

TERMS AND CONDITIONS OF SALE

1. GENERAL

THE TERM "SELLER" as used herein shall mean All Metal Sales, Inc., and may be variously referred to as "us" or "our." The "Purchaser" as used herein shall mean the buyer and may be variously referred to as "you" or "your."

This Order Acknowledgment is our only method of acceptance of an order. Our acceptance is limited to the terms and conditions of this Order Acknowledgment and, even if you do not sign and return this document, your acceptance of delivery of goods we ship hereunder shall serve as your agreement that this document constitutes the final, definite, complete and exclusive agreement between us with respect to the goods. There are no oral or written, express or implied representations, affirmations, promises, commitments, contracts, understandings or agreements other than those set forth in this Order Acknowledgement. All proposals, negotiations, representations, affirmations, promises, commitments, contracts, understandings or agreements, if any, made at any time are superseded by this Order Acknowledgement and merged herein. Seller expressly objects to any additional or conflicting terms in your Purchase Order or your other documentation and those additional or conflicting terms, if any, shall not be deemed accepted by Seller unless Seller's acceptance is in writing and specifically refers to each such additional or conflicting term.

2. ACCEPTANCE BY ALL METAL SALES, INC.

Acceptance of an order by Seller occurs when both the order has been received by the home office of All Metal Sales, Inc. in Westlake, Ohio, U.S.A., and when it has been approved. Approval is accomplished when, and only when, an officer has signed the Order Acknowledgment. All orders for goods from All Metal Sales, Inc. shall be accepted by All Metal Sales, Inc. exclusively in Westlake, Ohio, U.S.A.

3. PAYMENT - Payment terms are stated on the face of this Order Acknowledgment as well as hereunder.

- a) All payments for goods furnished hereunder shall be made upon the basis of goods delivered as shown in our delivery tickets, whether signed by you or not, and our other delivery records. We cannot agree to accept payment on the basis of product you install because we have no control over the handling of our product after delivery.
- b) You will receive invoices from us showing amounts due. If you do not notify us of any discrepancy regarding the amounts stated thereon by the due date of each invoice, your actions shall constitute an irrevocable acceptance of the goods and an admission that the amounts stated are due and that the goods fully comply with all terms, conditions, specifications or other requirements of your Purchase Order.
- c) If Purchaser fails to make any payments due hereunder or under any other agreement with us or, if at any time, we have any doubt about your intention or ability to pay, Seller may, without prejudice to other remedies, defer further shipments, cancel the unfilled portion of the order, and apply any payments from you in such proportion as we deem proper to your various accounts, all until you cure this default.
- d) The prices for the products which are the subject of this Order Acknowledgment are based on current costs effective as of the date of acceptance by Seller and are guaranteed for ninety (90) days only unless otherwise specified in the body of this Order Acknowledgment. Purchaser understands that an executed copy of this Order Acknowledgment must be received by Seller and released for immediate shipment within ninety (90) days from acceptance by Seller or additional carrying charges may apply.
- e) Unless different terms are expressly set forth on the face of this Order Acknowledgment, all payments are due net 30 days and interest of 1-1/2% per month will be charged to all past due accounts. Purchaser agrees that all such charges are applicable and due as payment for any past due account.
- f) Purchasers who have used credit, debit or charge cards for any deposit or payment hereby authorize Seller to charge that credit card for any outstanding balance that remains unpaid after 15 days from the date payment becomes due under this Order Acknowledgment. This authorization is continuing until final payment is received by Seller.

4. SHIPMENT; TITLE; RISK OF LOSS

- a) After acceptance by Seller, no order may be canceled or modified without Seller's prior written approval. Title to, and risk of loss in, the products shall pass to Purchaser at Seller's plant and/or facilities upon loading of the products onto the carrier.
- b) Deliveries shall be made in accordance with a delivery schedule, which may be revised by mutual agreement. **WE CANNOT GUARANTEE PRECISE DELIVERY DATES AND WE SHALL NOT BE RESPONSIBLE FOR DELAYS IN DELIVERIES NOR LIABLE FOR ANY LOSSES, EXPENSES OR DAMAGES, INCLUDING LIQUIDATED DAMAGES OR PENALTIES OF ANY KIND WHICH YOU MAY INCUR.**
- c) Purchaser agrees that partial shipments shall be permitted and that Seller may invoice each shipment separately.

5. WARRANTY AND LIMITATIONS

- a) **SELLER ACCEPTS NO RESPONSIBILITY FOR DESIGN OF THE PRODUCT OR INSTALLATION OF THE PRODUCTS DELIVERED. ANY DEFECTS IN PRODUCT DESIGN OR INSTALLATION OF PRODUCTS VOIDS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, EXCEPT WARRANTY OF TITLE.**
- b) The goods sold by Seller are all special or custom items and are not subject to return for credit. Approval of returns for credit shall be the decision of Seller in its sole and exclusive discretion and in accordance with Section 9 "Cancellation Charges" of this Order Acknowledgement.
- c) **ALL GOODS ARE SOLD "AS-IS." SELLER DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER WILL, AS BUYER'S SOLE AND EXCLUSIVE REMEDY AND AT SELLER'S OPTION, REPLACE OR, WITHOUT REPLACEMENT, RENDER CREDIT FOR ANY GOODS WHICH, IF PROPERLY SELECTED, STORED, PROCESSED AND USED BY BUYER SHALL PROVE DEFECTIVE WITHIN NINETY (90) DAYS FROM THE DATE OF SHIPMENT OR, IF THE CLAIM IS FOR SHORTAGES OR DEFECTIVE MATERIALS OR NON-CONFORMITY TO SPECIFICATIONS, WHICH WOULD BE REVEALED BY PROMPT INSPECTION, WITHIN FIVE (5) DAYS AFTER YOU RECEIVE THE MATERIALS. SELLER'S GOODS SHALL BE DEEMED DEFECTIVE ONLY TO THE EXTENT THAT THEY MATERIALLY DEVIATE FROM THE APPLICABLE SPECIFICATIONS, AS AGREED TO AND ACCEPTED BY SELLER.**
- d) Samples supplied by Seller are solely for the purpose of evaluating the suitability of such material or services for potential use and, as such, the samples are not intended to serve as warranties of any type, either express or implied. Purchaser shall have the sole responsibility for selection and specification of the goods or services appropriate for the end use of such goods or services, even if Purchaser has informed Seller of the end use for such goods or services. Purchaser acknowledges that it alone has determined that the materials purchased or processed hereunder will suitably meet the requirements of their intended use.
- e) **SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR, AND BUYER RELEASES SELLER FROM, ANY AND ALL LIABILITY FOR NEGLIGENCE BY SELLER WITH RESPECT TO ANY ACTIVITY ENGAGED IN BY SELLER WITH REGARD TO THE GOODS OR SERVICES HEREUNDER AND FROM ANY AND ALL LIABILITY IMPOSED UPON MANUFACTURERS OR SELLERS OF GOODS OR SERVICES UNDER ANY PRODUCT LIABILITY THEORY OR UNDER SIMILAR LEGAL THEORY. SELLER SHALL NOT, UNDER ANY CIRCUMSTANCES INCLUDING, BUT NOT LIMITED TO, DELAY IN DELIVERY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, OR**

USE OF MATERIALS SOLD OR PROCESSED BY SELLER, BE LIABLE TO BUYER OR ANY OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LIQUIDATED DAMAGES, PENALTIES OR FOR LOSSES OF ANY KIND WHATSOEVER. IN NO EVENT SHALL SELLER'S LIABILITY FOR DEFECTIVE MATERIAL SOLD TO BUYER EXCEED THE PURCHASE PRICE THEREOF.

- f) Any action arising from this Agreement, regardless of the theory of recovery, shall be commenced by you, if at all, within one (1) year after the cause of action has arisen.
- g) Exact quantities are not guaranteed. Purchaser expressly agrees that it will accept and pay for quantities that may differ from quantities set forth in this Order Acknowledgment up to +/- 10% of the total quantity specified for standard items and +/- 20% for custom or non-standard items.

6. CLAIMS

Damages in transit: Shipments must be inspected by you before unloading to ascertain any damage in route. Charges for inspections or tests are your expense. Damage claims will not be accepted after goods are unloaded. Claims for shortages or damages must be made by notation on the face of the freight bill or on the face of the delivery ticket at the time of unloading. The carrier, when accepting products at our plant or facilities, is responsible for damages in transit and all claims for damages in transit shall be made promptly to the carrier by you. Our responsibility terminates when the carrier accepts our products for transportation.

a) Claims:

- 1. Claims for shortages or defective materials or non-conformity to specifications, which would be revealed by prompt inspection, must be made in writing to us immediately and, in any event, within 5 days after you receive the materials so that any such claim can be investigated promptly.
- 2. Claims of defective materials or non-conformity to specifications not discernable by you from prompt inspection upon delivery, first discoverable by you upon installation of the products, or first discoverable upon failure of a portion of the product to pass any specified test, will be investigated promptly provided you give us notice in writing within 5 days after completion of the installation or testing. If upon such investigation satisfactory evidence is received establishing the defect or non-conformity and that any failure was the result of the quality of the product as delivered, your claim will be allowed in writing subject to the limitations of this Agreement.
- 3. No claim will be allowed except as provided above.

7. INDEMNITY

Purchaser expressly agrees to indemnify, defend and hold harmless Seller against all loss, expense, including attorney's fees, and damages arising from patent, trademark or trade name infringement in any way arising out of the goods or services provided hereunder in accordance with Purchaser's order, specifications or instructions, and against all loss, expense, including attorney's fees, and damages arising from bodily injury to any person including death resulting therefrom and damage to property caused by any products described herein following delivery or caused by the negligence or willful acts of Purchaser, its agents or employees regardless of whether or not the loss, expense, attorney's fees and damages are caused in part by Seller.

8. FORCE MAJEURE

Purchaser agrees that any delay or failure on the part of Seller to provide or install the product equipment when due, if caused by act of God, fire, labor shortage, riot, civil disturbance, war, explosion, accident, flood, storm, the elements or other catastrophe, strike, labor dispute, civil or military authority, material shortage, priority, requisition, allocation or any other governmental restriction or limitation; or by failure of delay of transportation, shortage of or inability to obtain supplies, equipment, fuel, or labor; or by compliance with any order or request of the United States or any department, board or agency thereof; or in the event of any legislative, executive, or judicial act of any political or governmental authority that substantially affects Seller's operations, or in the event Seller suspends or discontinues business for any reason or any other causes beyond the control of Seller, whether of a similar or dissimilar nature, shall not subject Seller to any liability to the Purchaser. The time for completion of this contract shall be extended for such time as may be necessary to cover any non-scheduled work stoppage or delay.

9. CANCELLATION CHARGES

Orders accepted by Seller are not subject to cancellation for any reason whatsoever after work has been started on such orders. If work has not been started on your order, and Seller has approved the cancellation, in writing, you shall be liable for, and shall pay to Seller, in advance and as an express condition precedent to Seller's approval of any cancellation, the full value of work completed, work-in-process, raw materials, anticipated profits and all other charges incurred in connection with the order; each on the basis of cost to Seller plus handling and overhead charges, all as conclusively and finally determined by Seller as to amount.

10. GOVERNING LAW/FORUM SELECTION

The contract formed pursuant to the terms, conditions and specifications of this Order Acknowledgment and the obligations thereby imposed on Seller and Purchaser shall be governed and construed according to the laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Ohio. Purchaser hereby expressly and irrevocably agrees that any disputes or controversies arising out of, relating to or concerning this Agreement and the rights and obligations hereunder shall be commenced in either the Court of Common Pleas, Cuyahoga County, Ohio, or the United States District Court, Northern District, Eastern Division of Ohio, and further irrevocably consents to jurisdiction of those courts and service of process in accordance with the provisions of the laws of the State of Ohio.

11. MISCELLANEOUS

- a) Seller's failure to insist upon strict performance of any provision of this Agreement shall not constitute a waiver of that or any other provision of any of the Seller's rights under this Agreement, nor shall it constitute a waiver by Seller of any subsequent default by you in the performance of this Agreement.
- b) You agree to pay any and all costs, expenses and attorney's fees which we may incur or become liable for by reason of our enforcing or attempting to enforce the terms of this Agreement, including, but not limited to, lien claims and foreclosure of lien claims and post-judgment collection efforts.
- c) Should any part or provision of this Agreement be declared invalid, unenforceable, illegal or in conflict with any law, the validity and enforceability of the remaining portions or provisions shall not be effected.
- d) This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, receivers, legal representatives, successors and assigns of the parties. This Agreement, however, shall not be construed, nor is it intended, to confer third-party beneficiary rights upon any person, nor create a relationship between any other persons except between Seller and Purchaser.
- e) Any checks received from Purchaser may be accepted on account and with full reservation of rights to collect any balance, notwithstanding any contrary legend or statement contained on or accompanying the check.
- f) Seller is not responsible for errors made in any of its publications whether stenographic, clerical, or printer's error.
- g) New customer order processing:
 - 1. The Seller requires 1-3 days to process credit approvals and will not initiate the credit approval process nor release any orders until you sign and return our "Order Acknowledgement."
 - 2. If the Purchaser requires an expedited delivery, the Seller will accept credit cards, wire transfer or checks by express delivery as method of payment.