

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

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

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 Seller 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 Seller's forms. Seller's terms and conditions, order confirmations, order acknowledgments, prior offers or any other document issued by Seller (unless included by reference in this Contract), shall not be binding on Metalcraft. The Parties acknowledge that no amendments may be made to the Contract, including the GPTC, unless agreed to between the Parties and confirmed to such effect in writing by the Parties. In the event of a conflict between the GPTC and any other documents or supplemental terms and conditions, the GPTC shall have precedence, unless Metalcraft expressly agrees in writing that such other documents or supplemental terms and conditions shall have precedence over the GPTC.

2. Warranties. Seller will assign to Metalcraft all transferable warranties made to Seller by the manufacturers or suppliers of goods. By furnishing goods and services under the Purchase Order, Seller warrants that the goods and services furnished will be free from defects in materials and workmanship and safe to use, consume or dispose of; will be merchantable and in conformity with Metalcraft's specifications, drawings and data, and Seller's descriptions, promises or samples; will be fit for the ordinary purposes for which such goods and services are used; will be of fair and average quality within the description in the Purchase Order; will be adequately contained, packaged and labeled; will conform to the terms of the Order; will be fit for Metalcraft's intended use, provided Seller has reason to know of such use; and that Seller will convey good title to the goods, free and clear of all liens, claims and encumbrances. These warranties shall survive acceptance of the goods and services and are in addition to any warranties of additional scope given to Metalcraft by Seller.

Seller guarantees that any goods or services, or any part thereof found defective or that do not meet any of these warranties within 90 days after such products or part thereof were accepted by Metalcraft, or within 90 days after such services or part thereof are performed by Seller, will be promptly repaired, replaced or re-performed without charge, so long as Metalcraft provides Seller written notice of such defect within ten (10) days of Metalcraft's discovery of such defect. The warranties specified in this section do not cover products and services provided on an unpaid evaluation or trial basis, or defects to the products and services resulting from normal wear and tear, or defects caused in whole or in part by Metalcraft's or its customers (or any third party's) misuse, neglect, improper installation or testing, unauthorized or improper attempts to repair, or by accident, fire, lightning or other hazard outside Seller's control.

3. Price. The price contained in the Purchase Order for the Goods supplied or to be supplied and the Services performed or to be performed pursuant to this Contract includes all charges for packing, crating, freight surcharges, expedited delivery or cartage. For greater certainty, the price set out in the Purchase Order includes all applicable taxes, fees, royalties, commissions and other accessory disbursements, if any, for the Goods or Services being provided, and Seller shall be responsible for any such taxes, fees, royalties, commissions and other accessory disbursements, including applicable sales taxes.

4. Inspection and Risk of Loss. All goods furnished under the Purchase Order will be subject to Metalcraft's final inspection and approval, with final inspection and approval being made upon delivery of the goods by Seller to the Destination. Metalcraft may reject goods not in accordance with the Purchase Order terms or Seller's warranties (expressed or implied). Seller shall be given a reasonable opportunity to correct defects identified by Metalcraft, and in the event such defects cannot be corrected by Seller, Metalcraft may return rejected goods to Seller at Seller's expense and Metalcraft shall have no further obligation for such goods. Payment for, physical possession by Metalcraft of, or acknowledgement of receipt of, any goods shall not be deemed acceptance, and in no event shall Metalcraft incur any liability for payment for rejected goods.

Metalcraft shall have a reasonable time (not more than thirty (30) calendar days from receipt) to submit claims of count, weight, quantity, loss or damage to delivered goods. Additionally, upon confirmation by Seller, Metalcraft may reject and submit claims therefor. Metalcraft will calculate damages on claims and may deduct the amount from Seller's invoice. If invoice was previously paid, Seller will promptly reimburse the amount of damages to Metalcraft.

Seller shall assume responsibility for and will pay any and all loss, cost, damage, or expense, including attorneys' fees and cost of replacement incurred by Metalcraft, attributed to Metalcraft's rejection of goods due to any material non-conformity of the goods, packaging, delivery, or any other material defect.

Metalcraft reserves the right to have a representative (either Metalcraft's personnel or contracted personnel) in Seller's facilities to inspect any material covered by the Purchase Order at any reasonable time from the start of manufacturing until final shipment of conforming goods.

Title to all goods furnished under the Purchase Order and the risk of loss or damage shall pass to Metalcraft at such time as the goods are delivered to the shipping destination and are inspected and accepted by Metalcraft. Notwithstanding such delivery, title shall revert to Seller, and Seller shall bear the risk of loss or damage to the goods furnished under the Purchase Order, in the event of and from the time Metalcraft gives notice of rejection or termination of the Order.

5. Indemnity and Limitation of Liability. To the fullest extent permitted by law, Seller 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 to Metalcraft pursuant to this Contract. The foregoing indemnity shall be in addition to any other indemnity obligations of Seller set forth in this Contract. Any insurance recoveries or policies shall not limit any obligation of Seller hereunder (including without limitation Workers Compensation). Seller expressly waives any provision of any worker's compensation laws under which Seller 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 Seller 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.

7. Independent Contractor and Non-Exclusivity. Seller is an independent contractor, and Seller's employees and any approved subcontractors shall at all times be under Seller's supervision, direction, and control. Seller shall have full power and authority to select the means, manner, and methods of performing its obligations hereunder without supervision, direction, or control by Metalcraft. Seller, and Seller's supervisors, may receive instructions from Metalcraft and Metalcraft's representative as to the end results to be accomplished, and Seller shall be responsible for directing Seller'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 Metalcraft or Metalcraft's representative shall not affect Seller's status as an independent contractor, and shall not relieve Seller of Seller's obligations under this Contract. Seller's employees are not entitled to workers' compensation benefits from Metalcraft and the Seller 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. Seller 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 Seller in respect of Seller's employees. This is a non-exclusive relationship and Seller 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. Seller 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. Seller 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 Seller is not responsible for its undesired dissemination, or knowledge which can be deduced from common knowledge; (2) learned by the Seller from a legal source other than Metalcraft; (3) unintentionally and without malice discovered by the Seller of its own efforts and which the Seller can demonstrate by written or other tangible evidence it rightfully possessed prior to the discovery by the Seller; or (4) learned by Seller 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, Seller has failed to protect the Confidential Information.