

**GENERAL TERMS AND CONDITIONS OF SALE • Available at [www.2020Metal.com](http://www.2020Metal.com)**

Unless otherwise agreed upon in writing, the following General Terms and Conditions of Sale (“Terms and Conditions”) are applicable to the sale of all products (“Products”) by **20-20 Solutions LLC (dba 20/20 Metals)** or any of its divisions (the “Seller”), to any purchaser thereof (the “Buyer”). These Terms and Conditions are subject to any additional terms contained in any agreement, statement of work, amendment, addendum or other writing signed by Seller, and each such writing is deemed to incorporate these Terms and Conditions as if fully set forth therein. All orders are subject to approval by Seller. Any amendment, waiver or other alteration of the Terms and Conditions shall be effective only if made in a writing signed by a designated officer or director of Seller, and any attempt by Buyer to alter such terms and conditions with printed purchase orders, acknowledgments or similar documentation shall be void and of no force or effect. Except as otherwise agreed to in writing by the Seller, any conflicting or additional terms and conditions of sale are expressly rejected by the Seller. Moreover, failure of Seller to reject orally or in writing any conflicting or contradictory terms contained in any document forwarded by Buyer to Seller after the Effective Date of this Agreement shall not be deemed to be an assent to such terms by the Seller.

**1. Entire Agreement:** These Terms and Conditions, along with any agreement, statement of work, amendment, order, addendum or other writing signed by Seller, constitute a complete and exclusive statement of the agreement (“Agreement”) between Seller and Buyer with respect to, and shall exclusively govern, the sale of all Products by Seller to Buyer in connection with or as contemplated by the Seller’s written or oral proposals, quotations and sales to Buyer (any such item, written or oral, being a “Sale Order”) and/or Buyer’s written or oral purchase orders or similar form to Seller (any such item, written or oral, being a “Purchase Order”), and shall continue in effect until terminated in writing by Seller. In the event of a conflict between the terms and conditions contained in a Sale Order, Purchase Order or final order acknowledgement and those contained in these Terms and Conditions, the terms contained in a Sale Order or final order acknowledgement shall control. Notwithstanding any different or additional terms or conditions contained in Buyer’s Purchase Order or other communication to Seller related to the Products, Seller accepts Buyer’s Purchase Order on the condition that Buyer expressly accepts and assents to these Terms and Conditions. Buyer’s orders shall not be binding upon Seller unless and until such orders are accepted by Seller in writing. In the absence of Buyer’s acceptance hereof, Seller’s commencement of performance or Seller’s acknowledgement of Buyer’s Purchase Order shall not be construed as Seller’s acceptance of any of Buyer’s terms. Any confirmation by Buyer that states different or additional terms shall operate as an acceptance of these Terms and Conditions, but Seller hereby objects to and rejects such different or additional terms and any such different or additional terms shall be deemed to be material alterations and notice of objection to them is hereby given. In addition, Buyer’s acceptance of any Products shall be deemed to be acceptance of all these Terms and Conditions. Seller hereby objects to any additional, contradictory, or different terms contained in any initial or subsequent Purchase Order from Buyer pertaining to the Products, including, but not limited to, any indemnification or compliance warranty provisions. Seller’s failure to object specifically to provisions contained in any Purchase Order shall not be deemed a waiver of the provisions contained in these Terms and Conditions.

**2. Acceptance of Terms and Conditions:** Buyer’s assent to the Terms and Conditions may be expressed

either by written acceptance or by failure to object in writing to the Terms and Conditions within a commercially reasonable time. Any such written objections should accompany, but be separate from, the Purchase Order submitted to Seller.

**3. Price & Taxes:** Unless otherwise specified, the price of Products shipped hereunder shall be F.O.B. Seller warehouse location and shall be an amount equal to Seller's price on the date of shipment plus applicable federal, state and local transactional costs and expenses, including, but not limited to, freight, taxes, duties, tariffs or other additional costs imposed by reason of this sale. Choice of carrier, shipping method and route shall be at the election of Seller, and same shall be common carrier prepaid including any special packaging shipping or handling charges. A surcharge may apply based on the price of Products and/or related materials, including but not limited to metal, in effect at the time of shipment. Pricing shall exclude the following: any federal, state and local sales, tariff, duty, use or excise taxes levied upon, or measured by the sale, the sales price or use of the Products. Tax exemption certificates or other evidence of exemption furnished by Buyer, will be accepted by Seller in lieu of applicable taxes.

**4. Price Changes:** If a price is specified, it may be changed by Seller by written notice sent to Buyer not less than fourteen (14) days prior to the effective date of change. Unless Buyer gives Seller written notice of objection to such change at least five (5) days prior to the effective date of the change, Buyer shall be deemed to have accepted such change. If Buyer gives such notice of objection and Buyer and Seller fail to agree on such change prior to the effective date thereof, the Agreement and the obligations of Seller and Buyer thereunder shall terminate with respect to the unshipped portion of the Products covered thereby. In the event of any governmental action or request which prevents Seller from making a price increase or continuing any price already in effect, Seller may terminate the Agreement by giving Buyer thirty (30) days prior written notice of termination. Changes to the production of Products or related materials that result from Buyer change requests, or that result from insufficient information from Buyer, may result in additional charges.

**5. Drawback:** The price of Products sold for export does not include import duty, if any, and Seller reserves the right to claim duty drawback. Buyer agrees to assist in Seller's efforts to obtain such drawback and to furnish Seller with all necessary documents and, if Products are transferred for export, to require exporter to furnish proof of such exportation.

**6. Payment:** For purpose of payment, each shipment and invoice therefore shall be a separate sale. Unless otherwise agreed, full payment is due in advance of shipment. ("Due Date"). All payments shall be made in U.S. dollars, unless otherwise agreed. Products scheduled to be delivered by Seller, must be taken by Buyer as scheduled and all Products are subject to "must take, must pay" full payment terms. Buyer's outstanding unpaid balances, if any, shall be subject to a finance charge of at the rate of 10% until paid in full (or such lower rate as may be the maximum permitted by law). Buyer shall also pay all of Seller's cost of collection (including reasonable attorneys' fees). Payments received may be applied by Seller, in its sole discretion, against any obligation owed by Buyer to Seller. Seller may refuse or delay shipments if

Buyer fails to pay on the Due Date.

**7. Purchase Money Security Interest:** To secure the complete and timely payment and performance of all Buyer's obligations under this Agreement, including the complete and timely payment of the full purchase price of Products sold under this Agreement, Seller hereby reserves, and Buyer hereby grants to the Seller a purchase money security interest in all Products and proceeds of the Products whether constituting equipment, inventory, fixtures, general intangibles, and/or any other form of personal property, including all accessions thereto and replacements thereof, all products and proceeds thereof, including without limitation, insurance proceeds. A description of the Products covered by this Agreement may be filed with appropriate authorities at any time as a financing statement to perfect Seller's security interest, provided further that, Buyer hereby authorizes Seller to prepare, execute, issue, and file such UCC-1 financing statements, continuation statements, amendments, and any instruments or third-party notices that Seller may reasonably require to perfect Seller's security interest. Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code, which remedies shall be cumulative and not exclusive.

**8. Setoff:** Seller shall have the right at any time and without notice, to set off any liability or obligation of Buyer to Seller against any liability or obligation of Seller to Buyer. Under no circumstances will Buyer have a right of set off against Seller without prior written notice to Seller and without five (5) business days in which Seller may cure or relieve itself of its liability to Buyer.

**9. Termination:** Time is of the essence and, in addition to any other rights, Seller shall further have the right, at its option, to terminate this Agreement without notice to Buyer if (i) payment is not made on or before the Due Date, (ii) Buyer becomes insolvent, or (iii) Buyer's ability to pay debt in the normal course of business otherwise becomes impaired.

**10. Shipments; Shipment Quantity Variances:** Quantities of Products scheduled to be delivered by Seller, must be taken by Buyer as scheduled, and if for any reason, Products or a portion of the Products, are not taken by BUYER as agreed, the Products remain subject to "must take, must pay" full payment terms. With respect to each shipment of Products, Buyer shall give Seller at least one (1) business day's advance notice, which notice shall include date of delivery and complete shipping instructions. Seller shall not be required to deliver in any month more than the monthly quantity specified in the Agreement, or if no monthly quantity is specified, more than the pro-rata amount of the maximum quantity specified, nor shall Seller be bound to tender delivery of any quantities for which Buyer has not given at least one (1) business day's advance notice. If Buyer fails to accept delivery of the stipulated or minimum pro-rata quantity in any month, or if it fails to give notice, Seller may, at its option, in addition to its other rights and remedies, cancel such deliveries or parts thereof. All Products shipped under this Agreement shall be subject to Seller's usual tolerances (+/- 10%) and applicable industry variations as to shipped quantity. Unless Seller receives written notification of variances in quantity within ten (10) days of the a (invoice, release, delivery) date, the invoiced quantity shall be conclusive.

**11. Delivery; Risk of Loss:** Unless otherwise specified, Products are shipped F.O.B. Seller warehouse location. Title to and risk of loss shall pass to Buyer upon release/delivery of Products to Buyer. Choice of carrier and shipping method shall be at the election of Seller, and same shall be prepaid and added to invoice. Any necessary special packaging, special shipping or handling charges will also be prepaid and added to invoice. Buyer may request changes to this process in writing and such changes shall be on a Sale Order Acknowledgment copy Seller sends to Buyer, which must be confirmed by Buyer. Unless the parties agree otherwise in writing, Seller will tender the Products in a single delivery; however, Seller shall have the right to deliver Products in partial shipments, if in its discretion partial shipments better achieves Buyer delivery requirements. Delivery dates are approximate and Seller shall not be liable for damages or costs which arise in connection with the delivery of Products after the date stated on any Sale Order, Purchase Order or other document. Delivery dates are further dependent upon the prompt receipt by Seller of all information required by Seller to proceed with work immediately and without interruption. Buyer shall be responsible for and pay all freight, handling, delivery, special packing and insurance charges for shipments of Products.

**12. Non-delivery:** (a) The quantity of any installment of Products as recorded by Seller on dispatch from Seller's warehouse location is conclusive evidence of the quantity received by Buyer upon delivery/release, unless Buyer can provide conclusive evidence proving the contrary; and (b) the Seller shall not be liable for non-delivery of Products unless Buyer provides written notice to Seller of such non-delivery or Buyer's failure to pick-up released Products within seven (5) days of the date when the Products would in the ordinary course of events have been released to the Buyer. In all cases, Products ordered by Buyer at a fixed priced will be on a "must take, must pay" basis and Buyer will continue to purchase Products as ordered for as long as specified in a Purchase Order for the duration of such Purchase Order or other related agreements. In addition, Buyer will be responsible for any quantity of Products subject to Purchase orders accepted by Seller if Buyer exercises any available option to purchase Products elsewhere as a direct result of a reduction in credit or payment terms.

**13. Inspection; Acceptance of Products:** Upon receipt of Products, Buyer agrees to immediately inspect and/or test the Products for compliance with the Product specifications provided to Seller. Such inspection or testing shall be completed promptly and in no event later than fourteen (14) days after delivery or release of the Products. The Products shall be deemed accepted and without defects by Buyer unless Buyer provides Seller, within fourteen (14) days of the end of the initial inspection period, a written notice specifying nonconformities or discrepancies in the quality or quantity of Products. If upon receipt and after timely inspection of Products, the Buyer discovers nonconformance, defects or potential defects in Products, on a limited basis Buyer is permitted to process or otherwise test Products (in no event, more than 10% of the Products delivered) upon advanced written notice to Seller. Buyer shall permit Seller to inspect any damaged or otherwise nonconforming Products. If Products meet specifications provided by Buyer to Seller in any documentation comprising of an Agreement between the parties, no rejection of delivery of Products is permitted under any circumstances; Products are subject to "must take, must pay" full payment terms.

**14. Cancellation:** Once an order is accepted by Seller, it may not be cancelled or changed by Buyer, nor shall Buyer be entitled to delay shipment or performance, except with the prior written consent and upon terms and conditions approved by Seller in writing. If Seller consents to the cancellation of an order for Products pursuant to the foregoing sentence, Buyer shall pay to Seller within thirty (30) days of such cancellation, all costs and expenses incurred by Seller in connection with Buyer's order (including without limitation, any restocking fees and reasonable cancellation charges) of an amount not less than fifteen percent (15%) of the canceled order. Any extra cost incurred by Seller to meet Buyer's request for rescheduling/cancellation will be Buyer's responsibility.

**15. Force Majeure:** Seller shall not be liable for delays in delivery or for failure to perform, and performance shall be excused, if such failure is due to causes beyond the reasonable control of Seller or its subcontractors, including, but not be limited to, acts of God, acts or omissions of Buyer, acts of government, including but not limited to civil or military authorities, fire, strikes, power surges or outages, embargos, sanctions, epidemics, quarantine restrictions, flood, natural disasters, riot, war, delays in transaction or inability to obtain necessary labor, materials or supplies or any cause which renders Seller's performance commercially impractical under Section 2-615(a) of the Uniform Commercial Code, as amended.

**16. Limited Warranty; Limitation of Liability and Exclusive Remedy:** Seller warrants that the Products will conform to Seller's specifications, as in effect at the time of shipment for a period of thirty (30) days from the date of shipment. Seller's sole obligation under this warranty shall be at its option to repair or replace any Products or part thereof which proves to be other than as warranted herein; provided that advance written notice of the alleged nonconformance is provided by Buyer to Seller within ten (10) days after discovery thereof and prior to thirty (30) days from the date of shipment. This warranty does not extend to any Products or parts thereof which have been processed, installed, operated, maintained, repaired or altered improperly or which have been the subject of misuse, accident or neglect; nor does the warranty apply to normal wear and tear resulting from use of the Products. Seller also warrants that it will convey good title to the Products and that such Products will be delivered free of any security interest or other lien or encumbrance. **EXCEPT AS SET FORTH IN THIS SECTION, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS. SELLER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY OF THE PRODUCTS OR THE FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE OR USE OF BUYER AS WELL AS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARISING BY ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. SELLER FURTHER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE CONFORMANCE OF THE PRODUCTS WITH ANY REQUIREMENTS OR SPECIFICATIONS PROVIDED BY BUYER, UNLESS THE CONFORMANCE WITH SUCH REQUIREMENTS OR SPECIFICATIONS HAS BEEN SPECIFICALLY AGREED TO BY SELLER IN WRITING.** Any cause of action for breach of the foregoing warranties shall be brought within sixty (60) days from the earlier of: (a) the date the alleged breach was discovered; (b) the date the alleged breach should have been discovered; or (c) thirty (30) days from the date of delivery. **BUYER'S SOLE REMEDY IN THE EVENT OF A**

BREACH OF THE FOREGOING WARRANTIES IS THE REPAIR OR REPLACEMENT OF THE AFFECTED PRODUCTS BY SELLER UPON RETURN OF THE PRODUCTS, TRANSPORTATION CHARGES PREPAID TO SELLER. SELLER MAY ASSESS A PRO-RATA CHARGE TO BUYER FOR USE OR MODIFICATION OF PRODUCTS PRIOR TO THEIR RETURN. In no event shall Seller's liability arising in connection with or under this Agreement (whether under the theories of breach of contract, tort liability, misrepresentation, fraud, warranty, negligence, strict liability or any other theory of law) exceed the purchase price of the Products.

**17. Disclaimer of Consequential Damages:** IN NO EVENT SHALL SELLER BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, BREACH OF ANY OBLIGATION OR WARRANTY IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HEREWITH. "CONSEQUENTIAL DAMAGES" FOR PURPOSES HEREOF SHALL INCLUDE WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, DAMAGES, EXPENSES, OR LOSSES SUSTAINED AS THE RESULT OF INJURY TO ANY PERSON, OR LOSS OF OR DAMAGE TO ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED THROUGH THE USE OF THE PRODUCTS), DAMAGES OR LOSSES RESULTING FROM CLAIMS OF OTHER PERSONS AGAINST BUYER, OR DAMAGES OR LOSSES SUSTAINED AS THE RESULT OF WORK STOPPAGE OR CAUSED BY OR RESULTING FROM THE USE OF DEFECTIVE OR NONCONFORMING PRODUCTS OR FROM DELAY IN THE DELIVERY OF PRODUCTS.

**18. Buyer's Indemnity:** Buyer shall indemnify Seller, Seller's officers, directors, employees and agents against all liability, cost or expense that may be sustained by Seller on account of, or arising from, the Agreement or the sale or transfer of the Products. Buyer shall further indemnify, defend and hold Seller and its directors, officers, employees, agents, suppliers, parents, affiliates, subsidiaries, successors and assigns harmless from and against any and all fines, penalties, suits, actions, claims, liabilities, judgments, losses, damages, costs and expenses (including attorneys' fees) resulting or arising from (a) Buyer's negligence or willful misconduct, (b) Buyer's use, sale, handling, storage, or disposal of the Products, or any product or waste derived therefrom, (c) Buyer's discharge or release of the Products, or any product or waste derived therefrom into water, onto land or into the air, (d) Buyer's exposing any person (including Buyer's employees) to the Products, or any product or waste derived therefrom, including failure to warn of such exposure, (e) the transportation of the Products to Buyer after tender of the Products by Seller to the carrier at the shipping point, or (f) any liability or cost arising out of any claim for the infringement of any patent or other rights which are or may be asserted against Seller because of the design, nature, structure or use of any goods manufactured by Buyer or modified at the request of Buyer. The foregoing shall apply, without limitation, to injury to person (including death) or damage or harm to property or the environment. This indemnity shall not apply to any fine, penalty, suit, action, claim, liability, judgment, cost or expense caused solely by Seller's negligence or willful misconduct, but shall apply where there is concurrent negligence or willful misconduct on the part of Seller and Buyer in proportion to Buyer's negligence or willful misconduct.

**19. Liquidated Damages:** With regard to this Agreement, the Buyer acknowledges that Seller has taken active and affirmative steps to meet its obligations under this Agreement that have significant value, and that keeping certain information confidential provides Seller a competitive advantage over its competitors. Buyer agrees that there will be a material adverse impact on Seller's business and competitive advantage, and that the damages would be difficult to ascertain with precision, if and to the extent that Buyer fails to comply with, or fails to cause any of its employees, agents or suppliers to comply with, the terms of this Agreement as to information related to current, past or future volume, pre-orders of Products, or the purchase price of Products and/or related services that Seller provided or may provide to Buyer, and any other information that Buyer knows or should know would tend to have a significant effect on Seller. Therefore, in the event Buyer breaches its obligations under this Agreement as to any of the types of information set forth herein, Buyer agrees to immediately pay, upon Seller's written demand, the greater of the sum of one million dollars (\$1,000,000 USD) or twenty-five percent (25%) of the amounts paid or payable to Seller for the period of 12 months preceding the breach as liquidated damages in each instance. The parties agree that the foregoing amount is a reasonable estimate of the damages that Seller would incur as a result of such breach. The parties also agree that each such breach would result in irreparable harm to Seller and Seller may seek injunctive relief in law and equity therefor. If and to the extent that Seller can establish that its damages exceed the foregoing liquidated damages, Seller may recover such additional amounts as damages for each such breach.

**20. Compliance with Laws:** Any provision required to be incorporated into a contract of this type by any applicable Federal, State, or local law, ordinance or governmental rule, regulation, order or other governmental requirements shall be deemed to be incorporated herein. Buyer represents and warrants that Products will not be used, resold, transferred, exported or reused in any way by Buyer in violation of any laws, regulations of any Federal, local, State or other governmental entity including export/import controls imposed by the U.S. Government (collectively, "Regulations"). In the event Buyer knows or is aware of any Regulations that would adversely impact the transaction(s) contemplated by a Sale Order and/or Buyer's Purchase Order, Buyer shall immediately advise Seller of the same. If the Seller, in its sole discretion, determines that the effect of the Regulations is a material increase in Seller's risk with respect to such transaction, the Seller may, without cost, liability or penalty of any kind, withdraw a Sale Order and/or revoke its acceptance of Buyer's Purchase Order.

**21. Disputes:** Any controversy or dispute between Seller and Buyer arising out of or in any way related to this Agreement not otherwise resolved between Seller and Buyer shall be resolved in a court sitting within the State of Ohio, Cuyahoga County, and Buyer consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts. No action, regardless of form, arising out of, or in any way connected with, Products may be brought by Buyer more than one (1) year after the earlier of: (a) the date the alleged breach was discovered; (b) the date the alleged breach should have been discovered; or (c) thirty (30) days from the date of shipment.

**22. Early Termination:** Seller may immediately terminate this Agreement without notice to Buyer if Buyer: (i) makes an assignment for the benefit of creditors, (ii) becomes insolvent or is otherwise unable to pay its debts in the ordinary course of business, or (iii) is the subject of any voluntary or involuntary proceedings in bankruptcy, or under any other insolvency or similar law, or for corporate reorganization or for receivership.

**23. General:** This Agreement shall be governed by the laws of the State of Ohio, without regard to conflicts of laws principles thereof. Buyer may not assign its right under or interest in the Agreement without the prior written consent of Seller. The Agreement shall be binding upon and inure to the benefit of Buyer and Seller, their successors and permitted assigns. Seller shall have the right, at its sole option, to assign or subcontract any of its rights or duties hereunder. No waiver by either party of any breach of these Terms and Conditions shall constitute a waiver of any other breach. If any provision hereof is held to be invalid or otherwise unenforceable for any reason, all other terms and remaining conditions will continue to be in force. Any clerical errors are subject to correction. Buyer shall reimburse Seller for reasonable attorney's fees necessarily incurred to enforce this Agreement or any provision hereof or to secure cost and/or damages pursuant to any other remedy, legal or equitable, arising from Buyer's breach hereof.

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