

**TERMS AND CONDITIONS OF PURCHASE**  
**(GOODS OTHER THAN COMMODITIES)**

The terms set forth in our Purchase Order and the following terms and conditions are the terms and conditions that control our purchase of goods from you.

**Definitions**

The term “we”, “our” or “us” means METALX, LLC or the affiliate of METALX, LLC designated as the buyer in the Purchase Order. The terms “you” or “your” mean the seller designated on the Purchase Order. The term “Purchase Order” means the “Purchase Order” form completed by us to confirm or set out certain terms of the agreement between you and us for the sale of goods. The term “Terms” means the terms and conditions set forth in this document. The term “Agreement” means the terms and conditions set out in the Purchase Order as supplemented by the Terms. The term “Goods” means the goods described in the Agreement that are the subject matter of the sale. The term “Affiliate” or “Affiliates” means any corporation, partnership, limited liability company, trust, other entity or other person, controlled by or under common control with you or us, as applicable.

**Rejection of Your Terms**

No terms proposed by you, whether set forth in a contract, confirmation, order, other document or other communication, will be binding on us and we hereby specifically object to and reject such terms.

**Applicable Terms**

If you sign the Purchase Order or otherwise agree to its terms, the Agreement will constitute the entire agreement between you and us with respect to the sale of the Goods and will supersede any prior agreements, written or oral, between you and us.

If the Purchase Order is a confirmation of a verbal agreement between you and us and you do not sign it or otherwise agree to its terms, you must notify us immediately if any provision of the Agreement does not conform to your understanding of the oral agreement. You also agree to provide us with a written objection to any unacceptable terms within ten (10) days of your receipt of the Purchase Order. If you have previously agreed to be bound by the Terms, you are not entitled to object to any of the terms and conditions set forth in the Terms and you will be bound by them even though the other terms of the Agreement were agreed upon orally and confirmed by the Purchase Order.

Your failure to return a signed copy of the Purchase Order or object to its contents will not excuse you from liability under the Agreement. If you have not already agreed to the terms and conditions of our Agreement, your delivery of goods to us will constitute your acceptance of the Agreement.

**Specifications**

The Goods must conform to the specifications set forth in the Agreement as supplemented by any additional specifications set forth in any documentation you provided to us; provided, however, if any additional specifications are inconsistent with those in the Purchase Order or attached to this Agreement, the inconsistent additional specifications shall be disregarded. Any such supplemental specifications are hereby incorporated by reference.

**Loading and Packing**

You will be responsible for all costs associated with loading and packing the goods for safe shipment.

**Delivery and Risk of Loss**

Except as otherwise specified in the Agreement, the costs of delivery is included in the price for the Goods. If delivery is not included in the price, you must select the delivery method and route that results in the lowest applicable delivery charge or, if we select a method and/or route, you must use our method and/or route. You will continue to bear the risk of loss until the Goods reach the destination specified in the Agreement.

**Inspection and Testing**

We may inspect and/or test the Goods for conformance to the specifications within a reasonable time after receiving the Goods. If all or any portion of the Goods fails to conform to the specifications, we may reject the entire load or lot or just the non-conforming goods. With respect to any rejected Goods, we may, at your expense and risk (i) hold the Goods for you; or (ii) return the Goods for, at our option, a full credit or refund or replacement. Any rejected Goods shall not be tendered again to us unless we have granted you permission to do so.

**Warranty**

Any express warranties you have provided to us or promulgated generally are hereby incorporated by reference and may be enforced by us. You also warrant that the Goods (i) conform to the specifications; (ii) are merchantable; and (iii) are fit for their intended purpose. If the Goods fail to conform to the specifications or you have breached your other warranties to us and we have not rejected or revoked our acceptance of the goods, we may deduct from any unpaid balance (or be entitled to a refund for) the price of the Goods. Alternatively, we may adjust the purchase price for the Goods in accordance with prior practice and/or industry standards.

**Indemnifications**

You agree to indemnify and hold us, our Affiliates, officers, directors, employees and agents harmless for and from all suits, claims, judgments, awards, losses, damages, costs or expenses (including attorney’s fees) relating to, arising out of, or caused by (i) a breach of your representations or obligations under the Agreement; or (ii) your intentional, willful or negligent acts.

## **Taxes**

Unless otherwise stated in the Agreement, the purchase price is inclusive of all taxes and other governmental fees and charges.

## **Cancellation and Other Remedies**

We may cancel the Agreement in whole or in part if you fail to deliver the goods by the delivery date specified in the Agreement, breach any representation or warranty, breach any other terms of the Agreement, you make an assignment for the benefit of creditors, a receiver is appointed for you, you become insolvent, or you file for bankruptcy or are subject to a proceeding for involuntary bankruptcy. All remedies provided in the Agreement are in addition to, and not in lieu of, any additional remedies available to us under the Indiana Uniform Commercial Code. We may exercise any of the other rights or remedies available to us. We may recover our reasonable attorney's fees and other litigation expenses if we prevail in any action to enforce the Agreement.

## **Termination for Convenience**

Unless this Agreement is designated as "Not Terminable for Convenience" in the Purchase Order, we may terminate this Agreement at our convenience for any or no reason prior to the delivery of all Goods we agreed to purchase. Any such termination shall be effective as of the date specified in a written notice of termination we provide to you. If we terminate this Agreement for convenience, we will pay you for the conforming Goods delivered to us prior to the effective date of termination. If you have not provided any Goods prior to our termination for convenience, we will pay you a termination fee of \$250.00.

## **Excusable Delays**

You will not be liable for any failure or delay in performance attributable to any cause beyond your reasonable control if, within two (2) days of learning of such cause, you provide written notice to us. If the cause relates to one of your suppliers, then such failure or delay will not be excusable unless the goods or services to be provided by such supplier are not obtainable by you from another source. In the event of an excusable delay, you agree to make your best efforts to comply with your contractual obligations and agree not to favor another customer over us. We may cancel all or any part of an order that has been delayed as a result of an excusable delay. In no event will we be liable for any failure or delay attributable to a cause beyond our reasonable control.

## **Assignment, Delegation and Change in Control**

Any assignment of the Agreement or any of your rights under it without our prior written consent shall be null and void and shall constitute a material breach of the Agreement. You may not delegate any of your duties under this Agreement without our prior written consent. We may cancel this Agreement, in whole or in part, upon any change in control of you.

## **Set-Off**

We may set-off any amount owed by you in connection with this Agreement against any amount owed to us or any of our Affiliates by you or any of your Affiliates.

## **Bribes and Kick-backs**

You represent and agree that neither you nor any of your agents or employees have offered or will offer, or have given or will give anything of significant value to our employees or representatives for the purpose of obtaining the Agreement or favorable treatment under the Agreement.

## **Compliance with Laws**

You agree to comply with all applicable local, state and federal laws, rules and regulations in conducting your business and performing your obligations under the Agreement. You certify that the goods have been produced in compliance with the Fair Labor Standards Act of 1938, as amended, including all regulations thereunder.

## **Amendments and Waivers**

No amendment, modification, waiver or release of any provisions of the Agreement will be binding on us without a writing signed by our authorized representative. Our failure in any one or more instances to require the performance of any term or condition in the Agreement shall not act as a waiver of our right to insist on strict performance in the future.

## **Severability**

If any provision of the Agreement is determined to be invalid, illegal or unenforceable, such determination shall not render the other provisions of the Agreement invalid, illegal or unenforceable.

## **Applicable Law and Forum.**

The Agreement shall be deemed to have been made in Indiana and shall be governed by the laws of Indiana, without regard to its choice of laws provisions. Any lawsuit or other proceeding initiated by you relating in any way to the Agreement or the transactions contemplated thereunder must be brought in the DeKalb County, Indiana Circuit or Superior Court or the United States District Court for the Northern District of Indiana, Fort Wayne Division. If we initiate a lawsuit or other proceeding against you, you consent to the jurisdiction of any of the foregoing courts, waive any venue objections and agree not to seek any transfer of the lawsuit or proceeding to another court. You agree to pay the reasonable attorney's fees incurred by us in moving any action initiated by you to one of the foregoing forums.