

## METZFAB MANUFACTURING TERMS

These Manufacturing Terms (“Agreement”) are entered into as of the date listed below (the “Effective Date”), by and between Metzfab Industries, LLC (“Manufacturer”), a limited liability company organized under the laws of Arizona, with a place of business at 23012 N 15th Ave. Phoenix, AZ 85027 and Customer, as listed on the signature line. Manufacturer is engaged in the business of custom metal fabrication, CNC machining, welding, and metal finishing services in the greater Phoenix, Arizona area. Customer desires to have Manufacture fabricate certain products from the Manufacturer pursuant to the terms and conditions set forth in this Agreement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

**1.0 Manufacture and Specifications.** Manufacturer will manufacture for the Customer the products requested by Customer from time to time (the “Products”) pursuant to the terms and conditions set forth in this Agreement. Manufacturer will be responsible the fabrication and manufacture and fabrication of the Products, including, if requested, design services, to Customer’s specifications. The manufacture of the Products will be performed in a good and workmanlike manner and in compliance with all applicable laws. It is customer’s responsibility to ensure that all parts meet their specifications and needs.

**2.0 Purchase Orders.** Orders for the purchase of Products (“Purchase Orders”) must be submitted to Manufacturer in writing [e.g., by facsimile, letter, email, etc.]. Each Purchase Order must specify (i) the quantity of Products being ordered, (ii) Product prices, (iii) payment terms granted by Manufacturer, and (iv) a receipt date. The terms of this Agreement will prevail over any conflicting terms and conditions in any Purchase Order or any other instrument or document provided by the Customer. Any additional or different terms or conditions in any Purchase Order or other instrument or submission from the Customer will be deemed objected to by Manufacturer, and such additional or different term shall be of no effect or in any way binding upon Manufacturer unless accepted in writing by the Manufacturer.

**3.0 Acceptance.** Purchase Orders are subject to written acceptance by an authorized representative of the Manufacturer. Purchase Orders submitted by Customer are not binding on the Manufacturer until the earlier of written acceptance by Manufacturer or shipment, and acceptance by shipment shall only be binding as to the portion of the Purchase Order actually shipped by Manufacturer. Manufacturer reserves the right to refuse, cancel, or delay any Purchase Order placed by Customer and accepted by Manufacturer when Customer is delinquent in payments or when Customer has failed to perform any of its material obligations under this Agreement.

**4.0 Prices.** The initial prices for the Products, as set forth on the Purchase Order, do not include, and Manufacturer shall not be responsible for, the cost of any required federal, state, or local sales or other taxes, duties, export or custom charges, VAT charges, brokerage or other fees. Prices may be revised for any quarterly period (commencing on the first days of January, April, July, and October) upon written notice from the Manufacturer to the Customer upon not less than [number, e.g., thirty (30)] days prior to the date on which any such quarterly period is to commence. Customer must immediately notify Manufacturer if a price increase is not acceptable, and the Customer may, by written notice mailed prior to effective date of the price increase, cancel an order as it applies to any Products for which the Customer has not agreed to the new price. The

Customer's failure to notify the Manufacturer in writing of its objection to the proposed price revision prior to the beginning of any quarterly period will be considered acceptance of the revision.

**5.0 Invoices; Payment.** Manufacturer will invoice Customer on at least a monthly basis and Customer must render payment to Manufacturer, without abatement, reduction, or setoff, within thirty (30) days of the date of Manufacturer's invoice by wire transfer, certified check, bank check, or such other method as may be agreed upon by the Manufacturer. Any amounts not paid by Customer when due to Manufacturer shall be subject to interest charges, from the date due until paid, at the rate of rate of one and one half percent (1.5%) per month], or the highest interest rate allowable by law (whichever is less), payable monthly. In addition, if any amounts due to Manufacturer from Customer for any reason become past due, Manufacturer may at its option and without further notice stop production with respect to any Customer Purchase Order and withhold further shipments of Products to the Customer until all invoices have been paid in full, and such withholding of production and shipments shall not be considered a breach or default of any of Manufacturer's obligations under this Agreement. The Manufacture reserves a purchase money security interest in all goods or inventory sold pursuant to this Agreement and proceeds thereof until payment in full is made for all goods and services provided in connection with the sale. Customer agrees to execute any financing statement requested by Manufacturer to perfect its security interest in the goods.

**6.0 Shipment Terms; Title and Risk of Loss.** All Products acquired by Customer under this Agreement will be suitable packaged for shipment in Manufacturer's standard containers, marked for shipment to Customer at the address specified in the Purchase Order, and delivered to Customer or the forwarding agent selected by Customer within the forty-eight (48) contiguous United States and Canada. Any expense for any special packaging or any special delivery requested by Customer shall be borne solely by Customer. Customer shall be responsible for any and all freight, shipment, and insurance charges associated with shipment of the Products, even if the order is rejected upon delivery. Shipment of Products under this Agreement shall be F.O.B. Manufacturer's warehouse or related facility. Title and risk of loss will pass F.O.B. Manufacturer's shipping point.

**7.0 Acceptance of Shipments.** Customer shall have three (3) days from the date of arrival of the shipment of the Products to the shipping location designated by Customer to inspect the Products and notify Manufacturer of any discrepancies with respect to shipments of Purchase Orders, including, but not limited to any discrepancies in the quantity or quality of the Products. Customer shall notify Manufacturer of any such discrepancies within [number, e.g., five] days of its inspection of the shipment. Any Products found to be defective or non-conforming shall be returned to Manufacturer, at Manufacturer's expense, and Manufacturer will either credit the Customer's account for all amounts paid for the non-confirming Products or replace the returned Products.

**8.0 Manufacturer's Right to Delay or Cancel.** The Parties agree that shipment of any Products ordered from Manufacturer under this Agreement may be delayed for a period of time sufficient to allow Manufacturer to manufacture and assemble or otherwise acquire the Products for Customer, and the Parties further agree that Manufacturer shall not be held liable to Customer or any other party for any delay in shipment of any Purchase Order. Notwithstanding any other terms contained in this Agreement, Manufacturer reserves the right to refuse, cancel or delay any shipment to Customer when Customer is delinquent in payments, when payment for a shipment

has not been arranged to Manufacturer's reasonable satisfaction, or when Customer has failed to perform any of its material obligations under this Agreement. Such refusal, cancellation or delay of any shipment shall not be deemed a breach of this Agreement by the Manufacturer.

**9.0 WARRANTY. THE PRODUCTS SOLD UNDER THIS AGREEMENT ARE PURCHASED BY THE CUSTOMER "AS IS" AND MANUFACTURER DOES NOT PROVIDE ANY WARRANTY FOR THE GOODS, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES THAT THEY ARE OF MERCHANTABILITY QUALITY OR THAT THEY CAN BE USED FOR ANY PARTICULAR PURPOSE.**

If Manufacturer produces Products according to Customer's specifications, it is Customer's responsibility to ensure that all parts meet their needs and requirement (e.g., for quality, thickness, tolerance, or molecular structure, etc.). It is Customer's responsibility to ensure the materials and specifications are within US, industry, or other applicable standards.

If Manufacturer offers design services for the Products, the Customer is solely responsible for their design choices. All parts produced and designed by Metzfab Industries are non-engineered and untested. It is then up to our customer to ensure the product is safe for market use. Metzfab Industries will correct any wrongly installed or assembled products but if these products are being shipped directly to a customer from Metzfab Industries, the Customer must be on site for quality control inspections before Products exit the facility to ensure all components have been assembled correctly and are up to Customer specifications for safety and function.

All Customers need to check in to front office before entering Manufacturer's facility. No customer should enter our facility without proper safety equipment and without being escorted by proper company personnel. Failure to obey safety regulations and rules and any conditions above while in our facility may result in serious injury or death. These areas include anywhere on the promise of our facility. Coming into our facility is our customers choice and by doing so they are entering at their own risk.

**10.0 INDEMNIFICATION.** Customer will defend, indemnify and hold harmless Manufacturer, its subsidiaries, parents and affiliates and their officers, directors, shareholders, agents, servants and employees from and against any and all third party claims, losses, liabilities, damages, expenses and costs, including attorney's fees and court costs, arising out of (i) any negligent act or omission, willful misconduct or fraud of Customer or its agents; or (ii) Customer's breach of any of its representations, warranties or obligations contained in this Agreement; or (iii) Customer's failure to fully conform to all laws, ordinances, rules and regulations; or (iv) any patent, trademark, or intellectual property claim asserted with regard to the Products not solely caused by the Manufacturer.

**11.0 LIMITATION OF LIABILITY; ACTIONS.** IN NO EVENT SHALL MANUFACTURER BE LIABLE UNDER THIS AGREEMENT TO THE CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, SHUTDOWN OR SLOWDOWN COSTS, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR OTHER ECONOMIC LOSS, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR

SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. MANUFACTURER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY DIRECT DAMAGES SHALL NOT EXCEED THE PURCHASE PRICE PAID OR PAYABLE BY THE CUSTOMER TO THE MANUFACTURER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT

**12.0 COMPLIANCE WITH LAWS; NOTIFICATION.** Customer represents, warrants and covenants that it shall comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Products. Customer acknowledges and understands that the Products may be subject to restrictions upon export from the United States and upon resale after export. Customer therefore represents and warrants that it shall comply fully with all relevant regulations and import and/or export control laws of the United States. Customer shall promptly notify Manufacturer in the event Customer knows or has reason to believe that any act or refrainment from acting required by or contemplated by this Agreement violates any applicable law, rule or regulation (whether criminal or non-criminal) or if it becomes aware that any Products contain a defect which could create a substantial product hazard or an unreasonable risk of serious injury or death.

**13.0 CUSTOMER'S REPRESENTATIONS AND WARRANTIES.** Customer represents and warrants to the Manufacturer that (i) Customer is duly formed and organized, validly existing, and in good standing under the laws of the state of the state where it was formed and is authorized to do business in each jurisdiction in which it conducts its business; (ii) its purchase of Products and performance under this Agreement does not violate any existing obligations or contracts of the Customer; (iii) it has the full legal right, power, and authority to enter into and perform this Agreement and that all requisite corporate and other approvals have been obtained; (iv) the individuals signing this Agreement on its behalf are authorized to execute this Agreement and that no further proof of authorization shall be required; and (v) there are no pending or threatened actions or proceedings or government investigations against it that may affect its performance of this Agreement.

**14.0 TERM.** This Agreement shall have an initial term of two (2) years from the Effective Date (the "Initial Term"), unless earlier terminated in accordance with the provisions in **Error! Reference source not found.** Thereafter, the Agreement will automatically renew for additional one (1) year terms (each a "Renewal Term"), unless not less than sixty (60) days prior to the end of the Initial Term or any Renewal Term, either Party notifies the other of its intent not to renew the Agreement. The Initial Term and Renewal Terms, if any, are collectively referred to herein as the

**15.0 TERMINATION.** Either Party may terminate this Agreement at any time in the event of a breach by the other Party of a material covenant, commitment or obligation under this Agreement that remains uncured after thirty (30) days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party. In addition, either Party may terminate this Agreement immediately at its option upon written notice if the other Party: (i)

becomes or is declared insolvent or bankrupt; (ii) is the subject of a voluntary or involuntary bankruptcy or other proceeding related to its liquidation or solvency, which proceeding is not dismissed within ninety (90) calendar days after its filing; (iii) ceases to do business in the normal course; or (iv) makes an assignment for the benefit of creditors. This Agreement shall terminate immediately and automatically upon any determination by a court of competent jurisdiction that either Party is excused or prohibited from performing in full all obligations hereunder, including, without limitation, rejection of this Agreement pursuant to 11 U.S.C. §365. Either Party may terminate this Agreement at any time with or without cause by giving sixty (60) days prior written notice.

**16.0 FORCE MAJEURE.** Manufacturer shall not be liable hereunder for any failure or delay in the performance of its obligations under this Agreement, if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accidents, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, acts of God, pandemics, war, or other similar or different occurrences beyond the reasonable control of the Manufacturer, for so long as such force majeure event is in effect.

**17.0 GOVERNING LAW AND VENUE.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona, without giving effect to the principles of conflicts of law of such state. Any action arising out of this Agreement will be brought solely in any state or federal court located in Maricopa County, Arizona. Both Parties hereby submit to the exclusive jurisdiction and venue of any such court. **THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING FROM THE TERMS OF THIS AGREEMENT.**

**18.0 ATTORNEY'S FEES.** If either Party incurs any legal fees associated with the enforcement of this Agreement or any rights under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and any court, arbitration, mediation, or other litigation expenses from the other Party.

**19.0 COLLECTION COSTS.** If Manufacturer incurs any costs, expenses, or fees, including reasonable attorneys' fees and professional collection services fees, in connection with the collection or payment of any amounts due Manufacturer from Customer under this Agreement, Customer agrees to reimburse Manufacturer for all such costs, expenses and fees.

**20.0 ASSIGNMENT; NO THIRD PARTY BENEFICIARIES.** Neither Party may assign this Agreement, either in whole or part, without the express written consent of the other Party. Notwithstanding the foregoing, Manufacturer may assign this Agreement to any affiliated company or if the assignment is carried out as part of a merger, restructuring, or reorganization, or sale or transfer of all or substantially all of the Manufacturer's assets, without the consent of the Customer. Any assignment without required consent shall be null and void. Notwithstanding the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the Parties. There are no third-party beneficiaries to this Agreement.

**21.0 RELATIONSHIP OF THE PARTIES.** The relationship of the Parties hereto is that of vendor and purchaser. Nothing in this Agreement, and no course of dealing between the Parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the Parties or between one Party and the other Party's

employees or agents. Each of the Parties is an independent contractor and neither Manufacturer nor Customer has the authority to bind or contract any obligation in the name of or on account of the other Party or to incur any liability or make any statements, representations, warranties or commitments on behalf of the other Party, or otherwise act on behalf of the other. Each Party shall be solely responsible for payment of the salaries of its employees and personnel (including withholding of income taxes and social security), workers compensation, and all other employment benefits.

**22.0 SEVERABILITY.** In the event any provision or portion of this Agreement shall be held to be unenforceable, invalid or illegal under applicable law or by a court of competent jurisdiction, the remaining provisions or portions shall remain in full force and effect.

**23.0 HEADINGS; CONSTRUCTION.** The headings/captions appearing in this Agreement have been inserted for the purposes of convenience and ready reference, and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the provisions to which they appertain. This Agreement is the result of negotiations between the Parties and their counsel. Accordingly, this Agreement shall not be construed more strongly against either Party regardless of which Party is more responsible for its preparation, and any ambiguity that might exist herein shall not be construed against the drafting Party.

**24.0 RIGHTS CUMULATIVE.** The rights and remedies of the Parties herein provided shall be cumulative and not exclusive of any rights or remedies provided by law or equity.

**25.0 COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

**26.0 SURVIVAL.** Each term and provision of this Agreement that should by its sense and context survive any termination or expiration of this Agreement, shall so survive regardless of the cause and even if resulting from the material breach of either Party to this Agreement.

**27.0 NOTICE.** All notices or other communications required under this Agreement shall be deemed effective when received and made in writing by either (i) hand delivery, (ii) registered mail, (iii) certified mail, return receipt requested, or (iv) overnight mail, addressed to the Party to be notified at the addresses provided on the written Purchase Order.

**28.0 WAIVER.** No waiver of any term or right in this Agreement shall be effective unless in writing, signed by an authorized representative of the waiving Party. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision or any other provision of this Agreement thereafter

**29.0 ENTIRE AGREEMENT; MODIFICATION.** This Agreement, and any Exhibits attached hereto, is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement or communications between the Parties, whether written, oral, electronic or otherwise. No change, modification, amendment, or addition of or to this Agreement or any part thereof shall be valid unless in writing and signed by an authorized representative of the Parties. Each Party hereto has received independent legal advice regarding this Agreement and their respective rights and obligations set forth herein. The Parties

acknowledge and agree that they are not relying upon any representations or statements made by the other Party or the other Party's employees, agents, representatives or attorneys regarding this Agreement, except to the extent such representations are expressly set forth in this Agreement.

In witness whereof, the Parties hereto have executed this Agreement on the date set forth below:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CUSTOMER:**

**MANUFACTURER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Its:

Its: