

Mid-County Fabricating, Inc.
Terms and Conditions of Purchase

Each purchase order (“**Order**”) issued by Mid-County Fabricating, Inc. (“**Seller**”) is an offer to the customer identified on the Order (“**Customer**”) for the purchase of goods (“**Goods**”) and/or services (“**Services**”) and incorporates and is governed exclusively by these terms and conditions (“**Terms**”). Each Order is conditioned upon Customer’s acceptance of these Terms exclusively. An Order is deemed accepted upon Customer’s written acceptance of the Order, commencement of work under the Order, or any other conduct that recognizes the existence of acceptance. By sending any request for Good or Services or responding to any proposal, Order, etc., Customer acknowledges that they have read these Terms and agree to be bound by all provisions set forth herein. These Terms apply to all, including future, sales of Goods and/or Services, as far as not modified or excluded by Seller’s express written agreement. Any terms and conditions contained in Customer’s documentation shall not be binding on Seller and are expressly rejected by Seller. This applies despite Seller’s knowledge of existing contradictory terms and conditions. Each release, schedule, work order, shipping instruction, specification and other document issued by Seller, relating to the Goods and/or Services pursuant to the Order are incorporated into the Order. Specific terms and conditions of the Order shall take priority over any inconsistent provision in these Terms. Together, the Order, any documents incorporated therein, and these Terms constitute the entire agreement between Seller and the Customer (“**Agreement**”). This Agreement supersedes all prior or contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

Sale of Goods and Services: Seller shall sell and Customer shall purchase the Goods and/or Services by written Order which is accepted by the Seller in an order confirmation (“Confirmation”). Seller’s employees or agents are not authorized to make any representations concerning the Goods or Services, unless confirmed by Seller in writing. In entering into this Agreement, Customer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed. Any advice or recommendation given by Seller or its employees or agents to Customer including any advice as to the storage, application or use of the Goods or Services, which is not confirmed in writing by Seller, is followed or acted upon entirely at Customer’s own risk, and accordingly, Seller shall not be liable for any such advice or recommendation which is not so confirmed. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Seller shall be subject to correction without any liability on the part of Seller.

Orders, Specifications, Schedule: Customer shall be responsible to Seller for ensuring the accuracy of the details of any Order, including any applicable submitted specification(s) (“**Specifications**”), and for giving Seller any necessary information relating to the Goods and/or Services (“**Order Info**”) within a sufficient time to enable Seller to perform this Agreement in accordance with its Terms. Any completion dates specified in any Order shall be contingent upon Seller’s prompt receipt of all Specifications and Order Info. All schedules shall be mutually agreed upon by Seller and Customer, including start dates, durations and changes that impact Seller’s work. Seller shall at all times be allowed a reasonable time to perform its work and shall not be liable to Customer for any delay related damages. Any changes to the Goods and/or Services shall entitle Seller to an equitable price and schedule adjustment.

Price of the Goods and Services: Subject to changes and/or delays caused by Customer, the price of the Goods and/or Services shall be Seller’s is the price quoted on the face of the Order. All prices shall only be valid for **15 days** from the date of the Order. Due to material and labor costs fluctuation, Seller retains the right to adjust the price of any Order that is not accepted within **15 days** of quotation (this right shall not be deemed to affect Customer’s acceptance of any Order). No Order may be cancelled by Customer except with Seller’s written agreement. Except as otherwise stated within an Order and unless otherwise agreed in writing between Seller and Customer, all prices are given by Seller on an ex works basis and Customer bears all responsibility for shipping costs. The price is exclusive of any applicable value added, sales, or other tax, which Customer may be additionally liable to pay to Seller, as well as any freight or insurance costs incurred. Customs duties, clearance charges, or equivalent duties shall be for the account of Customer.

Terms of Payment: Customer shall pay the price in full within thirty (30) days after receipt of Seller's invoice (unless otherwise agreed in writing between the parties), notwithstanding that delivery may not have taken place and the Goods may not have passed to Customer. If Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Seller, Seller shall be entitled i) suspend work on any and all Goods and Services, ii) cancel shipment and/or recover an previously delivered Goods, and iii) charge Customer of late payment fee (both before and after any judgment) on the amount unpaid at the rate of 8 percent (8%) per annum, or the maximum rate allowed by law, whichever is less, until payment in full is made. Notwithstanding any other term or condition herein and in particular notwithstanding any period of credit extended to the Customer, if the balance on Customer's account with Seller (being the value of invoices charged to Customer for which Seller has not received payment) equals or exceeds Customer's credit limit with Seller, if any, Seller may, in its sole discretion, refuse to accept further Orders from Customer. Further Seller may, in its sole discretion, refuse to accept Orders from Customer or make sales to Customer where the value of the goods ordered by Customer, would, if invoiced to Customer's account, cause the balance on such account to equal or exceed such credit limit set by Seller in its sole discretion. Any decision made by Seller in the exercise of its sole discretion as provided for in this paragraph shall not, and shall not be deemed to, prejudice, limit, hamper or affect any subsequent exercise by Seller of its rights or sole discretion. Without prejudice to any other right or remedy it may have, Seller reserves the right to set off any amount owed by Customer against any amount owed by Seller to Customer.

Delivery: Unless otherwise agreed in writing, all Goods and Services shall be provided at Seller's premises. Customer shall pickup any Goods on the dates and times specified in the Order or when notified by Seller. Customer acknowledges that time is of the essence and that Seller retains the right to charge Customer storage fees for any Goods which are not retrieved by Customer in accordance with the paragraph. Customer is responsible for any freight, shipping or other costs incurred obtaining Goods and/or Services from Seller.

Risk and Property: Risk of damage to or loss of the Goods shall pass to Customer i) in the case of Goods to be delivered to Customer at Seller's place of business or delivered to a carrier at Seller's place of business, at the time when Seller notifies Customer that the Goods are available for collection or that the goods have been dispatched with a carrier; or ii) in the case of Goods to be delivered otherwise than at Seller's premises, at the time of delivery or, if Customer wrongfully fails to take delivery of the Goods, the time when Seller has tendered delivery of the Goods. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, title in the Goods shall not pass to Customer until Seller has received in cash or cleared funds payment in full of the price of the Goods and Services agreed to be sold by Seller to Customer for which payment is then due. Until such time as title to the Goods passes to Customer, Customer shall hold the Goods as Seller's fiduciary agent and bailee and shall keep the Goods separate from the goods of Customer and third parties, and shall keep the goods properly stored, protected and insured and identified on Customer's premises, but shall be entitled to use the Goods in the ordinary course of business. Customer hereby irrevocably authorizes Seller or its representatives to enter upon Customer's premises where the Goods are stored, or are thought to be stored, for the purpose of repossessing them and, if Seller so chooses, subsequent resale. As collateral security for the payment of the price of the Goods and Services, Customer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Customer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Minnesota Uniform Commercial Code.

Intellectual Property: "Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to: (i) patents; (ii) trademarks; (iii) internet domain names, whether or not trademarks, registered by any authorized private registrar or governmental, web addresses, web pages, website, and URLs; (iv) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other specifications and documentation; (v) trade secrets; and (vi) all industrial and other intellectual property

rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the laws of any jurisdiction throughout in any part of the world.

Customer acknowledges and agrees that (i) except to the extent provided in a separate written agreement between Customer and Seller, Seller (or its licensors) will retain all Intellectual Property Rights used to create, embodied in, used in, and otherwise relating to the Goods and any of their component parts; (ii) any and all Seller's Intellectual Property Rights are the sole and exclusive property of Seller or its licensors; (iii) Customer shall not acquire any ownership interest in any of Seller's Intellectual Property Rights under this Agreement; (iv) any goodwill derived from the use by Customer of Seller's Intellectual Property Rights inures to the benefit of Seller or its licensors, as the case may be; (v) if Customer acquires any Intellectual Property Rights in or relating to any product (including any Good) purchased under this Agreement (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either Party; and (vi) Customer shall use Seller's Intellectual Property Rights only in accordance with this Agreement and any instructions of Seller.

Customer shall not: (i) take any action that may interfere with any of Seller's rights in or to Seller's Intellectual Property Rights, including Seller's ownership or exercise thereof; (ii) challenge any right, title, or interest of Seller in or to Seller's Intellectual Property Rights; (iii) make any claim or take any action adverse to Seller's ownership of Seller's Intellectual Property Rights; (iv) register or apply for registrations, anywhere in the world, for Seller's Trademarks or any other Trademark that is similar to Seller's Trademarks or that incorporates Seller's Trademarks in whole or in confusingly similar part; (v) use any mark, anywhere, that is confusingly similar to Seller's Trademarks; (vi) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under this Agreement (including Goods) or any Seller Trademark; (vii) misappropriate any of Seller's Trademarks for use as a domain name without prior written consent from Seller; or (viii) alter, obscure, or remove any of Seller's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under this Agreement (including Goods), marketing materials, or other materials that Seller may provide.

IF THE GOODS ARE TO BE MANUFACTURED OR ANY PROCESS IS APPLIED TO THE GOODS BY SELLER IN ACCORDANCE WITH A SPECIFICATION SUBMITTED BY CUSTOMER, CUSTOMER SHALL INDEMNIFY SELLER AGAINST ALL LOSS, DAMAGES, COSTS, AND EXPENSES AWARDED AGAINST OR INCURRED BY SELLER IN CONNECTION WITH OR PAID OR AGREED TO BE PAID BY SELLER IN SETTLEMENT OF ANY CLAIM FOR INFRINGEMENT OF ANY PATENT, COPYRIGHT, DESIGN, TRADEMARK OR OTHER INDUSTRIAL OR INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PERSON WHICH RESULTS FROM SELLER'S USE OF SUCH SPECIFICATION.

No Warranties: SELLER MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; or (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. PRODUCTS MANUFACTURED BY A THIRD PARTY ("**THIRD PARTY PRODUCT**") MAY CONSTITUTE, CONTAIN, BE CONTAINED IN, INCORPORATED INTO, ATTACHED TO, OR PACKAGED TOGETHER WITH, THE GOODS. FOR THE AVOIDANCE OF DOUBT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. SELLER MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

Limitation of Liability: IN NO EVENT SHALL SELLER BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN

VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER DURING THE SIX (6) MONTHS PRIOR TO EVENT LEADING TO SUCH PAYMENT.

ASSUMPTION OF RISK: WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SELLER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.

Force Majeure: Seller shall not be liable or responsible to the Customer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the Seller's reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (i) acts of God; (ii) flood, fire, earthquake, other potential disasters or catastrophes, such as epidemics or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; (viii) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and other (ix) events beyond the reasonable control of the Seller. The Seller shall give notice of the Force Majeure Event to the Customer, stating the period of time the occurrence is expected to continue. The Seller shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Seller shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

Compliance with Law: Customer shall comply with all applicable laws, regulations, and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Customer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Customer. Customer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

Liquidated Damages: If the Customer breaches its obligations to Seller ("Customer Breach"), the Customer shall pay to the Seller an amount equal to at least 150% of the price of the applicable Goods and Services as "Liquidated Damages". The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that the Seller's harm caused by a Customer Breach would be impossible or very difficult to accurately estimate and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from a Customer Breach.

General:

- The subject matter of this Agreement between the parties shall be treated as confidential by Customer and shall not be disclosed or used other than by Customer in performing under this Agreement.
- Customer agrees to take any and all necessary steps to assist Seller in perfecting a lien on the goods, including, but not limited to, the following: (1) Customer will provide accurate information to Seller relating

to the location where goods will be used/consumed; and (2) the name and address for any third-parties involved, if any.

- No waiver by Seller of any provisions of this Agreement is effective unless set forth in writing signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Customer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

- The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

- All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Minnesota. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Minnesota in each case located in the County of Hennepin, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

- Seller shall be entitled to recover from Customer, and Customer agrees to pay, Seller's attorneys' fees, employee time, costs and expenses incurred in protecting Seller's rights or otherwise enforcing this Agreement.

- All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this paragraph.

- If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

- Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.

- Seller reserves that right to amend these Terms at its convenience. Customer acknowledges and agrees that Customer is responsible for reviewing the most current version of these Terms and that all Orders made subsequent to Seller's amendment of these Terms shall be subject to the revised terms contained in any such amendment.