



2950 Turnpike Drive, Suite 10-14
Hatboro, PA 19040

Marmetal Industries, LLC TERMS AND CONDITIONS OF SALE

1. **PRICES.** All prices, quotations, shipments, and deliveries by Marmetal Industries, LLC are F.O.B. Hatboro, PA, unless otherwise stated on the Sales Order or Invoice. All pricing is subject to change from time to time, and all orders are accepted subject to Marmetal's price in effect at the time of shipment, unless otherwise agreed and confirmed in writing.
2. **APPLICABILITY, ACCEPTANCE AND MODIFICATION.** These terms and conditions apply to all quotations and invoices covering the sale of Marmetal products or services. Marmetal's acceptance of Buyer's order is expressly made conditional on Buyer's acceptance of the terms and conditions set forth herein. The terms and conditions set forth herein (together with the corresponding purchase order(s) or invoices) constitute the complete agreement between Marmetal and the Buyer and may be accepted only in accordance with their terms. They may not be modified except by written agreement referring specifically to these terms and conditions and signed by a duly authorized officer of Marmetal. Any provisions of Buyer's purchase order which are inconsistent with the foregoing shall be of no force and effect unless Marmetal shall have agreed to a modification of these terms and conditions in the manner set forth herein. Buyer's failure to dissent from the terms and conditions, or Buyer's acceptance or use of the Marmetal goods or services shall constitute Buyer's acceptance of these terms and conditions. Buyer, by these presents and the acceptance of the goods ordered herein, represents and warrants that Buyer is solvent and able to pay for the goods in accordance with these terms and conditions of sale. Any order accepted by Marmetal shall not be assigned, sold, or otherwise transferred by Buyer unless Marmetal expressly agrees in writing to such sale, assignment, or other transfer.
3. **DELIVERY AND DELAYS.** Marmetal's obligation is to deliver the goods F.O.B. Hatboro, PA, unless otherwise stated on the Sales Order or Invoice. Risk of loss passes to Buyer at the moment of delivery. Buyer will inspect the products within a reasonable time after receipt thereof, and if Buyer fails to notify Marmetal within fourteen (14) days after receipt that the products are defective in any respect, Buyer will have waived any and all rights or claims against Marmetal. Quantity shortages/overages or transportation damage must be reported at the time of receipt of goods. Orders for products made to Buyer's specifications are not subject to cancellation by Buyer. After shipment, Buyer shall have no rights or claims against Marmetal for such products. Delivery dates appearing on Marmetal's order acknowledgment or given to Buyer in any other manner are approximate. Marmetal will not be liable for any delay in the performance hereof or for any damages suffered by Buyer by reason of such delay caused by the occurrence of any contingency beyond the control of Marmetal, including, but not limited to, delays or non-delivery arising directly or indirectly from fires, floods, substantial damage to its plant, accidents, riots, acts of God, open hostilities, declarations



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of national emergencies, war, terrorist acts, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, or any other cause or causes (whether or not similar in nature to any of those hereinabove specified) beyond its control. Marmetal may allocate production and deliveries among Marmetal's customers in its sole discretion.

4. **STORAGE.** In the event that Buyer is unable to accept delivery of goods at the time of completion and shipment, Marmetal may invoice for the total purchase price as if the shipment has been made and; (i) if Marmetal is able to store such material in its own facilities, the Buyer shall pay Marmetal reasonable handling and storage charges for the period of such storage; or (ii) if Marmetal is unable to store such material in its own facilities, Marmetal reserves the right to arrange handling and storage in a suitable warehouse for the Buyer, at the Buyer's expense. In cases where handling and storage become necessary, it will become the responsibility of the Buyer to notify Marmetal when shipment is to be made and to what destination.
5. **ADEQUATE ASSURANCES.** Marmetal may, at any time, suspend performance of any order or require payment from Buyer in cash, security, or other adequate assurance satisfactory to Marmetal when, in Marmetal's sole opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.
6. **TAXES.** Any tax which Marmetal may be required to pay or collect, through assessment or otherwise, under any existing or future law upon or with respect to the sale, purchase, delivery, transportation, storage, processing, use, or consumption of any goods or services provided by Marmetal to Buyer shall be for the account of Buyer and may be added to the price of goods or services purchased by Buyer. Buyer shall promptly pay the amount thereof to Marmetal upon demand.
7. **LIMITED WARRANTY. (A).** Marmetal warrants that the goods supplied hereunder shall comply with the specifications contained on the face of the purchase order, as approved by Marmetal on its Sales Order. In the event that within [ninety] days of the delivery of goods sold hereunder the Buyer establishes that such goods do not meet the applicable specifications and within [thirty] days thereof provide Marmetal written notice of such deficiency, then Marmetal shall, at its option, rework or replace such defective goods free of charge (at which time the Buyer shall return all such defective goods to Marmetal). Notwithstanding the foregoing, Marmetal shall not be responsible for any change in the finish characteristics in the goods which may occur following delivery as a result of environmental conditions. Marmetal's obligations hereunder are expressly conditioned upon the goods sold hereunder having been properly stored, not having been subject to accident, misuse, damage or abuse



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and further upon the Buyer giving Marmetal full access to its facilities and records to investigate the cause of the alleged defect. Marmetal shall not be liable to Buyer under this warranty if Marmetal determines that the defect was caused by misuse, abuse, vandalism, improper application, improper operation, improper maintenance, alteration, repair or modification, negligence or use, casualty, fire, flood, storage, handling or any other cause beyond the control of Marmetal. **(B).** THE WARRANTIES PROVIDED FOR UNDER THIS SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES. MARMETAL EXPRESSLY DISCLAIMS AND BUYER HEREBY WAIVES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE BUYER ACKNOWLEDGES AND AGREES THAT NO OTHER REPRESENTATIONS OR WARRANTIES WERE MADE TO OR RELIED UPON BY BUYER WITH RESPECT TO THE QUALITY AND FUNCTION OF THE GOODS SOLD HEREIN. MARMETAL DOES NOT AUTHORIZE ANY PERSON, COMPANY OR ENTITY WHATSOEVER TO ASSUME FOR IT ANY OBLIGATION OR LIABILITY IN CONNECTION WITH THE SALE OF SAID GOODS.

8. **LIMITATIONS OF BUYER'S REMEDIES.** Buyer's remedies with respect to any claim arising out of any order, or Marmetal's performance in connection therewith, including, without limitation, any claim arising out of any defect or alleged defect in any goods or services furnished by Marmetal, shall be limited exclusively to the repair and replacement of defective goods as specified in Section 7 herein. Without limiting the foregoing, Marmetal shall not be liable for breach of contract arising out of or in connection with a warranty claim. In no event shall Marmetal be liable for any damages including, but not limited to, lost profits or other incidental or consequential damages arising out of this Agreement or the use or inability to use any of the goods or services, even if Marmetal has been advised of the possibility of such damages, or of any claim by Buyer or any other party.
9. **WAIVER.** Waiver by Marmetal of any breach by Buyer of any of the terms and conditions set forth herein shall not be construed as a waiver of any other breach or the failure of Marmetal to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at a subsequent time.
10. **GOVERNING LAW.** This Agreement shall be governed by the Uniform Commercial Code as adopted by the State of New Jersey. Buyer consents to the jurisdiction of the state and federal courts within the State of New Jersey. Service of process by certified or registered mail shall be sufficient to commence suit and obtain a judgment by default. Buyer waives any right to personal service of process. Notwithstanding anything contained herein to the contrary, if Marmetal so directs, any controversy or claim arising out of or related to this agreement, or the performance or breach thereof shall be resolved by binding arbitration in accordance with



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the rules and procedures then obtaining of the American Arbitration Association. Any action or proceeding by Buyer arising out of or in connection with this transaction, including any claim for Marmetal's breach of contract or Marmetal's breach of warranty, must be commenced within two (2) years after the delivery of the goods to Buyer.

11. **CREDIT.** Unless otherwise provided, payment terms are net 30 days from invoice date. All invoices paid after the due date specified within shall accrue interest at the lesser of 2% per month or the highest rate of interest permitted by law. Buyer is liable to Seller for any collection fee that Seller may incur in an attempt to collect past due accounts. In the event that the Buyer pays any invoice with a credit card, Buyer hereby waives, releases, and discharges any and all rights that Buyer may have, under the terms of Buyer's agreement with the credit card provider, to dispute, challenge and/or protest the payment of any Marmetal invoice. No refunds or returns are accepted without prior authorization.
12. **MALPRACTICE AND FRAUD.** Malpractice is defined as an improper act or practice which is a deliberate violation of written procedures and includes falsification of official records. Any falsification, concealment, or alteration of any material fact, or any false, fraudulent, or fictitious statement or representation in connection with the work under any contract with the jurisdiction of the Government is not only prohibited by Buyer policy but may also be punishable under Federal law.

THESE TERMS AND CONDITIONS ARE CONSIDERED AS AN INTEGRAL PART OF THE SALES ORDER.