

## **Metalcraft Mining Equipment Rebuilders, Inc. (Metalcraft) General Terms and Conditions**

**1. Acceptance of Entire Agreement.** These General Terms and Conditions (hereinafter defined as the "GTC"), pertain to the provision of (as applicable) all goods ("Goods") and/or services ("Services") by Metalcraft. The company designated as the purchaser of such Goods and/or Services in any Bid, purchase order, proposal or other document is referred to herein as the "Purchaser". These GTC, including the terms and conditions on the face of any Bid delivered by Metalcraft, and all proposals, designs, plans and other documents specified by Metalcraft in such bid (hereinafter collectively defined as the "Contract") shall govern all purchases made by the Purchaser from Metalcraft. In the event that any term or terms set forth in the Contract conflicts with any term or terms set forth in this GTC, the term or terms set forth in the Contract shall govern and take precedence over the conflicting term or terms set forth in this GTC.

Unless governed by a separate and specific agreement mutually agreed to in writing, executed by an authorized representative of both Parties, this Contract shall constitute the complete and final written agreement between Metalcraft and Purchaser and supersedes all other agreements and understandings between the Parties regarding the supply of Goods and the performance of Services pursuant to the Contract. No other proposed terms, whether consistent or conflicting, are a part of the Contract, even if such terms are provided on Purchaser's forms. Purchaser's terms and conditions, order confirmations, order acknowledgments, prior offers or any other document issued by Purchaser (unless included by reference in this Contract), shall not be binding on Metalcraft. Any references to Purchaser's offer or quote in the Purchase Order are only for purposes of price, schedule, quantity and/or quality terms and expressly exclude any of Purchaser's general terms and conditions. The Parties acknowledge that no amendments may be made to the Contract, including the GTC, unless agreed to between the Parties and confirmed to such effect in writing by the Parties. In the event of a conflict between the GTC and any other documents or supplemental terms and conditions, the GTC shall have precedence, unless Metalcraft expressly agrees in writing that such other documents or supplemental terms and conditions shall have precedence over the GTC.

**2. Warranties.** Metalcraft makes and gives no warranties, express or implied, and it is expressly understood that implied warranties of merchantability and fitness for a particular purpose are specifically excluded with respect to any and all goods or materials furnished by Metalcraft. This warranty policy cannot be expanded without the prior and specific written consent of Metalcraft. Metalcraft shall not under any circumstances be liable for special, indirect, incidental, consequential or punitive damages, such as, but not limited to, damages or loss of property or equipment, loss of profits or revenue, cost of capital, cost of purchased or replacement goods or claims of Purchaser or its customers for service interruptions. The liability of Metalcraft with respect to the sale, delivery, resale, installation or use of any goods sold, whether arising out of any theory of contract, negligence, strict liability, or under any warranty or otherwise, for any damages whatsoever, shall not exceed the price of the goods upon which such liability is based.

**3. Price.** The price contained in the bid for the Goods supplied or to be supplied and the Services performed or to be performed pursuant to this Contract does not include charges for packing, crating, freight surcharges, expedited delivery or cartage. For greater certainty, the price set out in the Bid does not include applicable taxes, fees, royalties, commissions and other accessory disbursements, if any, for the Goods or Services being provided, and Purchaser shall be responsible for any such taxes, fees, royalties, commissions and other accessory disbursements, including applicable sales taxes. Metalcraft reserves the right to increase its base price accordingly if its vendors add a surcharge to or substantially increase the price of the material required to complete the Contract. If we are unable to deliver a machine due to reasons beyond our control such as a delay in the customer's need for the machine or MSHA approval for a field modification, the customer will be billed upon completion of our work. Payment in full will be due to the stated terms regardless of when the machine can be delivered. In the event customer fails to take delivery in a timely manner, Metalcraft reserves the right to charge a fee for storing the equipment. Such fee will be due and payable prior to the equipment leaving our facility. In the event customer fails to deliver customer provided components to Metalcraft in a timely manner, Metalcraft reserves the right to provide the needed components and charge the customer accordingly. Customer agrees to pay such charges.

**4. Inspection and Risk of Loss.** Purchaser may inspect the Goods when the Goods are delivered to the final destination specified in the Contract. Any inspection or approval performed at the final destination specified in the Contract or elsewhere during or after manufacture, whether or not such inspection or approval be provided for by the terms of this Contract, shall be final and shall constitute final acceptance of the Goods by Purchaser. Title and risk of loss of all Goods shall pass to Purchaser upon Purchaser's physical receipt and inspection of the Goods. In the event that Purchaser arranges the transportation of the Goods from Metalcraft's facility to Purchaser's facility, title and risk of loss of all Goods shall pass to Purchaser once the Goods have been loaded at Metalcraft's facility by Purchaser or Purchaser's representative.

**5. Indemnity and Limitation of Liability.** To the fullest extent permitted by law, Purchaser shall indemnify, defend and hold harmless Metalcraft, its subsidiaries, affiliates, joint ventures, agents, representatives, directors, managers, officers, employees, successors and assigns (each an "Indemnitee"), from and against all claims, demands, damages, liabilities, losses and expenses (including reasonable attorney, paralegal, and expert fees and court-imposed costs, penalties, and interest) incurred or suffered by any Indemnitee and arising out of or resulting from, directly or indirectly, the Goods or Services provided by Metalcraft pursuant to this Contract. The foregoing indemnity shall be in addition to any other indemnity obligations of Purchaser set forth in this Contract. Any insurance recoveries or policies shall not limit any obligation of Purchaser hereunder (including without limitation Workers Compensation). Purchaser expressly waives any provision of any worker's compensation laws under which Purchaser could preclude its joinder as an additional defendant or avoid liability for damages (such as statutory immunity), contribution or indemnity.

**6. Force Majeure.** Neither Metalcraft nor Purchaser shall be liable to the other for any loss or damage arising out of a delay, or non-performance of any contractual obligation set forth in this Contract caused by acts of God, fire, flood, earthquake, storm, hurricane or

other natural disaster, pandemic, epidemic, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockade, embargo, labor dispute, strike, or interruption or failure of electricity or telephone service or other events beyond the reasonable control of either Party which prevents performance of such Party's obligations under this Contract. Both Parties shall be prompt in restoring normal conditions, re-establishing schedules and resuming operations as soon as the interruptions have ceased. In the case of an event of force majeure, the Party claiming the benefit of the event of force majeure shall, to the extent possible, within seventy-two (72) hours of the occurrence of such event, give the other Party written notice thereof, and a description of the full particulars of the event and the cause or causes of the event. The notice shall describe with particularity the actions that the Party giving the notice intends to take to resolve the event of force majeure as soon as reasonably possible. In no event shall Metalcraft be entitled to any increase in the price as a result of any event of force majeure. During the duration of force majeure, each Party shall bear its own costs resulting from the delay. Force majeure shall not include financial distress, insolvency, bankruptcy, or other similar conditions affecting one of the Parties and/or its affiliates and/or sub-contractors. Should the affected Party be unable to resume performance within 30 days, the non-affected Party shall be entitled to terminate this Contract by giving a written notice to the other Party confirming its election to terminate this Contract, which termination shall take effect on the date of the delivery of such notice or later on as specified in such notice. In the event the Contract is terminated by either party pursuant to this provision, Purchaser shall pay Metalcraft a pro rata portion of the Purchase Price commensurate with the percentage of work completed by Metalcraft under the Contract prior to termination of the Contract.

**7. Independent Contractor and Non-Exclusivity.** Metalcraft is an independent contractor, and Metalcraft's employees and any approved subcontractors shall at all times be under Metalcraft's supervision, direction, and control. Metalcraft shall have full power and authority to select the means, manner, and methods of performing its obligations hereunder without supervision, direction, or control by Purchaser. Metalcraft, and Metalcraft's supervisors, may receive instructions from Purchaser and Purchaser's representative as to the end results to be accomplished, and Metalcraft shall be responsible for directing Metalcraft's employees as to the means, manner, and methods of performing its obligations hereunder. Compliance by Metalcraft or Metalcraft's employees with engineering instructions, safety practices, maintenance instructions, or change orders issued by Purchaser or Purchaser's representative shall not affect Metalcraft's status as an independent contractor, and shall not relieve Metalcraft of Metalcraft's obligations under this Contract. Metalcraft's employees are not entitled to workers' compensation benefits from Purchaser and the Metalcraft is obligated to remit, pay and withhold all applicable state, provincial, local, or federal income or other taxes on any monies earned pursuant to the Contract relationship. Metalcraft shall be solely and exclusively responsible for all federal, state, provincial or local income or other taxes and statutory deductions and withholdings required to be made by Metalcraft in respect of Metalcraft's employees. This is a non-exclusive relationship and Metalcraft has the right to provide similar Goods or Services to other vendors.

**8. Governing Law.** This Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of West Virginia, without regard to conflict of law principles.

**9. Confidentiality and Nondisclosure.** "Confidential Information" shall mean the Contract and any information, action, process, design, idea, concept, experience, knowledge, supporting document (whether in print form or electronic), material, file, electronic file regardless of format, including but not limited to documents suffixed with: .pdf, .tiff, .jpg, .mp3, .wav, .doc, .exe, .wpd, .xls, .ppt, or any other suffix used in the creation of electronic data, recording, business record, business concern, unpublished corporate record, internal memo, e-mail, personnel file, personal information, computer system, website, software application, firewall, login, password, computer code regardless of language, and any and all documents and information, whether written, electronic or verbal. Purchaser shall protect any and all Confidential Information and other information it receives from Metalcraft as though it were its own. Confidential Information shall not be disclosed to third parties or used even after termination or completion of the Contract. Purchaser shall protect all forwarded Confidential Information, or any other information it receives from Metalcraft, and will return all copies of the Confidential Information to Metalcraft at the termination of the Contract, or will destroy all copies and provide an affidavit attesting to its destruction.

The previous paragraph does not apply to information that is: (1) generally known information, assuming the Purchaser is not responsible for its undesired dissemination, or knowledge which can be deduced from common knowledge; (2) learned by the Purchaser from a legal source other than Metalcraft; (3) unintentionally and without malice discovered by the Purchaser of its own efforts and which the Purchaser can demonstrate by written or other tangible evidence it rightfully possessed prior to the discovery by the Purchaser; or (4) learned by Purchaser from a third party legally and without breaching confidentiality. Metalcraft, in addition to Metalcraft's other rights and remedies, reserves the right to terminate the Contract or any applicable order or service request immediately, if, in the discretion of Metalcraft, Purchaser has failed to protect the Confidential Information.