

## TERMS AND CONDITIONS

**PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY.** THE TERMS AND CONDITIONS OF SALES AND SERVICE PROJECTS ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY CUSTOMER ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF MATERIALS OR ARTICLES (THE "PRODUCTS") OR BY ENGAGING METAL TECHNOLOGY, INC. OR ITS AFFILIATES ("MTI") TO PROVIDE PRODUCTS OR PERFORM OR PROCURE ANY SERVICES, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CUSTOMER AND MTI HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

THE PRICING SET FORTH ON THIS QUOTATION SHALL REMAIN IN EFFECT FOR 30 DAYS AFTER CUSTOMER'S RECEIPT.

**ACCEPTANCE; INSPECTION.** The only guarantee given by MTI with respect to its Products is to replace such Products as proven to be defective within a period of thirty (30) days after final inspection and acceptance, or to allow credit for such Product at the option of MTI. After Products are shipped to Customer, claims for shortages or defective Product shall be made immediately upon receipt and must be reported prior to the time that any further processing, assembling or other work is performed by Customer on the merchandise, otherwise MTI's liability to Customer on such claim will cease to exist. Any Product claimed to be defective must be held for MTI's inspection and disposition.

**PAYMENT TERMS** Payment terms for all Products and services are net 30 days, unless otherwise stated on the Invoice. On balances PAST DUE, a **FINANCE CHARGE** of 18% per annum, compounded monthly, WILL BE CHARGED. We reserve the right to charge \$25 for returned checks where permitted by law. Where authorized by Customer, an electronic transfer will be made from Customer's account to satisfy any returned check and returned check fee.

If Customer fails to fulfill the terms of payment hereunder or any other stipulations contained herein, MTI may at its election defer shipments until satisfactory performance has been made by the Customer, or cancel all outstanding orders, and such deferment of shipments or cancellation of orders shall not prejudice any claim for damages MTI may otherwise have against the Customer.

**CUSTOMER SUPPLIED MATERIAL.** It is recognized that even after utilizing all the skills and information available to Metal Technology, Inc. (MTI), risks still remain in metal forming and machining. Therefore, MTI liability shall not exceed the amount charged by MTI for services performed on customer supplied material, except by written agreement signed by MTI. The customer, by contracting for services with MTI, agrees to accept the limits of liability as expressed in the statement to the exclusion of any and all other provisions as to liability; including the customer's own invoices, purchase orders or other documents. If the customer desires their own provisions as to liability to remain in force and effect, this must be agreed to in writing, signed by an officer of MTI. In such event, a different charge for services, reflecting the higher risk to MTI, shall be determined by MTI and the customer.

**TAXES; FEES.** Customer shall pay all sales, use, excise, duty or other taxes, if any, that may be levied on the Products referred to herein or upon or in connection with the manufacture, sale or shipment thereof.

**DELAYS.** MTI shall not be liable for any delay or failure in performance in the event of and to the extent of any cause or condition beyond MTI's reasonable control, including fire or natural disaster, strike, riot, vandalism, terrorism, governmental rule or order, transportation delay, inability to obtain competent labor or satisfactory quality or quantity of materials from usual sources, or lack of complete data or incorrect data provided by Customer. If shipments by MTI are prevented by any of the foregoing conditions beyond MTI's control, the Customer will reimburse MTI for all commitments of MTI in connection with this order, including the cost of material completed or in process at the time of the occurrence of such conditions.

**DEFECTIVE MATERIALS.** Notwithstanding any other provisions herein, Customer will, upon the written request of MTI, replace at the Customer's expense any material Customer supplies to MTI hereunder which proves defective, and MTI shall be excused from delivering any Products hereunder, until a reasonable time after the Customer replaces such defective material with material conforming to applicable specifications.

**SPECIFICATION CHANGES.** Customer shall be responsible for all additional costs incurred as the result of Customer's change in specifications, requirements or changes as a result of inaccurate or incomplete data provided by Customer.

**TITLE AND RISK OF LOSS.** The Products sold to Customer shall be delivered by MTI F.O.B. Albany, OR. Customer shall bear all costs, insurance premiums, freight and all other charges or expenses incurred after MTI has placed the Products in the custody of a carrier designated by Customer at the place of shipment to Customer. Title and risk of loss with respect to the Products shall pass to Customer when MTI places the Products in the custody of a carrier designated by Customer for shipment to Customer.

**CANCELLATION.** If Customer cancels an order placed as a result of this quotation, the Customer shall immediately reimburse MTI for (1) the unit contract price of all completed Products; (2) any unamortized portion of amortizable expense for artwork, tooling, "Get-ready" and similar items; (3) the percentage of the unit contract price of uncompleted Products which is equal to the percentage of completion, as determined by MTI in its sole discretion, including any amounts expended or committed for by MTI for productive materials purchased by Customer and for labor performed thereon; and (4) any other expenses reasonably incurred by MTI in connection with the cancellation. Customer shall at its own expense promptly remove all such materials purchased by Customer from the MTI plant promptly. If Customer fails to remove the materials after 15 days' written

request from MTI, MTI may remove such materials from its property and store them for Customer's account at the expense of Customer.

**INDEMNIFICATION.** Customer shall indemnify, defend and hold MTI harmless from all liability and litigation expense caused by the Customer's use of any patented or unpatented inventions which result from the manufacture, use or sale of Products alone or in combination with other materials, structures or devices, and any other intellectual property claims arising from Customer's designs, use of Products or other conduct of Customer's business.

**WARRANTY DISCLAIMER. MTI MAKES NO WARRANTY OF ANY KIND WHATSOEVER, AND SPECIFICALLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, AS TO THE SUITABILITY, PRODUCTIVITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, MERCHANTABILITY, OR CONDITION.**

**LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL MTI BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, OR BUSINESS REVENUES, EVEN IF MTI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, WHETHER A CLAIM IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY. IN THE EVENT OF ANY LIABILITY INCURRED BY MTI, THE ENTIRE LIABILITY OF MTI FOR DAMAGES FROM ANY CAUSE WHATSOEVER SHALL NOT EXCEED THE AMOUNT CHARGED BY MTI FOR THE PRODUCT(S) AND/OR SERVICES GIVING RISE TO THE CLAIM. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.**

If Customer desires different terms relating to liability or Product warranties, Customer's provisions must be agreed to in writing, and signed by an officer of MTI. In such event, a different charge for services, reflecting the higher risk to MTI shall be determined by MTI in its sole discretion.

### GENERAL.

**ATTORNEYS' FEES.** If MTI hires an attorney to enforce or interpret this agreement, Customer agrees to pay MTI's attorneys' fees and costs. The prevailing party in any action or proceeding to enforce or interpret this agreement will be entitled to its costs and reasonable attorneys' fees at trial, on appeal, and in any bankruptcy proceeding; and the costs and attorneys' fees of collecting any judgment obtained including any costs or reasonable attorneys' fees incurred in any bankruptcy proceeding.

**GOVERNING LAW; JURISDICTION.** This agreement will be governed by and construed in accordance with the laws of the state of Oregon. Customer consents to jurisdiction in the Oregon state and federal courts for any proceeding to enforce or interpret this agreement. Venue for any action or proceeding shall be exclusively in Linn County, Oregon.

**SEVERABILITY.** If any term or provision of this agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this agreement and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable will not be affected, and each term or provision of this agreement will be valid and enforceable to the fullest extent permitted by law.

**WAIVER OF BREACH.** The waiver by either party of a breach of any term or provision of this agreement will not be construed as a waiver of any subsequent breach of the same or any other term or provision by either party.