

Accurate Metal Fabricators, LLC

Terms and Conditions of Purchase

1. ACCEPTANCE - ACCEPTANCE OF THIS PURCHASE ORDER (ORDER) BY SELLER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED IN THIS ORDER. ANY TERMS AND CONDITIONS STATED BY THE SELLER IN ANY PRIOR PROPOSAL ON SELLER'S ACKNOWLEDGMENT FORM OR IN OTHERWISE ACKNOWLEDGING OR ACCEPTING THIS ORDER IS DEEMED BY BUYER TO BE A MATERIAL ALTERATION OF THIS ORDER AND IS HEREBY OBJECTED TO BY BUYER. ANY SUCH TERM OR CONDITION SHALL BE TOTALLY INAPPLICABLE TO THIS ORDER UNLESS SPECIFICALLY AGREED TO IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER. ACCEPTANCE OF THE GOODS OR SERVICES COVERED BY THIS ORDER WILL NOT CONSTITUTE ACCEPTANCE BY BUYER OF SELLER'S TERMS AND CONDITIONS. ANY OF THE FOLLOWING ACTS BY SELLER SHALL CONSTITUTE ACCEPTANCE OF THIS ORDER AND ALL OF ITS TERMS AND CONDITIONS: SIGNING AND RETURNING A COPY OF THIS ORDER, DELIVERY OF ANY OF THE GOODS OR SERVICES ORDERED, INFORMING THE BUYER IN ANY MANNER OF COMMENCEMENT OR PERFORMANCE, OR RETURNING SELLER'S OWN FORM OF ACKNOWLEDGMENT.
2. CHANGES - Nothing in the Order may be added to, modified, superseded or otherwise altered except in writing signed by an authorized representative of the Buyer. Buyer may make changes in the drawings and specifications on any item at any time. If such changes result in delay or additional expenses to Seller, an equitable adjustment of price and delivery schedules will be made.
3. PRICE AND DELIVERY. Seller shall furnish the goods covered by this Order (Goods) or the services covered by this Order (Services) in accordance with the prices and delivery schedule stated on the Order's face. If prices and/or delivery dates are not stated, Seller shall offer the lowest prices and best delivery dates, both of which shall be subject to written acceptance by Buyer. All prices include all applicable taxes except sales taxes which are separately shown where applicable. Time is of the essence and the Order is subject to termination for failure to timely deliver. The acceptance by Buyer of late performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by the Seller.
4. PACKING AND SHIPPING - No change shall be made by Seller for packaging or storage. All Goods shall be packaged, marked, and otherwise prepared in accordance with good commercial practices. Seller shall mark on containers handling and loading instructions, shipping information, order number, item and account number, shipment date, and names and addresses of Seller and Buyer. An itemized packing list shall accompany each shipment.
5. F.O.B., TITLE AND RISK OF LOSS - Unless otherwise specified on the face of this Order, the F.O.B. point shall be the Buyer's location designated on the face of this Order. If transportation is F.O.B. to location, Seller shall bear all risk of loss or damage to the Goods, and the title shall not shift to Buyer until delivery of the Goods to Buyer's location.
6. INVOICING - After each shipment or service under this Order, Seller shall send a separate invoice, including item numbers, in duplicate, accompanied by a bill of lading or express receipt. Payment of invoice shall not constitute acceptance of the Goods or Services and shall be subject to appropriate adjustment for failure of Seller to meet requirements of this Order. Buyer may set off any amount owed by the Seller or any of its affiliated companies to Buyer against any amount owed by Buyer to Seller under this Order.
7. INSPECTION - Final acceptance of Goods is dependent upon completion of all applicable inspection procedures reasonably required and approval by Buyer, irrespective of the date of payment. Should the Goods or Services fail to meet any inspection requirements, the Buyer may exercise all of its rights, including those provided in the Uniform Commercial Code (UCC). Buyer may return rejected items at Seller's expense. Seller shall not replace Goods returned as defective unless directed by Buyer in writing. In the case of Services, Buyer reserves the right to inspect Services at all reasonable times and places. If any of the Services do not conform with Order requirements, Buyer may require the Seller to perform the Services again in conformity with Order requirements, with no additional payment. When defects in the quality or quantity of Service cannot be corrected by re-performance, Buyer may (1) require the Seller to take necessary action to ensure that the future performance conforms to Order requirements and (2) equitably reduce the payment due the Seller to reflect the reduced value of the Services performed. These remedies in no way limit the remedies available to the Buyer in the termination provisions of this Order, or remedies otherwise available at law.

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8. WARRANTIES - All provisions and remedies of the UCC relating to both implied and express warranties are herewith referred to and made a part of the Order and are in addition to any warranties stipulated in the specifications. Seller warrants that the Goods will be (i) free from defects in workmanship and materials; (ii) free from defects in design except to the extent that such Goods comply with detailed designs provided by Buyer; (iii) fit for such particular purpose Buyer intends to use the Goods or Services, if Seller knows or has reason to know such particular purpose; (iv) in conformity with any statements made on the containers or labels or advertisements for such Goods or Services; and (v) in conformity with all other requirements of this Order. These warranties, and all other warranties, express or implied, shall survive delivery, inspection, acceptance, and payment. In addition to any rights Buyer may have, if Goods are found not to be as warranted within a period of one (1) year after acceptance by Buyer, Buyer may return such Goods to Seller at Seller's expense, for correction, replacement, or credit, as Buyer may direct. Any Goods corrected or furnished in replacement shall from the date of delivery of such corrected or replacement Goods, be subject to the provisions of Section 7 for the same period and to the same extent as Goods initially furnished pursuant to this Order.

9. BUYER'S PROPERTY - All tools, dies, jigs, patterns, equipment or material and other items purchased, furnished, charged to or paid for by Buyer, and any replacement thereof, shall remain the property of Buyer. Such property shall be plainly marked to show it is the property of Buyer and shall be safely stored apart from other property. Seller shall not substitute other property for Buyer's property and shall not use such property except in filling Buyer's orders. Seller shall hold such property at its own risk and upon Buyer's written request shall redeliver the property to Buyer in the same condition as originally received by Seller, reasonable wear and tear accepted.

10. DRAWINGS, SPECIFICATIONS, AND TECHNICAL INFORMATION - The ideas, information, and designs in or shown upon the drawings, specifications, photographs and other engineering and manufacturing information, supplied by Buyer shall remain Buyer's property, shall be retained in confidence by Seller and not disclosed to any other person or entity, and shall not be used or incorporated into any product or item later manufactured or assembled by Seller or anyone other than the Buyer. Any unpatented knowledge or information concerning Seller's processes, present or contemplated products or their use which Seller may disclose to employees of Buyer in connection with the ordering, acquisition, and use by Buyer of the Goods or Services covered by this Order shall, unless specifically agreed in writing, be deemed to have been disclosed as a part of the consideration for this Order and Seller agrees not to assert any claim against Buyer by reason of any use or alleged use to which any such information or knowledge may be put by Buyer.

11. COMPLIANCE WITH LAWS - Seller shall comply with all federal, state and local laws, ordinances, rules and regulations in the manufacture and sale of the Goods and performance of the Services including but not limited to the Occupation Safety and Health Act, the Truth in Negotiation Act, and all applicable requirements of the Fair Labor Standards Act. Seller will defend and hold Buyer harmless from any loss, damages, or costs arising from or caused in any way by any actual or alleged violation of a federal, state, or local law, ordinance, rule, or regulation or failure by the Seller to have any chemical substances sold hereunder included in the list of approved chemical substances published by the Environmental Protection Agency Pursuant to the Toxic Substance Control Act.

12. LIEN WAIVERS - Seller shall furnish, upon Buyer's request, waivers by Seller and other persons entitled to assert any lien in connection with the performance of this Order.

13. PATENTS AND COPYRIGHTS - Seller shall defend, at its own expense, any suit or claim that may be instituted against Buyer or any customer of Buyer for alleged infringement of patents, relating to the maintenance sale, or use of the Goods, except for any such infringement resulting from Seller's compliance with the detailed designs provided by Buyer, and Seller shall indemnify Buyer and its customers for all costs and damages arising out of such alleged infringement. Buyer shall have the right at no additional charge to use and/or reproduce the Seller's applicable literature, such as operating and maintenance manuals, technical publications, prints or drawings, training manuals, and other similar supporting documentation and sales literature. Seller shall advise Buyer of any updated information relative to the foregoing literature and documentation with timely notifications in writing.

14. INDEMNIFICATION - Seller shall indemnify and defend Buyer, its successors and assigns, from and against any losses, damages, and expenses (including attorneys' fees) which Buyer may sustain or incur as a result of any claim of infringement, negligence, breach of warrant, strict liability in tort or otherwise in connection with the use of the Goods furnished and Services performed hereunder, except such which is wholly caused by Buyer's conduct. Seller shall carry and maintain insurance coverage satisfactory to Buyer to cover the above and upon Buyer's request, shall furnish Buyer evidence of such insurance in a form satisfactory to Buyer.

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15. ASSIGNMENT/SUBCONTRACTS - No part of this Order may be assigned or subcontracted without the prior written approval of Buyer. Any unauthorized assignment or subcontract is void.
16. NOTICE OF LABOR DISPUTES - Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, Seller shall immediately notify Buyer in writing of all relevant information with respect to such dispute.
17. CESSATION OF PRODUCTION - If production of any Goods is to be permanently discontinued at any time within one (1) year after final delivery of such Goods under this Order, Seller shall give Buyer at least 180 days prior written notice of such discontinuance, during which time, Seller shall accept orders from Buyer for a reasonable quantity of such Goods.
18. PUBLICITY - Seller shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of this Order without prior written consent of Buyer, except as may be required to perform this Order.
19. TERMINATION - If Seller becomes insolvent or makes an assignment for the benefit of its creditors, or if a petition in bankruptcy is filed by or with respect to Seller, Buyer may, by notice in writing, terminate this Order without liability to Seller except for items already accepted by Buyer. Buyer may terminate this Order at any time by notice in writing to Seller, in such event Buyer shall not be liable for any termination, cancellation, charge back or restocking charges, and in no event shall Buyer be liable for any loss of profits on the Order or portion thereof so terminated.
20. WAIVER - The failure of the Buyer to insist upon the performance of any provision of this Order or to exercise any right of privilege granted to the Buyer under this Order, shall not be construed as waiving such provision or any other provision of this Order, and the same shall continue in full force and effect. If any provision of this Order is found to be illegal or otherwise unenforceable by any court or other judicial or administrative body, the other provisions of this Order shall not be affected hereby, and shall remain in full force and effect.
21. REMEDIES. If Seller breaches this agreement, Buyer shall have all remedies available by law and at equity. In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Rather, Seller's sole remedy in the event of breach of this agreement by Buyer shall be the right to recover damages in the amount equal to the difference between market price at the time of breach and the purchase price specified in the Order. No alternate method of measuring damages shall be available to Seller from this transaction.
22. APPLICABLE LAW - The validity, performance and construction of this Order shall be governed by the laws of the State of California.
23. ARBITRATION - Any dispute regarding this Order shall be resolved through binding arbitration conducted in Orange County, California by a neutral arbitrator or retired judge pursuant to the Rules set forth in the California Code of Civil Procedure ' ' 1281-1288.8, including ' 1283.05. Judgment may be entered on the arbitrator=s award in any court having jurisdiction. Notwithstanding the foregoing, either party may seek provisions injunctive relief from a court of competent jurisdiction.