

TERMS AND CONDITIONS

1. **PRICE:** Prices are subject to adjustment by Seller (Metal Sales Manufacturing Corporation) in order to conform to Seller's prices in effect at date of shipment. Prices specified do not include any taxes (excise, privilege, occupation, sales, use, or other taxes payable on account), and all such taxes now in effect and/or hereafter levied which are applicable are in addition to such price and shall be paid by the Purchaser (Applicant Customer).
2. **TERMS OF PAYMENT:** All accounts are payable in U.S. funds at the office of the Seller at Louisville, Kentucky, unless otherwise stated on the invoice. Payments on account by the Purchaser may, at the Seller's option, be applied on the oldest unpaid items of account in order of original date, if not otherwise specified by purchaser. Cash prior to credit approval by Seller's Credit Department. Purchaser's financial responsibility is at all times subject to approval of Seller's Credit Department. All payments shall be due in full in Louisville, Kentucky in accordance with terms stated on the face of the invoice. A late charge of 2% per month will be assessed on delinquent balances. Purchaser shall pay all attorney's fees and all costs in the event any matter shall be referred to a third party for collection whether or not litigation is initiated. Purchaser understands and agrees that upon default in payment terms, that Seller will incur and Purchaser will pay additional in-house expense related to the collection process in the minimum amount of \$100.00 or 10% of the balance not to exceed \$1000.00, whichever is greater, which is in addition to the fees, costs and charges references herein above. If at any time, the Seller believes that the financial responsibility of the Purchaser is impaired, the Seller shall have the right to cancel orders, discontinue shipments, require payments in advance and/or require other satisfactory security to guarantee that invoices will be paid promptly when due.
3. **SECURITY INTEREST:** As security for any and all amounts due Seller, Purchaser hereby grants to Seller a security interest in all equipment, supplies, merchandise, receivables, inventory and other goods of Purchaser and in the proceeds and products thereof; and at Seller's request, Purchaser shall, from time to time, execute and deliver Uniform Commercial Code Financing Statements to Seller for filing as a public record. Seller's security interest is junior to any conflicting security interest of Purchaser's commercial bank (if any such security interest now exists).
4. **HANDLING AND SHIPMENT OF CUSTOMER ORDERS:**
 - A. **TELEPHONE ORDERS:**
 - 1) Purchaser assumes responsibility of the accuracy of orders placed by telephone unless a written confirmation is received prior to fabrication.
 - 2) When urgencies require verbal orders, Purchaser's confirming order should be marked "Confirming Order – Do Not Duplicate." Seller recognizes the need of filling orders promptly and agrees that it will use its best efforts to make shipments on the dates specified by Purchaser, provided such dates are reasonable; but, Seller shall not be liable for any damages for failure to make shipments on time due to fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, delays in transportation, equipment failure, shortage of cars, trucks, fuel or material, governmental interference or regulation, acts of God or any other contingencies beyond Seller's control.
 - B. **DELIVERY & SHIPMENT:**

Freight and transportation charges will be paid by Purchaser. Upon delivery of materials, f.o.b. carrier at Seller's plant, all risk of loss, damage and other incidents of ownership shall immediately pass to Purchaser, but title to such materials will be retained by Seller as security for Purchaser's performance until payment in full is received.
 - C. **RETURNS:**

All sales to Purchaser are final. Purchaser must obtain Seller's written authorization before returning any goods. Authorized returns are subject to a restocking charge of up to 50%.
5. **CONTINGENCIES:** All quotations and agreements are subject to the contingencies of and delays in production and delivery. Seller will not be responsible for delays resulting from fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, delays in transportation, equipment failure, shortage of cars, trucks, fuel or material, governmental interference or regulation, acts of God or any other contingencies beyond Seller's control.
6. **WARRANTY:** The following is in lieu of all warranties, express, implied or statutory including but not limited to any express or implied warranties of merchantability or fitness for a particular purpose, warranties made by Purchaser, or any other obligation on the part of the Seller. Seller warrants that at the time of delivery the materials/goods delivered under this contract will conform to specifications, and will be free from defects in materials and workmanship. If any of the materials/goods listed on the face hereof are labeled "secondary" or other than prime, then without limiting the effect or applicability of the warranty disclaimers appearing above, such materials/goods are sold on a strictly "as is" basis, will be accepted by Purchaser with all faults regardless of whether such faults are patent or latent, and Seller makes no warranties or representations, implied or expressed, concerning such materials/goods.
7. **REMEDIES AND DAMAGES:** If the materials/goods furnished by Seller fail to conform to such warranty Seller's sole and exclusive liability shall be to repair, replace, or upon mutual agreement to credit Purchaser's account for defective material only. This warranty applies to materials only and does not include any labor expense or associated costs. If repair to replacement is made, Seller shall have reasonable time to make such repair or replacement f.o.b. Seller's plant, freight allowed, notice of defective materials/goods, including any shortages, must be given to Seller verbally within twenty-four (24) hours and confirmed in writing within seventy-two (72) hours of delivery. In no event shall Seller be liable for special, incidental or consequential damages for any breach of the provisions of this contract including, but not limited to, loss of goodwill, loss of profit, loss of use or loss of crops.

Purchaser agrees to indemnify and hold Seller harmless against any claim or demand, which exceeds or might exceed Seller's exclusive liability as set out above, asserted against Seller by any person or entity to whom Purchaser has sold or otherwise transferred the materials/goods or who otherwise may assert a claim or liability against Seller, whether based in contract, products liability or otherwise, arising from or connected with the materials/goods, regardless of whether Purchaser, or Seller, is in privity of contract with such person or entity. Purchaser agrees that Seller shall have the benefit, at Seller's election, of any settlement or limitation on damages or liability to which Purchaser may be, or become, party or from which it may benefit.

Purchaser shall be liable for any loss suffered by Seller by reason of Purchaser's cancellation of materials ordered including the loss of Seller's reasonable profits.

In the event of Purchaser's failure or refusal to accept materials ordered, Seller may without notice retain or repossess said materials and Purchaser shall be liable for the full purchase price, less allowance for the then current value thereof at the mill after deducting freight, storage, handling, restocking charges and other costs.
8. **LEGAL ACTION:** No legal action shall be brought by Purchaser against Seller for any claim with respect to any materials/goods furnished under this Contract, more than one year after delivery of such materials/goods to Purchaser, and it is agreed that any cause of action with respect to such materials/goods shall accrue on the date of delivery of such materials/goods.
9. **GENERAL:** In any event provision, or portion of any provision, of this Contract is held to unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect. No waiver of any provisions of this Contract shall be implied from any failure by Seller to exercise same. It is understood that there are no oral or other agreements between Seller and Purchaser with regard to the subject of this Contract which are not incorporated in this document. This contract shall not be modified or its terms altered by course of dealing or course of performance. No modification or amendment of this Contract shall be effective unless in writing signed by the party to be charged. Sale and delivery of the listed materials/goods are made subject to the terms and conditions herein stated notwithstanding any contrary provisions on purchase orders or similar documents.
10. **STORAGE OF MATERIALS/GOODS:** Purchaser must store all materials/goods above ground on well-skidded platforms. Materials/goods must be stored under waterproof covering, with proper ventilation to panels to prevent condensation build-up between panels. Failure to store or ventilate materials/goods properly may result in accelerated deterioration and will void any warranty applicable thereto.