

FORGE Standard Terms and Conditions of Sale

ACCEPTANCE. Keener Metal Fabricating LLC. (DBA. Forge Racks and Dunnage) (hereinafter "Seller") shall be bound only upon Seller's written confirmation of acceptance ("Order Acknowledgement") of an offer by Buyer to purchase certain goods and/or services. The Order Acknowledgement provided by Seller and these Terms and Conditions of Sale, which form part of the Order Acknowledgement, constitute the complete contract of sale between Buyer and Seller (collectively, the "Agreement"), and are deemed accepted by Buyer unless Buyer objects to any term, in writing, within seven (7) days from the date listed on the Order Acknowledgement. Seller may commence performance in reliance on Customer's acceptance of these Terms and Conditions of Sale.

TERMS OF PURCHASE ORDER ACCEPTANCE AND COMPLETE AGREEMENT. All customer orders and acceptances are expressly conditioned upon assent to these Terms and Conditions of Sale. This Agreement may not be modified or altered except in writing duly executed by both parties and specifically identifying revisions to these Terms and Conditions of Sale. No additional or different terms and conditions stated in or attached to Buyer's communications to Seller, including but not limited to Buyer's purchase orders are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage, and past performance are hereby superseded and shall not be used to interpret these terms and conditions. Fulfillment of Buyer's purchase order by Seller does not constitute acceptance of any of Buyer's terms and conditions and does not modify or amend these Terms and Conditions. These Terms and Conditions and the related Order Acknowledgement supersede all prior or contemporaneous understandings, Agreements, negotiations, representations and warranties, and communications, both oral and written.

TRADE COMPLIANCE. Buyer acknowledges that products provided by Seller, including any software, documentation, and related technical data included with or contained in such products, may be subject to U.S. export control and sanctions laws and regulations, including the Export Administration Regulations, and International Traffic in Arms Regulations. The Buyer shall comply with all applicable export control and sanctions laws and regulations in connection with any purchases and transactions with SELLER.

The buyer shall comply with SELLER's requests for information needed to assess the application of export control and sanctions laws and regulations to any order or shipment. SELLER shall not be required to consummate any shipment or transaction where such transaction or shipment may be prohibited by export control and sanctions laws or regulations.

Buyer shall indemnify, hold harmless, and defend SELLER and its owners, officers, directors, employees, and affiliates against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and attorneys' fees, arising out of any noncompliance with this section by Buyer or Buyer's owners, directors, officers, employees, contractors, subcontractors, or agents.

DELIVERY, TITLE, AND RISK OF LOSS. Title to and risk of loss for the goods shall pass to the Buyer F.O.B. point of origin unless otherwise expressly agreed to in writing by an authorized officer of Seller. Buyer shall promptly take delivery of the goods following notice that the goods have been delivered at the point of origin. Buyer shall be responsible for all loading costs and provide all equipment and labor reasonably suited for receipt of the goods at the delivery point. Seller may, in its sole discretion, without liability or penalty, make partial shipments of goods to Buyer. Each Shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's Purchase Order. Although Seller may elect to assist Buyer in connection with pursuing any claim for damages, Seller shall not thereby assume any obligations for such damage.

PAYMENT. Payment terms are net thirty (30) days from date of invoice unless special terms are set forth in Seller's Order Acknowledgement. Any amounts not paid when due shall accrue interest at the lower rate of (1) 1.5% per month, or (2) at the highest rate permitted by law. If Customer shall fail to comply with any provision or to make payments in accordance with the terms of this Agreement, Seller may, at its option, defer shipments or, without waiving any other rights it may have, terminate this Agreement.

TRANSPORTATION CHARGES. Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges including but not limited to fuel surcharges.

SECURITY. If at any time Buyer's financial responsibility appears unsatisfactory to Seller and Buyer fails to provide, at Seller's request, satisfactory security, or if Buyer fails to comply with the terms of payment hereunder, Seller may, without prejudice to any of its other rights, defer manufacture and/or shipment of goods until Buyer fulfills these obligations or cancel the Order, at Seller's option

CANCELLATION. Buyer acknowledges and agrees that goods supplied by Seller are custom manufactured goods and are not stocked items. Because goods are specially manufactured, orders placed by Buyer may not be cancelled prior to manufacture without Seller's written consent. Buyer may not cancel an order once manufacturing of good has begun. Seller reserves the right to cancel any sale without liability to Buyer (except a refund of monies paid) if the manufacture or sale of product becomes impossible, impracticable, or technically or economically unfeasible.

PERMISSIBLE VARIATIONS. The products sold hereunder shall be subject to standard manufacturing variations, tolerances and classifications, generally accepted in the industry.

TECHNICAL ADVICE. Seller shall not be responsible for results of any technical advice in connection with the design, installation or use of the products sold hereunder.

DISCLAIMER OF WARRANTY FOR BUYER SUPPLIED MATERIALS. Buyer acknowledges that metal fabrication and the associated process operations (sawing, drilling, milling, etc.) have inherent risks that can damage the material. Seller takes commercially reasonable precautions to mitigate these risks; however, there may be situations that could lead to the damage of Buyer supplied material or products developed pursuant to Buyer's specifications, designs, or instructions (collectively, "Buyer Supplied Materials"). These risks include, but are not limited to, weather, power outages/spikes, tool failure, workpiece movement/release, material defects, etc. Our goal is to be 100% successful during the processing of Buyer Supplied Material, however, because of the aforementioned associated risks we offer this service on a "best effort" basis and expressly disclaim all other warranties for Buyer Supplied Material.

SELLER WARRANTY. Seller warrants that the goods delivered to Buyer in connection with the Order Acknowledgement meet Seller's standard specifications for the goods in effect at the date of delivery. This warranty is void and of no effect if the goods or any articles made from the goods are not stored or handled in accordance with the product specifications. Seller makes no further warranty regarding the goods. THE

FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM ANY COURSE OF DEALING OR TRADE USAGE. In case of a breach of this warranty attributable solely to the actions or omissions of Seller, at Seller's option, the goods will be repaired or replaced or a credit in the amount of the sales price will be issued for the goods that fail to meet the warranted specifications following Seller's inspection of returned goods. THE FOREGOING REPRESENTS BUYER'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THIS WARRANTY. No claim under this warranty will be valid, and Seller shall not be liable to Buyer for a breach of the warranty set forth above, unless: (i) Buyer notifies Seller in writing within forty-five (45) days from the date of shipment of any alleged defect reasonably describing the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine the allegedly defective goods; and (iii) Seller reasonably verifies Buyer's claim that the goods are defective. If instructed, Buyer will return any defective product in compliance with Seller's shipping instructions. Additionally, Seller shall not be liable for a breach of the warranty set forth herein if: (a) Buyer makes any further use of such goods after giving notice to Seller alleging such goods are defective; or (ii) Buyer alters or repairs such goods without the prior written consent of Seller.

LIMITATION OF LIABILITY. Seller's responsibility for any claims, damages, expenses, losses, or liabilities arising out of or related to the goods delivered in accordance with any Order Acknowledgment or for any non-delivery of such goods shall not exceed the purchase price paid by Buyer for such goods. In no event shall Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, Incidental, special, consequential, and/or punitive damages or any expenses for lost profit, lost revenue, property damage, personal injuries, or lost production, whether suffered by Buyer or any third party, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the sales price of the good giving rise to the liability.

INDEMNIFICATION. Buyer agrees to indemnify, defend, and hold Seller harmless from any and all claims, demands, losses, damages, expenses (including legal costs and attorneys' fees) and liabilities resulting from or in any way related to Buyer's use of the goods delivered in accordance with this Order Acknowledgement.

INTELLECTUAL PROPERTY RIGHTS. Seller or Seller's licensor shall own the intellectual property rights in any product or service sold to Buyer unless expressly stated otherwise in the Order Acknowledgement. Unless different terms are stated in the Order Acknowledgement, Seller grants Buyer a fully paid-up, worldwide, perpetual, non-exclusive, royalty-free and unlimited license (with the right to sublicense) and right to use such intellectual property as is necessary for Buyer to use and enjoy the products or services identified Order Acknowledgement for Buyer's internal business purposes only.

CONFIDENTIALITY. If the parties have entered into a Non-Disclosure Agreement (the "NDA"), prior to or concurrently with the issuance by Seller of the Order Acknowledgement, then the parties agree that such NDA remains in full force and effect, and the terms and conditions of the NDA are incorporated herein by reference, and supersede the terms hereof, such that if there is a conflict between the terms and conditions of the NDA and these Conditions of Sale, then the terms and conditions of the NDA will govern. In the absence of an NDA, Buyer agrees to keep confidential and maintain the confidentiality of the confidential information of Seller, including the terms of the Agreement, the work being performed by Seller, the products and services being supplied and the relationship between Seller and Buyer, and all Seller intellectual property, trade secrets, and proprietary information. Buyer agrees to protect the information in strictest confidence by using the same degree of care to prevent the unauthorized use, dissemination, or publication of the information as Buyer uses to protect its own confidential information, provided that in no case shall such standard of care be less than a reasonable degree of care. Buyer may disclose such information only to those of Buyer's employees who have a need to know such information provided that such employees are under obligations of confidentiality to maintain the confidentiality of such confidential information. Buyer shall not use the confidential information of the Seller for any purpose other than as necessary to carry out the purposes of the sales transaction identified in the Order Acknowledgement.

ASSIGNMENT AND SUBCONTRACTING. Buyer shall not assign this Agreement or any right or obligation bestowed or imposed herein without the express prior written consent of Seller. Seller may assign this Agreement at Seller's discretion, effective upon notice to Buyer. Additionally, Seller may subcontract or delegate its obligations under this Agreement at Seller's discretion.

FORCE MAJEURE. Seller shall be excused for delays in delivery or performance where such delay is due to acts of God, acts of Buyer not within its rights, actors of civil

or military authority, fires, strikes, floods, pandemics, epidemics, war, riot or other similar causes beyond Seller's control which Seller could not have reasonably foreseen or protected against.

WAIVER. In no event shall any failure or delay by exercising any right hereunder be construed or found to operate as a waiver of such right.

VALIDITY. In the event that any portion(s) of these Terms and Conditions is(are) found to be invalid, or otherwise unenforceable, such finding shall not affect the validity of the remaining portion(s).

GOVERNING LAW. This Agreement shall be governed by the laws of the State of Ohio, USA, without regard to any conflict of laws provisions. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or the rights or obligations of Seller or Buyer.

DISPUTES. The parties shall attempt in good faith to resolve any dispute arising out of the making or performance of or otherwise relating to this Agreement promptly by negotiations between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within twenty (20) days after delivery of said notice, executives of the parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within sixty (60) days after the disputing party's notice, or if the parties fail to meet within twenty (20) days, any party may institute litigation. As a material term of this Agreement, the parties agree that any such litigation must be instituted with the completed service of a complaint not less than two (2) years of the occurrence of the issue giving rise to the dispute or the claim is forever barred. In the event of litigation, each party consents to and covenants not to challenge exclusive venue and personal jurisdiction of the federal court of the United States District Court for the Southern District of Ohio or the courts of the State of Ohio in each case located in the City of Dayton and County of Montgomery, and each party irrevocably submits to and covenants not to challenge the exclusive jurisdiction and venue of such courts in any such suit, action or proceeding. The parties further irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the parties at their mailing addresses identified on the Order Acknowledgement or an alternate address for which one party specifically notifies the other in writing.

SEVERABILITY. If any term or provision of these terms and conditions is invalid, illegal or unenforceable in any applicable jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these terms and conditions or invalidate or render unenforceable such term or provision in any other jurisdiction.

RELATIONSHIP OF THE PARTIES. The relationship between Buyer and Seller is that of independent contractors. Nothing in these terms and conditions shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

SURVIVAL. Provisions of these Terms and Conditions which by their nature should apply beyond their terms will remain in force after any termination or expiration of the applicable Purchase Order Including, without limitation, the provisions regarding limitation of liability, indemnification, governing law and venue, and survival.