

1. Controlling Provisions.

(a) Generally. This document is an offer or counter-offer by Metalex Corporation ("Seller"), to sell the goods and/or services that are identified in this document (the "Products") to the buyer identified in this document ("Buyer") in accordance with these Terms and Conditions of Sale ("Terms and Conditions"). It is not an acceptance of any offer made by Buyer. All sales by Seller to Buyer are subject to, and are expressly conditioned upon assent to, these Terms and Conditions. Seller hereby objects to any additional or different terms or conditions, and notifies Buyer that Seller is unwilling to sell on any terms or conditions other than these Terms and Conditions. These Terms and Conditions and the additional terms and conditions contained in or attached to this document, as supplemented by agreed upon quantities and shipping dates (collectively, the "Contract"), shall be the entire agreement between Seller and Buyer on the subject of the transactions described herein; and there are no conditions to this Contract that are not expressed herein. Buyer's acceptance of this offer is limited to the terms, covenants and conditions contained in this offer. **THIS CONTRACT (INCLUDING ALL ITEMS EXPRESSLY INCORPORATED BY REFERENCE) CONSTITUTES THE FINAL EXPRESSION OF THE TERMS BETWEEN SELLER AND BUYER REGARDING THE PRODUCTS AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS MADE IN WRITING AND SIGNED BY SELLER AND BUYER.** Seller's sales representatives are without authority to change, modify or alter the terms of this Contract.

(b) Acceptance. Buyer shall be deemed to have made an unqualified acceptance of this offer and the terms and conditions herein on the earliest of the following to occur: (a) Seller's receipt of a copy of this Contract (or any document in which this is referenced or to which it is attached) signed by Buyer, (b) Buyer's payment of any amounts due under this Contract, (c) Buyer's delivery to Seller of any material to be furnished by Buyer, (d) Seller's delivery of the Products, (e) failure by Buyer to notify Seller to the contrary within ten days of receipt of this Contract (or any document in which this is referenced or to which it is attached) or (f) any other event constituting acceptance under applicable law.

(c) Governing Law. This Contract shall be governed by and construed according to the internal laws of the State of Illinois, U.S.A., including, without limitation, the Uniform Commercial Code as adopted in the State of Illinois, U.S.A. Neither this Contract nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a Court situated in the State of Illinois, U.S.A. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court.

(d) Severability Waiver. The invalidity of any provision or clause of this Contract shall not affect the validity of any other provision or clause hereof. Seller reserves the right to correct clerical or similar errors relating to price or any other term shown in this Contract. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract shall not be construed as a waiver or relinquishment or any right granted hereunder or the future performance of such term, covenant or condition.

(e) Compliance with Laws. Buyer agrees to comply with all laws and regulations applicable to the purchase, transport, use, storage, sale, lease and/or disposal of the Products.

2. Delivery.

(a) Generally. Seller shall deliver the Products F.O.B. the shipping point. All risk of loss, damage or delay, and title to Products, shall pass from Seller to Buyer upon Seller's delivery of the Products F.O.B. the shipping point. Partial shipments shall be permitted. Buyer shall accept overrun and/or underruns not exceeding 15% of quantity ordered, to be paid for or allowed pro rata.

(b) Delivery Dates. All delivery dates are approximate. Delivery dates given by Seller are based on prompt receipt of all necessary information regarding the order. Seller will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by Seller to meet any delivery date does not constitute a cause for cancellation and/or for damages of any kind. Time for delivery shall not be of the essence.

(c) Delivery Delays. Any delay in delivery due to causes beyond Seller's reasonable control, or due to any causes specified in the following sentence, shall extend the term of delivery by a period equal to the length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's (a) failure to supply adequate instructions, (b) failure to arrange for pickup, (c) failure to supply or approve necessary data in a timely manner, (d) requested changes or (e) failure to provide documents or materials required for Seller to effect delivery, Seller will store all Products at Buyer's risk and expense. Buyer shall pay all storage costs and expenses upon Seller's demand.

(d) Claims. Claims for shortages or other errors must be made in writing to Seller within 10 days after Seller's delivery. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

(e) Orders. Buyer shall ensure that its orders are received by Seller within the minimum lead times and quantities (where applicable) indicated on the applicable quote or other communication by the Seller. Buyer's orders or mutually agreed change orders shall be subject to all provisions of this Contract, whether or not the order or change order so states.

3. Prices/Taxes.

(a) Prices. Unless prices are stated on the face hereof, prices shall be the higher of Seller's most recent quote to Buyer, prevailing market price, Seller's list price or the last price charged by Seller to Buyer for the Products. Unless otherwise stated on the face hereof, prices are in U.S. Dollars, F.O.B. the shipping point. Prices are subject to increase based on any event or cause that impacts the price or availability of materials or supplies, including, without limitation, foreign exchange rates, increases in raw material costs, inflation and increases in labor and other production and supply costs.

(b) Taxes. Buyer shall pay or reimburse Seller on demand for all taxes, fees and costs, including, without limitation, any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value added tax, duty, customs agent or broker fees, inspection or testing fee, freight costs, insurance, consular fees or any other tax, fee or charge of any nature whatsoever, including interest, imposed on, in connection with or measured by any transaction between Seller and the Buyer, in addition to the prices quoted or invoiced.

4. Terms of Payment.

(a) Generally. Unless otherwise stated on the face hereof, payment terms are 100% of invoice amount due 30 days after Seller's delivery.

(b) Seller's Rights. Notwithstanding the foregoing, terms of payment on all orders are subject to the approval of Seller's credit department. If Buyer does not pay Seller any amount due under this Contract or any other agreement when such amount is due or if Buyer defaults in the performance of this Contract, Seller may, without liability to Buyer and without prejudice to Seller's other lawful remedies, (i) terminate Seller's obligations under this Contract, (ii) declare immediately due and payable all Buyer's obligations to Seller, (iii) change credit terms (including, without limitation, requiring payment in advance) with respect to any further work, (iv) suspend or discontinue any further work and/or (v) repossess the Products. Buyer agrees to reimburse Seller for all costs and fees, including, without limitation, attorney's fees and repossession fees, incurred by Seller in collecting any sums owed by Buyer to Seller. Buyer agrees to pay a late payment charge of 1.5% per month, or the maximum amount allowable by law (if lower), on all amounts not paid in full when due, payable on Seller's demand. Buyer shall not set off amounts due to Seller against claims against Seller.

5. Cancellations, Changes and Returns.

(a) Cancellations. All undelivered Products may be cancelled by Buyer only upon written approval of an authorized representative of Seller. In the event of any cancellation of an order by Buyer, Buyer shall pay to Seller its reasonable costs and expenses, plus Seller's usual rate of profit for similar work.

(b) Changes. Buyer may not alter or modify its order or any part thereof without Seller's prior, written consent. Seller reserves the right to change the price, terms of payment and delivery dates for any Products affected by any alterations or modification.

(c) Returns. No Products may be returned to Seller without its prior written authorization, and Products may be returned only on the terms or conditions specified in such authorization. Returned Products must be of current manufacture, unused, in resalable condition and securely packed to reach Seller without damage. Any cost incurred by Seller to put equipment in first class condition will be charged to Buyer. All Product returned to Seller shall be subject to a restocking charge plus the costs of freight, packaging, insurance and any import or export costs.

6. Limited Warranty.

(a) Limited Warranty. Seller warrants to Buyer that its Products will be free from material defects in workmanship and materials under normal use and service for a period of 90 days from the date of Seller's delivery of Products (the "Warranty Period"). There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, damage due to environmental or natural elements, failure to follow Seller's instructions or improper installation, storage or maintenance. This warranty does not cover parts furnished but not produced or manufactured by Seller, and Seller's sole obligation with respect to such parts shall be limited to assigning or transferring to Buyer any written warranty extended to Seller by the manufacturer of such parts to the extent such warranty may reasonably be assigned or transferred. However, Seller does not adopt, guarantee or represent that the manufacturer will comply with any of the terms of the warranty of such manufacturer.

(b) Remedy. Seller's sole and exclusive obligation under this warranty (and Buyer's sole and exclusive remedy) shall be, upon prompt written notice by Buyer during the Warranty Period of any breach, to either, at Seller's option, repair or replace without charge, F.O.B. Seller's facility, any defective Product or part thereof expressly warranted herein by Seller against defects and found by Seller in its sole discretion to be defective and covered by this warranty or credit Buyer for the purchase price paid for such Product or part. **SELLER SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, WITHOUT LIMITATION, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR SELLER'S ACTS OR OMISSIONS OR OTHERWISE.** This warranty covers only replacement or repair of defective Products or parts thereof at Seller's facility and does not include the cost of field service travel and living expenses, labor, inspection, removal or installation of new Products or parts or normal maintenance.

(c) LIMITATION ON DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, INDIRECT, SPECIAL OR OTHER DAMAGES. SELLER'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THIS CONTRACT SHALL BE LIMITED TO THE MONIES PAID TO SELLER FOR THAT DEFECTIVE PRODUCT.

(d) No Waiver or Additional Expenses. Any assistance Seller provides to or procures for Buyer outside the terms, limitations or exclusions of this warranty will not constitute a waiver of the terms, limitations or exclusions of this limited warranty, nor will such assistance extend or revive the warranty. Seller will not reimburse Buyer for any expenses incurred by Buyer in repairing, correcting or replacing any defective Products, except for those incurred with Seller's prior written permission.

7. DISCLAIMER OF OTHER WARRANTIES. SELLER AND BUYER AGREE THAT THE EXPRESS WARRANTIES IN THE PRECEDING SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). SELLER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES. Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as an express warranty. Prior to using or permitting use of the Products, Buyer shall determine the suitability of the Products for the intended use and Buyer shall assume all risk and liability whatsoever in connection therewith.

8. Engineering Data. All engineering data, design information, concepts and engineering and shop drawings used in the completion of this order are and shall remain Seller's property. Buyer shall not copy, reproduce, distribute, publish or communicate to any third party such data without the prior written permission of an authorized representative of Seller. Seller hereby gives its permission to Buyer to distribute product data or operation and maintenance information to the end user.

9. Patent Infringement and Defects in Buyer's Specifications. Orders manufactured to Buyer's specifications, drawings, designs or descriptions are executed only with the understanding that Buyer will indemnify and hold harmless Seller from any and all damages sustained by Seller, including, without limitation, reasonable attorneys' fees, resulting from any action or threatened action against Seller for

(a) infringement of the patents or proprietary rights of any other person, or (b) injury to person or property, including death, relating to defects in Buyer's specifications, drawings, designs or descriptions.

10. Indemnification and Insurance.

(a) Indemnification. Buyer hereby releases and agrees to indemnify, defend and hold harmless Seller, its shareholders, officers, agents, employees, affiliates, successors, assigns and third-party suppliers ("Seller's Indemnified Parties") from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, losses, suits, demands, fines, penalties, judgments, omissions, damages or expenses whatsoever, including, without limitation, attorneys' fees and costs ("Damages"), incurred by or against Seller or any of Seller's Indemnified Parties due to or arising out of, in connection with, resulting from or relating to (i) misrepresentations, breach of the warranties, representations, covenants or agreements contained in this Contract or any law by Buyer or any of Buyer's shareholders, members, directors, managers, officers, employees, affiliates, representatives, agents, successors or assigns ("Buyer's Parties"), or (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties, or (iii) losses, damages or injuries caused by Buyer's products, Buyer's specifications, designs, approvals or instructions provided to Seller, or due to improper application or use of the Products or otherwise. Prior to settling any claim, Buyer will give Seller an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without Seller's written consent. In the event of any recall affecting the Products, Seller shall have the right to control the recall process and Buyer shall fully cooperate with Seller in connection with the recall.

(b) Insurance. Buyer shall maintain and have in effect at all times during this Contract, and for a period of three years thereafter, Commercial General Liability Insurance, which includes (without limitation) coverage for business automobile, transit and other transportation liability, bodily injury liability, personal injury liability, property damage liability, theft, advertising injury liability, medical payments, products liability and products-completed and completed operations liability coverage, Workers' Compensation Insurance and Contractual Liability Insurance incorporated in Buyer's Commercial General Liability Insurance policy covering the defense and indemnification agreement and other obligations of Buyer under this Contract. Seller shall be named as an additional named insured under each in amounts and with carriers acceptable to Seller with a Best's rating of not less than "A". Buyer shall carry a minimum coverage reasonably acceptable to Seller. Buyer shall at Seller's request deliver copies of the policy or policies of insurance to Seller. Such policies shall provide a waiver of subrogation against Seller as the additional named insured and contain no cross-liability exclusion. Buyer agrees that the parties intend that Buyer's insurance coverage will be primary over any other potentially applicable insurance. Buyer shall ensure that any umbrella or excess liability coverage shall not treat the naming of Seller as an additional named insured as a coverage change that voids or terminates such coverage. The policies should state that they may not be cancelled or amended without 60 days prior written notice to Seller.

11. Confidential Information. Buyer acknowledges that all trade secrets, designs, specifications and other Confidential Information (as defined below) which may be disclosed to it by Seller shall at all times, both during and after expiration or termination of this Contract for any reason, remain the exclusive property of Seller and that Buyer shall not acquire any proprietary interest whatsoever therein. "Confidential Information" means all knowledge and information disclosed by Seller to Buyer orally or in writing, or acquired by Buyer through observation, regarding Seller's products, technology, inventions, formulas, know-how, services, forecasts, sales methods, customer lists, customer usage and requirements, financial information, business plans, strategies and future business relationships, with the exception of such information which (i) was already part of the public domain at the time of the disclosure by Seller; (ii) becomes part of the public domain through no fault of Buyer (but only after and only to the extent that it is published or otherwise becomes part of the public domain); (iii) was in Buyer's possession prior to the disclosure by Seller and was not acquired, directly or indirectly, from Seller or from a third party who was under a continuing obligation of confidence to Seller; or (iv) is received (after the disclosure by Seller) by Buyer from a third party who did not require Buyer to hold it in confidence and did not acquire it directly or indirectly from Seller under a continuing obligation of confidence. Except as necessary to perform its duties under this Contract, Buyer shall not use or disclose any of such Confidential Information, but shall use the greater of the degree of care required by this Contract or the same degree of care given its own trade secrets and confidential information. Upon expiration or termination of this Contract for any reason, Buyer shall, within 15 days, surrender to Seller all plans, drawings, specifications, sketches, pictures, films, tapes, computer disks, literature, samples, documents, other tangible objects and all copies thereof relating to trade secrets and other Confidential Information and all of Seller's property. Buyer shall be permitted to destroy rather than return all analyses, extracts and summaries prepared by Buyer which contain Confidential Information, and such destruction shall be certified in writing to Seller by an authorized officer of Buyer who has supervised such destruction. Nothing in this Contract shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Seller with broader protection than that provided herein.

12. Assignment. Neither party shall assign or transfer this Contract or any interest or duty of performance herein without the prior written consent of the other party; provided, however, that Seller may assign, without Buyer's consent, this Contract and its interest herein to any affiliate or to any entity succeeding to Seller's business and/or perform through subcontractors. Subject to the foregoing, these terms and conditions shall be binding on and inure to the benefit of the parties and their successors and assigns.

13. Independent Contractor. Buyer is an independent contractor and neither Buyer nor any of its employees or agents shall be considered an employee or agent of Seller. Neither Buyer nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on Seller's behalf.

14. Force Majeure. Seller shall not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding Seller's available supply or any other cause beyond Seller's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Seller may, at its option and without liability, prorate its deliveries, cancel all or any portion of this Contract and/or extend any date upon which performance is due hereunder.

15. Survival. The provisions in sections 1, 4, 8, 9, 10, 11 and 15 and the warranty and damage limitations in sections 6 and 7, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of the parties' agreement for any reason. All of Seller's remedies herein are cumulative and not exclusive of any other remedies available to Seller at law, by contract or in equity.