

## GENERAL TERMS & CONDITIONS OF PURCHASE · [available at www.premiermetaltrading.com](http://www.premiermetaltrading.com)

Unless otherwise agreed upon in writing, the following General Terms and Conditions of Purchase (“Terms and Conditions”) are applicable to the purchase of all products, metals, parts, fabrications and/or services (the “Goods”) by **Premier Metal Trading, LLC**, or any of its divisions (“Buyer”), from any seller or supplier thereof (“Seller”). Buyer strives to work with all Sellers to limit concerns or confusion regarding Buyer’s purchasing conditions and Buyer agrees to work with Seller to resolve disputes. To the extent Buyer’s conditions of purchase are unclear, refer to these Terms and Conditions, which may be subject to additional terms contained in any written agreement, amendment, or statement of work between Buyer and Seller.

1. **Acceptance of Contract.** This purchase order (“Purchase Order” or “Agreement”) becomes a contract subject to the Terms and Conditions set forth herein when accepted by acknowledgment or commencement of performance by Seller. No change in, modification of, or revision of this Purchase Order, shall be valid unless agreed to in writing by Buyer. The failure of Buyer to reject orally or in writing, any conflicting or contradictory terms contained in any document forwarded by Seller to Buyer subsequent to this Purchase Order shall not be deemed to be an assent to such terms. An attempt by Seller to modify such Terms and Conditions with sales orders, acknowledgments or similar documentation shall be of no force or effect, and except as otherwise agreed to in writing by Buyer, any conflicting or additional terms and conditions of sale are expressly rejected by the Buyer.

2. **Prices.** If a specific price for Goods has been quoted to Buyer by a representative or agent of Seller, or if a price previously established by Seller has been set forth for the Goods on a Purchase Order, such price shall be the price of the Goods and the full extent of Buyer's liability for the Goods, unless a different price is agreed to in writing by Buyer. Seller warrants that the prices for the Goods are the same or more favorable than those currently extended to any other customer for the same or like articles in equal or smaller quantities. Additional charges of any kind, including charges for shipping, processing, packing, taxes, import or export duties, excises, taxes, tariffs, or other extra costs, will not be allowed unless agreed to in advance by Buyer.

3. **Taxes.** Seller's prices shall exclude any federal, state and local sales, tariff, duty, use or excise taxes levied upon, or measured by the sale, the sales price or use of the Goods. All such taxes, lawfully applicable, shall be listed separately on Seller's invoice. If such applicable taxes are not separately listed, Seller assumes full responsibility for such payment, and shall indemnify and hold Buyer harmless from any and all liability in connection with such taxes. Tax exemption certificates or other evidence of exemption furnished by Buyer, will be accepted by Seller in lieu of such taxes.

4. **Delivery; Time of the Essence.** Time is of the essence in the performance of Seller’s obligations hereunder and Buyer is relying upon timely performance by Seller. Deliveries shall be made both in quantities and at times specified in a Purchase Order during Buyer’s normal business hours or as otherwise instructed. Unless the parties agree otherwise, Seller must tender the Goods in a single delivery. Upon delivery Buyer has the right to inspect the Goods, at its sole option, it may sample Goods and may reject all or a portion of the Goods as nonconforming or defective. Buyer’s acceptance of Seller’s late performance will not be deemed a waiver of this provision.

5. **Title and Risk of Loss.** Except as otherwise expressly provided herein, title to and the risk of loss on all the Goods shipped by Seller to Buyer shall not pass to Buyer until Seller’s tender to and Buyer's receipt and acceptance of such Goods at Buyer's specified location, warehouse, or dock.

6. **Acceptance of the Goods.** Acceptance of the Goods shall take place at the time when such Goods have been timely delivered to Buyer. Acceptance of all or any part of the Goods by Buyer shall not relieve Seller from any of its obligations and warranties hereunder, nor will acceptance of any part of the Purchase Order bind the Buyer to accept future shipments or deprive Buyer of any right which it may have to return Goods already received and accepted. Acceptance of all or any part of the Purchase Order shall not be deemed a waiver of the Buyer's right either to cancel or to return all or any portion of the Goods, because of failure to conform to the Purchase Order or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, suffered by the Buyer as a result of any default of the Seller or the Seller's Goods or performance. In no event shall payment be deemed to constitute acceptance.

7. **Rejection of Nonconforming Goods.** Buyer has the right to inspect the Goods, and it may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right upon notice to the Seller to: (a) rescind this Agreement; (b) accept the Goods at a reasonably reduced price; or (c) return the Goods and, at its option, require replacement Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including but not limited to transportation charges for the return of the nonconforming or defective Goods. If Seller fails to timely deliver replacement

Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause.

8. **Payment.** Payment shall be made according to the terms set forth on the face of this Purchase Order. Unless otherwise agreed, invoices shall be paid within thirty (30) days after the receipt of the invoice or of the Goods by Buyer, whichever is later. C.O.D. shipments will not be accepted, unless agreed to in writing in advance.

9. **Warranties.** The Seller warrants and represents to Buyer that all Goods will conform to the specifications, samples, or other descriptions furnished by Buyer, or by Seller and approved by Buyer, and they will be free from defects in material and workmanship. Additionally, Buyer shall have the right to all Buyer's remedies and Seller's warranties to the fullest extent provided under the Uniform Commercial Code, including, but not limited to warranties or merchantability and fitness. All warranties and remedies shall survive acceptance and payment.

**Indemnification.** Seller shall indemnify and hold Buyer harmless against all loss on account of claims of injuries to persons or damage to property based in whole or in part upon a defect in the Goods or from any act or omission of Seller, its agents, employees and subcontractors. Further, Seller agrees to indemnify and hold harmless the Buyer, its successors and assigns, against any and all claims, liabilities, costs and expenses (including, but not limited to, court costs, attorneys' fees, inspectors' fees, or costs of testing, loss of production/time) incurred by Buyer in connection with or related to any recall, inspection, tests, replacement or correction of the Goods or any and all parts or equipment in which the Goods are incorporated when such recall, inspection, tests, replacement or correction result from or are related to, in whole or in part, a defect or alleged defect in the Goods.

10. **Changes and Cancellation.** Buyer reserves the right by written notice to cancel, suspend or change from time to time the Goods and services to be furnished by Seller hereunder. Upon such notification, Seller shall immediately comply and adjust operations in connection with this Purchase Order accordingly. All costs and expenses relating to this Purchase Order and incurred by Seller after the receipt of such notice, which would not have been incurred if Seller had complied with such notice, shall be the sole responsibility of Seller. In the event of cancellation of this Purchase Order, Buyer shall be responsible and liable only for the price of the Goods accepted prior to such notice plus the actual and reasonable costs incurred by Seller prior to notice of cancellation with respect to the Goods canceled. In the event of suspension of this Purchase Order Buyer shall be responsible and liable only for the price of Goods eventually accepted. In the event of a modification of this Purchase Order by Buyer (including, but not limited to, a change in the number or design of the Goods), Buyer shall be responsible and liable only for the price of the Goods accepted plus the actual and reasonable costs incurred by Seller to accomplish such modification. In the event of any cancellation, suspension or modification of this Purchase Order, Buyer shall not be responsible or liable for any costs of production, processing or shipping of the Goods apart from the price of Goods accepted if such costs represent a portion of and are included in the price of such accepted Goods. In the event of any cancellation, suspension or modification of this Purchase Order, Seller shall not be entitled to, nor shall Buyer be responsible or liable for, anticipatory profits or consequential damages.

11. **Default.** Buyer reserves the right, by written notice, to cancel this Purchase Order without liability to Buyer in the event of: (a) insolvency of Seller; (b) the filing by the Seller of a voluntary petition under titles 11 or 7 of the United States Code; (c) the filing of an involuntary petition to have Seller declared bankrupt; (d) the appointment of a receiver or trustee for Seller; or (e) the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform, or breaches any of the terms of the Purchase Order, then Buyer reserves the right to cure upon such failure of performance or breach, and without any liability (i) to cancel this Purchase Order in whole or in part by written notice to Seller, or (ii) after notifying Seller of such failure or breach and of Buyer's intent to exercise such right, to obtain the Goods from another source, with any excess costs resulting there from, chargeable to Seller. Seller shall be liable for Buyer's damages in connection with such breach or failure to perform including consequential damages reasonably foreseeable by Seller or of which Seller was apprised by Buyer; *provided, however*, the Seller shall not be responsible for delays or defaults occasioned by Acts of God or war.

12. **Patent or Copyright Indemnification.** Except when Buyer supplies all specifications for the Goods, Seller shall hold and save Buyer, its successors, assigns, customers and users harmless from loss and/or liability of any nature of kind arising out of or existing because of the infringement or alleged infringement of any patent or copyright for or on account of the manufacture, sale or use of any Goods furnished hereunder. Buyer shall notify Seller in writing of any suit filed against it or its customers, on account of any alleged infringement, and at Seller's request shall give Seller control of the defense of such suit, insofar as Buyer has the authority to do so, and information and assistance for the same, all at Seller's expense. Buyer and the

party against whom suit is brought, may be represented by their own counsel in any such suit. Furthermore, in the event that Buyer should be enjoined in such suit or proceeding from using any part of the Goods delivered hereunder, Seller, at its option, shall promptly either: (a) secure termination of the injunction or liability; or (b) replace said Goods with non-infringing goods or modify them to become non-infringing, all at Seller's expense. The provisions of this paragraph shall not apply to the Buyer's use of any of the Goods delivered hereunder in combination with other materials or in the practice of any process, or to infringement by reason of such use.

13. **Safety Data Sheets.** Upon request, Seller shall provide a Safety Data Sheet (SDS) to Buyer for Goods sold to Buyer hereunder, and where such information is applicable because of the nature of the Goods, prior to such Goods being delivered to Buyer's facility.

14. **Compliance with Laws.** Seller shall, in the performance of work under this Purchase Order, fully comply with all applicable federal, state, and local laws and regulations, and shall indemnify and hold Buyer harmless from any costs, loss or liability arising or resulting from Seller's failure of compliance.

15. **Assignment.** Seller shall not assign or transfer this Purchase Order or any interest therein or monies payable thereunder without the written consent of the Buyer, which will not be unreasonably withheld, and any assignment or transfer made without such consent shall be null and void.

16. **Remedies.** The remedies provided Buyer herein shall be cumulative and in addition to any other remedies provided by law or equity. A waiver of a breach of any provision hereunder shall not constitute a waiver of any other breach.

17. **Set-Off.** Buyer may at any time set-off any amount owing from Buyer to Seller or to any of Seller's affiliated companies against any amount payable in connection with this Purchase Order by Buyer.

18. **Notice.** Notice given hereunder shall be effective upon receipt and in any event shall be effective no later than: (1) three days for notice sent via US mail; (2) twenty-four hours after sending by facsimile (fax) or electronic mail (e-mail); at the time shown on a confirmed telecopy message; or (3) at the time of delivery if personally delivered.

19. **Waiver.** Buyer's failure to insist on Seller's strict performance of the terms and conditions of a Purchase Order shall not be construed as a waiver of Buyer's right to insist upon such performance in the future. Buyer's waiver of a breach of any provision hereunder shall not constitute a waiver of any other breach.

20. **Disputes:** Any controversy or dispute between Seller and Buyer arising out of or in any way related to this Agreement not otherwise resolved between Seller and Buyer shall be resolved in a court sitting within the State of Ohio, Cuyahoga County, and Seller consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts. This Agreement shall be governed by the laws of the State of Ohio, without regard to conflicts of laws principles thereof.