the Buyer of responsibility for payment. Estimated completion of tooling date will not apply when changes in specification or design are requested by the Buyer.

Freight Policy

Freight shall be Marchel "EX WORKS". Marchel reserves the right to charge freight and handling fees, including, without limitation, fees for small orders, rural and/or rush deliveries or special handling.

Title and Risk of Loss

Risk of loss in transit from damage or otherwise is on Buyer. All claims are to be filed by the buyer to the carrier.

Return Policy

No material may be returned without a valid return of material authorization number (RMA) from Marchel and then only in accordance with Marchel's terms and instructions.

Inspection and return of Non-Conforming Products

(a) Buyer must inspect products within twenty-one (21) days of receipt (the "inspection period"). The Buyer is said to have accepted the delivered products unless he informs Marchel in writing of any non-conforming products within the inspection period and stating full particulars in support of his claim.

(b) If Buyer advises Marchel, during the inspection period, of non-conforming products, Marchel, at its own discretion may, (i) replace non-conforming products with conforming products or (ii) credit the Buyer the cost of the non-conforming products after inspection by Marchel of the non-conforming products.

Marchel shall not be responsible for any special indirect or consequential damages. There are no other warranties or representation either expressed or implied except as provided in the documentation provided by Marchel. The warranties set forth herein are in lieu of any and all warranties expressed or implied including the warranties of merchantability and fitness.

Assignment

Buyer shall not assign any order or any interest therein without the written prior consent of Marchel and any such actual or attempted assignment shall entitle Marchel to cancel such order upon notice to Buyer.

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Modification of Terms

Any failure by Marchel to insist upon a strict performance of any of the terms and conditions herein shall not be deemed a waiver of any rights or remedies that Marchel may have and shall not be deemed a waiver of any subsequent breach of default in the terms and conditions herein contained. No provision of these terms and conditions shall be deemed to have been waived by Marchel unless such a waiver is in writing and signed by an officer of Marchel.

Mediation / Arbitration

If a dispute, claim or controversy arises, between or among the parties, and it is not resolved by good faith negotiation and collaboration, the parties shall first proceed in good faith to submit the matter to mediation. Costs related to mediation shall be equally shared between or among the parties.

The parties agree that any dispute, claim or controversy in law or equity arising between them out of this agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator is required to be a retired judge or justice, or an attorney with at least five (5) years of business law experience unless the parties mutually agree otherwise. Under arbitration, the parties shall have the right to discovery in accordance with state law. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the South Carolina Arbitration Act.

Applicable laws and jurisdiction

The sale and/or manufacture of the products by Marchel and the terms of this agreement are governed by the laws of the state of South Carolina and, subject to the requirements for mediation and arbitration set forth above, all disputes, claims or and legal actions arising from the sale and/or manufacture of the products by Marchel shall be maintained in a court of competent jurisdiction in the County of Spartanburg, State of South Carolina.

Reimbursement of legal fees incurred

Customer agrees to pay upon demand all of Marchel's cost and expenses, including charges of a collection agency and Marchel's reasonable attorney's fees and expenses, incurred in connection with the enforcement of this agreement. Costs and expenses include Marchel's reasonable attorney's fees and legal expenses whether or not there is a lawsuit, including reasonable attorney's fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection fees or costs. Customer agrees to also pay all court costs and such additional fees as may be directed by the court.