

## Terms of Use and Order Policies

We are delighted that you have chosen to create and order your custom-designed parts (“**Custom Parts**”) through eMachineShop.com. If this is your first time, welcome aboard; we look forward to cultivating a long-term, mutually beneficial relationship with you. If you are a returning customer, welcome back; we’re delighted to see you again. In both cases, we hope that your new Custom Parts will bring you personal satisfaction and professional success.

PLEASE READ THIS DOCUMENT CAREFULLY! IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU.

These Terms of Use (the “**ToUs**”) shall apply to the registration of users and subsequent use of the software license, Custom Parts manufacture services and website services (hereinafter collectively referred to as the “**Services**”) offered by Micro Logic, Corp., a corporation operating and existing under the laws of the State of New Jersey, which shall include its successors-in-interests and assigns or any person acting on behalf of and with the authority of Micro Logic Corp. (hereinafter referred to as “**We**”, “**us**” or “**MLC**”). These ToUs constitute an Agreement between you (“**You**” or the “**User**”) and MLC when you register and make use of the Services. The User and MLC shall collectively be referred to as the “**Parties**” and individually as the “**Party**”.

You must read, agree to, and accept all of the terms of use contained in this ToUs, as well as the terms and conditions in the Privacy Policy, and the End User License Agreement (the “**EULA**”) specified on [www.emachineshop.com](http://www.emachineshop.com) (hereinafter collectively referred to as the “**Additional Terms**”), in order to use our MLC website located at [www.emachineshop.com](http://www.emachineshop.com) (the “**Site**”), as well as all affiliated websites, including mobile websites and applications, including without limitation, whether owned and operated by us, or successors-in-interest, our Affiliates (defined below) or any third-parties (collectively, the “**Locations**”); to avail the Services.

These ToUs, as well as the Additional Terms constitute the complete and exclusive statement of the agreement (the “**Agreement**”) of both the Parties with respect to the subject matter of this Agreement, and supersede all prior oral and written commitments, understandings, and communications between the Parties regarding such matters. MLC may, at its sole discretion, amend the Agreement, from time to time, by displaying the revised version(s) of the same on the Site. Any continued use of the Services by the User after the revised Agreement has come into effect shall be deemed as the User’s consent to such revised Agreement. In the event of a conflict between these ToUs and the Additional Terms, these ToUs will control unless the Additional Terms explicitly state that they control.

### 1. DEFINITIONS

- 1.1. “**Accepted Order**” means an accepted Order for Custom Parts, the Design and Custom Parts Price of which has been approved and accepted by MLC, for manufacture.

- 1.2. **“Account”** has the meaning given to the term in Clause 2.1 below.
- 1.3. **“Affiliate”** means any entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or under common control with MLC.
- 1.4. **“Contractor”** means parties engaged by MLC to assist in the provision of the Services to the User.
- 1.5. **“Current Version”** means a version of the Software / Site / application that is currently being supported by MLC.
- 1.6. **“Custom Parts”** has the meaning given to the term in the introductory paragraph of these ToUs.
- 1.7. **“Custom Parts Price”** means the price payable by the User to MLC as consideration for the fabrication of the Custom Parts (inclusive of shipping costs), as advised by MLC in an Accepted Order.
- 1.8. **“Design”** means the design created by the User using the software, or through other means, for the Custom Parts, which the User wishes to have manufactured by MLC pursuant to and in accordance with the corresponding **Order**, including all documents and information, datasets, software or information contained in the documents.
- 1.9. **“Intellectual Property Rights”** means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction, and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967 and Intellectual Property has the corresponding meaning.
- 1.10. **“Order”** means the request for manufacture and subsequent purchase of the Custom Parts in accordance with the Design made by User for the provision of Service to User by MLC.
- 1.11. **“Payment Method”** means a valid debit and/or credit card issued by a bank acceptable to MLC, a bank account linked to your Account, a debit card, a charge card or such other method of payment as MLC may accept from time to time in our sole discretion.
- 1.12. **“Permitted Purpose”** means purchasing Custom Parts and using the Service for legal personal or business purposes.
- 1.13. **“Services”** means any and all services agreed upon, including without limitation the Software license, manufacturing services, and website services performed for and/or delivered to Users for the Custom Parts specified by the User in the Order.
- 1.14. **“Software”** means the eMachineShop software application which the User may use under license from MLC, pursuant to the EULA, to create the Design(s) for the Custom Parts.
- 1.15. **“Substantial Change”** means a change to the terms of the Agreement that reduces your rights or increases your responsibilities.

1.16. **“User”** means any authorized User who has created an Account, and is or will be utilizing the Site for personal, consumer, and/or commercial purposes.

## 2. **ACCOUNT REGISTRATION**

2.1. All Users shall apply to MLC for use of the Services by registering for a unique User account on the Site (**“Account”**).

2.1.1. User Account Registration Requirements and Eligibility:

2.1.1.1. The User shall register for an Account by providing all requisite information, in the prescribed form(s) available on the Site. MLC shall be entitled at its sole discretion to accept or reject such MLC Account applications.

2.1.1.2. By registering for an Account on the Site, or by clicking to accept this Agreement when prompted on the Site, the User has been deemed to have executed this Agreement electronically, effective on the date the User registers their Account or clicks to accept the Agreement. The User’s Account registration constitutes an acknowledgement that they are able to electronically receive, download, and print the Agreement, and any amendments thereafter.

2.1.1.3. The User represents, acknowledges, agrees, and affirms the following:

A. The User shall use the Site and the Services solely for the Permitted Purpose;

B. the User shall comply with all applicable laws and regulations with respect to his or her use of the Site and the Services;

C. the User is an individual 18 years or older, with the full capacity to enter into legally binding contracts;

D. the User shall be financially responsible for its use of the Site and the purchase of Services, where applicable;

E. the User is not a citizen or resident of a geographic area in which access to or use of the Site or the Services is prohibited by applicable law, decree, regulation, treaty, or administrative act; and the User agrees that if the User’s country of residence or other circumstances change such that the above representations are no longer accurate, that the User shall immediately notify MLC of the same and cease using the Site and Services forthwith.

2.1.1.4. For the purpose of availing Accounts and Services, the User is required to have

A. A valid email address; and

B. Reached the age of majority.

2.1.2. MLC may discontinue the Services and/or the Account for the User at its sole discretion any time without assigning any reason.

2.1.3. Proper identification of the User may be required, at the time of opening the Account subject to the verification as per MLC’s internal policy / procedures. All User Accounts, at the time of registration and from time to time thereafter, shall be

subject to verification, including, but not limited to, validation against third-party databases or the verification of one or more official government or legal documents that confirm the User's identity and their capacity to enter into an this Agreement with MLC. The User authorizes MLC, to directly or through third parties, make any and all inquiries necessary to validate the User's identity and confirm their ownership of their email address or financial accounts, subject to applicable law. When requested, User must provide MLC with such information about themselves.

- 2.1.4.** Any User opening or operating an Account is deemed to have read, understood and accepted the Agreement, and any and all amendments from time to time to the aforementioned by MLC.
- 2.1.5.** MLC reserves the right to avail and access User identification-related data obtained through the Account registration of the User.
- 2.1.6.** The User agrees to provide true, accurate, and complete information on its Account and all registration and other forms they access on the Site or provide to MLC, and to update the User's information to maintain its truthfulness, accuracy, and completeness. The User agrees not to provide and to correct any information about their location, billing / financial details, contact information, or their delivery address that the User has provided that is or becomes false or misleading.
- 2.1.7.** The User shall not register for more than one User Account without express written permission from MLC, and the User shall not ask or allow another person to access a User Account on their behalf, for their use or benefit.

### **3. ATTRIBUTES OF ACCOUNTS**

- 3.1.** Only one Account may be opened per User.
- 3.2.** The grant to, and operation of Account and Services by a User is purely personal in nature and not transferable under any circumstance.
- 3.3.** Each Account shall be linked to the User's registered email address, which shall be quoted in all correspondence with the User relating to the Account and Services.
- 3.4.** MLC reserves the right without prior notice to the User to charge the User for any expenses, fees, withholding tax, tax, duty, or any other cost, service charges or expenses arising out of any transactions or operation of the Account with the Site as may be payable to the Government, or any regulatory authority as may be levied, from time to time. All applicable taxes shall be recovered as per tax laws in force. Failure to do so shall result in recovery of the service charge by MLC in a manner as MLC may deem fit along with such interest charges, if any, from the User's Payment Method on file, without any liability to MLC.
- 3.5.** The Parties hereby agree that if the User opens further accounts with MLC and/or subscribes to any of the products/services of MLC or any of the Affiliates, and MLC extends the Services to such accounts, products or services and the User opts for use thereof, then this Agreement shall automatically apply to such further use of Account and Services by the User.

3.6. This Agreement is in addition to and not in substitution for the specific terms and conditions, rules and regulations, procedures of MLC following various types of accounts and all services offered to User from time to time.

#### 4. USAGE OF ACCOUNT / DORMANCY

4.1. In order to use the Service, the User must be registered for an Account.

4.2. Transaction requests shall be authorized only through the User's email address (or password, if prompted by MLC to create a unique password at the time of registration) via the registered Account.

4.3. In case of MLC receiving official notice, or as and when MLC becomes aware of it from any other reliable source, regarding the demise of a User, MLC shall stop operations immediately in the account and will not be obliged to allow any operation or withdrawal except on production of a Succession Certificate or other Court orders, from a Court of competent jurisdiction.

4.4. Any discrepancy in the Account activities for transactions and receiving of alerts should be promptly brought to the notice of MLC by the User in writing within 24 hours from the date of transaction, failing which the said activities of the Account and/or receiving of alerts shall be deemed to be finally and conclusively non-discrepant and accepted by the User, for all purposes whatsoever. In the case of any error, MLC reserves its rights, at all times to make adjusting entries to rectify the error without notice and inform the User subsequently, and recover any amount wrongly paid or credited to the User and/or any third-party together with any accrued interest charges. However, MLC shall not be liable for any loss or damage due to such error(s) or any consequential loss arising therefrom to the User and/or any third-party.

4.5. In accordance with this Agreement, the User may be entitled to receive certain records from MLC and/or MLC's Affiliates, such as contracts, notices, and communications, in writing (hereinafter collectively referred to as the "**Records**"). To facilitate the User's use of the Site and the Services, the User hereby consents to being provided these Records by MLC electronically instead of in paper form. The User shall be responsible for retaining copies (whether soft copies or hard copies) of all such Records duly communicated to the User by MLC. However, MLC reserves the right, in its sole discretion, to communicate with the User via postal service and other third-party mail services using the address under which the Account is registered. The User's consent to receive Records electronically shall remain effective until and unless it is expressly withdrawn in writing by the User by contacting Customer Support. Withdrawal of User's consent to receive such Records electronically ("**Withdrawal**"), shall cause the User's access to the Site and the Services to be revoked, and the User shall no longer be permitted to use the Site or the Services. Withdrawal shall be effective only after MLC has had a reasonable period of time to process the request for Withdrawal. Please note that Withdrawal shall not apply to records and notices electronically provided by MLC to the User before the Withdrawal becomes effective.

- 4.6. The User shall be responsible for keeping all contact information (including without limitation all email addresses and postal addresses) in MLC's records up-to-date by promptly notifying MLC of its current contact information, as well as any changes to the same, as soon as those changes occur.
- 4.7. By entering into this Agreement, the User acknowledges and confirms that the User possesses all of the hardware and software necessitated to receive all electronic notifications and Records as may be provided by MLC, such requirements which may be amended by MLC from time to time, including without limitation:
  - 4.7.1. a valid and current email address;
  - 4.7.2. a data plan, or internet connection for your smartphone device;
  - 4.7.3. Software, browsers, plugins, or other mobile and/or computer applications and programs identified on the Site in their Current Versions. The use of other browsers, or any of the aforementioned items in any version that is not the Current Version, may lead to compatibility issues;
  - 4.7.4. a mobile and/or computer device with an operating system capable of supporting the afore-mentioned items.

## 5. SECURITY

- 5.1. If the User is prompted to create a password for the Account in accordance with Clause 4.2 hereinabove, MLC shall not be liable to the User or any third-party, if anyone gets / has access to User's Account password and/or mobile device with the Site, and the User fails to inform MLC. The Orders, Design(s), any transaction(s) done, and/or instructions sent on the Account by the unreported and unauthorized user shall be considered legitimate and shall be acted and/or relied upon by MLC. MLC accepts no liabilities and shall not be held liable for compensation against any resulting User's loss.
- 5.2. The User irrevocably and unconditionally undertakes to ensure that the User's password and other Confidential Information is kept confidential and to not let any unauthorized person have access to the mobile phone and/or the password.
- 5.3. Subject to Clause 4.2 hereinabove, the security of the password must not be endangered or compromised by choosing a password that can be easily guessed, such as four (4) of the same numbers or numbers in sequence such as 1234.
- 5.4. The User hereby acknowledges, agrees, and confirms that the User's registered mobile phone/SIM shall only be used by the User and he/she shall take all necessary precautions and care to ensure that the same are not misplaced, lost or stolen. If User's registered mobile phone/SIM is lost or stolen, User shall immediately notify his/her mobile operator to block and prevent misuse of the mobile phone/SIM. The User shall also promptly notify MLC's Customer Service to block access to his/her Account, failing which, MLC shall not be held liable for any cost, charges, expenses, losses (direct, indirect or consequential), claims (including third party claims) or damages suffered or incurred by the User. The time at which MLC receives instructions to

block access to the Account shall be determined and certified by MLC and such determination shall be binding and conclusive on the User.

- 5.5. If the User believes that his/her Account has been accessed without his knowledge or consent, or that their password has been fraudulently used, they shall contact MLC immediately to block account.
- 5.6. MLC shall not be required to independently verify the User Instructions and shall be effective unless countermanded by further instructions from the User within reasonable time frame. MLC shall have no liability whatsoever if it does not or is unable to stop or prevent the implementation of any such countermanded User Instruction.
- 5.7. All instructions for operating the Accounts and availing Services shall be given by the User ("**User Instructions**") in the manner prescribed by MLC. The User is also responsible for the accuracy completeness and authenticity of the payment instructions provided to MLC and/or its Affiliates and the same shall be considered to be sufficient to operate the Accounts.
- 5.8. The User Instructions shall be affected only after authentication of the User in accordance with the prescribed procedure for the Account.
- 5.9. All the records of MLC generated by the User Instructions, (including the time of the transaction and payments requested when availing Services and using the Account), recorded shall be conclusive proof of the genuineness and accuracy of the transaction and accompanying User Instructions.
- 5.10. When a User provides payment instructions and the same are received by MLC, transaction shall deemed to be fixed and finalized and User may not subsequently raise any objections with respect thereto. Once the User Instructions are received the transaction may not subsequently be changed or reversed in any way. MLC may seek clarification on User Instructions as and when it deems fit.
- 5.11. MLC may refuse to comply with the User Instructions without assigning any reason whatsoever and shall not be under any duty to assess the prudence or otherwise of any User Instruction and have the right to suspend the operations through standard process if it has reason to believe that the User Instructions will lead or expose to direct or indirect loss or may require indemnity from the User before continuing to operate Account.
- 5.12. The User undertakes and agrees not to use or permit the use of Account and Services for any illegal or improper purposes and shall comply with all applicable laws and regulations governing the Accounts. The User shall be held liable for any illegal funds transfer and money laundering done through their Account.

## 6. SERVICES AND ORDER BASICS

- 6.1. The Site is an online portal for Users to select and place Order(s) for manufacture of Custom Parts pertaining to the Accepted Design specified by the User in the Order. Subject to the Agreement, MLC provides the Services to Users, including hosting and maintaining the Site.
- 6.2. **Designs.** Users shall browse the Site and use the Software pursuant to and in accordance with the Software License granted to the User under the EULA, to create a Design for Custom Parts sought to be purchased by the User. The User shall also have the option of providing MLC with a Design created using a source, other than the Software.
  - 6.2.1. **Software version.** If using the Software to create the Design, the User hereby agrees to upgrade to the Current Version of the Software prior to placing an Order. MLC shall not be liable for any errors caused by use of Software versions other than the Current Version.
- 6.3. **Orders and Accepted Orders.** All Designs must be submitted to MLC for acceptance and approval through the User's completion of an Order. The User shall provide the Design for the Custom Parts of its choice, and provide the relevant delivery address and Payment Method for payment of the Custom Parts Price when placing the Order. MLC shall review the User's Order request and terms, and the Design submitted. If the Design and corresponding Custom Parts Price within a submitted Order is accepted and approved by MLC, the corresponding Order shall then be deemed an Accepted Order, and MLC shall thereon be authorized to charge the User's Payment Method accordingly for the Custom Parts Price. If the Design and/or Custom Parts Price is not accepted and approved by MLC, then MLC shall notify the User in writing of such rejected Order, and MLC may, without being obligated to, advise the User on the reasons for rejection / deficiencies in the Design or inadequacies in the Custom Parts Price. MLC shall not process the Payment Method, or be authorized to otherwise charge the User, for the Custom Parts Price for any Order which is not an Accepted Order.
  - 6.3.1. **Order Confirmations.** MLC shall send a confirmation email upon receipt of each Order to the User's designated email address. It is the User's responsibility to check and ensure that MLC's e-mail address is not blocked by the User's spam filters, and to check the User's email program's junk folder for the confirmation email. In the event that the User cannot find or did not receive a confirmation email against submission of an Order, it shall be the User's responsibility to contact MLC to confirm MLC's receipt of said Order. To avoid any double-ordering (and double-billing), the User shall only resubmit an Order to MLC, if MLC confirms in writing that the original Order was not received. Due to the intentional similarity of many orders, MLC shall not screen for duplicate Orders, nor have any responsibility or liability to do so. In the event that the User accidentally places a duplicate Order, the User shall notify MLC immediately to cancel the duplicate Order, otherwise all such Orders shall be processed for consideration, and if they are confirmed as Accepted Orders, then subsequently the User shall be charged the corresponding Custom Parts Prices at the time of shipment, or the calculated cancellations charges as advised by MLC if cancelled prior to shipment.



- 6.3.2. Custom Parts Price Quotations.** While Custom Parts Price estimates and quotations are generally accurate, they are subject to upward or downward adjustment by MLC after MLC has received the Order, but prior to confirming an Accepted Order. Custom Parts Price adjustments may be invoked to accommodate many factors, including but not limited to unusual Designs, specific customization requests made by the User, and unexpected market fluctuations affecting the availability and price of shipping and/or raw materials. If a Custom Parts Price adjustment is made, the User shall be notified via the e-mail address supplied by the User. The Customer shall be given ten (10) business days to accept the new Custom Parts Price (all other terms will remain unchanged) or to cancel the Order. In the event that the User does not respond to the Custom Parts Price adjustment notification within the specified ten (10) business days, then MLC shall automatically cancel such Order.
- 6.3.3. Declined Orders.** Sometimes, a Custom Part will prove technically or economically impracticable to fabricate as ordered. MLC reserves the right to decline fabrication of a Custom Part and the corresponding Order, in MLC's sole discretion. In the event of an Order being declined, the User shall not hold MLC liable for any inconvenience or losses incurred by the User for such declined Order, for any reason whatsoever. If the User orders more than one Custom Part at one time in a given Order, and MLC declines the production of fewer than all of the Custom Parts, MLC shall issue an Accepted Order on the basis of a partially accepted Order, removing the declined Custom Parts, any remaining Custom Parts shall be manufactured, and paid for, per the terms of the Accepted Order.
- 6.3.4. Canceling/Modifying Orders.** The Custom Parts provided by MLC are custom fabricated products, and not stocked items. For this reason, once an Order is confirmed as an Accepted Order, the User may cancel or modify the Accepted Order, in whole or in part, subject to payment of: (i) all cancellation/modification charges, as advised by MLC in writing as shall be calculated by MLC at the time of the request for such cancellation or modification.
- 6.3.5. Modifying Orders.** MLC reserves the right to cancel any extant Accepted Order if manufacturing the desired Custom Parts is found to be technically or economically impractical. In the alternative, MLC may modify specifications or manufacturing processes, provided the modifications do not adversely affect the form, fit, or function of the Custom Parts, as specified in the Design of the Accepted Order.
- 6.3.6. Custom Parts Price/Description Changes.** All Prices, pictures, and descriptions are subject to change. MLC is not responsible for Price, typographical, or other errors in any Price estimate or Site description, and it reserves the right to cancel or refuse, in its sole discretion, any Orders and Accepted Orders resulting from such errors.
- 6.4. Checklist.** The Site provides a checklist designed to help the User minimize errors when placing an Order. The User hereby agrees to carefully review and attend to the checklist prior to placing any Order(s) and to attend to any warnings or advisories provided by the Software, if used. The User also hereby acknowledges and agrees that User understands that the checklist is

not absolute and/or conclusive, and that no checklist can cover every possibility, and is to be supplemented with the User's common sense and due care.

**6.5.** MLC shall ship the Custom Parts in accordance with the details in the Accepted Order to the User.

**6.6. Custom Parts Design and Manufacture:**

**6.6.1. CAD Warnings.** The CAD software utilised by the User for the Design may provide warning messages. It is recommended that the User resolve warnings prior to ordering. In the event that a problem occurs with the Custom Parts relating to a warning that the User did not resolve, the User agrees to accept those Custom Parts, regardless of whether they deviate from the User's specifications. In the event that a problem occurs during manufacturing relating to a warning that the User did not resolve, and MLC deems it appropriate to stop manufacturing the Custom Parts, the User shall be responsible for payment of work done and all related costs actually incurred by MLC.

**6.6.2. Test Runs.** While MLC appreciates and encourages the placement of large Orders, it also prefers the User to be satisfied with the finished Custom Parts before the User commits to large production runs of said Custom Parts. If the User is working with a new Design, or is unsure how a particular design or material will function in a specific context, MLC recommends that the User place a smaller "test run" Order first, then follow up with a larger Order once the User is comfortable that each Custom Part, as designed, is suitable for the User's needs. However, this is merely a suggestion, and MLC shall bear no liability for towards the User, for the User's following or ignoring of such suggestion.

**6.6.3. Mating Parts.** Similarly, if the User is designing Custom Parts that mate together, including but not limited to bent parts, MLC recommends that the User place a small "test run" Order, to ensure that the User's specifications translate properly into the physical objects that the User envisioned. The User is solely responsible for ensuring that the User's Designs mate properly and allow appropriate clearances/tolerances. Placing a small initial Order is the best way to do this. Once again, however, this is merely a suggestion, and MLC shall bear no liability towards the User, for the User's following or ignoring of such suggestion.

**6.6.4. Absent Specifications.** The CAD software or Software, as the case may be, used by the User may include common specification parameters such as linear tolerance, flatness, surface roughness, etc.; however, no built-in list of specifications can be exhaustive to cover all possible needs. For example, there may be no built-in specifications for the angle of grain in a brush finish, the cleanliness of surfaces, weight, and so on ad infinitum. It is the User's responsibility to provide any necessary or desired specifications as special text instructions, and the User shall not have the right to reject any Custom Parts on the basis of specifications that were not explicitly stated in the corresponding Order and Accepted Order.

- 6.6.5. Material Properties.** All Custom Parts are subject to tolerances and variations consistent with usages of trade and uniform manufacturing practices concerning material properties (including but not limited to color, dimension, flatness, thickness, weight, straightness, sections, composition, weight, texture, tensile strength, torsional strength, heat resistance, electrical resistivity, and chemical reactivity). Measurement specifications shall be governed generally by ASME Y14.5-2009 and/or the Specifications section of the online help (currently located at <https://www.emachineshop.com/specifications/>). The User hereby acknowledges and accepts that there are normal variations in material properties, and that the Custom Parts may vary within the range generally accepted as conforming within the trade. The material properties information presented by the Software for each material type and the tabular information presented in the Software's "Material", "Finish", and other dialogs are to be taken as general guides, and not as definitive specifications. This information is neither intended nor guaranteed to be comprehensive, and may not be error-free or apply specifically to your intended application of the Custom Parts. If specific Material Properties or design elements are desired, the User must make independent verification from another source, prior to submitting an Order. As always, a small "test run" Order is advised, followed by a larger "full-scale" Order, if the User is satisfied by the Custom Parts from the "test run" and all appropriate tolerances are specified. The User hereby accepts that errors in subtractive machining processes may occasionally be corrected by additive processes.
- 6.6.6. Special Instructions.** For User using the Software, the "Comments to the Machinist" feature allows the User to provide MLC with specific, detailed instructions to better help the User to customize the Designs submitted to MLC for fabrication. Additionally, for Designs developed without using the Software, the User may also provide additional, written instructions, as needed, in order to carry out the Design in the Order. MLC shall endeavor to interpret the User's instructions, but MLC must rely upon the User to be as clear and precise as possible, and MLC shall not be responsible for material or fabrication decisions resulting from errors, omissions, or ambiguities in the User's instructions.
- 6.6.7. General Safety Considerations.** The User hereby acknowledges that the Custom Parts ordered from MLC were not designed by MLC, nor does MLC have any control over their Design, or their use or misuse once they have been delivered to the User. It is the User's responsibility to create a functional, safe design, and to provide adequate safety devices and equipment to safeguard the end user and other persons and property from harm stemming from any particular use, operation, or setup, and to adequately conform to all Federal, State, and Local laws, rules, regulations, safety standards, and industry safety standards. Additionally, it is the User's responsibility to fully inspect all Custom Parts for Design conformity, variation in material selection, defects in fabrication, defects in material uniformity or strength, and all other matters that could affect safety or performance. MLC shall not be liable in any manner whatsoever for the consequences of, or the results obtained through, the use or application of the Software, the submitted Designs,

and/or the Custom Parts, including but not limited to their use with or incorporation into weapons or other inherently dangerous instrumentalities. MLC shall not be responsible for any losses or damages sustained by the User or by any other party as a result of the use, installation, or application of the Custom Parts. Furthermore, the User shall indemnify and hold harmless MLC from any claims arising out of, connected with, or related to the use, installation, or application of the Custom Parts.

- 6.6.8. Assistance and Advice.** EMS does not claim any expertise in engineering, design, or any related spheres. Accordingly, if the Software or the EMS staff helps You create or modify a design, or offers suggestions or advice in any other way, such assistance and/or advice are general suggestions only, and are not intended to replace consultation with engineers, other suitably trained professionals, or resource materials. It is your final responsibility to review carefully your design, and You take any advice or suggestions provided by the Software or the EMS staff at your own risk. You assume full final responsibility for checking correctness, dimensions, safety, applicability, and functionality, including but not limited to all aspects of the supplied checklist, and You accept the Custom Parts as if You independently created the design and performed all engineering yourself, without assistance from EMS or the Software.
- 6.6.9. Life Support / Avionics / Other Safety-critical Applications.** The Custom Parts are not intended for sale as parts, components, or assemblies for the planning, construction, maintenance, operation, or use of any nuclear facility or weapons systems, or for use in aircraft flight, navigation, communication, or ground support equipment, or for use in medical systems or life-support equipment where the failure or malfunction of such Custom Part can reasonably be expected to result in personal injury, or for use in other safety-critical applications. The User hereby agrees that, in the event that the User uses any Custom Parts for such purposes, the User does so at its own discretion and risk, and that MLC shall not be liable, in whole or in part, for any claims or damages arising from such use. Furthermore, You shall indemnify and hold MLC harmless from any claims arising out of, connected with, or related to the use and performance of Custom Parts in such applications.
- 6.6.10. Regulated Uses.** The User is solely responsible for assuring compliance with any and all statutory and/or regulatory requirements pertaining to the intended use of the Custom Parts, either as delivered to the User or after having been incorporated into any system, product, device, apparatus, or mechanism, and the User shall indemnify and hold MLC harmless from any claims arising out of, connected with or related to the User's failure to do so.
- 6.6.11. Duty to Inspect.** Upon receipt of the Custom Parts the User shall have the responsibility of examining the packing carefully upon receipt, and advise the carrier of any visible damage at the time of delivery. If the User receives Custom Parts that have been damaged in transit, the User shall keep the shipping carton, packing material, and the Custom Parts intact, and take plenty of suitably-lit, high-resolution photos of ALL sides of the packaging.

**6.6.12. Duty to Notify MLC of Problems.** If the User believes that any part of the Accepted Order is missing, damaged, or defective, the User must so notify MLC, in writing, within ten (10) business days after the Custom Parts arrival at the delivery destination specified in the Accepted Order. The User's written notice must set forth with particularity the manner in which the User believes that the delivered Custom Parts do not comply with the Accepted Order or this Agreement. Failure to give MLC timely notice constitutes and demonstrates the User's approval and acceptance of the Custom Parts, in the quantity and quality delivered.

**6.7. Delivery of Custom Parts**

**6.7.1.** MLC's standard delivery method is UPS operated by United Parcel Service (please note that the United Parcel Service terms and conditions of delivery shall apply to all Accepted Orders so shipped).

**6.7.2.** In the event that the User requests expedited delivery terms in the Order, subject to MLC's approval of such expedited delivery term, additional carrier charges shall apply, and MLC shall inform the User of the same at the time of confirming the Accepted Order.

**6.7.3.** The User shall make all arrangements necessary to take delivery of the Custom Parts whenever tendered for delivery. In the event that the User is unable to take delivery of the Custom Parts at the nominated delivery address and for any reason MLC is required to re-deliver the Accepted Order, then MLC shall be entitled to charge a reasonable fee for the re-delivery.

**6.7.4.** Any delivery time or date given by MLC to the User is an estimate only. The User must still accept delivery of the Custom Parts, even if late, and MLC shall not be liable for any loss or damage incurred by the User as a result of the delivery being late.

**6.7.5.** If a User elects to have multiple Accepted Orders consolidated into a single shipment to reduce shipping charges, each individual Accepted Order shall be charged as completed, even though these Accepted Orders shall not be shipped until the final order in the consolidated set of orders is completed. For Custom Parts manufactured with custom tooling, including but not limited to molding, blanking, casting, extrusion, and forging, if samples are provided, the User's Payment Method shall be charged for the tooling and test run portion of the Accepted Order prior to shipment of the samples. For partial shipments of Accepted Orders, partial prorated portion of the corresponding Custom Part Price shall be charged at time of shipment of such partial shipment.

**6.7.6. Delivery Method.** The User shall have the option of selecting the mode and port of shipment, and MLC shall select the fastest and most economical means practicable to ship it to such port. MLC shall normally follow the User's shipping instructions, but reserves the right to ship Custom Parts freight collect and to select the means of transportation and routing when the User's instructions are deemed unsuitable. If MLC selects the carrier, the cost of appropriate insurance

shall be added to the Accepted Order and the Custom Parts Price, in addition to shipping costs. If the User selects the carrier, the User has the option of insuring the delivery, an option which MLC strongly endorses for the User's protection.

- 6.7.7. Title / Risk of Loss.** Regardless of the method of delivery, all shipments are F.O.B. the MLC New Jersey facility. Title and risk of loss or damage will pass from MLC to the User upon delivery of the Custom Parts to the carrier.
- 6.7.8. Shipment Quantity.** When MLC fabricates parts, it aims to supply whatever quantity the User has specified in the Order, plus or minus a certain amount to allow for fabrication errors and overages. This allowed variation is 5% rounded down to a whole number. Provided that MLC ships a quantity that is within the range indicated, Accepted Order shall be satisfied. If, however, the actual quantity shipped is less than the minimum indicated, the User shall be charged in proportion to the quantity actually shipped.
- 6.7.9. Export Control Laws.** The User acknowledges that Custom Parts, and the transactions contemplated by this Agreement, are subject to the export control laws and regulations of the United States, and may also be subject to the customs and export laws and regulations of the country(-ies) in which the Custom Parts are manufactured and/or received. The User hereby acknowledges that it is the User's sole responsibility to comply with and abide by those laws and regulations, and the User warrants and represents that the User shall do so. Under U.S. law, Custom Parts may not be exported, re-exported, or transferred to restricted countries, restricted end-users, or for restricted end-uses. Compilations of restricted end-users include but are not limited to those that are maintained currently in the U.S. Department of Commerce's Denied Persons List, Entity List, and Unverified List, the U.S. Treasury Department's Specially Designated Nationals List, and the Department of State's List of Statutorily Debarred Parties . In addition, the Custom Parts may not be exported, re-exported, or transferred to an end-user engaged in activities related to illegal weapons, including but not limited to weapons of mass destruction. Such activities also include, without limitation, those related to: (1) the design, development, production, or use of nuclear materials, facilities or weapons; (2) the design, development, production, or use of missiles or support of missile projects; and (3) the design, development, production, or use of chemical, biological, or other weapons. The User hereby indemnifies and holds MLC harmless from all loss, damage, expense, or liability to any/all parties incurred in connection with, or as a result of, such activities, or from the use of the Custom Parts in connection with such activities, to the extent that such loss, damage, expense, or liability results—directly or indirectly—from any violation of this paragraph, and/or any of the EULA's restrictions. The User also warrants and represents that the User is not located in, or a resident or national of, a restricted country, and is not on any of the U.S. lists of restricted end-users, and is not engaged in or financially or materially supporting any activities related

to illegal weapons (including but not limited to weapons of mass destruction) or other restricted or illegal activities. The User understands that the requirements and restrictions of U.S. law as applicable to the User may vary depending upon, among other things, the nature of the Custom Parts, and may change over time, and that, to determine the precise controls applicable to each order of Custom Parts, The User shall refer to the current U.S. Export Administration Regulations and the U.S. Foreign Assets Control Regulations, as well as any other applicable lists, laws, and regulations. The User agrees not to provide any written regulatory certifications or notifications on behalf of EMS. If delivery is to be made outside the United States, the User shall obtain and pay for any applicable permits, licenses, and/or other governmental authorization(s), and the User shall comply with all laws and regulations of both the United States and the destination country. The User shall indemnify and hold MLC harmless from any and all claims arising out of, connected with, or related to these promises, warranties, and representations, or the breach or alleged breach of same. By placing an order for Custom Parts, the User confirms explicitly that the User agrees to the foregoing, and acknowledges explicitly that the User promises, warranties, and indemnification obligations under this paragraph are ongoing and shall survive the consummation or termination of any transaction contemplated by this Agreement.

**6.8. Returns.** No Custom Parts may be returned without prior authorization from MLC. After the User has provided MLC with the written notification described in Clause 6.6.12 above, the User shall contact MLC to request a Return Material Authorization (“**RMA**”) number. No Custom Parts shall be accepted for return without an RMA number. When any Custom Parts are returned for examination and inspection, the User assumes responsibility for damage resulting from inadequate packaging and damage or loss in transit. The User must return all allegedly defective Custom Parts, together with all packaging, manuals, and items included in the original box, along with a detailed explanation of the defect, within thirty (30) calendar days from the date of delivery.

## **7. PRICES AND PAYMENTS**

**7.1.** Custom Part Prices for Custom Parts shall be displayed on the Site and/or the Order and/or the Accepted Order(s), as the case may be, shall vary according to the specific type of Custom Parts and the selected delivery period. Once an Order is confirmed as an Accepted Order, the Custom Parts Prices quoted under that Accepted Order shall not be increased by MLC, unless the Custom Parts have to be re-delivered in accordance with Clause 6.7.3 hereinabove.

**7.2.** Any additional charges due to re-delivery or due to the scenario envisaged in Clause 9.3 hereinbelow (hereinafter collectively referred to as the “**Additional Charges**”) shall be charged by MLC to the User by using the Payment Method specified on the Order and/or any other Payment Methods specified on the User’s Account.

- 7.3. Subject to Clause 7.1 hereinabove, MLC shall reserve the right to change the Custom Parts Prices at the sole discretion of MLC, without any prior notice to the User.
- 7.4. Receipt by MLC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared, or recognized.
- 7.5. All Custom Parts Prices, and Additional Charges on the Site, the Order(s) and the Accepted Order(s) are denominated in United States Dollars.
- 7.6. **Payment Methods**
- 7.6.1. In order to use certain features of the Site and/or the Services, any User attempting to make an Order must provide account information for at least one of the following valid Payment Methods:
- A. Credit card;
  - B. Debit card;
  - C. Charge card;
  - D. Wire Transfer; and/or
  - E. Or any other payment method as may be accepted by MLC from time to time. Wherein the User hereby authorizes MLC to run authorizations on all credit/debit/charge cards provided by the User, to store credit/debit/charge card, banking, or other financial details as User's method of payment for Services, and to charge User's credit/debit/charge card for all due Custom Parts Prices and accrued Additional Charges.
- 7.6.2. By providing Payment Method information, the User represents, warrants, and covenants that:
- 7.6.2.1. the User is legally authorized to provide such information;
  - 7.6.2.2. the User is legally authorized to perform payments using the Payment Method(s); and
  - 7.6.2.3. such action does not violate the terms and conditions applicable to the User's use of such Payment Method(s) or applicable law.
- 7.6.3. By authorizing a payment using a Payment Method, the User represents, warrants, and covenants that there are sufficient funds or credit available to complete the payment of the Custom Parts Prices, and the Additional Charges, if any, using the designated Payment Method. To the extent that any amounts owed under this Agreement cannot be collected from User's Payment Method(s), the User is solely responsible for paying such amounts by other means.
- 7.7. **Non-Payment.** In the event that the User either (i) cancels its debit, credit card, or charge card (ii) initiates an improper chargeback, or (iii) commits any other act or omission; which leads to a failure on part of the User to pay any Custom Parts Prices, and/or Additional Charges due, MLC shall have the right to suspend or close the User's Account and revoke the User's access to the Services. Notwithstanding other remedies available to MLC under the law and under Clauses 7.7.1 and 7.7.2



below, the User must pay to MLC upon first demand for amounts owed under the Agreement and Order(s) plus interest on the outstanding amount at the lesser of one and one-half percent (1.5%) per month or the maximum interest allowed by applicable law, plus attorneys' fees and other costs of collection to the extent permitted by applicable law. To the extent permitted by applicable law, MLC shall reserve the right to set-off amounts due against other amounts received from or held by MLC for the User, report such behaviour to any law enforcement authorities and/or regulatory authorities, and cooperate with credit reporting agencies and law enforcement authorities in any resulting investigation or prosecution.

**7.7.1.** If full payment of the Custom Parts Price for an Accepted Order is not received at the time the Custom Parts are ready to ship, an Inventory Carrying Charge of 2% (or the maximum rate allowed by law, whichever is smaller) of that Accepted Order's unpaid balance shall be added to the Custom Parts Price due and payable, each month or portion thereof until full payment of the outstanding portion of the Custom Parts Price is received, without limiting MLC's rights to pursue collection. In addition to this, MLC shall also reserve the right to retain the Custom Parts, and not ship them to the User, pending full payment of the Custom Parts Price.

**7.7.2.** In the event that full payment for an Accepted Order is not received thirty (30) days after the Accepted Order is ready to ship, MLC shall have the right, at any time thereafter, to sell or otherwise dispose of all of the Custom Parts items comprising that Accepted Order, or any portion thereof. Proceeds from such sale/disposition shall first be used to pay the balance due on the Accepted Order (including any accrued Inventory Carrying Charges due under Clause 7.7.1 above) and to reimburse MLC for its actual expenses incurred in connection with such sale/disposition (which expenses are added to the unpaid balance of the Accepted Order, as they are incurred). Any remaining proceeds from the sale/disposition, if any, shall be returned to the User. Any balance that remains unpaid after such sale/disposition shall continue to incur Inventory Carrying Charges until the balance has been reduced to zero.

**7.8. Taxes.** Any payments of the Custom Parts Prices and/or Additional Charges due under the Services shall be subject to all applicable taxes under the law. All Custom Parts Prices and Additional Charges are exclusive of sales taxes, unless otherwise expressly stated on the Site, the Order and/or the Accepted Order.

## **8. INTELLECTUAL PROPERTY RIGHTS AND SITE LICENSE**

**8.1.** The User hereby warrants and represents that any and all Designs, plans, schematics, manufacturing specifications, and other order-related information submitted by the User, and the Custom Parts manufactured or fabricated in accordance therewith, are the User's original inventions/works of authorship, designed and created/commissioned by the User, which do not by themselves, or as incorporated into any system, product, device, apparatus, or mechanism, or as used in a process—infringe or violate any Intellectual Property Rights (including but not limited to patent, copyright, trademark, or trade secret rights) of any

third party. The User further warrants and represents that the Designs, plans, schematics, and manufacturing specifications submitted by the User, and the Custom Parts manufactured or fabricated in accordance therewith, do not infringe on or violate any local, state, or federal laws, or any international laws, codes, or regulations. The User shall indemnify and hold harmless MLC against any and all claims arising out of, connected with or related to the foregoing warranties and representations.

- 8.2.** The User retains all Intellectual Property Rights to, and MLC claims no rights in and to, the User's submitted Designs. MLC may disclose to its employees and third parties such information as is needed to perform Services in connection with creating and shipping the User's Accepted Order(s) and correcting technical issues. MLC shall keep confidential the User's identity and contact and payment information provided with the Accepted Orders, but the corresponding Design file may, under some circumstances, be provided to MLC suppliers for the purpose of provision of the Services.
- 8.3.** MLC grants to the User a limited license to access and use the Site for the purpose of using the Services. The User shall only access (or attempt to access) the Site or Services by the interface provided, and the User shall not use information from the Site or Services for any purposes other than the purposes for which it was made available. The User shall not do any of the following without MLC's express prior written consent:
  - 8.3.1.** sell, reproduce, distribute, modify, display, publicly perform, prepare derivative works based on, repost, or otherwise use any content of the Site or Services in any way for any public or commercial purpose;
  - 8.3.2.** use any content of the Site or Services on any other website or in a networked computer environment for any purpose except User's own viewing;
  - 8.3.3.** frame or link to the Site or Services;
  - 8.3.4.** attempt to reverse engineer, modify, adapt, translate, prepare derivative works from, decompile, attempt to interfere with the operation of, or otherwise attempt to derive source code from any part of the Site or the Services unless expressly permitted by applicable law.
  - 8.3.5.** access the Services in order to build a similar service or application, or publish any performance, or any benchmark test or analysis relating to the Services.
- 8.4.** MLC and its licensors retain all right, title, and interest in and to all Intellectual Property Rights related in and to the Site and the Services. The logos and names are trademarks of MLC and may be registered in certain jurisdictions. All other product names, company names, marks, logos, and symbols on the Site or the Services may be the trademarks of their respective owners. Except as expressly stated in this Agreement, nothing in the Agreement confers any license under any of MLC's or any third party's Intellectual Property Rights, whether by estoppel, implication, or otherwise.

## **9. UNAUTHORIZED ACCESS AND USE; SITE INTERFERENCE; MALICIOUS SOFTWARE**

- 9.1. The User shall not use any robot, spider, scraper, or other automated means to access the Site for any purpose without MLC's express written permission. The User further shall not:
- 9.1.1. access the audiovisual content available on the Site for any purpose or in any manner other than streaming;
  - 9.1.2. take any action that imposes or MLC reasonably believes may impose (in MLC's sole discretion) an unreasonable or disproportionately large load on the Site's infrastructure;
  - 9.1.3. copy, reproduce, modify, create derivative works from, distribute, or publicly display any content (other than content you have submitted to the Site) from the Site ("**Content**"), any software code that is part of the Site, or any services that are offered on the Site without the prior express written permission of MLC and the appropriate third party, as applicable;
  - 9.1.4. interfere or attempt to interfere with the proper operation of the Site or any activities conducted on the Site;
  - 9.1.5. bypass any of MLC's measures to prevent or restrict access to the Site or any subparts of the Site, including, without limitation, features that prevent or restrict use or copying of any Content or enforce limitations on use of the Site or the content therein;
  - 9.1.6. transmit chain letters, or other unsolicited communications;
  - 9.1.7. attempt to interfere with or compromise the system integrity or security or decipher any transmissions to or from the servers running the Site;
  - 9.1.8. collect, harvest, retain, forward, or use any personally identifiable information, including Account names, from the Site;
  - 9.1.9. access any Content on the Site through any technology or means other than those provided or authorized by the Site;
  - 9.1.10. directly or indirectly, advertise or promote another website, product, or service or solicit other Users for other websites, products, or services; or
  - 9.1.11. In addition to the aforementioned types of Content in Clause 9.1 hereinabove, the User shall not post, upload, display or otherwise make available Content that, *inter alia* promotes, supports, represents, advocates, threatens, contains and/or condones:
    - A. any form of racism, bigotry, hatred or physical harm of any kind against any group or individual;
    - B. harassment or intimidation of another person;
    - C. requests money from, or is intended to defraud, other Users of the Service;
    - D. spam or solicits users of the Tinder application;
    - E. information that is false or misleading, or promotes illegal activities or conduct that is defamatory, libelous or otherwise objectionable;

- F. an illegal or unauthorized copy of another person's copyrighted work, such as providing pirated computer programs, images, audio or video files or links to them, or infringement of any other person's Intellectual Property Rights, in any manner whatsoever;
- G. video, audio photographs, or images of another person without his or her express permission (or in the case of a minor, the minor's legal guardian);
- H. restricted or password only access pages, or hidden pages or images (those not linked to or from another accessible page);
- I. material that exploits people in a sexual, violent or other illegal manner, or solicits personal information from anyone under the age of 18;
- J. provides instructional information about illegal activities such as making or buying illegal weapons or drugs, violating someone's privacy, or providing, disseminating or creating computer viruses;
- K. viruses, time bombs, trojan horses, cancelbots, worms, any invalid data or other harmful or malicious software code, or disruptive codes, components or devices, agent, hidden procedure, routine, or mechanism through or to the Site or the Site software that is designed to cause to cease functioning, disrupt, disable, harm, or otherwise impair in any manner, including aesthetic disruptions or distortions, the operation of (or to allow you or any other person to access or damage or corrupt data, storage media, programs, equipment, or communications or otherwise interfere with operations of or on) the MLC Site or any other software, firmware, hardware, computer system, or network of MLC or any third party;
- L. an impersonation of, or otherwise misrepresents affiliation, connection or association with, any person or entity;
- M. provides information or data you do not have a right to make available under law or under contractual or fiduciary relationships (such as inside information, proprietary and Confidential Information);
- N. disrupting the normal flow of dialogue, causes a screen to "scroll" faster than other users are able to type, or otherwise negatively affects other users' ability to engage in real time exchanges; and
- O. solicitation of passwords or personal identifying information for commercial or unlawful purposes from other users or disseminates another person's personal information without his or her permission.

**9.2.** MLC reserves the right, in its sole discretion, to investigate and take any legal action against anyone who violates the provisions of this Clause 9, including removing the offending communication from the Service and terminating or suspending the account of such violators.

**9.3.** ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USER'S USE OF THE SERVICE IS ACCESSED AT THE USER'S OWN DISCRETION AND RISK, AND THE USER SHALL BE SOLELY RESPONSIBLE FOR AND HEREBY WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGE TO THE USER'S DEVICE, COMPUTER SYSTEM, INTERNET ACCESS, DOWNLOAD OR DISPLAY DEVICE, OR LOSS OR CORRUPTION OF DATA THAT RESULTS OR MAY RESULT FROM THE DOWNLOAD OF ANY SUCH MATERIAL. IF THE USER DOES NOT ACCEPT THIS LIMITATION OF LIABILITY, THEN SUCH USER SHALL NOT BE AUTHORIZED TO DOWNLOAD OR OBTAIN ANY MATERIAL THROUGH THE SERVICE.

## **10. THIRD-PARTY VERIFICATION**

**10.1.** The Site makes available various services provided by third parties to verify a User's credentials and provide other information. Any information or content expressed or made available by these third parties or any other Users is that of the respective author(s) or distributor(s) and shall not be deemed to be the stance, opinion, or belief of MLC. MLC neither endorses nor is responsible for the accuracy or reliability of any opinion, advice, information, or statement made on the Site by anyone other than MLC's authorized employees acting in their official capacities.

## **11. LINKS AND APPLICATIONS**

**11.1.** The Site may contain links to third-party websites. The Site may also contain applications that allow the User to access third-party websites via the Site. Such third-party websites are owned and operated by the third parties and/or their licensors. MLC does not warrant or guarantee access and use of third-party websites, including online communication services, such as chat, email, and calls will be governed by the terms and policies of the applicable third-party websites. The User acknowledges and agrees that MLC is not responsible or liable for the availability or accuracy of third-party websites; or the content, advertising, or products on or available from third-party websites. The User shall access third-party websites by clicking on a link, or installing an application at the User's sole risk and discretion.

## **12. MOBILE AND OTHER DEVICES**

**12.1.** When using the Site, please be aware that your carrier's normal rates and fees, such as text messaging and data charges, will still apply.

## **13. SITE UPDATES**

**13.1.** MLC may from time to time in its sole discretion develop and provide Site and/or Services updates, which may include upgrades, bug fixes, patches, and other error corrections and/or new features (collectively, including related documentation, "**Updates**").

Updates may also modify or delete in their entirety certain features and functionality. You agree that we do not have any obligation to provide any Updates or to continue to provide or enable any particular features or functionality. You will promptly download and install all Updates and acknowledge and agree that the Services or portions thereof may not work properly should you fail to do so. You further agree that all Updates will be subject to the terms of this Agreement, unless otherwise provided in terms associated with such Update. MLC reserves the right, at any time, to modify, suspend, or discontinue Services or any part thereof without notice. You agree MLC shall not be liable to you or any third party for any modification, suspension, or discontinuance of Services or any part thereof.

#### **14. CONFIDENTIALITY**

- 14.1.** Unless otherwise specified in the Agreement, all information exchanged during the course of the Agreement (“**Confidential Information**”) shall be regarded as confidential between the Parties and shall not be disclosed to any unauthorized person or used by the recipient other than for the purpose to which it relates. Any authorized disclosure to another person(s) shall be on the same terms as to confidentiality as contained in this clause. Parties hereby agree to make available Confidential Information only to those of their employees, subcontractors, and/or third-parties, who need to have access to it for the purposes of this Agreement and to obligate such employees, subcontractors, and/or third-parties correspondingly to the extent legally permissible.
- 14.2.** If, for the purposes of this Agreement, a Party discloses any Confidential Information to its employees, subcontractors, and/or third parties, it shall notify such employees, subcontractors, and/or third-parties, of the confidential nature thereof and make all necessary efforts and take all precautions to bind such employees, subcontractors, and/or third-parties, to keep the Confidential Information strictly confidential.
- 14.3.** During and after the tenure of this Agreement if any Confidential Information is received by a Party under or by virtue of this Agreement the same shall be maintained in the strictest of confidence and trust.
- 14.4.** The obligation of confidentiality and limited use shall survive termination of this Agreement and continue even after the termination or expiry of this Agreement.

#### **15. WARRANTIES AND WARRANTY DISCLAIMER**

- 15.1.** The Site and the Services are provided “as is” and on an “as available” basis. MLC makes no express representations or warranties with regard to the Site, the Services, or any activities or items related to this Agreement. To the maximum extent permitted by applicable law, MLC disclaims all express and implied conditions, representations, and warranties including, but not limited to, the warranties of merchantability, accuracy, fitness for a particular purpose, title, and non-infringement. Some

jurisdictions may not allow for all of the foregoing limitations on warranties, so to that extent, some or all of the above limitations may not apply to the User.

**15.2. Limited Warranty.** Subject to this Agreement, MLC warrants to the User, as the original purchaser, that each Custom Part delivered shall be free from defects in material or workmanship, and that each Custom Part delivered shall meet the contractually agreed upon specifications, at the time of delivery. MLC's obligation under the Warranty contained in this Clause 15.2 herein is limited to repairing, replacing, or refunding, at its option, any Custom Part that does not meet this Warranty, provided that the User has provided EMS with timely notice and returned the Custom Part(s) to MLC in accordance with this Agreement, with the transportation charges pre-paid, and provided that, upon MLC's examination, the Custom Part, when tested within the specified ratings and in accordance with good engineering practice, does not meet the Warranty contained herein. MLC reserves the right to require the User to demonstrate that the Custom Parts are non-functional in their intended application. In the event of Custom Part replacement, Design changes shall not be accepted. If samples with non-conformities are not rejected by the User in accordance with the provisions of Clause 6.6.12 above, then the User shall accept subsequent production runs with similar non-conformities. All Custom Parts are subject to the tolerances and variations referred to in this Agreement. MLC, based upon its own examination, shall determine whether a Custom Part meets specified or standard tolerances or is non-conforming pursuant to this Warranty. This Warranty does not cover ordinary maintenance or alleged defects resulting from wear and tear within the normal consumable life of the Custom Part, nor does it cover neglect, misuse, abuse, improper handling or storage, alterations, connection of the Custom Part to or incorporation of the Custom Part into other objects, power or external circuitry, high usage, electro-static discharge, operation in unusual environments, improper maintenance, improper handling, accident, and/or negligence. No repair or replacement will extend the applicable warranty period. MLC NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME ANY OTHER LIABILITIES IN CONNECTION WITH THE SALE OR USE OF ANY PRODUCT. THE FOREGOING WARRANTY AND REMEDIES ARE FOR YOUR EXCLUSIVE BENEFIT AND ARE NOT TRANSFERABLE.

**15.3. Disclaimer of Warranties.** The User hereby acknowledges that MLC does not make, and specifically negates, renounces, and disclaims any representations, warranties, and/or guarantees of any kind or character, expressed or implied, with respect to (i) Custom Parts, their use, design, application or operation, their merchantability, their physical condition, or their fitness for a particular purpose; (ii) the maintenance of or other expenses to be incurred in connection with the Custom Parts; (iii) the engineering, design, fabrication work, or any other work or service (whether gratuitous or for payment) supplied by MLC and/or its agents, suppliers, and employees; or (iv) the accuracy or reliability of any information, designs or documents furnished to the User. THE LIMITED WARRANTY DESCRIBED IN CLAUSE 15.2 ABOVE IS THE ONLY EXPRESS WARRANTY MADE TO THE USER AND IS PROVIDED IN LIEU OF ANY OTHER WARRANTIES OR SIMILAR OBLIGATIONS (IF ANY) CREATED BY

ANY ADVERTISING, DOCUMENTATION, PACKAGING, OR OTHER COMMUNICATIONS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MLC PROVIDES THE PARTS AND SUPPORT SERVICES (IF ANY) AS IS AND WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND, WHETHER VERBAL OR WRITTEN, EXPRESS OR IMPLIED, OTHER THAN THE LIMITED WARRANTY DESCRIBED IN CLAUSE 15.2. MLC HEREBY DISCLAIMS EXPRESSLY ALL OTHER WARRANTIES AND CONDITIONS, WHETHER VERBAL OR WRITTEN, AND WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, RESULTS, FITNESS FOR A PARTICULAR PURPOSE, RELIABILITY OR AVAILABILITY, SATISFACTORY QUALITY, QUIET ENJOYMENT, QUIET POSSESSION, CONDITION OF TITLE, CORRESPONDENCE TO DESCRIPTION, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ACCURACY OF INFORMATIONAL CONTENT, ACCURACY OR COMPLETENESS OF RESPONSES, WORKMANLIKE EFFORT, AND/OR LACK OF NEGLIGENCE. YOU ASSUME THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE CUSTOM PARTS AND ANY ITEMS AFFIXED THERETO OR USED THEREWITH. NO VERBAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MLC, ITS SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, LICENSORS, SUPPLIERS, DISTRIBUTORS, CO-BRANDERS OR OTHER PARTNERS, EMPLOYEES AND/OR SOFTWARE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS LIMITED WARRANTY. THIS WARRANTY DISCLAIMER AFFECTS YOUR LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

## **16. LIMITATION OF LIABILITY**

- 16.1.** The Parties agree that MLC shall not be liable for any damages or losses arising out of or in connection with the Agreement, including, but not limited to:
- 16.1.1.** The User's use of or inability to access the Site or Services;
  - 16.1.2.** delays or disruptions in the Site or Services;
  - 16.1.3.** viruses or other malicious software obtained by accessing, or linking to, the Site or Services;
  - 16.1.4.** glitches, bugs, errors, or inaccuracies of any kind in the Site or Services;
  - 16.1.5.** damage to the User's hardware device from the use of the Site or Services;
  - 16.1.6.** the content, actions, or inactions of third parties' use of the Site or Services;
  - 16.1.7.** a suspension or other action taken with respect to the User's Account;



- 16.1.8.** the User's reliance on the quality, accuracy, or reliability of profiles, ratings, recommendations, and feedback (including their content, order, and display), or metrics found on, used on, or made available through the Site; and
- 16.1.9.** the User's need to modify practices, content, or behavior as a result of changes to the Agreement.
- 16.2.** The liability of MLC, its Affiliates, licensors, and third-party service providers to the User for any claim arising out of or in connection with this Agreement shall not exceed the aggregate of any Fee and any Additional Charges paid by the User in the preceding six months of such claim. These limitations will apply to any liability, arising from any cause of action whatsoever arising out of or in connection with this Agreement, whether in contract, tort (including negligence), strict liability, or otherwise, even if advised of the possibility of such costs or damages and even if the limited remedies provided herein fail of their essential purpose. Some jurisdictions do not allow for all of the foregoing exclusions and limitations, so to that extent, some or all of these limitations and exclusions may not apply to the User.
- 16.3. No Incidental, Consequential and Certain Other Damages.** WHETHER RELATING TO THE AFOREMENTIONED LIMITED WARRANTY OR OTHERWISE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MLC, ITS SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, LICENSORS, SUPPLIERS, DISTRIBUTORS, CO-BRANDERS OR OTHER PARTNERS, OR EMPLOYEES BE LIABLE, TO THE USER OR TO ANY OTHER PARTY, FOR ANY GENERAL, SPECIAL, INCIDENTAL, PUNITIVE, DIRECT, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, PERSONAL INJURY, DAMAGE TO PROPERTY, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY, INCLUDING, WITHOUT LIMITATION, THAT OF GOOD FAITH OR REASONABLE CARE, NEGLIGENCE, AND ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER), OR FOR ANY CLAIM BY ANY THIRD PARTY, ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE CUSTOM PARTS, THE PROVISION OF OR FAILURE TO PROVIDE TECHNICAL OR CUSTOMER SUPPORT OR OTHER SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT. IN ADDITION, IN NO EVENT SHALL THE LIABILITY OF MLC, ITS SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, LICENSORS, SUPPLIERS, DISTRIBUTORS, CO-BRANDERS OR OTHER PARTNERS, OR EMPLOYEES FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE CUSTOM PARTS OR THESE TERMS OF USE AND ORDER POLICIES EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE PARTS PRINCIPALLY RESPONSIBLE FOR OR CONNECTED WITH SUCH DAMAGES. ALL LIMITATIONS, EXCLUSIONS AND DISCLAIMERS UNDER THIS AGREEMENT SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND SHALL APPLY TO ANY DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT

(INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, EVEN IF MLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER ANY REMEDY AVAILABLE FAILS ITS ESSENTIAL PURPOSE.

## 17. INDEMNIFICATION

- 17.1. The User shall indemnify, defend, and hold harmless MLC, our Affiliates, and our respective directors, officers, employees, representatives, and agents (each an “**Indemnified Party**”) from any and all claims, damages, liabilities, costs, losses, and expenses (including, but not limited to, reasonable attorneys’ fees and all related costs and expenses) arising from or relating to any claim, suit, proceeding, demand, or action brought by the User, a third party, or another User against an Indemnified Party relating to:
- 17.1.1. use of the Site and the Services by User, including any payment obligations incurred through use of the Services;
  - 17.1.2. the User’s failure to comply with the Agreement;
  - 17.1.3. User’s failure to comply with applicable law(s) and/or regulation(s);
  - 17.1.4. User’s negligence, willful misconduct, or fraud; and
  - 17.1.5. defamation, libel, violation of privacy rights, unfair competition, or infringement of Intellectual Property Rights or allegations thereof to the extent caused by the User.
- 17.2. Additionally, in no event shall MLC, its Affiliates, licensors, or third-party service providers be liable for any special, consequential, incidental, punitive, exemplary, or indirect costs or damages, including, but not limited to, litigation costs, installation and removal costs, or loss of data, production, profit, or business opportunities.

## 18. COMMUNICATIONS FROM USER TO MLC

- 18.1. All notices to MLC or our Affiliates intended to have a legal effect must be in writing and delivered either (a) in person; (b) by a means evidenced by a delivery receipt, to the following address: 31 Industrial Ave., Mahwah, NJ 07430 ; or (c) in writing via email to “legal at miclog.com” (replace “at” with @), and shall be deemed effective upon receipt by MLC. MLC does not accept service of any legal process by email or mail; all such service should occur by hand delivery on MLC or its registered agent for service of process.

## 19. GENERAL PROVISIONS

- 19.1. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the User and MLC relating to the subject matter hereof and thereof and cancels and supersedes any prior or contemporaneous discussions, agreements,

representations, warranties, and other communications between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof and thereof. The section headings in the Agreement are included for ease of reference only and have no binding effect. Even though MLC has drafted the Agreement, the User represents that they had ample time to review and decide whether to agree to the Agreement. If an ambiguity or question of intent or interpretation of the Agreement arises, no presumption or burden of proof will arise favoring or disfavoring the Parties because of the authorship of any provision of the Agreement.

- 19.2. Modifications.** No modification or amendment to the Agreement shall be binding upon MLC unless in a written instrument signed by a duly authorized representative of MLC. For the purposes of this subsection, a written instrument will expressly exclude electronic communications, such as email and electronic notices, but will include facsimiles.
- 19.3. No Waiver.** Notwithstanding anything to the contrary in this Agreement, the failure or delay of either Party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and will in no way affect that Party's right to later enforce or exercise it, unless such Party issues an express written waiver, signed by a duly authorized representative of such Party.
- 19.4. Assignability.** User may not assign any of its rights or obligations hereunder, for any reason whatsoever. MLC may freely assign this Agreement without User's consent. Any attempted assignment or transfer in violation of this subsection will be null and void.
- 19.5. Severability.** If and to the extent any provision of this Agreement is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability and will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the Parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction will not in any way affect the legality, validity, or enforceability of such provision in any other jurisdiction or of any other provision in any jurisdiction.
- 19.6. Force Majeure.** Neither Party shall be responsible for the failure to perform or any delay in performance of any obligation hereunder due to labor disturbances, accidents, fires, floods, telecommunications or Internet failures, strikes, wars, riots, rebellions, blockades, acts of government, governmental requirements and regulations or restrictions imposed by law or any other similar conditions beyond the reasonable control of such party. The time for performance of such Party shall be extended by the period of such delay. Irrespective of any extension of time, if an event of Force Majeure occurs and its effect continues for a period of 30 days, either Party shall have the right to give to the other a notice of termination with immediate effect.
- 19.7. Choice of Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, without regard to (i) conflicts of laws provisions of the State of New Jersey or any other jurisdiction; (ii) the U.N. Convention on Contracts for the International Sale of Goods; (iii) the 1974 Convention on the Limitation Period in the

International Sale of Goods; (iv) the 1980 Vienna Protocol amending the 1974 Convention; or (v) any amendment or protocol to the foregoing. Any and all actions to interpret, apply, or enforce the provisions of the Agreement, or to assert or defend any Claims or causes of action relating in any way to this Agreement, the Software, Designs, and/or Custom Parts, shall be brought in the Superior Court of the State of New Jersey, or in the United States District Court, District of New Jersey; the Parties hereby unconditionally and irrevocably consent to the exclusive jurisdiction of and venue in such courts, and hereby irrevocably waive any objection based on forum non-conveniens and any objection to the venue of any action instituted in such courts.

**19.8. Language.** The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations. The Parties hereby confirm that it is their wish that this Agreement, as well as other documents relating hereto, including Notices, have been and shall be written in the English language only.