

## TERMS AND CONDITIONS OF SALE

**Acceptance** Confirmation, acceptance, or acknowledgement by Northern Metal Fab ("NMF") of the Purchase Order ("Order") are subject to these terms and conditions, notwithstanding any documentation received from Buyer ("Buyer"). These terms and conditions constitute the entire agreement between the parties and take precedence over Buyer's additional or different terms. NMF hereby objects to any additional or different terms contained in any of the Buyer's documents whether attached to this Order, provided orally, or set forth in correspondence transmitted through any other means, unless such terms are set forth in a written agreement currently in effect, signed by an officer of both parties.

**Changes** Any change to an Order, including but not limited to specifications, content, schedule, inspection, testing, and delivery requirements will be agreed to in writing, in advance, by both parties. All costs associated with changes initiated by Buyer will be borne by Buyer and invoiced at the earliest opportunity. The minimum charge per change order is \$500.

**Schedule** Completion dates are approximate and are subject to availability, physical receipt, and acceptance of all material at NMF. NMF is not responsible for failure to manufacture due to causes beyond its reasonable control, including transportation delays. NMF is not responsible for delays caused by Buyer, including, but not limited to, (a) late, incorrect, incomplete, or missing specifications; (b) late, incorrect, incomplete, missing, or defective Buyer supplied materials; (c) late inspection; (d) Buyer negligence, breach of contract, or misconduct; (e) changes made by Buyer. Buyer shall compensate NMF for costs and expenses associated with delays caused by Buyer's actions.

**Force Majeure** NMF shall not be liable or responsible, nor be deemed to have defaulted under or breached this agreement, for any failure or delay in fulfilling or performing any term of this agreement, when and to the extent such failure or delay is caused by or results from acts beyond NMF's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) laws; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (i) shortage of adequate power or transportation facilities (each a "Force Majeure Event"). Notice shall be provided to Buyer in as timely a manner as is reasonable upon an occurrence of such Force Majeure events.

**Subcontracting** Portions of the manufacture of the products and services under this order may be provided by subcontractors in those cases where NMF does not have the capacity or resources without requiring Buyer consent.

**Pricing** NMF reserves the right to adjust the quoted price based on differences between Quote and Order, accepted order changes, and on the prevailing price of materials unless other financial arrangements have been made in advance of order. Buyer is liable for risk of availability and any consequential delay in Order shipment until all material has been received and accepted by NMF. Buyer is liable for any difference between quoted weight and actual. Applicable taxes are the Buyer's sole responsibility unless otherwise explicitly indicated.

**Invoicing** Unless other arrangements are made in advance and accepted by both parties, invoicing will occur at all of the following: completion of NMF's scope of work, progress billing milestones, or product physically shipping from NMF facilities in part or in whole. Invoices for product(s) made before physical shipment and held at NMF facilities will be recognized as "shipped-in-place". Terms on invoices for material deposits or a down payment are due upon receipt unless other terms have been agreed upon by both parties in advance of order acceptance.

**Payment** Payment shall be made within the terms stated on NMF's invoice. NMF reserves the right to suspend or cancel the Order and cease work if installment(s) thereon are not received when due, or if the customer's account becomes delinquent. A service charge at the maximum legal rate will be assessed on the past due portion of the account. In the event collection efforts are necessary, the Buyer shall be liable for all related costs, including disbursements, court, and attorneys' fees. Back charges for any reason will not be accepted without prior written authorization by NMF.

**Shipping** All shipments are F.O.B. at NMF's manufacturing facilities. NMF shall have satisfied all delivery obligations and possession of title to all goods hereunder shall be deemed passed to Buyer upon delivery to the carrier at point of shipment, whereupon Buyer assumes all risk of delay in delivery, loss or damage to the goods, and responsibility for shipping and insurance costs. Unless agreed to in writing at the time of quote, NMF does not guarantee a delivery date and shall not be liable for delays in transit nor delivery. Freight and delivery charges paid by NMF will be passed on to Buyer.

**Storage** In the event product(s) associated with an Order are completed before shipment can be accepted by Buyer, Buyer requests storage, and reasonable storage is available on NMF's property, NMF agrees to store the goods for 30 days. Acceptance of a written agreement is required in advance for storage of product beyond 30 days. The Buyer shall hold NMF harmless in the event of environmental or other incidental damage beyond NMF's control.

**Cancellation.** Buyer may cancel an order with reasonable written notification subject to reimbursement terms herein. The Buyer is liable for all costs incurred up to the time of cancellation, including all costs for products and services not yet received but for which commitment has been made and cannot be cancelled, plus a reasonable profit.

**Confidentiality** The parties agree that each party shall keep confidential and not disclose to any person not affiliated with such party any of the other party's confidential information and business secrets (including, financial, marketing, product, process, manufacturing, design, specification, customer, accounting, employment, and related information). The parties further acknowledge that each possesses certain proprietary inventions, discoveries, works of authorships, and creations ("Work") which may comprise all, or part of the goods purchased pursuant to the order, and that the owning or creating party retains all right, title, ownership, copyright, and other intellectual property rights in such Work.

**Warranty/Limitation of Liability** NMF warrants the materials and workmanship conform to the specifications provided by Buyer and manufactured according to applicable standards under which NMF is certified and which have been explicitly required by Buyer for a period of one year after the earlier of "shipped-in-place" or physical shipment. Any repair or replacement of defective products will be mutually agreed upon in advance by both parties and will not extend NMF's warranty. NMF shall have no warranty obligations with respect to any product that is customer supplied, operated outside of the product plans and specifications, improperly maintained, misused, or otherwise damaged or with respect to loss caused by the negligence, breach of contract or misconduct of Buyer, its agents, or employees. Except as expressly provided herein, NMF makes no further representation or warranty of any kind, express or implied, whether as to merchantability, fitness for a particular purpose, course of dealing, usage of trade, or any other matter. In no event shall NMF be liable for any incidental, indirect, punitive, or consequential damages arising in any manner out of any breach of warranty or connected with the use of the products or services referenced in the order, including, but not limited to, interruption of service, loss of business or lost profits. In no event shall NMF's total cumulative liability to Buyer relating to this order exceed the amount paid by Buyer pursuant to the order.

**Indemnification** Buyer shall indemnify NMF, its successors, assigns, and suppliers (whether direct or indirect) against any and all losses, damages and expenses (including attorneys' fees and other costs of defending any action) which they, or any of them, may sustain or incur as a result of misuse, negligence, breach of warranty other than that allowed above, personal injury or death, patent or trademark infringement, strict liability in tort or based on any other theory of law in connection with the goods/services furnished by the seller hereunder, or as a result of any claim that the goods furnished by the seller fail to conform to or comply with any laws, regulations, standards, or based upon or arising out of any construction, installation, services or facilities.

**Assignment** Unless excepted herein, this Agreement may not be assigned by either party without the prior written consent of the other party. This Agreement shall be subject to the laws of the State of Wisconsin, with any dispute related to this Agreement venued or heard in the State of Wisconsin. Any notice required under this Agreement shall be valid upon either hand delivery or delivery via United States Mail, postage prepaid, to the parties at the addresses set forth in these terms and conditions or the purchase order.