

TECHMETALS INC.
345 SPRINGFIELD STREET
DAYTON OH 45403

PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms in this Purchase Order have the following meanings:

"Purchase Order" is this agreement between TMI and Vendor pertaining to the Goods including all of the terms and conditions set forth on both sides of this Purchase Order regardless of whether it is signed by the Vendor.

"TMI" is Techmetals, Inc. and is the buyer under this Purchase Order.

"Goods" are any and all goods or services passing under or provided pursuant to this Purchase Order, or described on the face of this Purchase Order.

"Order Documentation" is, collectively, all of the written evidence of a contract between TMI and Vendor for the sale of Goods, including without limitation, any writings so constructed by virtue of Section 2-207 of the UCC.

"Person" is any natural person, firm, limited liability company, partnership, business organization or corporation.

"UCC" is the Uniform Commercial Code as adopted and in effect in the State of Ohio.

"Vendor" is the Person named after the word "Vendor" on the face of this Purchase Order, and from whom TMI will purchase or is purchasing Goods.

2. **ACCEPTANCE.** Vendor may accept this Purchase Order by signing, dating and returning to TMI

the original copy of this Purchase Order or as provided in paragraph 24 below. Vendor and TMI agree that (a) this Purchase Order contains the entire agreement between the parties with respect to the purchase and sale of Goods and/or services that might relate thereto, and (b) the documents described in clause (a) of the paragraph operate as the final, complete and exclusive terms of the agreement between Vendor and TMI with respect to the purchase and sales of Goods and/or services that might relate thereto and, (b) the documents described in clause (a) of this paragraph operate as the final, complete and exclusive terms of the agreement between the Vendor and TMI with respect to the purchase and sale of Goods and/or such services. NO ORDER DOCUMENTATION-OTHER THAN OR IN ADDITION TO THIS PURCHASE ORDER-SHALL BE EFFECTIVE BETWEEN TMI AND VENDOR UNLESS MADE BY A WRITING SIGNED BY VENDOR AND AN AUTHORIZED AGENT OF TMI WHICH REFERS SPECIFICALLY TO AND BY ITS OWN TERMS AMENDS OR SUPERSEDES THE PROVISIONS OF THIS PURCHASE ORDER. THE TERMS OF THIS PURCHASE ORDER SHALL CONTROL OVER THE TERMS OF ANY OTHER ORDER DOCUMENTATION BETWEEN TMI AND VENDOR WITH RESPECT TO TMI'S PURCHASE OF GOODS AND/OR SERVICES RELATING THERETO UNLESS THIS PURCHASE ORDER IS SPECIFICALLY AMENDED OR SUPERSEDED BY A WRITING SIGNED BY AN AUTHORIZED AGENT OF TMI AND BY VENDOR WHICH BY ITS OWN TERMS PURPORTS TO AMEND OR SUPERSEDE THE PROVISION OF THIS PURCHASE ORDER. Specifically, TMI objects to any acknowledgment of this Purchase Order or of any particular sale of any particular good and/or services, or any provision in any other Order Documentation (including, without limitation, any master agreement, master sales agreement, or other similar or different document submitted to TMI by Vendor which purports to apply to sale of Goods by Vendor to TMI, even if that document purports to govern or supersede this Purchase Order) which states terms additional to or different from this Purchase Order (unless those additional or different terms are specifically accepted by an authorized agent of TMI in a writing signed by such authorized agent which refers specifically to, and by its own terms purports to amend or supersede, the provisions of this Purchase Order). Those additional or different terms shall not be a part of any agreement between TMI and Vendor with respect to goods and/or such services.

3. **TERMS OF PAYMENT.** Terms of payment for the Goods are specified on the face of this

Purchase Order. Any payment for Goods identified or tendered or attempted to be provided by Vendor hereunder shall not constitute an acceptance of those Goods by TMI. All Goods received shall be subject to inspection and rejection by TMI or an agent on behalf of TMI (if any), or by a purchaser to whom TMI has sold goods. Drafts on TMI will not be honored nor C.O.D. shipments accepted unless arranged by prior written agreement. Except for price reductions pursuant to paragraph 5 of this Purchase Order, prices established in this Purchase Order may not be altered without the prior written consent of TMI provided in a writing which by its term's purports and/or supersedes this Purchase Order.

4. **NO EXTRAS.** Unless authorized by this Purchase Order (a) Vendor may not charge extra for packaging, reels, boxes, crating, cartage or storage, energy or any other surcharges, and (b) the price for the Goods shall not exceed the price stated in this Purchase Order. Unless TMI has consented prior to Vendor's shipment of particular Goods in a writing purporting to amend or supersede this Purchase Order, there shall be no restocking or related charge for any Goods returned to Vendor by TMI for any reason within thirty (30) days of TMI's or its designee's receipt of those Goods.

5. **COST REDUCTION.** TMI shall receive the benefit of any general or specific price reduction by Vendor on the Goods. Vendor agrees to invoice TMI at the Good's lowest prevailing market price, if such price is not stated on this Purchase Order.

6. **FREIGHT.** Unless otherwise expressly stated on the face of this Purchase Order, Vendor shall ship all Goods F.O.B. destinations. Vendor shall pay all freight or express charges from and return to place of origin on properly rejected, nonconforming Goods.

7. **SHIPPING AND RISK OF LOSS.** Vendor shall ship all Goods as specified by TMI to the Person at the address(es) shown after the words "Ship To" stated on the face of this Purchase Order. Vendor shall have complete responsibility for all expense and risk of loss while Goods are in its hands or the hands of a common carrier arranged for by Vendor. TMI shall have no liability or responsibility for any injury, loss or damage to any Goods or to any person arising out of the transportation, delivery, unloading or any other aspect of shipping any Goods. TMI may file claims against (and Vendor is not required to file claims against) any carrier with which TMI contracts in the event of any loss in connection with the transportation of any Goods.

8. DELIVERY AND FORCE MAJEURE.

(a) Vendor shall deliver all Goods on the date indicated pursuant to this Purchase Order. Time is of the essence. TMI may cancel this Purchase Order without liability to Vendor or any other Person, if Vendor fails to deliver any Goods as required by this Purchase Order and may charge Vendor with any losses incurred as a result thereof. Vendor acknowledges and agrees that the failure to deliver any installment or shipment of Goods as required in this Order, and/or any non-conformity of all or any part of any installment or shipment of Goods, will substantially impair the value of the whole Purchase Order and constitute a breach of the whole Purchase Order. No acceptance by TMI of all or any part of any non-conforming installment or shipment of Goods shall waive such non-conformity whether or not TMI timely and reasonably notifies Vendor of cancellation. If fires, accidents, epidemics, embargoes or directions of any governmental authority with jurisdiction, or other causes beyond the control of either Vendor or TMI affect their respective abilities to order shipment of, to ship or to accept any Goods, then the other party may delay or suspend shipment or acceptance (as the case may be) of such affected Goods without liability to the other party, but if it is Vendor who suspects or delays shipment, it shall allocate its available supply of Goods of the type described on the face of this Purchase Order among its customers as TMI unilaterally deems to be fair and equitable.

9. CANCELLATION. TMI may without liability cancel this Purchase Order upon written notice to Vendor, if Vendor (a) admits in writing its inability to pay, or fails to pay, its debts generally as they become due, (b) becomes insolvent, (c) makes a general assignment for the benefit of its creditors, (d) files a petition or admits the material allegations of any petition filed against it in bankruptcy under applicable federal bankruptcy laws or other laws for the relief of debtors, (e) fails to comply with any material terms or condition of this Purchase Order, or (f) as otherwise provided in this Purchase Order.

10. CONFIDENTIAL INFORMATION. Without TMI's prior written consent, Vendor shall not disclose to any Person any information whatsoever pertaining to this Purchase Order. Upon cancellation or fulfillment of the terms of this Purchase Order, Vendor shall return upon TMI's request all drawings, blueprints, descriptions, or other papers containing such information. Vendor agrees that TMI may enforce Vendor's compliance with this provision by seeking injunctive or other equitable relief in addition to damages. Any and all information concerning pricing, quantity or any other term of this Purchase Order is considered proprietary of TMI. Vendor shall not discuss, convey or transmit any such information in any form to any non-TMI personnel. Vendor may not assign, subcontract, delegate or transfer this Purchase Order nor any rights or duties hereunder without TMI's prior written consent.

11. RESTRICTIONS ON EXPORTS: ITAR, Nuclear, DOD, and all other Restricted Information

Vendor shall not disclose any Proprietary Information or other information furnished hereunder in any manner contrary to the laws and regulations of the United States of America. Technical data as defined in the International Trafficking in Arms Regulations (ITAR) 22CFR120.0. Export of this material is restricted by the Arms Export Central Act (22 USC 2751 et seq). These regulations contain significant fines for violations. Both parties agree that it will not transfer any export-controlled item, data, print process, or service, to include transfer to foreign persons employed by or associated with, or under contract to either Vendor or lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Vendor shall indemnify and hold harmless TMI for any fines or other damages resulting from violations of any such laws and regulations by Vendor.

12. COMPLIANCE WITH LAW. Vendor's performance of this Purchase Order shall comply with all applicable federal and state laws, regulations and orders. Vendor shall furnish TMI with a sworn certificate representing such compliance in form satisfactory to TMI if so requested.

13. WARRANTIES. VENDOR WARRANTS THAT ALL GOODS, INCLUDING WITHOUT LIMITATION, ANY SERVICES OR INSTALLATION PROVIDED BY VENDOR TO TMI: (A) ARE FREE OF DEFECTS IN TITLE, LABOR, MATERIAL, FABRICATION OR PROCESSING, (B) CONFORM TO APPLICABLE SPECIFICATIONS, DRAWINGS, SAMPLES OR IN OTHER DESCRIPTIONS PROVIDED TO OR BY THE VENDOR, (C) ARE FIT FOR THEIR INTENDED PURPOSES, (D) ARE MERCHANTABLE, (E) ARE FREE OF DESIGN DEFECTS AND (F) ARE FIT FOR ANY PARTICULAR PURPOSE WHICH TMI MADE KNOWN TO VENDOR BY ANY METHOD OR MEDIUM. THESE WARRANTIES SHALL RUN TO TMI, ITS SUCCESSORS, ASSIGNS AND CUSTOMERS, AND TO BUYERS, USERS AND CONSUMERS OF THE GOODS. IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY THE UCC FOR BREACH OF WARRANTY, VENDOR AT ITS OWN EXPENSE SHALL REPLACE, INSTALL OR CORRECT PROMPTLY ANY GOODS NOT CONFORMING TO THESE WARRANTIES, AND TMI MAY CHARGE THE VENDOR ALL COSTS INCURRED IN CORRECTING OR REPLACING GOODS NOT CORRECTED OR REPLACED BY THE VENDOR. NEITHER THESE WARRANTIES, ANY IMPLIED WARRANTIES NOR ANY REMEDY FOR ANY BREACH OF WARRANTY MAY BE DISCLAIMED OR LIMITED BY VENDOR IN ANYWAY.

14. LIABILITY. Insofar as labor or the performance of work (as distinguished from the sale of Goods) is covered by this Purchase Order, Vendor shall perform such labor or work as an independent contractor. Vendor, at its expense, shall indemnify and save TMI, its agents, employees and customers, harmless from and against any and all liability to any Persons or things or property, in connection with work performed hereunder or incidental thereto.

15. INSURANCE. Vendor shall maintain product liability, comprehensive general liability, auto liability, worker's compensation, and such other insurance (the "Insurance") as will reasonably protect Vendor and TMI (in the sole judgment of TMI) against any claims which may arise in connection with the production, sales, use, consumption and/or delivery of Goods, and all other transactions or operations contemplated by this Purchase Order, whether such transactions are performed by Vendor or other Person engaged by Vendor or any employees or agents of such other Persons. Vendor shall provide TMI with a certificate of insurance evidencing the existence of the required insurance and naming TMI as an additional insured by a Vendor's Endorsement. Vendor shall cause the insurer to provide TMI with thirty (30) days advance written notice of changes in or cancellation of any insurance. Vendor will provide, upon TMI's request, a copy of any accident report filed with Vendor's Insurance carriers pertaining to accidents occurring as a result of any Goods and/or anything furnished under or required by this Purchase Order. The minimum insurance coverage requirements are:

- (a) Product Liability & Comprehensive General Liability – limits of at least \$1 Million per occurrence (without sub limits) and including, without limitation, the Vendor's indemnification obligations under paragraph 19 of this Purchase Order;
- (b) Automobile Liability – as required in each state in which work is to be performed, but in no case less than \$500,000 combined single limit, including, without limitation, all autos, including hired and non-owned; and
- (c) Worker's Compensation – as required in each state in which work is to be performed, and including, without limitations, employer's liability protection of not less than \$500,000.

16. INDEMNITY AGREEMENT. Vendor assumes all responsibility and liability for, and agrees to indemnify and hold TMI and its employees and agents harmless from and against: (a) any and all damage, loss or injury of any kind or nature whatsoever (including personal injury and/or death resulting there from), to all Persons, whether employees of Vendor or otherwise, and to all property (including loss of use thereof) and (b) all damage, injury, expense, or loss that TMI or its employees and/or agents may sustain as a result of any

claim pertaining thereto caused by, resulting from, arising out of or occurring in connection with, Vendor's duties and/or obligations under this Purchase Order, and/or any sale, resale, delivery, use and/or consumption of any Goods, except only for such damage or injury caused by the sole negligence of TMI or its employees. Vendor shall indemnify and hold TMI harmless from and against any claims, liability, damage, costs, expenses or losses (including, without limitation, reasonable attorneys' fees and expenses) either: (1) incurred by TMI as a result of Vendor's breach of any term, condition or provision of this Purchase Order, or (2) arising out of or in connection with the installation, processing, sale, delivery, use and/or consumption by any Person of any of the Goods, in whole or in part, unless such claim of injuries is due solely and exclusively to the negligence of TMI or its employees. Further, Vendor agrees to assume, on behalf of TMI and its employees, the defense of any action at law or equity which may be brought against TMI upon indemnification under this paragraph 15 or, to pay on behalf of TMI or upon TMI's request the amount of any judgment entered against TMI in any such action. This obligation is continuing and shall not be diminished by any approval or acceptance of, or payment for work or Goods by TMI. Vendor shall impose on its subcontractors' identical insurance and indemnification obligations.

17. NON-CONFORMING GOODS. TMI and Vendor agree that the Products ordered pursuant to the Order are unique goods. If Vendor fails to deliver or delivers defective or non-conforming Products (this includes if Vendor should at any time discover that they have supplied TMI with non-conforming product even after delivery, Vendor must notify TMI immediately), TMI may: (1.) Accept all or part of the defective or non-conforming Products at an equitable price reduction; (2.) Reject all or any part of a delivery of defective or non-conforming Products, and demand delivery of conforming Products. All rejected Products shall be shipped to Vendor at Vendor's cost; (3.) Make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Product to comply in all respects with Order requirements and charge the cost incurred to Seller; or (4.) Rescind this Order.

18. PRODUCT DESIGN. Vendor or your supplier creates and owns all designs, documents, and intellectual property related to the products purchased from you. Vendor has final approval and acceptance of products sold to TMI, although TMI may provide design modifications, qualifications, engineering and or manufacturing engineering changes as suggestions. Vendor or your supplier is the designer of the product. Vendor refrains sale of responsible to quality and product liability associated with Vendors products or services.

19. CHANGES. Vendor must notify TMI immediately at any time before or after deliver of product (or services) of any changes in product or process definition.

20. RIGHT OF ENTRY: TMI reserves the right to enter Vendor's facilities and that of their subtier suppliers to review parts, processes, tooling, equipment and related paperwork with adequate notice to Vendor for review of contracted work. This right will be extended also to regulatory authorities and TMI's customers, based upon requirements by said parties to review pertinent information.

21. SAFETY PROTECTIVE MEASURES AND PRECAUTIONS. Vendor shall take such safety protection measures and precautions as are required by law, ordinances, industrial codes, applicable municipal, state and federal safety regulations, or otherwise, and shall cooperate fully with and comply with all reasonable recommendations of TMI and any insurance carrier to ensure that all work transactions contemplated under this Purchase Order is completed with the greatest degree of safety.

22. JURISDICTION AND VENUE. The provisions hereof shall be governed by and construed in accordance with the laws of the state of Ohio, without regard to conflict of laws principles. The parties hereby consent to the exclusive jurisdiction and venue of the courts located in Montgomery County, Ohio. In the event any provision hereof shall be deemed to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the provisions shall continue in full force and effect. The headings contained in these Terms and Conditions are asserted for convenience only and in no way define, limit, or extend the scope or intent of any provision of these Terms and Conditions. Failure of Techmetals to insist on performance of any of these Terms and Conditions or requirements of the underlying Purchase Order, shall not be construed of a waiver of such Terms and Conditions or requirements and shall not affect the right of TMI thereafter to enforce each and every term, condition or requirement hereof.

23. ACCEPTANCE OF TERMS AND CONDITIONS. Vendor's agreement to the terms and conditions of this Purchase Order may be evidenced by Vendor's shipment of any Goods in response to this Purchase Order and/or acceptance of any payment by TMI for any Goods under or subject to this Purchase Order, in addition to and without regard to any signature other form of acceptance.

VENDOR:

TECHMETALS INC., 345 SPRINGFIELD STREET, DAYTON, OH 45403

BY & TITLE: _____

BY & TITLE: _____

DATE: _____

DATE: _____