

## Quotation Terms and Conditions

H. & M. METAL PROCESSING COMPANY ("Seller") hereby quotes to the party identified on the face hereof ("Buyer") the opportunity to purchase the services identified on the face hereof upon the terms and conditions set forth on the face hereof and hereinbelow:

1. ACCEPTANCE. The acceptance of any order from Buyer pursuant to this quotation is conditioned upon the acceptance by Buyer of all terms and conditions contained in this quotation. Any inconsistent or additional terms contained in the Buyer's purchase order are hereby rejected unless expressly accepted in writing by Seller within ten (10) days after its receipt of such purchase order. The terms and conditions as stated herein shall not be modified other than in writing signed by Seller and Buyer.
2. TITLE AND RISK OF LOSS. Unless otherwise stated herein, title in and risk of loss for all products delivered to Seller by Buyer upon which Seller will perform services, is, and shall remain, at all times with Buyer.
3. PRICES AND TAXES. Unless otherwise stated herein, the prices quoted are F.O.B. Seller's plant. The amount of any local, state or federal tax levied on the products and/or services referred to herein to the date of shipment shall be added to the amount paid by Buyer and shall remain the sole responsibility of Buyer. Any portion of the price which is not paid in accordance with the terms of payment herein stated shall bear interest from the due date at the rate of 11/2% per month until paid. The price quoted herein is valid only for a period of 90 days after which Seller can adjust the price upon written notice to the Buyer.
4. DELAY IN PERFORMANCE. Seller shall not be responsible or liable for any delays or failures in the performance of the services due to any cause or condition beyond the control of Seller, including, without limitation, strikes or labor difficulties, fires, floods and other actions of the elements, inability to secure transportation, shortage of materials or equipment, riots or other civil commotions and acts of God and war.
5. CANCELLATION OR CHANGE ORDERS; DELIVERY. No orders may be withdrawn or canceled by Buyer, nor may they be deferred when ready, unless Seller shall have previously approved such withdrawal, cancellation or deferral in writing and Seller shall have been paid a withdrawal, cancellation or deferral charge of a reasonable amount acceptable to Seller. In the event Buyer shall request changes in its order after receipt thereof by Seller, it shall be responsible for all charges and expenses reasonably incurred by Seller with respect to such changes. Any dates or schedules which may be specified for the performance or delivery of the services purchased hereunder have been stated only approximately and are estimated from the date of this quotation, with complete specifications, designs, samples and other information reasonably requested by Seller to be provided in order to proceed with the performance of the services. Seller shall not incur any liability, either direct or indirect, nor shall this quotation or any purchase order be canceled, as a result of any delays in meeting such dates or schedules.
6. LIMITED WARRANTY. Seller makes no warranty whatsoever, except as to title of the materials used to perform the services, with respect to the services performed, to Buyer's or any other party's specifications or with respect to any material selection by any party other than Seller, and Buyer shall, at its own expense, defend and save Seller harmless from and against any claim, suit, expense or otherwise which shall be asserted or brought against Seller by reason of Seller's performance of such services. All services are provided with the understanding that Buyer has independently determined the suitability or compatibility of such services for its purposes. Any statements, technical information or recommendations concerning services provided by Seller are based upon data provided to Seller by its suppliers and believed to be accurate, but do not constitute a guarantee or warranty. Seller makes no representation or warranty that the services performed hereunder shall be free of the claim of any third party by way of infringement.

Seller, at its sole option, will re-perform the services that fail to meet Buyer's specifications or are due to Seller's defective materials or workmanship; provided, however, if Seller determines that re-performance of the services is not commercially practicable, Seller shall issue a credit in favor of Buyer in an amount not to exceed the cost of the services performed. All claims for breach of this warranty must be made to Seller within five (5) days after the date Buyer receives from Seller the products upon which Seller performed services to which the claim relates and must be returned at Buyer's expense to Seller's plant in accordance with Seller's written material return authorization and instructions and the provided label. Seller's warranty shall extend only to the original Buyer from Seller. Seller's warranty does not cover the effects of normal wear, tear, deterioration or abuse of the products upon which Seller performed services or the effects of improper shipping, storage or handling of such products.

**EXCEPT FOR THE EXPRESS WARRANTY DESCRIBED ABOVE, THERE ARE NO OTHER WARRANTIES OR GUARANTEES, EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR ARISING UNDER CUSTOM OF TRADE INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. NO WARRANTIES OR REPRESENTATIONS AT ANY TIME MADE BY ANY REPRESENTATIVE OF SELLER SHALL BE EFFECTIVE TO VARY OR EXPAND THE ABOVE-REFERENCED EXPRESS WARRANTY OR ANY TERMS HEREOF.**

7. LIMITATION OF LIABILITY. In no event shall Seller be liable to Buyer or to any third party for consequential, incidental or special damages, or for lost profits, resulting from or in any manner related to the services, their performance or non-performance, or the design, use, or any inability to use the products upon which the services were performed, whether such damages be claimed under contract, tort or any other legal theory. Buyer understands that the sole and exclusive remedy of Buyer shall be re-performance of the services pursuant to the warranty provision hereinabove. Should the Seller be unable to remedy any warranty defect by re-performance of the services, Buyer's sole and exclusive remedy and Seller's sole and exclusive liability shall be a credit in favor of Buyer in an amount not to exceed the cost of the services. This limitation of liability shall survive the termination, expiration or cancellation hereof.

8. THIRD PARTY PARTICIPATION. Seller is not responsible for any delays caused by third parties utilized by Seller to perform its services or the inability of any such third parties to deliver their goods or services to Seller. It is understood by Buyer that Seller's quote may be based on a quote from a third party and Seller shall not be bound by its own quote if any third party fails to provide its goods or services as promised or agreed.

9. INDEMNIFICATION. Buyer shall indemnify Seller against all claims, losses, liabilities and expenses (including, without limitation, reasonable attorney fees) on account of any damaged property or injury or death of persons (including, without limitation, Buyer's employees) arising out of the Buyer's storage, handling, use, implementation or disposal of Buyer's products upon which Seller performed the services or arising out of any infringement claim where Seller was not responsible for the design of the products. This indemnity obligation of Buyer will survive the expiration, termination or cancellation hereof.

10. INTEGRATION. There are no understandings between the parties hereto as to the subject matter hereof other than as set forth herein. All previous communications between the parties hereto concerning the subject matter hereof, whether verbal or written, including, but not limited to Buyer's purchase order, are hereby abrogated and withdrawn, and this contract constitutes the whole of the agreement between the parties hereto. Any additional terms and conditions of a purchase order or change order shall not apply hereto unless agreed to by Seller in writing. Delivery of a purchase order by the Buyer pursuant to this quotation shall be deemed to be an acceptance by Buyer of the terms and conditions of this quotation and the terms and conditions included herein. Any different terms or conditions in any purchase order, regardless of whether such terms and conditions are material or not, shall not be binding unless expressly accepted in writing by Seller and Seller specifically objects to the inclusion of any different or additional terms or conditions by Buyer in confirming or accepting this quotation. If Buyer does include different or additional terms and conditions in its purchase order, acceptance, confirmation or other written form sent in response to this quotation, neither Seller's delivery of all or part of the products, nor any other action except a written notice from Seller, shall constitute acceptance of such additional or different terms, but instead the terms and conditions of this quotation shall govern.

11. MISCELLANEOUS. The terms and conditions applicable to the transaction provided for herein shall be determined and construed in accordance with, and shall be governed by, the laws of the State of Ohio. Further, Buyer and Seller agree to submit to the jurisdiction of the appropriate local, state or federal courts within Summit County, Ohio for purposes of resolving any dispute or claim arising in connection with said transaction. Nothing in this contract shall be construed as creating any act or beneficial right in or on behalf of any third party. The failure of either party to insist or enforce in any instance strict performance of any of the terms of this contract or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

## Purchase Order Terms and Conditions

H. & M. METAL PROCESSING COMPANY ("Buyer") hereby orders certain goods, materials, and/or services identified on the face hereof from the party identified on the face hereof ("Seller") upon the terms and conditions set forth on the face hereof and hereinbelow:

1. PRICE. The price shall not be higher than that appearing on the face of this Purchase Order ("Order"), or if no price appears thereon, then no higher than that last quoted by Seller.
2. INSPECTION & ACCEPTANCE. Delivery of the goods, materials and services shall not constitute acceptance of such goods and materials. All goods, materials and services shall be subject to inspection and acceptance by Buyer after delivery to Buyer's location. Goods, materials and services failing to meet the requirements of this Order will be held at Seller's risk and may be returned at Seller's expense. Any inconsistent or additional terms contained in any quotation or previous offer from Seller are hereby rejected unless expressly accepted in writing by Buyer within ten (10) days after delivery of this Order.
3. SUBSTITUTION AND EXTRAS. No substitutions of materials or accessories may be made without Buyer's written consent. No charge will be allowed for extras, shipping, packing, crating, freight or other carrier's charges, unless designated on this Order. If Buyer designates a specific shipper on the front of this Order, Seller agrees to use such shipper. In the event Seller fails to use such shipper, Seller shall be responsible for any increase in shipping costs to Buyer along with any other costs and expenses incurred by Buyer due to Seller's failure to use the designated shipper.
4. CANCELLATION. In addition to any other rights which Buyer may have, Buyer reserves the right to cancel this Order in whole or in part, holding Seller responsible if goods, materials or services furnished pursuant to this Order or any shipment thereunder are not as specified or if delivery is not made when and as specified. **TIME IS OF THE ESSENCE AS TO THE PERFORMANCE OF THIS ORDER.** Buyer may cancel this Order in whole or in part if Seller is adjudicated a bankrupt, if a petition under the Bankruptcy Act is filed against Seller, if Seller makes an assignment for the benefit of creditors, if a receiver of the property of Seller is appointed or if an action under any law for the relief of debtors is taken in respect of Seller. Upon any cancellation of this Order by Buyer, for any reason, in no event shall Seller be entitled to lost opportunity costs, unabsorbed overhead or anticipated profits as a result of such cancellation. Buyer's maximum liability for canceling this Order shall not exceed the date of sale contract price.
5. DELIVERY. Unless otherwise agreed in writing, Seller shall not make material commitments or production arrangements in excess of the amount, or in advance of the time, necessary to meet Buyer's delivery schedule, except at Seller's own risk. It is Seller's responsibility to comply with this schedule but not to anticipate Buyer's requirements.
6. PATENT, COPYRIGHT AND TRADEMARK INDEMNIFICATION. Seller warrants that it will defend at its expense the allegations of any suit against Buyer or Buyer's customers respecting infringement of any U.S. or other Letters Patent, or violation of any copyright or trademark, covering all or part of the goods, materials or services furnished under this Order, its manufacture and/or its use, or Seller shall procure for Buyer or Buyer's customers the right to continue to use such goods, materials or services, or replace it with substantially equivalent non-infringing or non-violating goods, materials or services. Buyer shall reasonably notify Seller of any charge of and suit for such infringement and tender to Seller the defense of such allegations, Buyer having the right to be represented in such defense at its own expense.
7. OVER-SHIPMENT. Materials shipped in excess of quantity ordered may be returned at Seller's expense, which expense shall include, without limitation, packing and freight charges and Buyer's labor costs, or, alternatively, at Buyer's option, Buyer may charge Seller an amount not to exceed Twenty Five Dollars (\$25) per package, plus shipping costs.
8. TITLE & RISK OF LOSS. Unless otherwise specified on the face of this Order, all risk of loss or damage and title to the goods, materials or services furnished under this Order shall pass to Buyer upon delivery and acceptance at Buyer's premises.
9. WARRANTY. Seller expressly warrants that all goods, materials and services specified in this Order shall conform to the specifications, drawings, samples or other description upon which this Order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect. Inspection, test, acceptance or use of such goods or materials shall not affect Seller's obligation under this warranty, and such warranty shall survive inspection, test acceptance and use. This warranty shall run to Buyer, its successors, assigns and customers and the user of its products and shall survive termination or cancellation hereof. Seller agrees to replace or correct defects (including labor and transportation) in any goods, materials or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such non-conformity. In the event of failure by Seller to promptly correct defects in or replace non-conforming goods, materials or services, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods, materials or services and charge Seller for costs incurred by Buyer thereby. The warranties and remedies contained in this Order supplement the warranties and remedies provided by the Uniform Commercial Code, which warranties and remedies shall not be disclaimed or limited in any way by Seller.
10. INDEMNITY. Seller shall defend and indemnify Buyer against all damages, liabilities, claims, losses and expenses, either direct, indirect or consequential (including attorneys' fees) arising out of, in any way except from Buyer's negligence, from any defect in the goods, materials or services purchased hereunder or from any act or omission of Seller, its agents or employees. This indemnity obligation of Seller shall survive the expiration or termination hereof.

11. DATA. Seller shall not use or disclose to any third party any data, designs or other information belonging to or supplied by or on behalf of Buyer, except in the performance of this or other orders for Buyer. Upon Buyer's request, such data, designs or other information and any copies thereof shall be returned to Buyer. Where Buyer's data, designs or other information are furnished to Seller's suppliers for procurement of supplies by Seller for use in the performance of Buyer's orders, Seller shall insert the substance of this provision in its orders. Any knowledge or information which Seller has disclosed or may hereafter disclose to Buyer incident to this Order, shall not, unless agreed in writing by Buyer, be deemed to be confidential or proprietary information, and accordingly will be acquired free from any restriction. No employee of Buyer has authority to make any agreement, express or implied, limiting the use of or providing for the confidentiality of information received by him/her, unless such agreement is made in writing and signed by the President of Buyer.

12. CHANGES IN WRITING. This Order represents the final written expression of agreement between Buyer and Seller, constituting the entire contract between Buyer and Seller and superseding all previous communications, either oral or written. In the event the terms and conditions of this Order are inconsistent in any manner with a quotation or proposal from Seller, this Order shall be deemed a counteroffer and Seller's subsequent delivery shall be deemed Seller's acceptance of such counteroffer on the terms and conditions contained herein. No terms and conditions other than those set forth above and on the face of this Order shall be effective unless said changes are reduced to writing and signed by both parties. Shipment by Seller of goods or materials, or the performance of services, pursuant to this Order shall be deemed to be an acceptance by Seller of the terms and conditions of this Order. Any different terms and conditions in Seller's acknowledgment of this Order or Seller's invoice, regardless of whether such terms and conditions are material or not, shall not be binding unless expressly accepted in writing by Buyer. Buyer specifically objects to the inclusion of any different or additional terms and conditions by Seller in acknowledging, confirming or accepting this Order. If Seller does include different or additional terms and conditions in its acknowledgment, acceptance, confirmation, invoice or other written form sent in response to this Order, neither Buyer's acceptance or delivery of all or part of the goods, materials, or services, nor Buyer's payment for the goods, materials or services shall constitute acceptance of such additional or different terms, but instead the terms and conditions of this Order shall govern. Neither this Order nor any interest herein shall be transferred or assigned by Seller without the written approval of Buyer.

13. MISCELLANEOUS. Seller shall cause the work and materials contemplated hereunder to be performed and manufactured in strict conformity with federal, state and local laws and Seller agrees, upon request, to furnish Buyer a Certificate of Compliance with any or all such laws in such form as Buyer may require. The right and duties of the parties hereto shall be determined by the laws of the State of Ohio and this Order shall be construed and considered as a contract made and to be performed in the State of Ohio. Further, Buyer and Seller agree to submit to the jurisdiction of the appropriate local, state or federal courts within Summit County, Ohio for purposes of resolving any dispute or claim arising in connection with said transaction. If delivery is not made within the time specified herein, Buyer may purchase such goods elsewhere and charge Seller the difference in price and/or Buyer may cancel the entire Order or any undelivered portion thereof. Payments due Seller may be offset against sums owed by Seller to Buyer. Nothing in this contract shall be construed as creating any act or beneficial right in or on behalf of any third party. The failure of either party to insist or enforce in any instance strict performance of any of the terms of this contract or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

## Invoice Terms and Conditions

This invoice is payable by the party identified on the face hereof ("Buyer") to H. & M. METAL PROCESSING COMPANY ("Seller"), at the address set forth on the face hereof, upon the terms and conditions set forth on the face hereof and hereinbelow:

1. ACCEPTANCE. Buyer's acceptance of the products upon which the services described on the face hereof were performed constitutes Buyer's acceptance of all terms and conditions contained in this invoice. Any inconsistent or additional terms contained in Buyer's order or otherwise are hereby rejected unless expressly accepted in writing by Seller within seven (7) days after its receipt of this invoice. The terms and conditions as stated herein shall not be modified other than in writing signed by Seller and Buyer.
2. TITLE AND RISK OF LOSS. Unless otherwise stated herein, title in and risk of loss for all products delivered to Seller by Buyer upon which Seller performed services, is, and shall remain, at all times with Buyer.
3. PRICES AND TAXES. Unless otherwise stated herein, the prices for the services purchased are F.O.B. Seller's plant. Any portion of the price which is not paid in accordance with the terms of payment herein stated shall bear interest from the due date at the rate of 11/2% per month until paid. Unless otherwise agreed by Seller in writing, the amount of any local, state or federal tax levied on the products referred to herein to the date of shipment shall be added to the amount paid by and remain the sole responsibility of Buyer.
4. DELAY IN PERFORMANCE. Seller shall not be responsible or liable for any delays or failures in the performance of the services due to any cause or condition beyond the control of Seller including, without limitation, strikes or labor difficulties, fire, floods, inability to secure transportation facilities, actions of the elements, shortage of materials or equipment, riots or other civil commotions, acts of God and war.
5. CANCELLATION OR CHANGE ORDERS; DELIVERY. No orders may be withdrawn or canceled by Buyer, nor may they be deferred when ready, unless Seller shall have previously approved such withdrawal, cancellation or deferral in writing and Seller shall have been paid a withdrawal, cancellation or deferral charge of a reasonable amount acceptable to Seller. In the event Buyer shall request changes in its order after receipt thereof by Seller, it shall be responsible for all charges and expenses reasonably incurred by Seller with respect to such changes. Any dates or schedules which may be specified for the performance and delivery of the services purchased hereunder have been stated only approximately and are estimated from the date of this quotation, with complete specifications, designs, samples and other information reasonably requested by Seller to be provided in order to proceed with the performance of the services. Seller shall not incur any liability, either direct or indirect, nor shall this quotation or any purchase order be canceled, as a result of any delays in meeting such dates or schedules.
6. LIMITED WARRANTY. Seller makes no warranty whatsoever, except as to title of the materials used to perform the services, with respect to the services performed, to Buyer's or any other party's specifications or with respect to any material selection by any party other than Seller, and Buyer shall, at its own expense, defend and save Seller harmless from and against any claim, suit, expense or otherwise which shall be asserted or brought against Seller by reason of Seller's performance of such services. All services are provided with the understanding that Buyer has independently determined the suitability or compatibility of such services for its purposes. Any statements, technical information or recommendations concerning services provided by Seller are based upon data provided to Seller by its suppliers and believed to be accurate, but do not constitute a guarantee or warranty. Seller makes no representation or warranty that the services performed hereunder shall be free of the claim of any third party by way of infringement.

Seller, at its sole option, will re-perform the services that fail to meet Buyer's specifications or are due to Seller's defective materials or workmanship; provided, however, if Seller determines that re-performance of the services is not commercially practicable, Seller shall issue a credit in favor of Buyer in an amount not to exceed the cost of the services performed. All claims for breach of this warranty must be made to Seller within five (5) days after the date Buyer receives from Seller the products upon which Seller performed services to which the claim relates and must be returned at Buyer's expense to Seller's plant in accordance with Seller's written material return authorization and instructions and the provided label. Seller's warranty shall extend only to the original Buyer from Seller. Seller's warranty does not cover the effects of normal wear, tear, deterioration or abuse of the products upon which Seller performed services or the effects of improper shipping, storage or handling of such products.

**EXCEPT FOR THE EXPRESS WARRANTY AS DESCRIBED ABOVE, THERE ARE NO OTHER WARRANTIES OR GUARANTEES, EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR ARISING UNDER CUSTOM OF TRADE INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. NO WARRANTIES OR REPRESENTATIONS AT ANY TIME MADE BY ANY REPRESENTATIVE OF SELLER SHALL BE EFFECTIVE TO VARY OR EXPAND THE ABOVE-REFERENCED EXPRESS WARRANTY OR ANY TERMS HEREOF.**

7. LIMITATION OF LIABILITY. In no event shall Seller be liable to Buyer or to any third party for consequential, incidental or special damages, or for lost profits, resulting from or in any manner related to the services, their performance or non-performance, or the design, use, or any inability to use the products upon which the services were performed, whether such damages be claimed under contract, tort or any other legal theory. Buyer understands that the sole and exclusive remedy of Buyer shall be re-performance of the services pursuant to the warranty provision hereinabove. Should the Seller be unable to remedy any warranty defect by re-performance of the services, Buyer's sole and exclusive remedy and Seller's sole and exclusive liability shall be a credit in favor of Buyer in an amount not to exceed the cost of the services. This limitation of liability shall survive the termination, expiration or cancellation hereof.

8. INDEMNIFICATION. Buyer shall indemnify Seller against all claims, losses, liabilities and expenses (including, without limitation, reasonable attorney fees) on account of any damaged property or injury or death of persons (including, without limitation, Buyer's employees) arising out of the Buyer's storage, handling, use, implementation or disposal of Buyer's products upon which Seller performed the services or arising out of any infringement claim where Seller was not responsible for the design of the products. This indemnity obligation of Buyer will survive the expiration, termination or cancellation hereof.

9. INTEGRATION. There are no understandings between the parties hereto as to the subject matter of this contract other than as set forth herein. All previous communications between the parties hereto concerning the subject matter of this contract, whether verbal or written, except for Seller's quotation, if any, including, but not limited to, Buyer's purchase order, are hereby abrogated and withdrawn, and this contract constitutes the whole of the agreement between the parties hereto. Any additional terms and conditions of a purchase order or change order shall not apply hereto unless agreed to by the parties in writing. Receipt of the goods delivered hereunder shall be deemed to be an acceptance by Buyer of the terms and conditions of this invoice and the terms and conditions included herein. Any different terms or conditions in Buyer's purchase order, regardless of whether such terms and conditions are material or not, shall not be binding unless expressly accepted in writing by Seller and Seller specifically objects to the inclusion of any different or additional terms or conditions by Buyer. If Buyer has included or includes different or additional terms and conditions in its purchase order, acceptance, confirmation or other written form sent in response to this invoice, neither Seller's delivery of all or part of the goods, nor any other action except a written notice from Seller, shall constitute acceptance of such additional or different terms, but instead the terms and conditions of this invoice and Seller's quotation, if any, shall govern.

10. MISCELLANEOUS. The terms and conditions applicable to the transaction provided for herein shall be determined and construed in accordance with, and shall be governed by, the laws of the State of Ohio. Further, Buyer and Seller agree to submit to the jurisdiction of the appropriate local, state or federal courts within Summit County, Ohio for purposes of resolving any dispute or claim arising in connection with said transaction. Nothing in this contract shall be construed as creating any act or beneficial right in or on behalf of any third party. The failure of either party to insist or enforce in any instance strict performance of any of the terms of this contract or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

11. PAYMENT OF LESS THAN FULL AMOUNT. In the event Buyer seeks to make payment on an invoice from Seller in an amount less than the full amount of the invoice and Buyer intends such payment to be in full satisfaction of the invoice, Buyer must send such payment to H. & M. Metal Processing Company, 1414 Kenmore Blvd, Akron, Ohio 44314, Attention: President.

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