



Jones Metal, Inc.

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TERMS AND CONDITIONS OF SALE

1. **Controlling Terms and Conditions.** These Terms and Conditions of Sale (“**Terms**”) apply to all sales of product and related services (“**Product**”) by Jones Metal, Inc. (“**Seller**”) to any customer (“**Buyer**”) with notice of these terms, however gained, including the use of Seller’s website. These Terms, together with those contained in any quotation or sales contract of Seller (“**Sale Contract**”), constitute the entire agreement (the “**Agreement**”) between the parties and shall prevail over any contradictory terms and conditions in any purchase order, acceptance acknowledgment, or other standard form used in the performance of this Agreement. To the extent Buyer’s purchase order or any other statement of Buyer contains any terms or conditions in addition to or different from the terms of this Agreement, such terms and conditions are hereby rejected by Seller and hereby waived by Buyer and such terms and conditions shall not affect this Agreement nor be binding upon Seller absent an express written statement by Seller to the contrary. Neither Seller’s delivery of the Product nor any other action at any time on the part of Seller shall constitute acceptance of additional or different terms. Buyer’s written acknowledgment of a Sale Contract or commencement of performance, including Buyer’s use of any Product provided by Seller, will constitute acceptance of the terms and conditions of this Agreement. In the event of any conflict between these Terms and the Sale Contract, the terms of these Terms shall govern.

2. **Purchase Price and Payment Terms.**

a. **Purchase Price.** Quotations are valid for a period of thirty (30) days from the date of quotation. Unless otherwise set forth in the Sale Contract, prices in effect at time of delivery will apply (the “**Purchase Price**”); and the Purchase Price does not include sales, use, excise or similar taxes or any shipping, delivery or insurance costs. Seller will invoice Buyer for any such amounts incurred by Seller on behalf of Buyer. Buyer shall provide Seller with a currently valid exemption for all sales claimed tax exempt.

b. **Payment Terms.** Unless provided otherwise in the Sale Contract, payment of the Purchase Price, and any other amounts incurred by Seller on behalf of Buyer, shall be due in full within thirty (30) days from the invoice date. Invoices issued by Seller for whole or partial shipments of Product shall be paid by Buyer regardless of disputes relating to other invoices, and Buyer waives the right to assert offsets or counterclaims with respect to such invoices. Buyer shall promptly notify Seller’s customer service personnel of any disputed invoice. Any amounts not paid when due will be subject to a late payment fee computed daily at a rate equal to the lower of one and one half percent (1.5%) per month or the highest rate permissible under applicable usury law. Buyer agrees to pay Seller’s reasonable attorneys’ fees and other costs incurred in collection of any amounts not paid when due.

c. **Buyer’s Financial Condition: Insecurity.** If in Seller’s sole judgment, Buyer’s financial condition or any other circumstance causes Seller to be insecure with respect to Buyer’s performance of any obligation under this Agreement, Seller may accelerate and demand immediate payment of any amounts owed Seller, suspend performance, cancel an order, or require cash payment or satisfactory security before shipment.

3. **Shipment Terms and Risk of Loss.** All shipments shall be made FCA Seller’s docks (under Incoterms® 2020), and title to and all risk of loss concerning the Product shall pass to Buyer upon the delivery of the Product to the carrier. Buyer shall at its sole cost and expense, be responsible for obtaining all licenses and permits and for satisfying all formalities as may be required to import the goods into any other country in accordance with then prevailing laws, rules and regulations. Any extra charge incurred for additional services, including loading, storage and handling, will be paid by Buyer. The delivery dates specified in this Agreement are estimates only and Seller’s failure to meet the same shall not be deemed a breach of this Agreement. Delays in securing Buyer’s approval of any matter shall, at Seller’s discretion, extend the date of delivery. Seller reserves the right to ship prior to the quoted ship date or to ship in installments.

4. **Inspection and Acceptance.** Buyer shall promptly inspect all shipments after arrival of the Product at the original shipping destination and notify Seller in writing within two (2) days of arrival, of any shortages or other failures to conform to this Agreement. Buyer shall allow Seller a reasonable opportunity to inspect such Product to enable Seller to verify the alleged nonconformity. Buyer’s failure to timely notify Seller in writing of any alleged nonconformity of the Product shall constitute an immediate and irrevocable acceptance of the Product. Buyer’s rejection of any Product shall not shift risk of loss of such Product until the Product is returned to Seller, freight prepaid, pursuant to Seller’s written authorization.

5. **Limited Warranty and Limited Remedy.** Seller warrants to the original Buyer that (i) services provided by Seller shall be

performed in a professional and workmanlike manner, consistent with applicable industry standards; and (ii) Product will be free from defects in material and workmanship for a period of one year from the date of shipment under normal use and care.

No performance warranty is intended or implied. This limited warranty does not cover any issues arising from: (a) Product design (which is solely the responsibility of Buyer), or (b) Product that has been modified, neglected, misused, abused, damaged by parties other than Seller, or subjected to accident, improper installation, handling or storage, abnormal physical stress or environmental conditions.

Any alleged breach of this limited warranty shall be forever waived if not reported to Seller in writing within the applicable warranty period. In the event of a breach of this limited warranty, Seller shall, as Seller's sole obligation and Buyer's sole remedy, repair or replace such nonconforming Product, or if Seller determines that such repair or replacement is not feasible, refund the Purchase Price. Seller may require Buyer to return the alleged defective Product to Seller, F.O.B. Seller's shipping origin, before remedying a breach of the limited warranty.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT SOLD HEREUNDER, INCLUDING, BUT NOT LIMITED TO, IMPLIED CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE OR ANY OTHER MATTER. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY EXCEPT AS STATED IN THIS AGREEMENT. BUYER IS SOLELY RESPONSIBLE FOR ANY TESTING AND DETERMINATION THAT A PRODUCT IS FIT FOR BUYER'S PARTICULAR PURPOSES.

6. LIMITATION OF LIABILITY. SELLER SHALL HAVE NO LIABILITY TO ANY PERSON FOR, AND BUYER HEREBY EXPRESSLY WAIVES, ALL INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS AND RELIANCE DAMAGES. THE PARTIES EXPRESSLY AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK AND SHALL SURVIVE THE DETERMINATION OF ANY COURT OF COMPETENT JURISDICTION THAT ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY HEREUNDER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCT IN RESPECT OF WHICH THE CLAIM IS MADE. No action may be brought by Buyer against Seller after one (1) year from the date of delivery of the Product, and Buyer agrees that this provision shall be grounds for dismissal of any suit or claim asserted by Buyer after such time.

7. Indemnification. Buyer shall indemnify (and at Seller's option, defend) and hold Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees harmless from any and all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys' fees) (collectively, "**Claims**"), arising out of or relating to: (a) Buyer's or its agents provided specifications, design, structure, operation, material or method of making Product, including, without limitation, any resulting violation of intellectual property or proprietary rights; (b) Buyer's use, misuse or disposal of Products or materials; (c) Buyer's non-compliance with any law; (d) breach of these Terms by Buyer; and (e) Products subject to the warranty exclusions in Section 5.

8. General Provisions.

a. Intellectual Property; Confidentiality. All specifications, documentation and any other intellectual property involved in the manufacturing the Product is the property of Seller, except to the extent Buyer has supplied specifications, drawings or other intellectual property to Seller. All non-public, confidential or proprietary information of Seller is confidential, solely for the use in performing hereunder and may not be disclosed, used or copied unless authorized in advance by Seller in writing.

b. Assignment. Buyer may not assign its rights or obligations under this Agreement to any third party, by operation of law or otherwise, without Seller's prior written consent.

c. Force Majeure. Seller shall not be liable to Buyer for any delay or failure of delivery of Product or other nonperformance caused in whole or part by any contingency or event beyond Seller's reasonable control, including, without limitation, acts of any government or any agency or subdivision thereof, war, riots, acts of God, pandemic or epidemic, machinery breakage, or any shortage of or inability to secure labor, transportation facilities, fuel, energy, raw materials, supplies, or machinery at reasonable prices or from regular sources. In the event of the occurrence of any of the foregoing, Seller may distribute its available goods among its customers on such a basis as Seller shall deem fair and equitable, without liability to Buyer.

d. Modification and Waiver. No addition to, or modification or waiver of, any provision of this Agreement shall be binding upon Seller unless set forth in a written document signed by Seller. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Agreement or of the same circumstance or event upon any recurrence thereof. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

e. Governing Law and Forum; WAIVER OF JURY TRIAL. The validity, operation, and performance of this Agreement

(including all matters arising out of or relating to this Agreement) shall be governed and controlled by the laws of the State of Minnesota and the United States of America, notwithstanding conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Any claim, cause of action, suit or demand allegedly arising out of or related to this Agreement shall be brought exclusively in the state or federal courts located in Minneapolis, Minnesota, and the parties irrevocably consent to jurisdiction in, and venue of such courts. BUYER IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.