

## TERMS AND CONDITIONS OF SALE

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- Terms and Conditions.** Any 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. 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 changes to the Order, including but not limited to specifications, content, schedule, and delivery requirements will be agreed to in writing by both parties. All costs associated with changes initiated by Buyer will be borne by Buyer and invoiced at the earliest opportunity.
  - Schedule.** NMF is not responsible for delays caused by: (a) late, incorrect, incomplete, or missing specifications, including but not limited to drawings, CAD models, inspection and test plans; (b) missing, late, incorrect, incomplete or defective Buyer supplied materials and parts or other Buyer negligence, breach of contract or misconduct; or (c) acts of god, war, strike/labor dispute, material shortages or other causes beyond NMF's reasonable control. Buyer shall compensate NMF for costs and expenses associated with delays caused by Buyer's actions.
  - Subcontract Operations.** 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.
  - Cancellation.** Buyer may cancel an order with appropriate written notification subject to reimbursement terms herein. Buyer is liable for all costs incurred up to the time of cancellation, including all those costs for products and services not yet received but for which commitment has been and cannot be cancelled, plus a reasonable profit. NMF will take all reasonable steps to minimize applicable costs.
  - Pricing.** Market conditions in the metals industry are volatile. Prices reflect the price of material at the time of quote. We reserve the right to adjust the quote price based on the prevailing cost of materials. Customer is liable for material price changes and the risk of availability of material until material has been received. Customer is liable for any difference between quoted weight and actual. Pricing may not include applicable federal, state, or local taxes, which shall be Buyer's sole responsibility.
  - Payment.** Payment shall be made within 30 days of invoicing, or such other time as agreed in writing. 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 may be assessed on the past due portion of the account. In the event outside collection efforts are necessary, the Buyer shall be liable for reasonable collection costs, disbursements, and attorneys' fees.
  - Storage.** In the event the products associated with this order ship-in-place (shipment), and reasonable storage is available on NMF's property, NMF agrees to store the goods for 30 days. Acceptance of a written agreement with pricing and requirements are required for storage of product beyond 30 days from date of shipment. The Buyer shall hold NMF harmless in the event of environmental or other incidental damage beyond NMF's control.
  - Freight and Shipment.** All shipments are F.O.B. at NMF's manufacturing facility. 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 loss or damage to the goods and responsibility for shipping and insurance costs. Any freight and delivery charges paid by NMF will be passed on to Buyer. NMF shall not be liable for delays in delivery or failure to manufacture due to causes beyond its reasonable control.
  - Confidential and Proprietary Rights.** 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, discovers, 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 and 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 shipment. Repair or replacement of defective products will be mutually agreed to by both parties. Provided, however, NMF shall have no warranty obligations with respect to products that are operated outside of the product plans and specifications, maintained improperly, 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 national, federal, state, provincial or local laws, regulations or standards, or based upon or arising out of any construction, installation, services or facilities.
  - Force Majeure.** Neither party shall be responsible for delays or failures in performance resulting from events or circumstances beyond the control of such party; provided however that notice shall be given in a timely manner to the other party upon the occurrence of such Force Majeure events. Force Majeure events shall include, without limitations, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental acts or regulations, fires, communication line failures, power failures and earthquakes.
  - Miscellaneous.** 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.
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