

# Accurate Metal Fabricators, LLC.

## Terms and Conditions of Sale

**1. Complete Agreement** - This Sales Order (the "Order") contains all of the terms of the purchase and sale between Accurate Metal Fabricators, LLC (the "Seller") and the Buyer and supersedes all prior correspondence, negotiations, discussions, representations and offers between them to the extent that they conflict or are in addition to the terms contained herein and no course of dealing or usage of trade shall be applicable unless expressly referred to herein. ACCEPTANCE BY BUYER OF THE OFFER CONTAINED IN THIS ORDER IS EXPRESSLY LIMITED TO THE EXACT TERMS AND CONDITIONS CONTAINED HEREIN. ANY TERMS AND CONDITIONS SET FORTH IN ANY PURCHASE ORDER OR OTHER DOCUMENT PROVIDED BY BUYER TO SELLER WHICH DIFFER FROM, CONFLICT WITH OR ARE NOT INCLUDED IN THESE TERMS AND CONDITIONS SHALL NOT BECOME A PART OF ANY AGREEMENT BETWEEN BUYER AND SELLER UNLESS SUCH TERMS AND CONDITIONS ARE SPECIFICALLY ACCEPTED BY SELLER IN WRITING. ACCEPTANCE OF PRODUCT CONSTITUTES ASSENT TO THE TERMS AND CONDITIONS OF SALE STATED HEREIN.

**2. Prices** - Seller may change its published or quoted prices at any time without notice. Written quotations expire automatically 30 days from the date issued and are subject to change or termination by notice from Seller during that period. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions, which are not part of the original price quotation. Prices are exclusive of all excise, sales, use and other taxes imposed by any federal, state, municipal or other government authority, all of which taxes shall be paid by Buyer. Buyer is responsible for obtaining and providing to Seller any certificate of exemption or similar document required to exempt any sale from sales, use or similar tax liability.

**3. Terms of Payment** - Unless otherwise expressly stated in writing, terms are net cash 30 days from the date of invoice. Seller reserves the right at any time to require full or partial payment in advance, or to revoke any credit previously extended, if, in Seller's sole judgment, Buyer's financial condition does not warrant proceeding on the terms specified. Overdue payments shall be subject to finance charges computed at a periodic rate (to the extent permitted by law) of 1-1/2 % per month (18% per year) or such lower rate as may be the maximum allowable by law. Amounts owed by Buyer with respect to which there is no dispute shall be paid without set-off for any amounts which Buyer may claim are owed by Seller and regardless of any other controversies which may exist.

**4. Delivery** - Unless otherwise specified in writing, all sales are F.O.B. Seller's premises in Seal Beach, California. Time of delivery shall be the time when the product is ready for pickup by Buyer or by a carrier for delivery to Buyer. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. Without in any way limiting the generality of the limitation of remedies herein, Seller shall not be liable for any loss or damage resulting from any delay or failure to deliver which is due to any cause beyond its control, including, without limitation, acts of nature, unavailability of supplies or sources or energy, riots, wars, fires, floods, epidemics, lockouts, strikes, and slowdowns, delays in delivery by its suppliers, or acts or omissions of Buyer. If, as a result of any such cause, any

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scheduled delivery is delayed, Seller may by written notice to Buyer, cancel that and all future deliveries without further liability or obligation of any kind. Products on which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and for its account. Buyer shall be liable for all costs and expenses incurred by Seller in holding or storing products for Buyer or at Buyer's request.

5. Shipment - Unless Buyer supplies specific instructions to the contrary, shipment methods and routes will be selected by Seller, but Seller will not assume any liability in connection with shipment. All shipments will be insured at Buyer's expense and made at Buyer's risk, and Buyer shall be responsible for making all claims with carriers, insurers, warehousemen and others for mis-delivery, non-delivery, loss, damage or delay.

6. Title and Risk of Loss - Subject to paragraph 7 and to Seller's right to stop delivery of products in transit, title to and risk of loss for products shall pass to Buyer upon the earlier delivery to Buyer or to a carrier for shipment to Buyer.

7. Security Interest - The Buyer hereby grants to Seller and Seller hereby reserves a purchase money security interest in all goods purchased under this Order, and in any proceeds thereof, to secure the unpaid purchase price of such goods. Upon request by Seller, the Buyer agrees to execute any document appropriate or necessary to perfect the security interest, or in the alternative, Buyer hereby appoints Seller as its attorney-in-fact to execute on Buyer's behalf any such financing statements or instruments. Payment in full of an invoice by the Buyer in total of the purchase price as shown on the invoice shall release the security interest of Seller on the invoiced goods.

8. Specifications - All products are subject to Seller's standard tolerances for specifications, except where specific tolerances are agreed to in writing at the time of order. Seller reserves the right to make substitutions and modifications in the specifications of any products provided that such substitutions or modifications do not materially affect the performance of the products or the purposes for which they can be used, or modify any custom specifications agreed to in writing at the time of order.

9. Acceptance of Products And Product Returns. Buyer may not cancel this Order except upon the written consent of Seller and upon terms that will fully indemnify Seller against loss. Inspection and acceptance of products shall be Buyer's responsibility. Buyer is deemed to have accepted products unless written notice of rejection is received by Seller within ten (10) days after delivery of the products. Buyer waives any right to revoke acceptance thereafter. Buyer shall report any discrepancy in shipment quantity or damage within ten (10) days after delivery. Products shall not be returned to Seller without its prior written authorization. Returned Products must be in original manufacturer's shipping cartons complete with all packing materials. All Products for return shall be returned freight prepaid. If returned products are claimed to be defective, a complete description of the nature of the defect must be included with the returned products. Products not eligible for return shall be returned to Buyer, freight collect.

10. Buyer's Limited Remedy - Seller's sole responsibility with respect to claims regarding any products purchased hereunder shall be, at its option, to credit or replace any product or component, which Seller determines to be defective. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES DUE TO ANY CAUSE WHATSOEVER EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO**

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SUIT OR ACTION SHALL BE BROUGHT AGAINST SELLER MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED. THE FOREGOING CONSTITUTES SELLER'S SOLE LIABILITY AND PURCHASER'S SOLE REMEDY WITH RESPECT TO PRODUCTS SOLD BY SELLER. EXCEPT AS THUS PROVIDED, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. 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.

12. Attorney's Fees. If any action is commenced by either party in a court, or through arbitration, to enforce or interpret the terms and conditions of this Agreement, the party finally prevailing in such proceeding or action (after appeal, if any) shall be entitled to recover from the unsuccessful party reasonable attorney fees, costs, and necessary disbursements, in addition to any other relief to which the prevailing party may be entitled.

13. Miscellaneous - This Order shall be governed by the laws of California. The headings herein are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. In case any provision herein shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. A waiver by Seller of any of the terms and conditions of this Order shall not be deemed to be a continuing waiver but shall apply solely to the instance of the waiver.

14. Compliance with Laws - The Buyer shall carry out the transactions contemplated by this sale and shall otherwise deal with the products sold in conformity with all applicable laws, rules, and regulations of all governmental authorities, including, without limitation, the Export Administration Act, and shall obtain all permits and licenses required in connection with the purchase, installation, sale, shipment or use of any of the products.

15. Indemnification. Buyer shall indemnify, and agrees to defend, Seller, its successors and assigns from and against any and all losses, damages, and expenses (including attorney's fees) which Seller may sustain or incur as a result of any claim of negligence, breach of warranty, strict liability in tort or otherwise in connection with the use of the goods furnished hereunder, except such which is wholly caused by Seller=s negligence.