

# Terms and Conditions of Sale

ESS Metron, LLC, a Colorado limited liability company, ("Seller") and the company or individual named on the face of the invoice ("Buyer") agree to these terms and conditions of sale (these "Terms and Conditions"). These Terms and Conditions are incorporated in full into the invoice and are binding on Buyer and Seller with respect to the sale of the Products (as defined in Section 2). The invoice and these Terms and Conditions together are referred to herein as the "Agreement."

1. **NONCONFORMING TERMS.** Seller's performance of the order described in the purchase order is expressly limited to and made conditional upon Buyer's acceptance of these Terms and Conditions and no other terms and conditions, whether the source of such terms and conditions is Buyer's standard terms and conditions, any other document of Buyer, any course of dealing, any course of performance, any trade custom or usage, and/or any other source whatsoever, will be binding on Seller unless agreed to in a written instrument signed by both Buyer and Seller.
2. **TAXES.** Except as otherwise provided on the face of the invoice, the purchase price set forth in the invoice (the "Price") does not include any applicable sales, use, VAT, excise, or other taxes, duties, assessments, charges, or import or export fees (collectively, "Taxes") imposed on the products described on the face of the invoice (the "Products") and/or any related services. Buyer agrees to pay all such Taxes and to indemnify Seller for all taxes, fees, and penalties levied on Seller due to Buyer's failure to pay such Taxes.
3. **SHIPMENT.** Unless otherwise specified by Buyer in writing, the Products shall be delivered FCA (Incoterms 2010) Buyer's facility identified in the purchase order (the "Delivery Point"), and risk of loss for the Products shall pass to Buyer upon delivery at the Delivery Point, it being understood and agreed that the Price is based on such delivery terms. Title to the Products shall pass from Seller to Buyer at the later to occur of (i) delivery of the Products at the Delivery Point and (ii) receipt by Seller of Buyer's payment in full of the Price.
4. **PAYMENT TERMS.** Unless otherwise specified by Seller in writing, the terms of payment shall be 20% of the Price upon Seller's transmittal of the Submittal, 30% of the Price upon Buyer's release to manufacturing and prior to procurement of materials, and 50% of the Price upon shipment of the Products. Seller reserves the right at any time and in its sole discretion to require payment in full in advance or COD or to otherwise modify the payment terms. Past due amounts shall bear interest at the rate of 18% per annum or the highest rate permitted by law, whichever is less. If Buyer is located outside the United States, an irrevocable confirmed letter of credit in favor of Seller for 100% of the Products' value is required before production of the Products will commence. This letter of credit shall be issued by a bank reasonably acceptable to Seller and any expenses associated with the issuance, drawdown, or enforcement of this letter of credit, will be borne by Buyer.
5. **MINIMUM BILLING.** All orders of \$50.00 net or less will be invoiced at the minimum rate (\$50.00 net) with transportation charges added.
6. **DELIVERY; FORCE MAJEURE.** Delivery dates are not guaranteed by Seller and are based on normal expectancies only. In no event shall Seller be deemed in default under this Agreement on account of any delay in the performance of any obligation of Seller if the delay is caused directly or indirectly by one or more forces or events beyond the reasonable control of Seller, including, but not limited to, delay caused directly or indirectly: (i) by action or inaction of Buyer, (ii) by failure of any manufacturer, contractor or supplier to timely provide raw materials, parts, tools, tooling, equipment, services, technical information, data or assistance, transportation or any other material or service reasonably necessary for performance by Seller, (iii) by governmental action or inaction, (iv) by strike or other labor disturbance, (v) by war, armed hostilities, civil unrest, act of terrorism, riot, fire, breakage of equipment, explosion, flood, earthquake, or any Act of God, or (vi) by epidemic or pandemic (including the COVID-19 pandemic) or any related government order.
7. **CANCELLATION AND CHANGE.** Orders are subject to cancellation, partial cancellation, or change only with the written consent of Seller and only upon such terms as Seller may impose. Should Buyer terminate, cancel, or stop its order, in whole or in part, without Seller's consent, such termination, cancellation, or stoppage shall constitute a breach of this Agreement by Buyer, for which Seller shall be entitled to all damages of Seller related to such breach, including, without limitation, the amount of Seller's cancellation costs and damages, including expenditures on materials, labor, overhead, and payments to subcontractors, direct costs incurred by Seller in settling claims with subcontractors or suppliers, reasonable profits on the work performed including work in process on the terminated portion of the order prior to Seller's receipt of Buyer's termination, cancellation, or stoppage notice, which amount shall be calculated at not less than Seller's profit margin on the entire project multiplied by the cost of the total work performed prior to Seller's receipt of Buyer's termination. Prices are set on the basis of the total quantity ordered, even though shipment may be in stages. Cancellation of a portion of an order after an earlier portion has been shipped and invoiced will result in an adjustment to the Price and an additional charge to Buyer.
8. **LIMITED WARRANTY.** Seller's Limited Warranty (as defined in this Section 8) is valid only when Installation, Acceptance Testing, Start-up, Commissioning and Training have been performed by a Qualified and Competent Service Company approved by Seller. All test reports must be reviewed and approved by a certified Service Representative of Seller and registered with Seller. Seller warrants that at the time of delivery at the Delivery Point all Products will be free from defects in Seller-supplied materials and Seller-supplied workmanship for a period of one (1) year from the initial operation of the Product, not to exceed eighteen (18) months from the date of delivery at the Delivery Point, whichever comes first; provided, however, that the foregoing warranty shall not cover, and Buyer acknowledges that Seller has made no warranty (and that Seller does not make any warranty) with respect to any of the following: (a) parts, materials, assemblies, or other items provided directly or indirectly by Buyer, if any, (b) parts, materials, assemblies, or other items obtained directly or indirectly from the original equipment manufacturer or from any other supplier or source, if any (any warranty claim for which Buyer shall direct to such original equipment manufacturer or other supplier or source and not to Seller), or (c) any design aspect of the Products supplied by Buyer (the "Limited Warranty"). Further, the Limited Warranty shall not cover the effects of normal wear and tear on the Products, the effects of any use or operation of the Products not in accordance with Seller's instructions, or the effects of improper storage. Seller's sole liability, and Buyer's exclusive remedy, for Seller's breach of the Limited Warranty shall be the repair or replacement, at Seller's election, of the defective Products shown to Seller's reasonable satisfaction to have been defective at the time of delivery. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE LIMITED WARRANTY, OR IN ANY AGREEMENT BETWEEN BUYER AND SELLER PERTAINING TO THE PRODUCTS, OR AT LAW OR IN EQUITY: THE WARRANTIES, OBLIGATIONS, AND LIABILITIES OF SELLER, AND THE REMEDIES OF BUYER SET OUT IN THIS SECTION 8, ARE SOLE AND EXCLUSIVE, AND ARE MADE AND ACCEPTED BY BUYER IN LIEU OF, AND BUYER WAIVES AND RELEASES, ALL OTHER WARRANTIES, OBLIGATIONS, AND LIABILITIES OF SELLER, AND ALL OTHER CLAIMS AND REMEDIES OF BUYER, EXPRESS OR IMPLIED, ARISING BY STATUTE OR OTHERWISE, WITH RESPECT TO ANY DEFECT IN THE PRODUCTS OR ANY DEFECT IN SELLER-SUPPLIED WORKMANSHIP OR ANY DEFECT IN ANY SELLER-SUPPLIED MATERIALS PERTAINING TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO THE WAIVER AND RELEASE BY BUYER OF THE FOLLOWING: (i) ANY STATUTORY OR IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PURPOSE, (ii) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, AND (iii) ANY OTHER RIGHT, CLAIM, OR REMEDY WHATSOEVER OF BUYER OR OF ANY PERSON OR ENTITY CLAIMING BY, THROUGH, OR UNDER BUYER AGAINST SELLER, WHETHER ARISING PURSUANT TO THE LIMITED WARRANTY, PURSUANT TO ANY AGREEMENT PERTAINING TO THE PRODUCTS, OR IN CONTRACT, IN INDEMNITY, IN TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), IN PRODUCTS LIABILITY, IN STRICT LIABILITY, OR OTHERWISE. BY ACCEPTING OR USING THE PRODUCTS, BUYER FURTHER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT NO STATEMENT OR REPRESENTATION HAS BEEN MADE BY SELLER, OR RELIED UPON BY BUYER THAT IS INCONSISTENT WITH THE LIMITED WARRANTY.**
9. **DEFECTIVE GOODS AND TESTING.** If Buyer believes that Products are defective, it must notify Seller in writing immediately upon discovery of suspected defect. The Products shall not be returned to Seller without the prior written authorization of Seller. If Buyer wishes to conduct tests to determine whether the Products are conforming, it must notify Seller prior to conducting the tests, endeavor to reach agreement with Seller on testing procedures, and provide Seller with an opportunity to witness such tests.
10. **INTELLECTUAL PROPERTY.** Buyer acknowledges and agrees that Intellectual Property pertaining to the Products shall be owned or licensed solely and exclusively by Seller. For purposes of this Section 10, "Intellectual Property" means the following, whether now or hereafter existing: all rights of intellectual and/or industrial property anywhere in the world, including, for the avoidance of doubt, patents (including patents of importation, patents of confirmation, patents of improvement, patents and certificates of addition and utility models, as well as divisions, reissues, continuations, continuations-in-part, renewals and extensions of any of the foregoing), data, information, inventions, ideas, discoveries, improvements, know-how (including information comprised in or derived from formulae, designs, specifications, processes, techniques, drawings, parts lists, product documentation, manuals, instructions, and planning documents, each in whatever form held), work product, copyrights, trade secrets, trade and services marks, industrial property, and including all registrations and applications for the same, and the right to apply for any of the same, and all like rights, and all other forms whatsoever of intellectual property, whether or not patentable.

11. **GOVERNMENT CONTRACTS AND SUBCONTRACTS.** If a government contract number appears on the face of the invoice, clauses contained in the Armed Services Procurement Regulations of the Federal Acquisition Regulations which the government expressly requires be included in subcontracts to which Buyer is a party shall be incorporated in this Agreement by reference.

12. **DEFAULT.** In the event (a) Buyer fails to make payment in the amounts and at the times required by Seller pursuant to this Agreement, (b) Buyer is in default under any other provisions of this Agreement or any other written agreement between Buyer and Seller, (c) any proceeding for, bankruptcy or insolvency is initiated by or against Buyer, (d) Buyer is unable to meet its debts as they become due, or (e) an assignee for the benefit of creditors or a receiver is appointed with or without Buyer's consent, then in each case, Seller shall have the right, in addition to all the other rights it may possess at any time, to withhold shipments of Products, in whole or in part, to recall and retake Products in transit, and/or to repossess all Products which may be stored with Seller for Buyer's account, without the necessity of instituting any other proceedings. Buyer agrees that all Products so recalled, retaken, or repossessed shall become the absolute property of Seller, and Seller shall give Buyer full credit for any repayments made by Buyer for the Price of such Products. Seller shall also have all of the rights and remedies available to it under the Uniform Commercial Code and other laws in effect.

13. **WAIVER.** No waiver of any provision of this Agreement by Seller shall be valid unless in writing and signed by an authorized representative of Seller. No delay on the part of Seller in exercising any right or remedy available to it under this Agreement shall operate as a waiver of such right or remedy.

14. **GOVERNING LAW.** This Agreement shall be governed by the laws (excluding conflicts of law principles) of the State of Colorado. The United Nations Convention on Contracts for the International Sales of Goods shall not apply to the sale of the Products. Any litigation pertaining to this Agreement may only be brought in, and Buyer submits to the exclusive jurisdiction of and waives any objection to venue in, the federal and state courts located in Denver, Colorado.

15. **ATTORNEYS' FEES.** In the event of litigation between Seller and Buyer to enforce this Agreement, or for damages or any other remedy for breach of this Agreement, the prevailing party shall be awarded reasonable attorneys' fees to be taxed as costs, in addition to any other remedy or judgment awarded pursuant to the litigation.

16. **COUNTERPARTS.** This Agreement may be executed in duplicate counterparts, which shall constitute one and the same instrument.

17. **SEVERABILITY.** In the event that any provision, term, or condition of this Agreement is declared void, unenforceable, or against public policy, then such provision, term or condition shall be construed as though it did not exist and shall not affect the remaining provisions, terms, or conditions of this Agreement, and the same shall be interpreted to the extent permissible to give effect to the parties' intent.

18. **ENTIRE AGREEMENT.** The provisions of this Agreement constitute the entire agreement between Seller and Buyer with regard to the Products and, except as set out in this Agreement, there are no other agreements, representations, warranties, or other understandings whatsoever between Seller and Buyer with regard thereto.

19. **LIMITATION OF LIABILITY.** WITHOUT PREJUDICE TO ANY OTHER PROVISION OF THIS AGREEMENT, SELLER SHALL NOT HAVE ANY OBLIGATION OR LIABILITY, AND BUYER ACKNOWLEDGES THAT SELLER SHALL NOT HAVE ANY OBLIGATION OR LIABILITY WHATSOEVER, TO BUYER, OR TO ANY PERSON OR ENTITY CLAIMING BY, THROUGH, OR UNDER BUYER, WHETHER ARISING PURSUANT TO THE LIMITED WARRANTY, OR IN CONTRACT, IN INDEMNITY, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), IN PRODUCTS LIABILITY, IN STRICT LIABILITY, OR OTHERWISE, FOR ANY EXEMPLARY OR PUNITIVE DAMAGES OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (EVEN THOUGH SUCH DAMAGES MAY BE FORESEEABLE) INCLUDING, BUT NOT LIMITED TO: LOSS OF PROFITS OR REVENUES; LOSS OF USE OF EQUIPMENT; COST OF CAPITAL; COST OF SUBSTITUTE EQUIPMENT, REPAIRS, OR FACILITIES; COST OF DOWNTIME; COST OF PURCHASED OR REPLACEMENT PRODUCTS OR PARTS; COST OF TRANSPORTATION; COST OF FREIGHT, INSPECTION, INSTALLATION, REMOVAL OR REINSTALLATION WITH RESPECT TO THE PRODUCTS; OR CLAIMS OF ANY CUSTOMERS OF BUYER FOR ANY SUCH DAMAGES.

20. **PRICING.** Any price quoted by Seller to Buyer in a proposal (a "Proposal") is valid for a period of 30 days from the date of such Proposal, subject to the Commodity Metal Price Disclaimer set forth in such Proposal. The Price set forth in the invoice is firm provided that a release to manufacture is received by Seller within 90 days of the date of the purchase order or within 30 days from the date of transmission of submittal drawings issuance, and/or a shipment is made within six (6) months from the date of the purchase order. Any extension in time will be subject to pricing adjustment in Seller's sole discretion.

**Seller is an Equal Opportunity Employer as required by Executive Order 11246, as amended.**