

TERMS AND CONDITIONS

1. **CONTRACT** – These terms and conditions constitute the complete agreement of Mohler Technology, Inc. ("MTI") and MTI's customer ("Buyer"), unless otherwise provided in writing signed by an authorized representative of MTI, and no terms or conditions in any way modifying the provisions state herein shall be binding upon the MTI. Acceptance of the Buyer's purchase order by MTI, or Buyer's acceptance of MTI's sales quotation or proposal, shipment of goods by MTI to Buyer, or the issuance by MTI of an acknowledgment of order, is made only on the express condition that these Terms and Conditions shall govern regardless of whether Buyer accepts these conditions by a written acknowledgment, by implication or by acceptance or payment for goods ordered hereunder. MTI's failure to object to provisions contained in any communication from Buyer or MTI's shipment of goods following receipt of any such communication is not a waiver or modification of the terms and conditions contained herein. If Buyer objects to any of the terms and conditions contained herein, any changes must be in writing in MTI's acknowledgment of order prior to commencement of performance by MTI. All orders shall be accepted only at MTI's offices in Boonville, Indiana.
2. **QUOTATIONS AND PUBLISHED PRICES** - Until acceptance, all written quotations are subject to change and are void after 30 days. Prices shown on the published price lists and other published literature issued by MTI are not offers to sell, and are subject to change without notice. See also: "Asbestos – Section 15".
3. **TAXES** - MTI's prices do not include any applicable sales, use, excise or similar taxes; and the amount of any such tax which MTI may be required to pay or collect will be added to each invoice unless the Buyer has furnished MTI with an appropriate tax exemption certificate acceptable to the taxing authorities.
4. **TERMS** - Except otherwise provided herein, terms are cash net 30 days. Amounts past due are subject to a service charge of 1 1/2% per month (or fraction thereof) or maximum contract rates permitted by law. If MTI deems that by reason of the financial condition of the Buyer or otherwise, the continuance or production or shipment on the terms specified herein is not justified, MTI may require full or partial payment in advance.
5. **PRICE POLICY** - Prices shall be subject to adjustment to those in effect at the time of shipment.
6. **PACKING** - MTI makes no charge for its standard packing for domestic shipment. The buyer will be charged for export packing or other special packing required. No credit or deduction will be allowed if no packing is required.
7. **DELIVERY** - Shipping dates given by MTI are approximate and are based on prompt receipt of all necessary information regarding the order. MTI will use its best efforts to meet the scheduled date, but cannot be held responsible for its failure to do so for causes beyond its reasonable control and, in no event shall it be liable for any loss or damage resulting from its failure to deliver.

In the event of any delay requested by the Buyer or any delay caused by lack of shipping instructions, MTI will store all items ordered at the Buyer's risk and expense and will invoice the Buyer for the full contract price of the apparatus on or after the date on which the same is ready for delivery. If manufacture is delayed by the buyer, payment shall be made based on the percent of completion and the contract price.
8. **SHIPPING CHARGES** - Except as otherwise provided herein, shipments are F.O.B. manufacturer's shipping point. Freight charges are estimated and added. Local delivery of stocked items is free by Mohler's established weekly scheduled trucks. Rush delivery is available at extra charge.
9. **CHANGES** - The Buyer may, with the written consent of MTI, make changes in the apparatus covered by an order. In the event of any such change, the Buyer shall pay to MTI the reasonable costs and other expenses incurred by MTI prior to such change for all work rendered unnecessary by such change or incurred by MTI thereafter for all work required to effect such change, plus MTI's usual profit thereon.
10. **CANCELLATION** - Undelivered parts of any order may be cancelled by the Buyer only with the written approval of MTI. If the Buyer makes an assignment for the benefit of creditors, in a voluntary or involuntary petition or other action in bankruptcy or for reorganization or under any other insolvency law shall be filed by or against the Buyer, if the Buyer shall admit its inability to pay its debts, if a trustee, receiver or liquidator is appointed for any part of the assets of the Buyer, or if the Buyer fails to make payments to MTI in accordance with the terms hereof, MTI may at its option cancel all undelivered parts of any order by written notice to the Buyer.

In the event of any cancellation of this order by either party, the Buyer shall pay MTI the reasonable costs and expenses (including engineering expenses and all commitments to its suppliers and subcontractors) incurred by MTI prior to receipt of notice of such cancellation, plus MTI's usual rate of profit for similar work.
11. **REGULATORY LAWS AND/OR STANDARDS** - MTI makes no promise or representation that its product will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as part of this contract between Buyer and MTI. MTI prices do not include the cost of any inspections or permits or inspection fees.

- 12. WARRANTY; LIMITATIONS OF REMEDIES/LIABILITY** - MTI extends no warranty other than as described on Exhibit "A" attached hereto and made a part hereof. MTI's liabilities and Buyer's remedies are expressly limited to those described on said Exhibit "A."
- 13. ERRORS** - Typographical and stenographic errors are subject to correction.
- 14. INFRINGEMENT ON PATENTS/COPYRIGHTS** - Buyer assumes liability for patent and copyright infringement when goods are made to Buyer's specifications.
- 15. ASBESTOS** – Unless specifically stated there is no provision for removal of asbestos. Upon discovery MTI will contact the Buyer for further instructions.
- 16. MISCELLANEOUS** – This agreement between MTI and Buyer shall be construed under, and governed by, the laws of the State of Indiana, and any disputes arising hereunder shall be resolved in the state courts located in Warrick County, Indiana. As used in this document, the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words and pronouns of any gender shall mean to include any other gender. This agreement shall bind the parties, their respective heirs, successors and assigns. All headings set forth herein are included for the convenience of reference only and shall not affect the interpretation hereof, nor shall any weight or value be given to the relative position of any part or provision hereof in relation to any other provision in determining such construction. If any provision of this agreement is contrary to, prohibited by, or deemed invalid under applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and deemed omitted, but shall not invalidate the remaining provisions hereof.

EXHIBIT "A"

**MOHLER TECHNOLOGY, INC. (MTI) - LIMITED STANDARD WARRANTY ("Warranty")**

Product Category (collectively, the "Goods")	Warranty (From Date of Shipment)
Manufactured AC mining motors	1 year - Failure to use thermal protection voids warranty.
Repaired or serviced AC mining motors	90 Days - Failure to use thermal protection voids warranty.
Repaired or serviced non-mining/products	1 year -- Failure to use thermal protection voids warranty.
New motors/products manufactured by other OEM's	OEM Warranty applies
Predictive Maintenance/Diagnostic Services	No warranty

1 - Limited Standard Warranty

- A. Products **Manufactured, repaired or serviced** by MTI are warranted to be free from defects in workmanship and materials.
- B. Repaired or serviced products found to be defective in workmanship or material will be repaired or replaced at MTI's option, at no charge to the buyer. No other remedy shall be available to the Buyer. Final determination as to whether a product is actually defective rests with MTI. The obligation of MTI hereunder shall be limited solely to repair or replace, at MTI's discretion, products that fail within the foregoing limitations, and shall be conditioned upon receipt by MTI of notice of any alleged defects or deficiency promptly after discovery and within the warranty period. In the case of components or units purchased by MTI, the obligation of MTI shall not exceed the settlement that MTI is able to obtain from the supplier thereof. No products shall be returned to MTI without its prior consent. MTI cannot assume responsibility or accept invoices for unauthorized repairs to its components, even though defective. The life of the products of MTI depends to a large extent upon type of usage thereof, and MTI MAKES NO WARRANTY AS TO FITNESS OF ITS PRODUCTS FOR SPECIFIC APPLICATIONS BY THE BUYER NOR AS TO PERIOD OF SERVICE UNLESS MTI SPECIFICALLY AGREES TO OTHERWISE IN WRITING AFTER THE PROPOSED USAGE HAS BEEN MADE KNOWN TO IT. This warranty does not apply to experimental or developmental products. Buyer assumes all responsibility and expense for removal, reinstallation, and freight in connection with the foregoing remedies.

2 - GENERAL OBLIGATIONS OF THE BUYER

MTI's Standard Warranty set forth above are conditioned upon the Buyer abiding by the following terms and conditions:

- A. The Buyer shall maintain the Motor(s) according to schedules, instructions and other provisions contained in the MTI/OEM Operating/Installation Manual, which is made apart hereof, **including the connection of all thermostats and /or thermal protections provided.**
- B. The Buyer shall not modify, or repair the Motor(s) without notifying MTI, and MTI giving its written approval thereof;
- C. The Buyer shall notify MTI of any facts giving rise to a warranty claim hereunder within twenty-four (24) hours after discovery; and
- D. All repair, maintenance and reconditioning of the Motor(s) shall be made by MTI or an approved service station only.
- E. The Buyer's failure to abide by any one of the above terms and conditions A through D shall immediately disqualify and terminate as to the Buyer, any rights under above Limited Standard Warranty.

3 - DISCLAIMER OF WARRANTIES - Except as otherwise expressly provided above:

- A. THE WARRANTIES DESCRIBED IN THIS LIMITED STANDARD WARRANTY SHALL BE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF **MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE** AND SHALL BE IN LIEU OF ALL OTHER OBLIGATIONS AND LIABILITIES, INCLUDING NEGLIGENCE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SALE OR FURNISHING OF GOODS AND/OR SERVICES, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION AND OPERATION. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF.

- B. THE BUYER AGREES THAT THE GOODS HAVE BEEN SELECTED BY THE BUYER AND ARE OF A DESIGN, SIZE, FITNESS AND CAPACITY SELECTED BY BUYER AND THAT BUYER IS SATISFIED THAT THE SAME IS SUITABLE AND FIT FOR BUYER'S PURPOSES;
- C. THE BUYER HEREBY WAIVES ANY CLAIM BUYER MAY HAVE AGAINST MTI FOR ANY LOSS, DAMAGES OR EXPENSE OR ANY KIND WHATSOEVER CAUSED BY THE GOODS OR ANY DEFECT THEREIN, THE USE OR MAINTENANCE THEREOF, AND ANY SERVICING OR ADJUSTMENT THERETO, NOT EXPRESSLY COVERED BY THIS WARRANTY;
- D. THE BUYER FURTHER AGREES THAT MTI WILL NOT BE LIABLE REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, OR IN TORT, INCLUDING NEGLIGENCE, FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO DAMAGES ARISING FROM THE LOSS OR USE OF THE EQUIPMENT, LOST PROFITS, OR DAMAGES CAUSED BY DELAYED DELIVERY OF ITS PRODUCTS, FOR ANY CLAIM AGAINST THE BUYER BY ANY OTHER PARTY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE;
- E. MTI'S LIABILITY UNDER THIS WARRANTY, INCLUDING MTI'S LIABILITY FOR FAILURE AFTER REPEATED EFFORT TO INSTALL THE GOODS IN GOOD WORKING ORDER, OR TO REPAIR OR REPLACE IN ACCORDANCE WITH THE STANDARD WARRANTY SET FORTH ABOVE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS; and
- F. THE STATED STANDARD WARRANTY SET FORTH ABOVE ARE IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF MTI ARISING OUT OF, OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE GOODS.

4 - FORCE MAJEURE

If the performance of any part of this Warranty by MTI is prevented, hindered, delayed or otherwise made impracticable by reason of any earthquake, strike, flood, riot, fire, explosion, war or any other casualty or cause beyond the control of MTI, and which cannot be overcome by reasonable diligence and without unusual expenses, MTI shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby, during the continuance of any such happening or event and for so long as such event shall continue to prevent, hinder or delay such performance. This Warranty shall be deemed suspended so long as and to the extent that any such cause shall operate to prevent, hinder or delay the performance by MTI of its obligations.

Upon the occurrence of any such event MTI shall, as soon as reasonably practical thereafter, notify Buyer of the nature and extent of any such force majeure condition referred to in the preceding subparagraph and advise Buyer of the nature and extent thereof.

5 - NOTICES

All notices to be given under this Warranty shall be in writing and shall be deemed to have been given and served when delivered in person or mailed, postage pre-paid to the address first written or such other address as either party may have last specified by written notice to the other.

6 - COST OF LITIGATION

In the event of any litigation between the parties hereto involving this Warranty or the respective rights of the parties hereunder, each party shall pay their own expenses.

7 - INCORPORATION OF TERMS AND CONDITIONS

This Warranty is subject to and supplemented by MTI's standard terms and conditions.