

# RICKARD SPECIALTY METALS & ENGINEERING INC.

## PURCHASING TERMS AND CONDITIONS

1. **GENERAL.** This Purchase Order constitutes buyer's offer to seller and becomes a binding Purchase Order on the terms set forth herein when accepted by Seller either by acknowledgement or the commencement of performance hereof. This Purchase Order expressly limits acceptance to the terms stated herein. Any additions or different terms proposed by Seller are rejected unless agreed to in writing by an authorized representative of Buyer.
  - a. Seller shall strictly adhere to the shipment or delivery schedules specified in this Purchase Order. If Seller does not comply with Buyer's delivery schedule or in the event it becomes apparent that delivery or completion cannot be accomplished within the time specified, Buyer, at its option, may either approve a revised delivery schedule or may terminate this Purchase Order either in whole or in part without penalty or liability to Seller, except for materials received and accepted or work completed and accepted. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Force Majeure" article of this Purchase Order. The added premium transportation costs are to be borne by Seller. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of land transportation.
  - b. Buyer shall, at no additional cost, retain goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within 30 days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse Buyer for reasonable costs associated with storage and return of the excess. If goods are manufactured with reference to Buyer's proprietary information or materials, Seller agrees that, pursuant to the "Buyer's Property and Plans" article of this Purchase Order, it will not sell or offer such goods for sale to anyone other than buyer without Buyer's prior written consent, which consent may be withheld in Buyer's sole discretion.
2. **SCHEDULE**
  - a. Seller shall strictly adhere to the shipment or delivery schedules specified in this Purchase Order. If Seller does not comply with Buyer's delivery schedule or in the event it becomes apparent that delivery or completion cannot be accomplished within the time specified, Buyer, at its option, may either approve a revised delivery schedule or may terminate this Purchase Order either in whole or in part without penalty or liability to Seller, except for materials received and accepted or work completed and accepted. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Force Majeure" article of this Purchase Order. The added premium transportation costs are to be borne by Seller. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of land transportation.
  - b. Buyer shall, at no additional cost, retain goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within 30 days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse Buyer for reasonable costs associated with storage and return of the excess. If goods are manufactured with reference to Buyer's proprietary information or materials, Seller agrees that, pursuant to the "Buyer's Property and Plans" article of this Purchase Order, it will not sell or offer such goods for sale to anyone other than buyer without Buyer's prior written consent, which consent may be withheld in Buyer's sole discretion.
3. **PACKING AND SHIPPING**
  - a. No charges will be made for packing, crating, or cartage unless specifically authorized by this Purchase Order. Seller warrants that goods supplied will be adequately contained, packaged and labeled, and are suitably packed to assure safe transit and to secure lowest transportation and insurance rates. Invoices bearing transportation charges must be supported with transportation and insurance rates. Invoices bearing transportation charges must be supported with transportation bills showing weight and rate. Tax shall not be imposed on transportation charges. For material delivered in error, or in excess of quantity shown herein, Buyer reserves the right to return such material at Seller's sole risk and expense. Except as otherwise expressly provided herein, title to and risk of loss on an item shipped by Seller shall pass to Buyer upon Buyer's inspection and acceptance of such terms at Buyer's facility. Buyer's count will be accepted as final and conclusive on all shipments not accompanied by a packing ticket(s). Buyer may charge Seller for damage to or deterioration of any goods resulting from improper packing or packaging.
4. **QUALITY CONTROL.** Seller shall establish and maintain a quality control system acceptable to Buyer for the goods purchased under this Purchase Order. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any Violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any goods delivered to Buyer during the period of any such violation or deviation.
5. **SELLER'S NOTICE OF DISCREPANCIES.** Seller shall notify Buyer in writing when discrepancies are discovered or suspected regarding Seller's processes, goods delivered or goods to be delivered under this Purchase Order. Any disposition of nonconforming product is at the sole discretion of the Buyer.
6. **INSPECTION**
  - a. At no additional cost to Buyer, goods shall be subject to inspection, surveillance and test at reasonable times and places, including Seller's subcontractors' locations. Buyer shall perform inspections, surveillance and tests so as not to unduly delay the work.
  - b. Seller shall maintain an inspection system acceptable to Buyer for the goods purchased under this Purchase Order. When specified, Seller shall submit evidence of inspection and results with delivered items.
  - c. If Buyer performs an inspection or test on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.
7. **ACCEPTANCE AND REJECTION**
  - a. Buyer shall have the option of accepting delivered goods or notifying Seller of rejection or revocation of acceptance (hereinafter "rejection"), notwithstanding any payment, prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Purchase Order or impair any rights or remedies of Buyer. Further, Seller shall be responsible for making all claims against carriers for losses and damages notwithstanding which party makes arrangements or payment for carriage.
  - b. If Seller delivers non-conforming goods, Buyer may at Buyer's option and at Seller's expense (i) return the goods for credit or refund; (ii) require Seller to promptly correct or replace the goods; (iii) correct the goods; or (iv) obtain replacement goods from another source.
  - c. Seller shall not redeliver corrected or rejected goods without identifying the former rejection or requirement for correction.

Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed within the original delivery schedule or such later time as Buyer's authorized representative(s) may reasonably direct.

- d. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this Purchase Order or otherwise.
8. **WARRANTY.** In addition to any warranties implied by fact or law, Seller expressly warrants all items to be free from defects in design (except Buyer's design), workmanship, and material; to conform strictly to applicable specifications, drawings, and approved samples; and to be fit and sufficient for the purpose intended and to be merchantable. Such warranties, together with all other service warranties of Seller, shall benefit Buyer, its successors, assigns and customers. All warranties shall survive Buyer's inspection, testing, and acceptance. In event of breach of warranty Buyer may, at its option, wither return for credit at Seller's expense or require prompt correction or replacement of the defective or non-conforming goods. Seller shall replace or repair, without cost to Buyer, any item on which defective performance, design, workmanship, or materials is found, provided claim is made within two (2) years from date of initial operation.
9. **TAXES.** Unless this Purchase Order specifies otherwise, the price of this Purchase Order includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Purchase Order except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.
10. **INVOICES AND PAYMENT.** Unless otherwise authorized by Buyer's authorized representative(s), Seller shall issue a separate original invoice for each delivery that shall include Buyer's Purchase Order number and line item number. Seller shall forward its invoice to the address specified elsewhere in this Purchase Order. Unless freight or other charges are itemized, buyer may take any offered discount on the full amount of the invoice. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery date, the actual delivery date or the date of receipt of a correct invoice. Payment shall be deemed made on the date Buyer any amounts paid in excess of amounts due Seller.
11. **CHANGES.** Except as specifically provided for herein, no changes as to quantities, description, price, destination for delivery or any other term of this Purchase Order of these Terms and Conditions shall be made, nor shall any charge for extras be allowed unless same have been authorized in writing by the Buyer's authorized agent, and the proper price adjustment stated in such order. No charge shall be allowed for freight, express, cartage, or other transportation unless agreed to and specified in this order.
12. **DISPUTES.** All claims and disputes arising out of or related to this Purchase Order or these Terms and Conditions shall be arbitrated under the Commercial Arbitration Rules San Bernardino County, California, before one neutral arbitrator. The arbitrator may award interim and final injunctive relief and other remedies. Any award of the arbitrator (including awards of interim or final remedies) may be confirmed or enforced in any court having jurisdiction. Notwithstanding the preceding, Buyer or Seller may bring court proceedings or claims against the other (i) solely as part of separate litigation commenced by an unrelated third party, or (ii) if not first sought from the arbitrator, for temporary or preliminary injunctive relief or other interim remedies pending conclusion of the arbitration. The prevailing party in any arbitration or court action or proceeding shall be awarded its reasonable attorneys' fees and costs. Pending final resolution of any dispute, Seller shall proceed with performance of this Purchase Order according to Buyer's instructions so long as buyer continues to pay amounts not in dispute.
13. **FORCE MAJEURE.** Neither party hereto shall be liable to the other for default or delay in performing its obligations hereunder due to any cause beyond the reasonable control of such party, as the case may be, including, but not limited to war, insurrection, acts of nature, and governmental order or regulation.
14. **CANCELLATION FOR DEFAULT**
  - a. Buyer may, by written notice to Seller, cancel all or part of this Purchase Order if (i) Seller fails to deliver the goods within the time specified by this Purchase Order or any written extension; (ii) Seller fails to perform any other provision of this Purchase Order or fails to make progress, so as to endanger performance of this Purchase Order, and, in either of these two circumstances, does not cure the failure within 10 days after receipt of notice from Buyer specifying the failure; or (iii) in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.
  - b. Seller shall continue work not canceled. If buyer cancels all or part of this Purchase Order, Seller shall be liable for Buyer's excess re-procurement costs.
  - c. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed goods, and (ii) any partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Purchase Order rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this Purchase Order. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customer has an interest.
  - d. Buyer shall pay the Purchase Order price for goods accepted. Buyer may withhold from any amount due under this Purchase Order any sum buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.
15. **ASSIGNMENT, DELEGATION AND SUBCONTRACTING.** Seller shall not delegate or assign its performance required by this Purchase Order, nor any monies due or to become due hereunder, without buyer's written consent, and any attempted delegation or assignment without such consent shall be void. This Purchase Order shall be binding upon Seller's successors and permitted assigns.
16. **INSURANCE.** Seller shall, at Seller's own expense, obtain and maintain comprehensive general liability insurance, on an occurrence basis, providing standard bodily injury, property damage, personal injury, and advertising injury coverage with per occurrence limits of no less than \$1,000,000 and a general aggregate limit of no less than \$2,000,000 per year. Seller will, upon request from Buyer, furnish to Buyer a standard form certificate of insurance evidencing the insurance coverage in effect.
17. **LIABILITY FOR SUPPLIED MATERIALS.** In the event Buyer supplies Seller with materials for the goods or articles to be produced by this Purchase Order, Seller shall be liable for all costs and expenses (including delivery charges) of any replacement materials required by Seller's willful misconduct or negligent handling, storage, use, manufacturing process, or workmanship of such materials.
18. **NO AGENCY.** No agency, employment relationship, joint venture, or partnership is created between the parties and neither party shall be deemed to be the agent of the other.

19. **PUBLICITY.** Without Buyer's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this Purchase Order or the goods or program to which it pertains. Seller shall be liable to Buyer for any breach of such obligation by any subcontractor. Further, Buyer may request the Seller sign a Nondisclosure/No compete Agreement.
20. **BUYER'S PROPERTY AND PLANS.** All plans, drawings, designs, and specifications supplied to Seller shall remain the property of Buyer and any information derived therefrom or otherwise communicated to Seller are strictly confidential and shall not, without the written consent of Buyer, be disclosed to any third party or used by Seller in any manner except in connection with furnishing any article, good or performing any work at the direction of Buyer. Seller shall hold buyer's plans, drawings, designs, and specifications in confidence and take all reasonable precautions to protect such information from disclosure, including without limitation, all precautions Seller employs with respect to its own confidential materials.  
Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this Purchase Order. Seller shall contact Buyer prior to releasing any property belonging to Buyer from Seller's inventory/control. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this Purchase Order with Buyer's prior written consent. Seller shall notify Buyer's authorized representative(s) if Buyer's property is lost, damaged or destroyed. As directed by Buyer, upon completion, termination or cancellation of this Purchase Order, Seller shall deliver such property, to the extent not incorporated in delivered goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses.
21. **RIGHTS AND REMEDIES.** Any failures, delays or forbearances or either party in insisting upon or enforcing any provision of this Purchase Order, or in exercising any rights or remedies under this Purchase Order, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this Purchase Order, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity. If any provision of this Purchase Order is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.
22. **COMPLIANCE WITH LAWS.** Seller shall comply, and shall ensure its subcontractors comply, with all applicable laws, rules, and regulations of any federal, state, or local government authority which are now or may become applicable to Seller's performance hereunder and Seller shall defend, indemnify, and hold Buyer harmless from and against any claim or penalty incurred in connection therewith. Seller shall furnish Buyer, on request, with reasonable certifications, guaranties and other documents regarding compliance with such laws, rules and regulations.
23. **WAIVER AND REMOVAL OF LIENS.** Seller agrees to secure, execute and deliver to Buyer all waivers, releases of lien rights, and other agreements, instruments, and other documents relating to amounts paid to Seller hereunder or otherwise necessary or desirable in Buyer's discretion to evidence Buyer's ownership of accepted goods hereunder free and clear of all liens, claims and other encumbrances. Seller shall secure and deliver to Buyer such waiver, releases of lien rights, and other agreements, instruments and other documents from subcontractors, vendors, laborers and/or materialmen as necessary to satisfy Seller's obligations.
24. **GOVERNING LAW & JURISDICTION.** This Purchase Order shall be governed by and construed in accordance with the laws of the state of California. No consideration shall be given to California's conflict of laws rules. Seller consents to the personal jurisdiction and venue of the federal and state courts in San Bernardino County, California in the event of any court action or proceeding arising out of or related to this Purchase Order or these Terms and Conditions.
25. **SUSPENSION OF WORK**  
a. Buyer's authorized representative(s) may, by written order, suspend all or part of the work to be performed under this Purchase Order for a period not to exceed 100 days. Within such period of any suspension of work, buyer may (i) cancel the suspension of work order; (ii) cancel this Purchase Order in accordance with the "Cancellation for Default" article of this Purchase Order; or (iii) extend the stop work period.  
b. Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if (i) this Purchase Order is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Purchase Order delivery schedule; and (iii) Seller submits a claim for adjustment within 20 days after the suspension is canceled.
26. **ACCESS TO PLANTS AND PROPERTIES.** Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer.
27. **ENTIRE AGREEMENT.** This Purchase Order contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications, written or oral, between Buyer and Seller related to the subject matter of this Purchase Order. No amendment or modification of this Purchase Order shall bind either party unless it is in writing and is signed by Buyer's authorized representative(s) and an authorized representative of Seller. In the event that any court or arbitrator holds any provision contained herein to be invalid or unenforceable in whole or in part, such action shall not affect the remainder of this Purchase Order or Terms and Conditions, which shall remain in full force and effect.
28. **SELLER'S INDEMNIFICATION.** Seller agrees to indemnify, defend, and hold buyer harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees incident to (i) any actual or alleged infringement of any patent, trademark, copyright or other right relating to the articles or materials covered by this Purchase Order including in the manufacture and/or sale of such articles or materials, (ii) alleged defects in the articles or materials covered by this Purchase Order, (iii) any actual or alleged violation of any law, statute or ordinance or any administrative order, rule or regulation, (iv) any actual or alleged violation of the warranties set forth herein, (v) or in any way connected with the articles or materials covered by this Purchase Order or with the use thereof by Buyer. Seller shall defend, indemnify, and hold Buyer and any parties for which Buyer is rendering services harmless from and against every demand, claim, cause of action, loss, liability, or expense (including legal fees) of any third party, including without limitation Seller, Seller's employees or agents, or Sellers' subcontractors or their employees on account of personal injury or death, loss or damage to property, or fines, penalties, assessments, or liens arising out of or incident to the material or services provided by Seller regardless of whether caused or contributed to, in whole or in part, by the concurrent negligence of Buyer, its employees or contractors, unseaworthiness of any vessel, strict liability, or pre-existing condition.
29. **DOCUMENTATION & RECORD CONTROL**  
a. All documents pertaining to this purchase order including but not limited to: MSDS, inspection reports, test reports, drawings, specifications, training records, personnel certifications and

Certification Hard Copy must be sent with product to specified destination.

- b. Additionally, electronically send:
  - i. One (1) copy by email to [sales@rickardmetals.com](mailto:sales@rickardmetals.com)

Seller shall be capable of retention of records pertaining to the product for a minimum period of Ten (10) years or that required by contract or regulatory authority.

- c. Seller shall be capable of retrieving and providing records to the buyer pertaining to the product within a reasonable amount of time. Reasonable amount of time is defined as
  - 1. Records for the current year and three years past provided within 1 business day
  - 2. Records prior to three years past the current year shall be provided with 5 business days.
- d. Buyer or customer owned proprietary specifications, drawings or design information including electronic, shall not be released to a third party without prior written consent of the owner or buyer. Upon notification the supplier shall dispose of the documents as directed by the owner or buyer.