



Milara, Inc.
49 Maple Street,
Milford, MA 01757,
USA



Contacts
+1 508 533 5322
sales@milarasmt.com
www.milarasmt.com

Milara Inc Terms & Conditions

- 1. General.** These terms and conditions of sale ("Sales Terms"), including any Seller quotation associated therewith and attachments thereto, apply to and supersede all printed terms and conditions on any purchase order issued to Milara, Inc. ("Seller") by the buyer of any Seller products and/or services ("Buyer") and constitute the entire agreement between the parties (the "Agreement"). No modification or deletion of any provision hereof or any additions hereto shall be binding on Seller unless agreed to in writing by a duly authorized representative of Seller. Failure of Seller to object to the provisions contained in any order or other writing of Buyer shall not be construed as a waiver of these Sales Terms nor an acceptance of any terms and conditions of Buyer. Buyer shall be deemed to have accepted these Sales Terms if Buyer expressly agrees to them in writing or accepts any shipment of any products and/or services (the "Products") to which these Sales Terms relate.
- 2. Acceptance of Orders.** Buyer shall purchase Products by issuing a written purchase order signed by an authorized representative, indicating specific Products, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications if applicable, and any other special instructions (a "PO"). Any contingencies contained on such PO are not binding upon Seller. Buyer shall not have the right to delay, hold, or otherwise postpone the acceptance of any order once it has been issued by Buyer and accepted by the Seller, except with the prior written consent of the Seller. Any unauthorized delay, hold or other postponement by Buyer shall be considered a material breach of this Agreement. All orders are subject to (i) receipt of initial payment due, (ii) Buyer's ability to meet Seller's credit requirements (as determined by Seller in its discretion) and (iii) acceptance by Seller at its offices in Milford, Massachusetts, USA. Acceptance of Products shipped hereunder shall occur immediately upon their arrival at Buyer's delivery location, unless Buyer notifies Seller in writing within five (5) days of the Products' arrival of any particular Products that do not conform with the terms of the Agreement. If Buyer fails to give such notice of nonconformity, Buyer shall be deemed to confirm the conformity of the Products with applicable Product descriptions and Buyer shall be bound to accept and pay for these Products in accordance with the terms of the Agreement. Buyer expressly waives any rights it may have to revoke acceptance after such five (5) day period.
- 3. Price.** Seller's sale of Products is made according to the applicable price schedule or other written price quotation of Seller as from time to time in effect as confirmed by Seller's acceptance of Buyer's POs. Buyer shall pay the full amount of the invoiced charges without any set-off or deduction in the currency stated in the PO within thirty (30) days from the date of the invoice. Payment shall be made by wire transfer or ACH in accordance with wire instructions provided by Seller. EXCEPT AS OTHERWISE SPECIFIED IN THIS SECTION, PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE. All sales, excise and use taxes, including custom duties, which are presently or may hereafter be imposed by any taxing authority are not included in the price of the Products and if such taxes are not separately stated and collected at the time of payment of sale price, Buyer



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will hold Seller harmless from payment thereof. The price of Products sold for export does not include import duties, if any, and Seller reserves the right to claim drawback of any customs duties, taxes or fees imposed on Seller. Buyer agrees to assist in Seller's efforts to obtain drawback and to furnish Seller with all necessary documents and, if Products are transferred for export to required exporter, to furnish proof of such exportation. Any such costs which Seller may be required to collect and pay are the sole responsibility of Buyer and will be added to Seller's invoice to Buyer.

- 4. Payment Terms.** Each shipment shall be considered a separate transaction and payment shall be made accordingly. Unless otherwise agreed in writing by Seller, payment for Products shall be made no later than thirty (30) days from date of the invoice. If, in the judgment of Seller, the financial condition of the Buyer at any time does not justify the making of any shipment on the terms specified herein, Seller may make a shipment only on a C.O.D. or cash in advance basis, suspend performance or revoke the acceptance of Buyer's PO. If shipments are ready to be made to Buyer, Seller shall have the right to demand payment thirty (30) days from the date Seller is prepared to make shipment. Shipments not made pending payment by Buyer shall be held at the risk and expense of the Buyer. Buyer shall pay interest of two (2) percent per month on past due invoices, compounded pro-rata on a daily basis, until all outstanding invoices are paid in full. The acceptance of any payments after the specified due dates thereof shall not constitute a waiver of Buyer's obligation to make future payments on the specified dates. Seller may, at its sole discretion, apply any amount paid by Buyer pursuant to any Buyer PO to any indebtedness owing by Buyer to Seller on account hereof or otherwise, including without limitation for prior POs. Failure to make any payment under the terms of this Agreement shall constitute a material breach. The Seller may require full or partial payment in advance. In the event of the Buyer's bankruptcy, default, or insolvency, the Buyer forfeits any tooling, non-recurring engineering, customization or similar fees paid under the terms of this Agreement. The Seller may, at its discretion, cancel any outstanding orders and suspend or cancel its duty to perform any provisions of this Agreement in the event of Buyer's default, bankruptcy, or insolvency. In the case of such breach or financial troubles, the Seller is entitled to reclaim materials, tools, and work-in-progress at the Buyer's expense. The Seller shall also be entitled to recover from the Buyer all costs incurred as a result of the Buyer's default or financial troubles, including, but not limited to, costs for labor, materials, tooling, overhead, interest, and reasonable attorney's fees.
- 5. Security Interest:** To secure the payment of all sums due Seller under Buyer's PO, Seller hereby reserves a security interest in each Product delivered to Buyer under that PO, until payment in full of the PO. Buyer agrees to execute any and all instruments requested by Seller that enable Seller to perfect such security interest. In the event Buyer is in default hereunder, Seller shall have the immediate right to repossess the Products and shall be free to enter the premises where the Products may be located and remove them as Seller's property, without prejudice to the Seller's right to recover any further expenses or damages the Seller may suffer by reason of such non-payment. The repossession of Products hereunder shall be in addition to any other legal remedies available to Seller. There is no set-off right for the Buyer.



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- 6. Title and Responsibility for Products.** All Products purchased hereunder shall be shipped F.O.B. Seller's facility. Title and risk of loss or damage to Products shall pass to Buyer on delivery to a common carrier at Seller's facility. It shall be the Buyer's responsibility to insure the Products against the risk of loss or damage.
- 7. Performance and Shipping.** Performance and shipping dates specified or communicated by Seller to Buyer are approximate dates only and the failure to perform or ship on such dates shall not be considered a breach by Seller. All claims for shortage of Products ordered or for incorrect charges must be presented to Seller within ten (10) days after receipt by Buyer of the particular shipment of Products. Buyer shall be responsible for all charges. Unless given written instruction, Seller shall select the carrier. All transportation charges shall be levied by Seller and paid by Buyer on the due date for invoice payment. Seller shall not be liable for damages or penalty for delay in delivery or for failure to give notice of any delay, and the carrier shall not be deemed to be an agent of Seller. Seller has the right to make partial deliveries. Buyer acknowledges that any request to delay shipment or delivery of Products must be submitted in writing and approved by Seller. Seller reserves the right to reject such requests and proceed with shipment as scheduled. Any unapproved delays by Buyer will not relieve Buyer of its obligation to accept and pay for the Products in accordance with this Agreement. Furthermore, if Buyer fails to take delivery of the Products as scheduled, Seller may charge Buyer for any storage costs incurred and other related expenses. Acceptance by Buyer of each delivery shall constitute a separate agreement. In the event of failure to pay according to the terms of this Agreement, further deliveries may be suspended. In the event that Buyer does not take delivery of any Products under accepted POs and such Products remain at Seller's facility, Seller shall have the right to charge for the storage of such Products.
- 8. Cancellation.** Buyer may not cancel, terminate, suspend performance of, or issue a hold on any order, in whole or in part, without the prior written consent of Seller, which consent, if given, shall be upon terms that will compensate Seller for any loss or damage therefrom, including but not limited to, the price of Products shipped to, manufactured for, or held separately for the Buyer, plus loss of profits, incurred costs, and a reasonable allocation of general and administrative expenses relating to the Products. Furthermore, any attempt by Buyer to unilaterally delay the delivery or acceptance of Products, without prior written consent from Seller, shall be considered a cancellation of the applicable PO subject to the terms and conditions outlined in this section.
- 9. LIMITED WARRANTY AND LIMITATION OF LIABILITY:** Seller warrants that the physical Products sold hereunder shall be substantially free of defects in materials and workmanship and shall substantially conform to Seller's published specifications therefor (or any written specifications specially agreed between the parties) for the twelve (12) months following their delivery to Buyer (the "Warranty Period"). Seller's sole liability and Buyer's exclusive remedy under this limited warranty will be limited to the repair or replacement, at Seller's election, of material which in the reasonable opinion of Seller is determined to be defective in workmanship or material or not in conformance with mutually agreed written specifications. Buyer must promptly notify Seller of any claim under this warranty. Seller may elect to inspect the allegedly defective materials on the Buyer's premises or require Buyer to properly pack and ship these materials to Seller's



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location, at Buyer's risk and expense. Buyer shall be reimbursed the cost of shipment if Seller determines that the returned item(s) were defective in workmanship or material or did not conform with specifications. No warranty is provided for any Product for any claim not made within the Warranty Period (or, for defects discovered at the end of the twelve (12) months, within ten (10) days after the Warranty Period expires). Seller reserves the right to issue a credit note or refund, in its discretion, for any defective Product as an alternative to repair or replacement. Any additional or modified warranties by Buyer in dealing with its customers shall be Buyer's exclusive responsibility, unless such enlargement or modification is agreed in writing in advance by Seller and Buyer. Seller shall not be responsible for any loss, damage, theft or destruction of any materials supplied by Buyer. The warranty provided herein excludes and does not cover any damage to Products or parts thereof which has been caused by accident, modification (other than by Seller), disassembly, misuse, use or testing in applications which exceed the Product specifications or ratings, neglect, improper installation, abuse, or use in hazardous activities. Buyer itself must make all claims under this warranty; no claim will be accepted from any third party. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, AFFIRMATIONS OF FACT OR PROMISES BY SELLER WITH REFERENCE TO THE PRODUCTS, INCLUDING NO WARRANTIES, REPRESENTATIONS OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT, ALL OF WHICH ARE HEREBY DISCLAIMED. EXCEPT FOR THE EXCLUSIVE REMEDY FOR BREACH OF THIS LIMITED WARRANTY SET FORTH ABOVE, SELLER WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES OR ANY THEORY OF CLAIM OR LIABILITY, INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE IN LAW OR IN EQUITY FOR ANY PERSONAL INJURY (INCLUDING DEATH) OR DAMAGE TO REAL OR PERSONAL PROPERTY RESULTING DIRECTLY OR INDIRECTLY FROM THE PRODUCT OR FOR ANY CONSEQUENTIAL, SPECIAL INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF INCOME, LOST PROFITS OR SALES, LOST GOODWILL, LOSS OF DATA, LOSS OF USE OF OR DAMAGE TO PRODUCTS OR SUPPLIES, EXCESSIVE OR INCREASED COSTS OF OPERATION, LABOR, SUBSTITUTE PRODUCTS OR FACILITIES, OR CLAIMS OF THIRD PARTIES. IN NO EVENT SHALL THE TOTAL COLLECTIVE CUMULATIVE LIABILITY OF SELLER OR ITS EMPLOYEES, OFFICERS, AGENTS AND DIRECTORS EXCEED THE AMOUNT PAID TO SELLER FOR PRODUCTS FROM WHICH SUCH LIABILITY AROSE.

10. Indemnification by Buyer. Buyer shall indemnify and hold harmless Seller, its officers, directors, employees, and agents from and against any claims, lawsuits, liabilities and arising out of malfeasance or negligence of Buyer, Buyer's agents, employees or representatives in the use, storage, sale, service, repair or distribution of Products or arising out of the breach of any representation or warranty or undertaking made by Buyer, its agents, employees or representatives, including improper training or instruction provided by Buyer to its customers, provided that Seller gives Buyer prompt written notice of any such claim or loss, does not incur any cost or expense with respect to any such claim without the approval of Buyer and fully cooperates with Buyer in the investigation, defense and settlement of all such claims and losses.



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11. Excusable Delays/Force Majeure. Seller shall not be liable for damages resulting from delay of delivery due to causes beyond Seller's control, including, but not limited to acts of God or of the public enemy, acts or omissions of Buyer, design changes agreed to by the parties, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, labor disputes, freight embargoes, and unusually severe weather. In the event of any such delay, Buyer will be notified and the date of delivery shall be extended for a period equal to the time lost by reason of such delay.

12. Compliance with Laws. Seller makes no promise or representation that the Products shall conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as specified in writing by Seller. Prices do not include the cost of any such related inspections or permits.

13. Patents and Copyrights. Seller represents to Buyer that, to its best knowledge, it has no cause to believe that the making, selling or using of the Product infringes any patents, copyrights, or other intellectual property rights. Seller shall indemnify, defend and hold harmless Buyer against all third-party claims against Buyer based on an allegation that any of the Products infringes any patents, copyrights or trade secrets of such third party, provided that Seller is notified promptly by Buyer in writing of said action or allegation of infringement, Seller has sole control of the defense of any such actions and all negotiations for its settlement or compromise, and Buyer provides reasonable cooperation and assistance to Seller in its efforts to defend and settle such claim. Seller shall have no liability for any settlement made without its express written consent.

If Buyer notifies Seller that it has been prevented from using any Product by reason of such alleged infringement, or if in Seller's opinion any Product is likely to become the subject of such a claim of infringement, Seller shall, at its option and expense: (1) procure for Buyer the right to continue using the Product; or (2) replace or modify the same so that it becomes non-infringing (without substantially degrading its functionality); or (3) if it is unable after reasonable effort to accomplish 1 or 2, retrieve the infringing item(s) and refund to Buyer a reasonable portion of Buyer's total payments to reflect such loss of use. Seller shall not have any liability to Buyer under this paragraph if infringement or the allegation thereof is based upon (a) any design, instruction, modification or other contribution of Buyer, (b) Buyer's use in connection with the Products of software, tools or other materials not approved by Seller, or (c) use of any Product in a manner for which it was not intended.

THE FOREGOING STATES THE ENTIRE LIABILITY OF SELLER AND THE SOLE REMEDY OF BUYER WITH RESPECT TO CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION.

Further, in the event that any claim, suit or proceeding is brought against Seller based on a claim of infringement of any United States or foreign patent, copyright, trademark or trade secret in connection with any Products sold hereunder by Seller to Buyer, where such infringement results from any designs, specifications, instructions or other contributions provided to Seller by Buyer, Buyer shall, at Buyer's expense, indemnify, defend and hold Seller harmless from any such infringement suit, claim or proceeding.



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14.Changes, Drawings and Improvements. Seller reserves the right to change or modify the specifications, design, drawings, and construction of any Products and to substitute other suitable material, unless otherwise specified in writing by Buyer in the PO. If drawings are furnished, they are submitted only to show general style and arrangement of the Products. It is agreed that Seller shall have the right to make changes or improvements in the design or construction of its Products without being obligated to install the changes or improvements on the Products purchased hereunder or others previously sold.

15.Proprietary Information; Intellectual Property.

(a) **Confidentiality.** Buyer agrees (and will obligate its employees) to treat as confidential and proprietary all proposals, specifications, drawings, blueprints, samples, models, tools, designs, processes, data, software and any other business or technical information, materials, or ideas in any form (e.g., written, electronic, visual, oral, or otherwise) supplied or disclosed to Buyer by Seller in connection with any PO ("Proprietary Information"), except to the extent such information is or becomes part of the public domain through not act or omission of Buyer. Such Proprietary Information shall remain the property of Seller and shall not be disclosed by Buyer to third parties, and Buyer shall use such Proprietary Information only in connection with its use of the Products.

(b) **Seller's Intellectual Property.** Buyer agrees that Seller owns all rights, title and interest, including without limitation all patents, copyrights, trade secrets, trademarks and other intellectual property rights ("Intellectual Property"), in and to (i) its Products, (ii) any modifications, improvements or additions to its Products, regardless of the source, and (iii) in and to all proposals, specifications, drawings, blueprints, models, tools, designs, processes, data, software and other materials that it conceives, develops or reduces to practice in working with Buyer or fulfilling Buyer's POs, except as may be otherwise expressly stated or agreed by Seller; Buyer may use such Seller Intellectual Property only in connection with its use of the Products it orders. Notwithstanding the foregoing, Buyer will own all such Intellectual Property rights in any designs, information or materials that it provides to Seller in connection with this Agreement and that it developed prior to or independent of its work with Seller; Buyer hereby grants Seller a nonexclusive license to make, sell and otherwise use such Buyer Intellectual Property in developing, making, shipping and servicing Products for Buyer.

(c) **No Reverse Engineering.** Buyer shall not attempt to, nor enable others to, reverse engineer, disassemble, decompile, attempt to derive the source code of, decrypt, modify, or create derivative works of any of the Products or embedded software or firmware (except to the extent of any rights at law that cannot be waived).

16.Termination. Seller may terminate any obligation to Buyer with respect to the sale of the Products set forth under this Agreement immediately by notice to Buyer if: (a) Buyer fails to make any payment on the due date, time being of the essence; (b) Buyer fails to accept delivery of any shipment; (c) Buyer makes any assignment for the benefit of creditors; (d) A trustee or receiver of all or a substantial part of Buyer's assets is appointed by any court; or (e) Buyer becomes insolvent or any bankruptcy or



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reorganization proceeding is instituted by Buyer or is instituted against Buyer and not dismissed within 30 days. Seller may also terminate any such obligation to Buyer on thirty (30) days' notice for any failure of Buyer to comply with any of its obligations contained in these Sales Terms, provided that such failure shall not have been corrected during such thirty (30) day period. All of Buyer's obligations hereunder shall survive the cancellation, termination, or completion of the PO.

17. Independent Contractors. Seller and Buyer are independent contractors, and the relationship created hereby shall not be deemed to be that of principal or agent. No sale or obligation of either party shall in any way bind the other party. No party shall be deemed to be a third party beneficiary in relation to these Sales Terms.

18. Assignment. Buyer may not assign any of the rights or interests arising under these Sales Terms or for breach thereof without the prior written consent of Seller. Any attempted assignment shall be void and be grounds for immediate termination of any obligation to Buyer with respect to the sale of the Products set forth in these Sales Terms. Any or all of Seller's rights or obligations hereunder may be assigned by Seller without notice and may be exercised by an assignee thereof.

19. Governing Law. This Agreement shall be interpreted and governed according to the laws of the Commonwealth of Massachusetts, U.S.A. without regard to conflicts of law principles. Any of these terms or conditions of sale that is contrary to law shall not invalidate any other provision of these Sales Terms, and any provision required to be included in an agreement of this type by applicable law shall be deemed to be incorporated in these Sales Terms.

20. Disputes. Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief, any and all claims, disputes or controversies arising under, resulting from, or related to this Agreement ("Dispute"), excluding any Dispute relating to the validity or infringement of any intellectual property right, shall be resolved by negotiation, mediation and, if necessary, arbitration, as follows. The party raising such Dispute shall promptly advise the other party in writing describing in reasonable detail the nature of such Dispute ("Notice of Dispute"). The senior management of the parties shall negotiate in good faith to resolve the Dispute; but if they have not done so within thirty (30) days, the parties shall submit the Dispute to mediation under the then-current Commercial Mediation Rules of the American Arbitration Association ("AAA"). The parties shall enter into good faith mediation, which sessions shall take place at the offices of the party receiving the notice of dispute, unless the parties agree upon another location or set of rules, and each party shall bear its own costs and an equal share of the costs of the mediator and the mediation organization. The parties shall hold in confidence the content and result of the mediation. If the representatives of the parties shall not have been able to resolve the Dispute within fifteen (15) business days after such mediation hearing, then any and all Disputes shall be resolved by final and binding arbitration under the then-current Commercial Arbitration Rules of the AAA, which sessions shall take place at the offices of the party receiving the notice of dispute, unless the parties agree upon another location or set of rules, and each party shall bear its own costs and an equal share of the costs of the arbitrator(s) and arbitration organization. The arbitrators shall

Commented [HGZ1]: Would you rather just say "Boston," here and below?

Commented [HZ2]: My only question is whether you would prefer, rather than equal cost sharing, that the prevailing party (if any) pay the other party's fees and costs.



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have the power to award summary judgment to the extent that any issues may be resolved prior to the hearing based on the clear language of this Agreement. All proceedings shall be conducted in the English language. The arbitrators shall have no power to add to, subtract from or modify any of the terms or conditions of this Agreement, nor to award punitive damages. Any award rendered in such arbitration may be enforced by either party in any Court of competent jurisdiction, to whose jurisdiction for such purposes each party hereby irrevocably consents and submits.

- 21. Captions.** Captions, as used herein, are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such captions may refer.
- 22. Severability.** If any provision or portion of these Sales Terms are determined to be invalid or unenforceable under any applicable law, such provision or portion thereof shall not apply in such instance, but the remaining provisions shall remain in effect.
- 23. Waiver.** The failure of Seller to enforce any provision hereunder, or to exercise any right or privilege granted hereunder, shall not be construed as waiving any such provision, and the same shall continue in full force and effect.
- 24. Entire Agreement.** This Agreement, as stated herein, the Confidential Information Disclosure Agreement signed by the parties (if any), and the PO constitute the entire agreement between the parties and there are no other agreements or understandings, either written or oral, to conflict with, alter or enlarge this Agreement unless agreed to in writing by the parties.