

COD Agreement

Date _____

Legal Business Name _____

Street address _____ City _____ State _____ Zip _____

Billing address _____ City _____ State _____ Zip _____

Phone _____ Fax _____

Type of ownership: Corp _____ Partnership _____ Individual _____

Number of years in business _____ Type of business _____ State of Incorporation _____

A/P Contact _____ Purchasing Contact _____

Direct Phone _____ Fax _____ Direct Phone _____ Fax _____

Email _____ Email _____

Account Type: ACH _____ Credit Card _____ Check _____ Cash _____

Fed ID # _____

Sales tax: Always _____ Sometimes _____ Never _____ (Must attach Sales Exemption Certificate)

Owner and/or Officer Information

Name _____ Title _____ Phone _____ SS # _____

Address _____ Zip _____

Name _____ Title _____ Phone _____ SS # _____

Address _____ Zip _____

Banking Information

Business account held at _____ Account # _____

Address _____ Phone number _____

Personal account held at _____ Account # _____

Address _____ Phone number _____

AGREEMENT

For purposes of obtaining goods and materials from **Metalwest** the undersigned Buyer makes the following representations and covenants:

1. The Buyer shall pay the full amount of any order, upon or before delivery of the materials.
2. If payment by check is returned dishonored, applicant agrees to replace dishonored check with certified funds and a \$35 bank fee.
3. The Buyer agrees that any disputed credit card charge, request for chargeback or adjustment, will first be reported to **Metalwest**, **Metalwest** will have 10 days to resolve the dispute with Buyer.
4. The undersigned Buyer acknowledges that it has read and agrees to **Metalwest's** terms and conditions of sale, as printed on this credit application.

Undersigned, an authorized company representative, certifies to the best of his/her knowledge and belief, all information contained in the agreement is true, complete and correct, and agrees to notify Seller immediately of any material change. By signing below, undersigned authorizes Seller to contact any Bank, Trade Creditors and any Credit Bureau deemed necessary without further notice, including but not limited to Dun & Bradstreet. The Buyer understands that Seller will retain this document whether or not it is approved.

SIGNED AT: CITY _____ STATE _____ THIS _____ DAY OF _____ 20 _____

COMPANY NAME _____ Signature _____
(Owner / Officer)

NAME _____ TITLE _____

TERMS AND CONDITIONS

Each order by Buyer shall be deemed an acknowledgment and acceptance by Buyer of Seller's terms and conditions as then in effect. The terms and conditions set forth herein, as may be subsequently modified by Seller from time to time, are incorporated by reference into all acknowledgment forms and invoices issued by Seller and shall only apply to the sale of goods in or delivered to locations in the United States.

1. **NO MODIFICATIONS.** Seller's provision of credit, acceptance of any purchase order and/or sale of any goods are expressly conditioned upon the terms and conditions contained or referred to herein. NO TERMS OR CONDITIONS WHICH ALTER OR MODIFY IN ANY WAY ANY PROVISION HEREOF SHALL BE BINDING UNLESS EXPRESSLY AGREED TO IN A WRITTEN INSTRUMENT SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE. SELLER OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS AND HEREBY REJECTS ANY AND ALL SUCH TERMS, WHETHER CONTAINED IN PREVIOUS OR SUBSEQUENT PROPOSALS OR COMMUNICATIONS FROM BUYER. Authorization by Buyer to furnish goods hereunder constitutes acceptance of these terms and conditions. BUYER AND SELLER AGREE THAT THE TERMS AND CONDITIONS PRINTED HEREIN ARE ACCEPTED IN GOOD FAITH BY BOTH PARTIES AS THE CONTROLLING AND FINAL TERMS AND CONDITIONS, AND FURTHER AGREE THAT THERE SHALL BE NO "BATTLE OF THE FORMS" AS DESCRIBED IN SECTION 2-207 OF THE UNIFORM COMMERCIAL CODE.

2. **ENTIRE AGREEMENT.** Except as otherwise agreed to by Seller in writing, the terms and conditions set forth herein shall constitute the complete and final agreement between Buyer and Seller, superseding completely any prior oral or written communications. Terms or conditions contained in any document issued by Buyer which in any manner purport to alter, modify, change, suspend, or add to any term or condition contained herein shall be deemed excluded from such Buyer document and waived by Buyer. Buyer and Seller expressly agree that Seller may modify these terms and conditions from time to time, and such modifications shall be binding upon Buyer.

3. **ORDERS.** Orders by telephone are accepted at the risk of Buyer, and shipments made before receipt of written confirmation are for the convenience of Buyer. To avoid the possibility of duplication, Buyer's confirming order must be clearly marked "Confirmation." Confirmation orders not so marked may at Seller's election be treated as original open orders. Orders cannot be cancelled or modified without Seller's consent.

4. **PRICE.** The purchase price of any goods sold hereunder shall be as stated on the applicable Seller order acknowledgment or accepted purchase order; provided, however, that any increase in Seller's cost of the subject materials after the date of the applicable Seller order acknowledgment or accepted purchase order, including, but not limited to, any price increase or surcharge, including, but not limited to, any such surcharge predicated upon an increase in the cost of raw materials or energy, will result in an increase in such price effective for any goods scheduled for shipment beginning immediately on the date such increase in Seller's cost of the subject material is imposed on Seller. Such price changes may be made effective by Seller without prior notice to Buyer and may be adjusted by Seller periodically to reflect a change in such costs. Seller shall be bound as to purchase price only upon shipment and acceptance of all or any part of the goods ordered.

5. **DELIVERY AND PERFORMANCE.** Unless agreed to by Seller in a separate written agreement, Seller does not guarantee any certain date of delivery. In no event, shall Seller be liable for failure to deliver or delays in delivery, for delay in performance or any damages suffered by Buyer by reason of such non-delivery or delays when such is occasioned by causes beyond Seller's control, including, without limitation, strikes, lockouts, floods, fires, unusually severe weather conditions, embargoes, war or other outbreak of hostilities, acts of terrorism, acts of God, acts of Buyer, market shortages, unavailability of materials, supplies or transportation services, any shift in raw material costs that prohibit or materially reduce the supply of material from Seller's suppliers, inability to obtain shipping space, machinery breakdowns, delays of carriers or suppliers, governmental acts and regulations or other contingency the non-occurrence of which was a basic assumption on which the purchase order was accepted. Seller shall not be liable for consequential or incidental damages resulting from any delay in delivery. Buyer's right, under the Uniform Commercial Code, to reject due to delay in delivery is waived unless notice thereof is presented to Seller in writing within five (5) days after delivery.

6. **INSTALLMENTS.** Unless otherwise expressly stated, Seller shall have the right to make delivery in installments. All installments shall be separately invoiced and paid as billed without regard to subsequent deliveries. Failure of Buyer to pay for any installment when due shall excuse Seller from making further deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept and pay for remaining installments.

7. **VARIATIONS IN SIZE AND LENGTH.** Goods and material are subject to the following variations in size and length: if cut to special size, standard variations as shown in Seller's current Stock List and Reference Book; if of regular stock size, the standard mill variations shall govern. Buyer agrees to accept any goods and material which are within the aforementioned standards.

8. **WARRANTY; DISCLAIMER.** Seller will furnish goods of the quality specified; provided, however, that Seller's statements, if any, with regard to the goods in product information, on its website, in price lists or other information shall not be binding. If the goods purchased hereunder are defective or are not in substantial conformity with the specifications, subject to the tolerances and variations consistent with usual trade practices, Seller will replace such materials with conforming materials at the point of initial delivery or will, at Seller's election, allow Buyer a credit or refund for the purchase price, provided that (1) Buyer has notified Seller of the defect or nonconformity within ten (10) days after the delivery of the material (failure to give such notice constitutes acceptance and an irrevocable waiver of all claims); (2) the material has been properly worked or used by Buyer; and (3) Seller has been given a reasonable opportunity to inspect the material. Buyer may not return, repair or dispose of material without Seller's consent. After inspection or waiver of inspection by Seller, Seller will arrange for the disposition of defective or nonconforming materials.

This warranty is expressly in lieu of all other warranties, expressed or implied, and of all other obligations or liabilities on Seller's part. SELLER EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR DAMAGES IN AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE GOODS SOLD HEREUNDER, NOR SHALL SELLER HAVE ANY LIABILITY FOR LOSS OF TIME, COST OF LABOR EXPENDED, OR FOR ANY SEPARATE, SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL DAMAGES RESULTING FROM REJECTION OF FINISHED PARTS BY BUYER OR BUYER'S CUSTOMERS.

9. **SECURING LOADS.** Buyer is responsible for the securing of all loads of material transported from Seller's facility in Buyer's vehicle, as well as for flagging or otherwise marking such material for transport. If a third party freight carrier transports material from Seller's facility, the freight carrier shall be responsible for securing the load, flagging or otherwise marking the material for transport. In no event, shall Seller have any liability to Buyer or any third party for any (i) damage to, or loss of, any vehicle used to carry material purchased by Buyer from Seller, whether such vehicle belongs to Buyer or a third party, or to any other vehicle belonging to a third party, (ii) damage to, or loss of, the material purchased by Buyer from Seller or to a third party's property (real or personal); (iii) injury to any person (whether the driver of the vehicle carrying the material or an unassociated third person) or (iv) any other loss of any kind, resulting from a failure by Buyer or a freight carrier to properly secure a load of material purchased from Seller and transported from Seller's facility in Buyer's vehicle or on a vehicle belonging to a freight carrier or flag or otherwise mark such material.

10. **CLAIMS AGAINST COMMON CARRIERS.** Delivery of goods or material to a common carrier shall constitute delivery to Buyer and upon such delivery to a common carrier, all risk of damage shall be borne by Buyer.

If Buyer discovers a shortage in goods delivered or if the goods have been damaged in transit, Buyer must make a note to that effect upon the receipt Buyer gives the carrier or his, her or its agent. Also, Buyer must request that a

similar notation be made on the freight bill. Damaged material must not be unloaded until it has been inspected and noted in writing. If there is justification for a claim, Buyer will file promptly with the carrier. If the material was shipped F.O.B. destination, Buyer must take the above steps, notify Seller immediately, and Seller will file a claim. Failure to comply with this provision shall be deemed an express acceptance of the goods and material in an "AS IS" condition with no right to credit, refund or any other remedy.

11. **LITIGATION AND COLLECTION.** Any litigation concerning the sale of goods hereunder shall be brought in the United States District Court for the District of Colorado, or, if subject matter jurisdiction is lacking therein, in the District Court of the 17th Judicial District, Adams County, Colorado, which courts shall have the exclusive venue for and have exclusive jurisdiction over any such litigation. Buyer and Seller hereby expressly consent to the jurisdiction and venue of said courts.

If any default is made in payment of amounts due for the sale of goods and materials hereunder or upon any other breach of the terms and conditions set forth herein, Buyer agrees to pay Seller's reasonable cost of collection and/or compliance, including reasonable attorneys' fees and costs, not to exceed the amount allowed by any applicable statute.

12. **FREIGHT CHARGES.** If the quoted price for the goods was based on freight being allowed to destination (and whether such freight charges were agreed to be included in the quoted price or to be charged as a separate line item), any change in applicable freight rates, including any applicable fuel surcharges, between the date of the quotation and the time of shipment will result in a corresponding change in price. If the quotation included sufficient material for a carload or truckload shipment and Buyer has ordered shipments to be made in less than carload or truckload amounts, then Buyer must pay the difference between carload/truckload and less than carload or truckload freight. If price is quoted F.O.B. trucks, it shall mean on the nearest accessible road or street to the seller's point of loading.

Except as otherwise provided herein, Seller shall not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. If such charges are by the terms of sale included (whether in the price itself or as a separate line item), any increase in rates, including any increase in applicable fuel surcharges becoming effective prior to the shipment date of the goods ordered, shall be the responsibility of Buyer.

13. **TAXES AND OTHER CHARGES.** In addition to the price quoted for goods sold, Buyer shall pay any tax imposed by any present or future law on the sale of goods covered by this order, and all other reasonable charges for ancillary services and costs such as forming, galvanizing and other services.

In the event Buyer fails to make payment to Seller of any amounts due and owing (including any applicable surcharge or freight charge) by the net due date, Seller may charge interest on the outstanding balance at an annual rate of 18% or the highest rate allowed by law (whichever is less). Payments after accrual of such interest charges shall be applied first against such interest charges and secondly against past due invoices. Buyer's account shall also be charged with any fees associated with insufficient funds.

14. **FINANCIAL RESPONSIBILITY.** Reasonable doubt on the part of Seller concerning the financial responsibility of Buyer (including, but not limited to, Buyer's failure to pay on the net due date for goods shipped) shall entitle Seller to stop operation, decline shipment, or stop any material in transit without liability, until the materials have been paid for or until Seller is furnished reasonably satisfactory proof of Buyer's financial responsibility. If Seller suspends performance and later proceeds with such order, Seller shall be entitled to such extension of time for performance as is necessitated by the suspension. If Seller has agreed with Buyer to accept payment for any shipment by credit card, such credit card shall be charged at the time of sale upon Buyer's confirmation that such shipment is to be paid for in such manner; provided, however, that Seller, at its discretion, shall have the right to charge such credit card at any later date for any other shipment that Buyer has failed to pay for on the net due date which shipment Buyer was originally to have paid for by some means other than such credit card (in the event Seller shall make such a charge, it shall promptly provide notice to Buyer of such). Seller may, in its discretion, require any order placed by Buyer to be paid on a C.O.D. basis.

15. **CONTROLLING LAW.** This contract is deemed made in Colorado and shall be governed by and construed in accordance with the laws of Colorado.

16. **WAIVER.** Neither any failure nor any delay on the part of Seller in exercising any rights hereunder shall operate as a waiver of any of Seller's rights hereunder. All rights and remedies granted herein are in addition to all remedies available at law or in equity.

17. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.** In furnishing goods or services hereunder, Seller agrees that it:

(a) Will not discriminate against any employee or applicant because of race, color, religion, sex or national origin. Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. In furtherance of this goal, Seller will comply with Executive Order 11246, as amended, and its implementing regulations, along with Department of Labor regulations.

(b) Will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. Seller agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans of the Vietnam era without discrimination based upon disability or veteran status in all employment practices. In furtherance of this goal, Seller will comply with Section 402 of the Vietnam Era Veteran Readjustment Assistance Act of 1974, and its implementing regulations, along with Department of Labor regulations.

(c) Will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Seller agrees to take affirmative action to employ, advance in employment and otherwise treat handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices. In furtherance of this goal, Seller will comply with Section 503 of the Rehabilitation Act of 1973, as amended, and its implementing regulations, along with Department of Labor regulations.

Seller incorporates by reference herein the equal opportunity clause contained in 29 C.F.R. § 60-14, the affirmative action clause contained in 29 C.F.R. § 60-250.4, and the affirmative action clause contained in 29 C.F.R. § 60-741.4.

18. **PAYMENT TERMS AND DISCOUNT.** Payment terms are 1/2% discount from the purchase price if paid within ten (10) days of invoice date, net thirty (30) days, unless otherwise stated in writing. No discount is allowed if payment of other invoices to Buyer are past due. Notwithstanding the foregoing and any conflicting provisions in Buyer's purchase order, cash and C.O.D. sales are not eligible for any prompt payment discount, and Buyer shall receive no discount on such sales. Freight charges are not subject to this discount.

19. **STATUTE OF LIMITATIONS.** Buyer and Seller agree that any action, regardless of form, arising out of this sale must be brought within one (1) year after the goods are delivered to Buyer.

20. **SEVERABILITY.** In the event any section or portion of a section of these terms and conditions are deemed unlawful or unenforceable, that section or portion of a section shall be stricken, and the remaining terms and conditions shall continue in full force and effect.

21. **FOREIGN CORRUPT PRACTICES ACT.** Seller, in connection with the sale of goods to Buyer hereunder, and Buyer, while acknowledging that it is an independent contractor from Seller, in connection with any purchase order and the purchase of goods hereunder and the resale of such goods, agree to comply with the United States' Foreign Corrupt Practices Act, as amended from time to time (the "FCPA"), by not paying, offering or agreeing to pay, authorizing the giving of, or causing to be paid, directly or indirectly, any money or other thing of value to any foreign official (as defined in the FCPA) to obtain or retain business or influence such foreign official in the performance of his or her duties.