

MFS SUPPLY LLC'S TERMS AND CONDITIONS OF SALE

EFFECTIVE DATE: January 28th, 2022

These Terms and Conditions of Sale, along with our Privacy Policy and other policies incorporated herein by reference (collectively, the “**Terms**”), govern Your relationship with MFS Supply LLC. “**You**” and “**Your**” includes, collectively, You, individually, anyone acting on Your behalf, including, but not limited to your agents, agents, affiliates, beneficiaries, or heirs, and anyone You are acting on behalf of, and “**MFS Supply**” includes, collectively, MFS Supply LLC and its subsidiaries, affiliates, partners, managers, officers, members, employees, beneficiaries, agents, assigns, vendors, fulfillment and Carriers, insurers, successors, agents, assignees, or trustee in bankruptcy. You agree to be bound by these Terms and you represent and warrant that You have the right, authority, and capacity to contract with MFS Supply and consent to these Terms in their entirety, and have read, understand, and agree to be bound by these Terms, including, but not limited to, the Mandatory Arbitration and Class Action Waiver provision.

1. USERS/COPPA (CHILDREN ONLINE PRIVACY PROTECTION ACT). Individuals under the age of 18 are not eligible to use our Website, www.MFSSupply.com, and any MFS Supply mobile application (collectively, MFS Supply’s “**Website**”), or to contract with MFS Supply. By using, visiting, browsing or making a purchase on a Website, You are certifying that You are over the age of 18. By using, visiting, browsing, or making a purchase on a Website or providing information on behalf of another, You are certifying and representing that You have the authority to bind that individual, company or other legal entity to these Terms.

We are committed to protecting the privacy of children. The Website is not designed or intended to attract individuals under the age of 18, and MFS Supply does not knowingly collect personal information online from visitors under the age of 18. If You are a parent or guardian and You are aware that Your child has violated these Terms and provided MFS Supply with personal information, please contact MFS Supply so that it may take steps to remove that information from its servers. If MFS Supply becomes aware that it has collected information from children without verification of parental consent, MFS Supply will take steps to remove that information from its servers.

2. MANDATORY ARBITRATION AND CLASS ACTION WAIVER. YOU AGREE THAT ANY DISPUTE (AS DEFINED HEREIN) BETWEEN YOU AND MFS SUPPLY WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (THE “AAA”) IN ACCORDANCE WITH THE CONSUMER ARBITRATION RULES THEN IN EFFECT, EXCEPT AS MODIFIED BY THIS SECTION 1. YOU AGREE THAT YOU HAVE GIVEN UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU MAY HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION (E.G., DISCOVERY). YOU ARE ENTITLED TO A FAIR HEARING, BUT THE ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN A COURT, AND ARBITRATION DECISIONS ARE SUBJECT TO VERY LIMITED REVIEW.

The interpretation and enforcement of these Terms shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1, *et seq.* Information may be obtained from the AAA online at www.adr.org, by calling (800) 778-7879, or by writing to 1633 Broadway - 10th Floor, New York, NY 10019. In the event this provision is prohibited by any jurisdiction, the parties hereby agree that this provision shall be enforceable to the greatest extent permitted by law.

- a. **INFORMAL EFFORTS TO RESOLVE DISPUTE.** For any Dispute YOU have with MFS Supply, and anyone acting on MFS Supply’s behalf, YOU agree to first contact MFS Supply and attempt to resolve the Dispute with MFS Supply informally, which could include agreeing to participate in mediation.
- b. **12-MONTH LIMITATIONS PERIOD.** To help resolve any Disputes between You and MFS Supply promptly and directly, You and MFS Supply agree to begin any arbitration within twelve months after the later of (i) the accrual of a Dispute, or (ii) Your or MFS Supply’s knowledge of (or when such party should have reasonably become aware of) the Dispute. If the Dispute is not filed with AAA within twelve months, it shall be deemed barred.
- c. **CLASS ACTION WAIVER.** It is the intent of both You and MFS Supply to require all Disputes be submitted to AAA exclusively on an individual basis. Claims subject to this Mandatory Arbitration And Class Action Waiver provision may not be joined or consolidated with any Dispute of any other person or be arbitrated on a class basis, in a representative capacity on behalf of the general public, or on behalf of any other person, unless otherwise agreed to by You

and MFS Supply in writing. You expressly waive the right to represent others in a class action against MFS Supply. If You or MFS Supply chooses to arbitrate a Claim, neither party will have the right to litigate that Claim in court or to have a jury trial on that Dispute, or to participate in a class action or representative action with respect to such Dispute.

- d. **ACKNOWLEDGMENT OF BINDING ARBITRATION CLAUSE.** By creating or maintaining a relationship with MFS Supply, by providing Your information to it or completing a purchase, You acknowledge that you have read these Terms and the Mandatory Arbitration And Class Action Waiver provision carefully, agree to them, and do so voluntarily and not in reliance on any promises or representations whatsoever except those contained in these Terms.
- e. **DISPUTES.** Except as expressly provided herein, any claim, dispute or controversy (whether based upon contract; tort, intentional or otherwise; constitution; statute; common law; or equity and whether pre-existing, present or future), including, but not limited to, initial claims, counter-claims, cross-claims and third-party claims, arising from or relating to (i) MFS Supply's Website; (ii) goods or services purchased from MFS Supply; (iii) any marketing by MFS Supply; (iv) these Terms, including the validity, enforceability, interpretation, scope, or application of these Terms and this Mandatory Arbitration And Class Action Waiver provision; (v) delivery of any goods or services by MFS Supply, and (vi) any Your and MFS Supply's relationship now and in the future (collectively, a "**Dispute**") shall be decided, upon the election of You or MFS Supply by binding Arbitration pursuant to this Mandatory Arbitration And Class Action Waiver provision and the applicable rules and procedures of the AAA administrator in effect at the time the Demand for Arbitration is filed. . In the event AAA is unavailable to perform the arbitration services contemplated by this section, either party may make an application to a court of competent jurisdiction to designate and appoint an arbitrator pursuant to Section 5 of the Federal Arbitration Act (9 U.S.C. § 5).
- f. **EXCEPTIONS.** Disputes excluded from this Mandatory Arbitration And Class Action Waiver provision are actions seeking injunctive relief and disputes related to MFS Supply's intellectual property. You and MFS Supply further agree not to invoke the right to arbitrate any individual Claim that you bring in small claims court or an equivalent court so long as the Claim is pending only in that court and remains pending only in that court (the "**Small Claims Court Exception**").
- g. **ARBITRATION FEES/DEPOSITS.** All Arbitration fees and deposits will be governed by AAA's then applicable rules, including, but not limited to, who is responsible for payment of any fees and deposits.
- h. **PROCEDURE.** A single arbitrator will resolve the Dispute. The arbitrator will be a lawyer with at least ten years' experience or who is a former or retired judge. The Arbitration shall follow the rules and procedures of the Arbitration administrator in effect on the date the Arbitration is filed, except when there is a conflict or inconsistency between the rules and procedures of the Arbitration administrator and this Arbitration provision, in which case this Arbitration provision shall govern.

The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the Agreement is void, voidable, or otherwise invalid.

The arbitration will be conducted by submission of documents, by telephone, online or in person. Any in-person Arbitration hearing for a Dispute shall take place in Solon, Ohio.

The arbitrator shall apply applicable substantive law consistent with the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "**FAA**") and shall honor all claims of privilege and confidentiality recognized at law. The arbitrator shall only be empowered to grant relief that would be available in court under law or in equity. The arbitrator shall not be empowered to disregard the law to do equity.

Should either party commence a Dispute in a forum other than the AAA, the arbitrator may award the other party its reasonable costs and expenses, including attorneys' fees, incurred in staying or dismissing such other proceedings or in otherwise enforcing compliance with this provision.

Any decision rendered in such arbitration proceeding will be final and binding on each of the parties, and judgment may be entered thereon in any court of competent jurisdiction. At the request of any party, the arbitrator will provide a written explanation of the basis for the

disposition of each claim, including written findings of fact and conclusions of law. This Arbitration provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the FAA.

3. AUTHORITY. MFS Supply may cancel Your order at any time after You complete Your purchase transaction for any reason. If an order is canceled, You will receive notice of the cancellation to the email address You have provided in Your MFS Supply Account Profile.

4. SHIPPING TERMS. MFS Supply will arrange for shipment of the products to You based on the delivery method selected by You when you complete Your purchase transaction and to the address You provide. An address change request after a package has already been shipped will incur an address change fee from the selected carrier. You are responsible for all shipping, handling, and delivery charges and fees. These charges are reimbursement for the costs MFS Supply incurs in the processing, handling, packing, shipping, and delivery of Your order. MFS Supply uses independent carriers (“**Carrier**”) to perform the majority of deliveries. Customer agrees to have purchase and delivery information, including shipping address and contact information, transmitted to Carrier. If MFS Supply uses a **Carrier** to perform delivery shipping and delivery dates are estimates only and cannot be guaranteed. MFS Supply is not liable for any delays in shipments. MFS Supply’s shipping terms are set forth in its Shipping Information. Review MFS Supply’s Shipping Information carefully so that you understand Your rights and MFS Supply’s obligations.

You must provide accurate delivery information, including information regarding accessibility for deliveries, because special trucks are needed to accommodate residential streets as well as liftgates for unloading shipments. As reasonably required, MFS Supply or the Carrier, will contact You at the telephone number that You provide to schedule a delivery date and prior to scheduled delivery to provide You with an approximate time window for delivery. MFS Supply and Carrier will not enter residences to deliver shipments with exception of select products. MFS Supply and Carrier deliver shipments to Your covered porch, garage, or doorstep, but not inside the residence. In certain markets, certain select products may be delivered inside the residence.

Any damaged or incorrect shipments must be brought to MFS Supply’s attention within 24 hours of Your receipt of goods. In such cases, please do NOT discard original packaging that was shipped to You.

5. RETURNS, EXCHANGE AND REFUNDS. MFS Supply will accept a return of products for a refund or exchange as set forth in MFS Supply’s Return, Exchange and Refund Policy. Review MFS Supply’s Return, Exchange and Refund Policy carefully so that you understand Your rights and MFS Supply’s obligations.

You are solely responsible for inspecting the products delivered to you for any visible damage or defects. Any damaged, defects or missing items must be brought to MFS Supply’s attention within 10 business days of Your receipt of the product(s). In such cases, please do NOT discard original packaging that was shipped to You.

6. MANUFACTURER’S WARRANTY AND DISCLAIMERS. MFS Supply sources products sold under MFS Supply’s private label onestock® which are covered by MFS Supply’s onestock® warranty. MFS Supply does not manufacture or control any of the other branded products it offers (“**Branded Products**”). The availability through MFS Supply of Branded Products does not indicate an affiliation with or endorsement of any product, service, or manufacturer. Accordingly, MFS Supply does not provide any warranties with respect to Branded Products offered. Branded Products, however, are covered by the manufacturer’s warranty as detailed in the product’s description on MFS Supply’s Website and included with the product. To obtain warranty service for defective products, please follow the instructions included in MFS Supply’s onestock® warranty or the manufacturer’s warranty, as applicable. **EXCEPT AS EXPRESSLY SET FORTH IN WRITING BY MFS SUPPLY, ALL PRODUCTS OFFERED FOR SALE BY MFS SUPPLY ARE PROVIDED “AS IS” WITHOUT ANY WARRANTY WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. CUSTOMER AFFIRMS AS TO ANY BRANDED PRODUCTS THAT MFS SUPPLY SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR ANY BREACH OF WARRANTY CLAIMS OR FOR ANY DAMAGES ARISING OUT OF THE MANUFACTURER’S FAILURE TO HONOR ITS WARRANTY OBLIGATIONS TO CUSTOMER.**

7. LIMITATION OF LIABILITY. **MFS SUPPLY’S CUMULATIVE LIABILITY TO YOU FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, ACTIONS OR DISPUTES ARISING OUT OF OR RELATING TO THESE TERMS SHALL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY YOU TO MFS SUPPLY.** MFS SUPPLY SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGE, OR FOR LOST PROFITS ARISING OUT OF THE PRODUCTS PROVIDED BY IT OR ANY BREACH OF THESE TERMS REGARDLESS OF (A) WHETHER MFS SUPPLY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) WHETHER SUCH DAMAGES

WERE FORESEEABLE, OR (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

Some jurisdictions do not allow exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations and/or exclusions may not apply. In the event the above referenced limitation of liabilities and/or disclaimer of warranties are prohibited, the parties hereby agree that the liability of MFS Supply shall be limited to the greatest extent permitted by applicable law. The limitation of liability set forth above shall not apply to (A) liability resulting from MFS Supply's gross negligence or willful misconduct, and (B) death or bodily injury resulting from MFS Supply's acts or omissions. You represent and warrant that You are buying the products from MFS Supply for Your own use only (i.e., not for resale or export of the products). You further represent and warrant that all purchases are intended for final delivery to locations within the United States.

8. INDEMNITY. To the full extent permissible by applicable law, You agree to indemnify and hold harmless MFS Supply from any and all claims, damages, losses, costs [(including without limitation reasonable attorneys' fees and costs)] or other expenses that arise directly or indirectly out of or from (a) You breach of any provision of these Terms; (b) Your activities in connection with MFS Supply's Website; or (c) unsolicited information You provide to MFS Supply.

9. FORCE MAJEURE. In the event that MFS Supply is delayed or hindered in, or prevented from, its performance of any obligation of the Agreement as a result of strikes, lockouts, shortages, or failure of supply of labor, fuel or materials, acts of God, causes associated with weather, acts or requirements of any public authority, enemy act, act of war, act of terrorism, civil disorder or commotion, fire or other casualty, disease, epidemic or pandemic, or any other cause or circumstance beyond the reasonable control of MFS Supply, then MFS Supply will not be liable to Customer, nor be deemed to have defaulted or breached the Agreement or these Terms, for any delay, hindrance, or prevention in MFS Supply's performance under the Agreement or these Terms.

10. PAYMENT. MFS Supply accepts PayPal and major credit cards through its website. To pay via an alternative method, please contact your sales rep or customer service at customerservice@mfssupply.com or 800-607-0541

11. CHANGES TO ORDER. You may only cancel an order by contacting MFS Supply customer service at customerservice@mfssupply.com or 800-607-0541 within one (1) hour from when You complete Your purchase transaction. Some jurisdictions may require that Customer be afforded a right to cancel that is a longer period. In the event the above referenced cancellation period is prohibited, the parties hereby agree that Your right to cancel shall be limited to the greatest extent permitted by law.

12. DISPUTES; NON-DISPARAGEMENT. MFS Supply and Customer covenant and agree to use their respective best efforts to resolve any disputes regarding product, payment, or otherwise arising under the Agreement or these Terms. In the event Customer is not satisfied with the product purchased under the Agreement or these Terms, Customer covenants and agrees to promptly advise MFS Supply in a writing that specifically describes any issues or problems Customer has with the product provided by MFS Supply. Each party hereto covenants and agrees not to make false representations of a material fact, or defame, disparage, discredit, or deprecate the other party hereto, or to otherwise communicate with any person or entity (including but not limited to any electronic communications on social media or otherwise) in a manner tending to damage the other party hereto, in its or their reputation, office, trade, or business.

13. WAIVER. The failure by MFS Supply to enforce any right or provision of the Agreement or these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of MFS Supply.

14. GOVERNING LAW. These Terms and the relationship between YOU and MFS Supply shall be governed by and construed under the laws of the State of Ohio (without regard to Ohio conflicts of law principles).

15. ENTIRE AGREEMENT. These Terms constitute the final, complete, and exclusive agreement between the parties, and supersede any prior or contemporaneous oral or written agreement, proposal, or warranties or representations. These Terms prevail over any conflicting or additional terms of any quote, order, invoice, or other communications, whether written or oral. Any additions, modifications, or changes to the products to be provided, to the contract price, or any other changes to these Terms must be acknowledged in writing by You and MFS Supply.

16. SEVERABILITY. If any provision these Terms is held invalid, illegal, void, or unenforceable, that provision will be deemed severed from these Terms, as applicable, and the remainder of these Terms, as applicable, shall continue in full force and effect.

17. ELECTRONIC SIGNATURE. The parties agree to conduct the transactions by electronic means as contemplated under the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq) and the Uniform Electronic Transactions Act. Your completion of a purchase transaction may be evidenced and effected by Your electronic signature, which will constitute a legal, valid and binding signature and have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile, or email electronic signatures. The parties hereby consent to the use of security procedures established by any third-party electronic signature capture service providers as may be chosen by MFS Supply.

18. ASSIGNMENT. You may not assign these Terms, by operation of law or otherwise, without MFS Supply's prior express written consent. MFS Supply reserves the right to freely assign these Terms, and the rights and obligations hereunder, to any third party, including, but not limited to, a successor, without notice or consent. Subject to the foregoing, these Terms will be binding on, inure to the benefit of, and be enforceable against You.

19. SURVIVAL. You and MFS Supply agree that the Terms shall survive the termination of our relationship to the extent necessary for the enforcement of the parties' rights and obligations. The Mandatory Arbitration And Class Action Waiver provision shall survive the suspension, termination, revocation, closure, or amendments to these Terms and the relationship of the parties.

20. PRODUCT RECALLS. The Consumer Product Safety Commission (CPSC) periodically announces a recall on products ("Recall Announcement"). If MFS Supply learns that a product that you have purchased is the subject of such a Recall Announcement, MFS Supply may send an email to the email address You provided during Your purchase with the information on the recalled product and the steps You should take if you own such a product, or we may this information on our Website. You may also visit the CPSC Website at www.cpsc.gov for additional information or call their 24-hour Toll-Free Consumer Hotline at 1-800-638-2772.

21. CONTACT. If you have questions about these Terms, please contact MFS Supply as follows:

CALLING: 800.607.0541 - toll free or 440.248.5300 - local

EMAILING: customerservice@mfssupply.com

WRITING:

MFS Supply LLC
Ohio/Headquarters
31100 Solon Rd Ste 16
Solon, OH 44139

MFS Supply does not guarantee that it will receive all such e-mail or other information timely and accurately and shall not be legally obligated to read, act on or respond to any such e-mail or other information. Be aware that Internet e-mail typically is not secure.

22. DIFFICULTY ACCESSING OUR TERMS. Individuals with disabilities who are unable to usefully access these Terms on a Website may contact us at the above-listed contact information to inquire how they can obtain a copy of our Terms in another, more easily readable format.