

Metal Matic, Inc.

Terms and Conditions of Sale

1. OFFER AND ACCEPTANCE. Metal Matic, Inc. ("Seller") sells goods only on these Terms and Conditions. Any communication intended to initiate a purchase of goods from Seller, whether in writing, by telephone, by electronic data interchange ("EDI") or by any other means, shall be treated as a request to Seller to quote its price for the quantity and types of goods described, and Seller's written response shall be Seller's offer to sell such goods or services at the price quoted, subject to these Terms and Conditions. Seller hereby objects to any terms or conditions, whenever or however communicated, which are in addition to or different from these Terms and Conditions, except such as may be agreed to in a writing executed by Seller.

2. TRADING PARTNER AGREEMENT. By initiating any purchase of goods from Seller via EDI, Buyer shall be deemed to have confirmed that these Terms and Conditions constitute an "EDI trading partner agreement" between the Seller and Buyer.

3. SPECIFICATIONS.

(a) Unless otherwise agreed in writing, tubing will be manufactured to standard industry published tolerances or variations.

(b) Mechanical tubing is described by outside diameter ("OD") and wall thickness ("Wall") dimensions. If inside diameter ("ID") is the more important dimension to Buyer, Buyer should order the tubing to OD and ID dimensions. Only two of the three cross-sectional dimensions (OD, ID or Wall) in any tube are subject to standard tolerances.

(c) Unless otherwise agreed in writing by Seller, mechanical tubing will be furnished in mill length, 20 feet plus ½ inch minus nothing. Up to five percent (5%) shorts will be shipped.

(d) Unless otherwise agreed in writing by Seller, all mechanical tubing will be oiled before shipment. If Buyer specifies that no rust preventative shall be applied, Seller shall not be responsible for damage due to rust after preparation for shipment.

4. DELIVERY.

(a) Unless otherwise specified by Buyer in writing, all shipments will be made F.O.B. Seller's plant in Minneapolis, Minnesota, Bedford Park, Illinois or Middletown, OH (as directed by Seller), and delivery for shipment to a carrier at the F.O.B. point shall constitute delivery thereof by Seller to Buyer. All goods are shipped at Buyer's risk and Seller shall incur no liability for goods damaged, broken or lost in transit. The carrier shall be responsible for goods lost or damaged in transit. In the event of loss or damage in transit, consignee must, pursuant to Section 2(b) of the Uniform Straight Bill of Lading, immediately notify the carrier's agent at destination by noting all such damage on the Bill of Lading, in order to substantiate the formal claim when made.

(b) If shipping instructions are not given by Buyer to Seller, Seller may pack and ship the goods in such manner as Seller shall determine without incurring any obligation or liability to Buyer on account of the manner in which Seller causes the same to be packed and shipped. Freight rates shall be those prevailing at the time of shipment.

(c) Buyer and Seller agree that Seller has the right to ship as much as ten percent (10%) either more or less than the quantity ordered and that Buyer shall pay for the quantity shipped.

(d) Seller shall not be liable for any failure to manufacture or deliver, or for any delay in the manufacture or delivery of, any goods sold by it if such failure or delay is caused by delay, inability or economic impracticability in obtaining transportation or materials, shortage of fuel, failure of sources of supplies, strike, lockout labor dispute, fire, flood, accident, invasion, riot, war, embargo, revolution, restraint or demand of the United States or of any other government, non-fulfillment by Buyer of conditions of payment, or any other cause beyond the control of Seller. If at any time Seller shall be prevented by reason of any of the aforesaid causes from supplying the full quantities of goods which it is then obligated to supply by Buyer and to its other customers under contract, Seller shall have the right to prorate the quantity then deliverable to Buyer and the quantities then deliverable to other customers under such contracts with them.

5. PRICE.

(a) Buyer will be billed at Seller's prices in effect at the time of shipment.

(b) If any federal, state or any other special sales or excise tax is applicable, then such tax will be charged to Buyer and must be paid by Buyer.

6. CHANGES. Buyer may request, by written change order to Seller, changes in the drawings, designs, specifications, quantity, material, or services ordered and/or delivery dates. Changes may not be possible if Buyer's order is in process when Buyer's request is received. If Seller consents to such change, and the cost of furnishing the goods ordered is thereby increased, Buyer will be billed for such increased costs.

7. TERMINATION. Buyer may not terminate work ordered in whole or in part without the written consent of Seller. If Seller consents to such termination, Buyer will accept delivery and pay for all goods completed as of the date of termination at the rate in effect at the time of termination and will reimburse Seller for actual costs incurred up to and including the date of termination for materials purchased solely for the goods ordered but not incorporated in finished goods. Seller shall also be entitled to a reasonable profit on work done prior to termination at the rate in effect at the time of such termination.

8. SPECIAL TOOLS. Costs for special tools and dies billed to Buyer does not convey to Buyer title or the right to remove such tools and dies from Seller's possession. Maintenance of such tools and dies will be at Seller's expense. In the event that Buyer does not re-order goods from Seller for 24 consecutive months, Seller has the right to scrap such tools and dies without further notice to Buyer.

9. WARRANTY.

(a) Seller warrants to Buyer that the goods sold hereunder shall be free from surface rust for a period of 30 days following delivery and free from other defects in material and workmanship for a period of six (6) months following delivery. Notwithstanding the foregoing, Seller makes no warranty regarding surface rust or the effects thereof if Buyer specifies that no rust preventative shall be applied to the applicable goods. Seller shall be under no liability for defects in the goods sold resulting from improper use or alterations or repairs by someone other than Seller without Seller's approval.

(b) The warranty set forth in subparagraph (a) above shall not be applicable unless Buyer has paid all sums due for the goods provided by Seller hereunder.

(c) Unless expressly stated on the face side hereof or herein, Seller makes no warranty in respect of the performance of the goods provided by Seller.

(d) THE AFORESAID WARRANTY AGAINST DEFECTS IN MATERIAL AND WORKMANSHIP IS EXCLUSIVE OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER MADE BY SELLER OR RELIED ON BY BUYER, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. REMEDIES.

(a) Should any goods subject to the warranty in paragraph 9(a) appear within the warranty period described in paragraph 9(a) to be defective in material or workmanship, Buyer should discontinue use immediately and promptly notify Seller so that Seller may investigate the claimed defect. Buyer must send a sample to Seller upon request, and Seller has the right to inspect the goods claimed to be defective at Buyer's plant and Buyer shall have no right to return any goods to Seller without the prior written consent of Seller. If such goods are found to be defective by Seller, Seller shall, at its option, either correct such defects by repair or replacement free of charge or refund to Buyer the purchase price of such goods. Any replacement goods shall be delivered to Buyer F.O.B. Seller's plant in Minneapolis, Minnesota, Bedford Park, Illinois or Middletown, OH (as directed by Seller), and any goods replaced by Seller shall become the property of Seller.

(b) Seller has implemented measures to maintain lot identification and traceability in the goods that it ships. Notwithstanding any other provision of these Terms and Conditions, Seller shall have no obligation (whether claimed as a breach of warranty, negligence, strict liability or otherwise) with respect to any goods to the extent that the loss or damages on account thereof would have been eliminated or mitigated if Buyer had maintained the goods in a manner that preserved such identification and traceability.

(c) BUYER AND SELLER AGREE THAT BUYER'S EXCLUSIVE REMEDY FOR ANY BREACH OF ANY WARRANTY IS AS SET FORTH ABOVE. The foregoing remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace the non-conforming goods or to refund the purchase price of such goods as provided above.

11. LIMITATION OF LIABILITY. BUYER EXPRESSLY AGREES THAT IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, DAMAGES OF ANY THIRD PERSON ASSERTED AGAINST BUYER, LOSS OF ANTICIPATED PROFITS OR LOSS OF PRODUCTION, WHETHER FOR SELLER'S BREACH OF ANY WARRANTY, BREACH OR REPUDIATION OF ANY OTHER TERM OR CONDITION, NEGLIGENCE, ON THE BASIS OF STRICT LIABILITY, OR FOR ANY OTHER REASON.

12. HOLD HARMLESS AND INDEMNIFICATION. Buyer assumes total responsibility for the use to which the goods sold are ultimately put and agrees to defend, indemnify and hold harmless Seller and its employees, agents, officers, and directors from any and all claims, demands, causes of action, suits, orders, judgments, and liabilities, and any and all losses and costs relating thereto (e.g. investigation expenses, attorneys' fees, litigation expenses) for any and all injuries, damages, or losses sustained or claimed to have been sustained by any one other than Buyer (whether or not such claims have been asserted against Buyer, Seller, or both) which are caused or claimed to have been caused, in whole or in

part, directly or indirectly, by Buyer's purchase, use, installation, operation, sale and/or maintenance of the goods sold even if such claims are caused or claimed to have been caused, in whole or in part, directly or indirectly, by Seller's breach of warranty, breach or repudiation of any other term or condition, negligence, on the basis of strict liability or for any other reason. Seller shall be given prompt notice by Buyer of any such claims, injuries, damages or losses. This indemnity and hold harmless provision is not intended to exceed the maximum scope of indemnity and hold harmless protection allowed under the prevailing applicable law. **IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THIS HOLD HARMLESS AND INDEMNIFICATION PROVISION SHALL SURVIVE THE PERFORMANCE OF THIS CONTRACT.**

13. **ACCOUNTS PAST DUE.** Buyer agrees to pay to Seller all reasonable expenses,, including but not limited to attorneys' fees, of collection on accounts past due.

14. **MISCELLANEOUS.** Unless express definition herein or the context hereof otherwise requires, all terms used herein which are defined or given meaning in the Uniform Commercial Code, as adopted in the State of Minnesota, shall have the same definition and meaning for purposes hereof, and any contract for the sale of goods by Seller to Buyer shall be governed by the laws of the State of Minnesota.