



574-584 Freeman St.
Orange, NJ 07050
973-675-7676
Fax 675-7446

Revised 02/27/2020

Re: P.O. # _____
Customer: _____

GENERAL TERMS of SALE

Know by these presents that Metfab Metals, LLC "MMLLC", for and in consideration of the sum of (contract price) **[TBD] thousand dollars (\$TBD,000.00)**, and other good and valuable consideration, upon the receipt of payment of which **Metfab Metals, LLC "MMLLC"** ("Seller") does by these presents (and this document) **REPRESENT & STATE** to _____ the general Terms of Sale of the goods and chattels outlined and identified in the attached schedule (Schedule "A") (made a part hereof by reference and thereby incorporated herein) of **Metfab Metals, LLC**, located at **560 Freeman Street, Orange, NJ 07050**.

In consideration of the above and the mutual covenants contained herein, the Seller (**MMLLC**) agrees as follows:

Notwithstanding the plans & specifications for the subject project/job, this sale and all deliveries/change orders hereunder are subject to these standard terms of sale for all transactions by **Metfab Metals, LLC** (hereinafter "MMLLC") and supersede, take precedence over and control any other writing or oral understanding, for the items sold/scope of work, any earlier contract term set forth in any related purchase order, correspondence, delivery receipt, packing slip or any other document exchanged:

- (1) **Parties:** MMLLC is the "Seller" hereunder and you are the "Buyer" referenced in the contract documents;
- (2) **MMLLC as "Supplier" Only:** For any and all purposes, MMLLC shall in all regards be deemed only a "supplier", and not in any way a sub-contractor to the Buyer or any other party to this contract or any job to which the parts/products are shipped or designated. In the event Buyer seeks any other service/products from MMLLC and MMLLC is to be designated as anything other than a supplier, such designation and the reasons therefore shall be set forth in a further writing, signed by MMLLC.
- (3) **Initial Obligations:** All parts/products will be fabricated substantially as indicated in the plans, insofar as there is no conflict between the plans and specifications and/or any modification/change order submitted to or by MMLLC. Insofar as practicable and as communicated to MMLLC, MMLLC will fabricate all parts/products in conformance to the most recent change properly submitted to, and received by MMLLC. In the event of a change order, not in writing, any and all risk of non-conforming goods shall be solely the Buyer's. Any variance between/among the contract documents will be resolved between/among the parties in the most expeditious fashion reasonably available, but will necessarily and correlatively extend, without penalty to MMLLC, any set time of delivery/completion;

- (4) Change Orders: A change order is an addition to a contract, usually due to an unforeseen fact, not contemplated by the Plans and Specifications. A change order modifies the scope of work in the original contract. Any and all change orders/modifications of the original contract documents will be promptly submitted in writing to MMLLC and will only become binding when they are counter-signed by an authorized representative of MMLLC. MMLLC will be paid for all fabricated parts/products whether or not they are any longer needed under such amended Contract documents;
- (5) Authorized Representative: Buyer will designate in writing to MMLLC, at the execution of the contract documents, an authorized representative for each project/job and he/she shall fully bind Buyer on all issues presented;
- (6) Additional Documents: MMLLC is not responsible for the cost of/provision of any additional contract documents, unless it explicitly so agrees in writing, at an agreed-upon cost to the Buyer herein;
- (7) Charges: All taxes, governmental charges, levies, excises or supplementary fees/costs of any type whatsoever are the sole responsibility of the Buyer, unless explicitly agreed otherwise in writing.
- (8) Shipping: All trucking, transportation, or other shipping charges are the sole responsibility of the Buyer, and not the responsibility of MMLLC, unless explicitly otherwise in writing.
- (9) Invoices: MMLLC will issue an invoice for all parts/products fabricated, upon the completion of fabrication and forthwith deliver such invoice to the Buyer. Such invoice incorporates by reference all the terms of sale set forth herein and Buyer agrees to be bound by these, as if set forth at length on the invoice.
- (10) Start Date: MMLLC will only commence fabrication on the later of the following: (a) the date set forth in the contract documents or (b) the date on which MMLLC receives all fully executed Contract documents, including a fully-executed and approved PURCHASE ORDER and appropriate credit approvals.
- (11) Non-Conforming Goods: In the event The Buyer deems the parts/products sold hereunder by MMLLC to be "non-conforming" in any respect, Buyer shall immediately notify MMLLC to this effect, identify all specifics and aspects of such non-conformance and give MM a reasonable opportunity to "cure" and/or replace the non-conforming parts/products, all without further penalty or charge of any kind. In no event will MM be liable for any costs incurred by Buyer in seeking "cover" or the replacement of such parts/products, unless and until MMLLC is given such timely notice and a reasonable opportunity to "cure" any confirmed non-conformance or replace any non-conforming parts/products.
- (12) Terms of payment: Payment of all sums invoiced by MMLLC to the Buyer shall be made, in full, within thirty (30) days of the date of each such invoice. In the event, payment in full is not received by MMLLC within this thirty (30) day period, payment shall be deemed, for all purposes "late" and a service charge of two percent (2%) of the total sum due shall accrue, and be due and owing to MMLLC, for each thirty (30) days thereafter, or any part thereof, until all sums due are paid in full. MMLLC shall retain a security interest in all parts/products shipped until payment in full is received. Buyer agrees to cooperate and execute any required documents for the perfection of MMLLC's security interest. In the event any sum is past-due and outstanding from the Buyer under the agreed terms of payment, MMLLC reserves the right to suspend all further contract work and/or fabrication until all sums due are paid in full.
- (13) Credit: MMLLC is hereby granted the right to check fully into the credit standing of the Buyer and to take all reasonable steps of inquiry to do so. In the event MMLLC is not satisfied, in any respect, with the credit-worthiness of the Buyer, MMLLC shall have the right to require payment in advance, or such security for payment, as MMLLC in its sole discretion deems warranted in the circumstances.
- (14) Offsets and Exceptions: Buyer shall offset against MMLLC only those back charges specifically authorized in contract documents and only after

communicating in writing, at least ten (10) days in advance, its intention to do so to MMLLC. MMLLC shall not be back-charged for failure to comply with dates of delivery/other provisions in the contract documents caused by weather, actions of third parties, untimely delivery and/or non-delivery by any carrier, Acts of God and or other causes, not reasonably anticipated and/or beyond the control of MMLLC. In the event Buyer fails to assert a right to either back-charge or offset a claim against MMLLC within ten (10) days of the passing of title or actual receipt of the subject parts/products (whichever is earlier in time), Buyer shall be deemed to have irrevocably waived such claim, offset or right to such and will not assert any such thereafter, directly or indirectly. In no event will MMLLC be liable for any sum in excess of the contract amount for each individual order for parts/products from MMLLC.

- (15) Limitation of Liability: In no event shall MMLLC be liable for any sum beyond the full value of the subject contract.
- (16) No Consequential Damages: In no event shall MMLLC be liable for any consequential damages alleged or sought by the Buyer. MMLLC disclaims, and will not be liable for, damages for project delays, loss of use, loss of profits or other damages arising out of the supply, or failure to do so, of the parts/products produced by MMLLC. MMLLC will not be liable in contract or tort for any incidental, consequential, special or indirect damages arising out of the supply or use of the parts/products supplied.
- (17) Indemnification: Buyer shall indemnify, defend and hold MMLLC harmless from and against any and all damages, liabilities and losses of any kind whatsoever. Including without limitation attorney's fees, arising out of or in connection with the use by the Buyer of the parts/products supplied and any claims made by any third parties related to such use.
- (18) Compliance with laws: Buyer will comply with all applicable laws regarding the purchase and use of the parts/products and agrees to maintain all and pay for all required governmental permits, licenses and approvals for the use of these parts/products. If required, Buyer will comply with any United States laws applicable to the use, sale or re-sale of these parts/products.
- (19) Confidential Information: Buyer will not disclose to any person or entity any information or data marked as confidential or proprietary information. Buyer will not re-copy, use or otherwise appropriate to its own use any process, information or design learned in the course of this contract work. Buyer recognizes that the unauthorized use or disclosure of such would cause MMLLC irreparable damage and leave MMLLC with no adequate remedy at law. Buyer agrees that MMLLC shall have the right to injunctive relief for any breach of this agreement, in addition to any other rights and remedies available to it. The obligations of confidentiality will expressly survive final payment to MMLLC.
- (20) Arbitration: The parties agree that any and all disputes as to the moneys owed, parts/ products ordered or supplied, due dates or any other point agreed hereunder shall be resolved solely by the sole means of arbitration in a form and manner agreed to between/among the Parties. Such arbitration shall commence by one of the parties hereto giving notice in the usual form (with all essential details set forth) to the all other parties and designating an arbitrator. The other party shall then name a second arbitrator. The two named arbitrators shall then designate a third arbitrator. The three arbitrators will then proceed to administer and decide the issues presented. All such proceedings shall be carried out solely here in New Jersey and any award thereon shall be enforced or set aside solely here in New Jersey, pursuant to New Jersey's law and statutes. The prevailing party shall pay all fees and costs of that proceeding, unless otherwise agreed.
- (21) Notices: All notices called for herein or in the Contract documents shall be mailed to MMLLC at:

560 Freeman Street, Orange, NJ 07050

In the event these contract documents have provided for such notice by fax and/or email and set forth current fax numbers/email addresses, such may be used along with ordinary mail.

- (22) Time: Any change order/modification of the contract documents shall, by that act alone, extend MMLLC's time of delivery/completion date, for such period of time reasonable required to fabricate/manufacture the parts/products called for;
- (23) Intellectual Property Ownership: MMLLC shall be, and shall under all conditions remain, the sole owner of all intellectual property (whether copyright, patent, trademark, trade secret or otherwise) in the parts/products, items, designs, concepts and ideas fabricated, originated, or created in whole or in part by MMLLC. Buyer shall have no rights in these except as may be licensed in a further agreement. This Sale shall not constitute a license to any degree whatsoever for or to the Buyer to use, replicate, duplicate or appropriate the intellectual property in the products sold and/or their design.
- (24) Passing/Transfer of Title: Unless MMLLC hereafter agrees, in writing, to deliver the parts/products called for herein (or any individual constituent part(s) ordered) directly to the Buyer (or to its designated jobsite or other third party), title to all parts/products will pass to the Buyer upon the loading of the subject parts/products onto the means of shipment/delivery chosen (either by Buyer or MMLLC), e.g., onto a common carrier or other truck, vehicle, container or the like selected for delivery. . If, however, , MMLLC agrees in writing to use its own vehicles to deliver the subject parts/products, title will then immediately pass upon the unloading of the parts/products from the MMLLC vehicle.
- (25) Risk of Loss: In line with the above paragraph ("Title"), the risk of loss shall irrevocably pass upon the passing of title to the Buyer. Neither MMLLC nor its insurer(s) shall be liable thereafter in any manner for the subject parts/products, damage or loss thereof, damage or injury arising out of their use, shipment or movement. All such liability or risk shall be deemed to be assumed by the Buyer upon taking title, notwithstanding anything else stated herein, in other communications or in any insuring document/policy.
- (26) Returns: In no event will the Buyer have a right to return for credit any parts/products shipped, without the prior written consent of MMLLC.
- (27) Warranties: MMLLC represent and warrant that it has the right, title and authority to sell these parts/products as set forth. Beyond that, MMLLC extends no warranties whatsoever, except as may be provided by the law of the State of New Jersey. No agent, employee or other representative of MMLLC has the authority/right to extend or give any warranties beyond those stated herein. MMLLC disclaims all implied warranties of merchantability and fitness for a particular purpose. MMLLC does not warrant, guarantee or make any representations regarding the use or the results of the use of the parts/products supplied.
- (28) Successors: This agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors, assigns, heirs and representatives, as the case may be.
- (29) Titles and Captions: The section or paragraph titles/captions contained herein are for convenience only and shall not be deemed a determinative part of this document.
- (30) Entire Agreement: This agreement constitutes the entire agreement between the parties hereto relating to this Sale and all prior agreements between the parties with respect thereto are merged into and superseded by this agreement.
- (31) Modification and Waiver: Any of the terms and conditions of this agreement may be waived only in writing by the Party entitled to the benefits thereof. No waiver of any provisions of this agreement shall be deemed to or constitute a waiver of any other provision.

- (32) Amendment: No change, amendment or modification of this agreement shall be valid unless the same shall be in writing and signed by the Party or Parties sought to be charged.
- (33) Counterparts: This agreement may be executed in counterparts, each of which shall be deemed an original and all of which constitute together the same instrument/document.
- (34) Governing Law: This agreement shall be construed in accordance with and governed by the laws of the state of New Jersey only. The Parties hereby consent to this and consent also to service of process, personal jurisdiction and venue exclusively in the state and federal courts of New Jersey and Essex County. And they hereby select such courts as the exclusive forum with respect to any action or proceeding brought to enforce any arbitration award hereunder or other legal liability or obligation under this agreement.
- (35) Construction: The language used in this agreement will be deemed to be the intentional language chosen by the Parties hereto in order to express their singular and mutual intent and no prior agreements shall be deemed to supersede this agreement.
- (36) Severability: If any provision hereof shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force or effect, but such holding shall have no effect upon and shall not impair the enforceability of any other provision of this agreement.
- (37) Acknowledgement: The parties acknowledge that they have read and understand this agreement and that they have consulted with their counsel of choice on any issue about which they had any question. They understand the practical and legal effect of all the terms of this agreement before they entered into it. And they are signing this voluntarily and without duress and fully intend to be bound by all the terms hereof.

ADDITIONAL STORAGE/DELIVERY/MISC. TERMS

- (38) Seller agrees and warrants that it is the lawful owner of the subject property (Schedule "A"); that the subject property (Schedule "A") is sold free and clear of any and all liens or claims; that the Seller has the unencumbered right to sell the subject property (Schedule "A"), without limitation; and that this warrant shall include Seller's promise to resolve and/or defend any and all claims asserted against the subject property (Schedule "A");
- (39) In the event the Buyer cannot, for good reason(s), take delivery of the subject property upon completion of its manufacture and its being ready for shipment, the subject property (Schedule "A") may be stored at Buyer's sole risk of loss and cost (to be billed at a daily rate by Seller to Buyer), and, while in the custody and stored at the premises of the Seller, shall be kept insured by Buyer against fire, theft and all related hazards, at Buyer's sole expense. A certificate evidencing such insurance shall be supplied to Seller, upon request;
- (40) In the event the Buyer cannot, for good reason(s), take delivery of the subject property upon completion of its manufacture and its being ready for shipment, the subject property (Schedule "A") may be stored at Buyer's sole risk of loss and cost (to be billed at a daily rate by Seller to Buyer), and, while in the custody and stored at the premises of the Seller, Buyer shall have the right to inspect the subject property (Schedule "A"), upon reasonable notice to Seller and during Seller's regular business hours at the storage facilities chosen by Seller. Failure to inspect shall not be deemed a waiver of any rights. Nothing herein shall be understood to prejudice or limit Seller's rights under any policy of insurance or against any third party.

ADDITIONAL PAYMENT TERMS

- (41) All late payments are subject to late charges, in the sole discretion of **Metfab Metals, LLC**.
- (42) When your payment is later than sixty (60) days from the date of Invoice, interest shall accrue at the rate of SIX PERCENT (6%) per annum (or whatever is the highest rate of interest allowable by law in the controlling jurisdiction) until payment in full is received and credited by **Metfab Metals, LLC**.
- (43) In the further event, it is necessary for **Metfab Metals, LLC** to retain attorneys to collect any or all sums due from you, you will be liable for all attorney's fees, costs and related expenses incurred by **Metfab Metals, LLC** in all such collection efforts and/or court/arbitration proceedings until **Metfab Metals, LLC** is paid in full or otherwise resolves these sums due.

SHIPMENTS & EXCEPTIONS

- (44) Per all the applicable terms of this sale, you are required within ten (10) days of the actual receipt of the shipment identified above and notwithstanding any other document, writing or notice (verbal, written or otherwise) to report in writing to **Metfab Metals, LLC** any and all exceptions to the condition, compliance to specs and/or timeliness of delivery of this entire shipment and all of its contents or you will be deemed to have accepted this shipment in good order with no exceptions.]
- (45) This sale is subject to all the special terms of our Quotation earlier submitted & accepted by you for these materials/services and all the General Terms & Conditions of Sale set forth at length on our website (and/or in other sales documents) at www.metfabmetals.com.
- (46) Any noted exceptions, shortages or defects reported (as otherwise required to **Metfab Metals, LLC** will be addressed in due course. **Metfab Metals, LLC** alone will have the sole option to repair, replace and/or add to the shipment, as its authorized representatives deem necessary to comply with the related Purchase Order or otherwise.

IN WITNESS WHEREOF, the Undersigned has set its hand and seal on this ___ day of _____, 2020.

Witness:

Seller: **Metfab Metals, LLC**

By, James A. Murray, Pres.

[No agent, employee or other representative of MMLLC---or any other person--- has the authority/right to modify, extend or amend the terms/conditions of these Terms of Sale beyond those stated herein, except in a writing signed by all of the parties in appropriate form. MMLLC disclaims and cannot warrant, guarantee or make any representations regarding the use or the results of the use of the parts/products supplied by your workmen or others, not in strict conformance and/ or with the plans and specifications of this job.]

Receipt & Acceptance of these terms are hereby acknowledged
_____ (Buyer's Name)

_____ (Buyer's authorized representative)
Purchasing Agent (or other title)

Dated: _____