

Bushwick Metals LLC Terms & Conditions of Sale

ENTIRE AGREEMENT: These Bushwick Metals LLC Terms and Conditions of Sale (this "Agreement") constitute the sole terms and conditions of the agreement between you ("you", "your," "customer") and Bushwick Metals LLC ("us", "our", "we", "Bushwick") with regard to all sales of goods and/or provision of services. The term "Bushwick Metals LLC" includes all parents, subsidiaries, and affiliates. Your acceptance is expressly limited to the terms of this Agreement; no order shall have any force or effect until acknowledged in writing by us or by our shipment of goods or provision of services, it being acknowledged that we are not obligated to accept any purchase order or may do so in whole or in part; any proposal for additional or different terms is hereby deemed material and is objected to and rejected. No terms of any document, purchase order or form submitted by you shall be effective to alter or add to this Agreement. Your receipt of any portion of the goods or our commencement of the performance of services shall constitute your acceptance of the terms of this Agreement without objection.

PRICES: All goods are subject to prior sale, unless we otherwise expressly indicate in writing. The prices quoted may be changed by us at any time and from time to time without notice. We reserve the right to correct any errors or omissions in specifications or prices without liability. Unless we otherwise specify in writing, all freight, insurance and shipping charges shall be at your sole cost and expense.

TAXES: Any taxes which, under any existing or future law, we may be required to pay or collect with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the goods or services shall, if not separately shown, be added as a separate item to the quoted price and shall be paid by you to us on demand. The foregoing shall not apply to any taxes, the payment or collection of which by us is excused by reason of delivery to us of valid tax exemption certificates.

QUANTITIES: We reserve the right to allocate goods and services to our customers as we see fit. On certain commodities, the producing mill reserves the privilege of shipping over or under the ordered quantity in accordance with our established trade practices which will constitute full and complete shipment of the material specified.

TERMS OF PAYMENT: Upon credit approval, standard terms of payment shall be 1/2% 10 days, Net 30 days, unless we otherwise designate in writing. All amounts you owe us shall be paid without abatement, deduction, or setoff. The date of payment of an invoice shall be the date the payment is received by us at the location designated on the invoice. If, in our judgment, your financial condition or other matters do not justify continuance on the terms of payment above, we reserve the right, without liability and without prejudice to any other rights and remedies, to suspend performance, decline to ship, stop goods in transit, require full or partial payment in advance or otherwise adjust the terms of this Agreement including ceasing to supply you. If your account becomes delinquent, you shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, costs of collection, attorneys' fees, costs and expenses. We reserve the right to process/convert checks electronically.

DELIVERIES: Any delivery schedule indicated is based on our present estimate of the time required to ship after receipt of your order and in case of any item which is to be shipped from a producing mill upon current production schedules of the producing mill. We reserve the right to make partial shipment(s) and invoice therefor. We shall not be liable for any claim, loss, damage or expense of any kind whatsoever for delays in delivery or loss or damage in transit.

SHIPMENTS: Unless otherwise expressly stated, shipment may be by carrier or other means selected by us. Title to any goods priced at shipping point shall pass to you upon delivery at such shipping point; title to any goods priced at destination shall pass to you upon delivery at the destination specified. No goods may be returned without our prior authorization.

WARRANTY: You warrant that all information, documents and data that you provide to us is accurate and complete.

DISCLAIMER OF WARRANTIES: Upon your request for Mill Test Reports they will be passed on to you, but we are not warranting the accuracy of the test reports or the applicability of the specified materials for your particular use or product. WE MAKE NO EXPRESS WARRANTIES WHATSOEVER WITH RESPECT TO ANY GOODS OR SERVICES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

TOLERANCE AND VARIATIONS: All goods shall be subject to tolerances and variations consistent with usual trade practices and applicable specifications regarding dimensions, straightness, section, composition, and mechanical properties and normal variations in surface and internal conditions and quality and shall also be subject to deviations from tolerances and variations consistent with practical testing and inspection methods.

SERVICES: Customer acknowledges that although Bushwick provides various fabrication services and offers a variety of structural materials, Bushwick does not provide engineering, design, or architectural services or advice. Customer agrees that customer is responsible for determining the appropriate material, cutting, and shaping specifications for Customer's intended use and that Bushwick's responsibility is limited to the delivery of goods that conform to customer's specifications.

CLAIMS: You agree to inspect goods upon arrival. If any goods received by you are damaged, or if the quantities received by you do not agree with the quantities indicated on the shipping documents, and if you intend to assert any claim against us on this account, you shall mark an exception on your receipt to the carrier and shall, within fifteen (15) days after receipt of such goods, furnish us detailed written information as to any damage or shortage. You shall advise us in writing promptly after receipt of any goods, and in no event not later than thirty (30) days after such receipt of any other claim you may have against us with respect to such goods. Failure to give written notice during the foregoing periods will constitute satisfactory shipment by us and your irrevocable acceptance of all goods. If you have any claims against us with respect to any goods, you shall afford us a reasonable opportunity to inspect such goods. Any action arising from or relating to this Agreement, the goods or services must be commenced within one year after the cause of action shall accrue, and no such action may be maintained which is not commenced within such period.

LIMITATION OF LIABILITY: Your exclusive remedy for breach of contract as to any goods, and our only liability for any such breach, shall be the re-performance of any services, replacement or repair of such goods, or repayment to you of the purchase price paid by you for such goods or services, whichever such remedy we shall select, and if we elect to repay the purchase price of any such goods and so advise you, you must return such goods to us immediately. We shall have no obligation to provide insurance. Under no circumstances shall we be liable to you or any other person or entity for incidental, consequential, exemplary, punitive or special damages or any other losses or expenses, including without limitation, for injuries to persons or damage to property, loss of profit or revenues or use, diminution in value, cost of substitute products, loss of use, or claims of your customers even if we have been advised of the possibility of such damages, regardless of the theory (contract, tort or otherwise) upon which the claim is based and notwithstanding the failure of any agreed or other remedy of its essential purpose.

TOOLS, DIES AND FIXTURES: Unless otherwise expressly set forth in writing by us, any tools, dies or fixtures which may be used, developed or acquired for use in the production of the goods covered shall be owned by us or any producing mill, as we may elect, even though you are charged in whole or part for the cost of such tools, dies and/or fixtures.

INDEMNIFICATION: You shall defend, indemnify and hold us and our representatives, agents, employees, successors and assigns harmless from and against all claims, suits, demands, losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses"), including death or injury, arising out of or relating to (a) you or your agent's provided specifications, structure, operation, material, method of manufacture or other directions including, without limitation, any resulting violation of intellectual or proprietary rights; (b) accident, damage or your use, abuse, misuse; (c) your non-compliance with any federal, state, or local law or regulation; (d) your breach of this Agreement; and (e) a use or application other than or varying in any degree from the specifications and/or our instructions.

TERMINATION: We have the right to cease work or terminate this Agreement or any purchase order, in whole or in part, at any time, without liability, if (i) you are in breach or default of this Agreement or any other agreement you have with us; (ii) a petition under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against you; (iii) you execute an assignment for the benefit or creditors; (iv) a receiver is appointed for you; or (v) we have any reasonable ground for insecurity with respect to your ability to perform and you are unable to provide us with adequate assurance immediately following our written request. We shall be entitled to all other rights and remedies we may have at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.

CANCELLATION: An order may be cancelled or modified only by our written consent and your payment of an additional charge, as we may determine. Your assistance upon cancelling or suspending fabrication or shipment, or your failure to furnish specifications when required, may be treated by us as a breach of contract by you, and we may cancel any unshipped balance without prejudice to any other rights or remedies we may have.

SET-OFF: You authorize us to apply toward payment of any moneys that become due us hereunder any sums which may now or hereafter be owed to you by us, or by any subsidiary or affiliated company of ours.

ASSIGNABILITY: You shall not assign this Agreement or any right or obligation under this Agreement without our express written consent and any purported assignment shall be void and ineffective, but the Agreement shall be binding upon and inure to the benefit of your and our successors.

AMENDMENT: Any attempt by you to modify, supersede, supplement or otherwise alter this Agreement will not modify this Agreement or be binding on us unless such change has been approved in a writing signed by our authorized representative which expressly states that this Agreement is modified, superseded, supplemented or otherwise altered.

WAIVER: All waivers by us shall be in writing. Our failure at any time to require your performance of any obligation hereunder shall not affect our right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

FORCE MAJEURE: We shall not be liable for any delay or failure to perform this Agreement, in whole or part, when such delay or failure is caused by or results from contingencies beyond our control, including without limitation, act(s) of God, force majeure, war, acts of war (whether war is declared or not), invasion, revolution, civil commotion, terrorist threats or acts, riot, acts of public enemies, blockade or embargo, delays of carriers or vendors, car shortage, fire, explosion, breakdown of plant, strike, lockout, labor dispute or slowdown or other industrial disturbances, casualty, accident, earthquake, epidemic, flood, cyclone, tornado, hurricane, lack or failure of sources of supply or increased cost of labor, raw materials, power or supplies, or excessive cost thereof, contingencies interfering with the production or with customary or usual means of transportation of the goods, or by reason of any law, order, regulation, ordinance, demand, requisition or requirement or any other act of any governmental authority, national, state, or local, including court orders, judgments, or decrees, or any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond our reasonable control. Quantities so affected may be eliminated by us from this Agreement without liability. We shall resume the performance of our obligations as soon as reasonably practicable after the removal of the cause. In the event that the our delay or failure remains uncured for a period of at least 10 days, we may thereafter terminate this Agreement, in whole or part, without liability upon written notice to you.

APPLICABLE LAW AND VENUE: This Agreement, your purchase of goods or services and all other aspects of our relationship with you shall be construed and governed according to the laws of the State of Connecticut and any litigation shall only be commenced in the State of Connecticut; either in state court or, if jurisdiction exists, in the federal district court of Connecticut. You hereby consent to personal jurisdiction in the State of Connecticut.

MISCELLANEOUS: Provisions which by their nature should survive will remain in force after any termination or expiration. The section headings contained herein are not part of this Agreement and are included solely for the convenience of the parties.