



## STANDARD TERMS AND CONDITIONS OF PURCHASE

**1. ENTIRE AGREEMENT.** These Standard Terms and Conditions of Purchase (“Terms”), together with any additional terms contained in any order or request for goods and/or services issued by Custom Pipe & Fabrication, Inc. (“Buyer”), including any specifications or details incorporated or referenced therein (“Order”), constitute the entire agreement and exclusive expression of the parties with respect to the purchase and sale of the goods and services described therein (collectively, the “Agreement”). This Agreement constitutes an offer made by Buyer and shall not be construed as acceptance of any offer from Seller. No other terms of Seller, no modification, amendment or waiver to this Agreement, and no cancellation, change or return of any Order will be binding on Buyer until accepted, in writing, by Buyer’s authorized representatives. An “authorized representative” of Buyer shall mean any Officer, Director or other representative of Buyer duly designated and evidenced by written certificate (“Authorized Representative”). Seller shall be deemed to have accepted this offer upon the earlier of: (a) commencement of the manufacture or fabrication of the good described in the Order (“Goods”); (b) shipment of any of the Goods; (c) performance of any of the services described in the Order (“Services”); (d) Seller’s execution of this Order; or (e) after the expiration of five (5) calendar days following Seller’s receipt of the Order. Notwithstanding the foregoing, Buyer shall not be obliged to make any payments to Seller unless Buyer has previously received a copy of this Order signed by Seller.

**2. PACKING AND SHIPMENT.** Unless otherwise specified by this Agreement, all Goods shall be delivered FOB Destination for domestic shipments (shipments originating in the United States) or DDP Destination for international shipments (shipments originating outside of the United States). No charges will be allowed, nor shall any amount be charged to Buyer for taxes, transportation, boxing, packing, returnable containers or insurance, unless stated in the Order. All sales, use, excise or similar taxes to be paid by Buyer, if any, must be itemized separately on the Order and on Seller’s invoices. A packing list must accompany each shipment. Seller shall not ship incomplete items without Buyer’s written authorization. All shipments must be packaged in a manner that will provide for efficient handling and preclude the possibility of damage to the Goods. All shipments tendered to a common carrier for delivery must conform to the packaging requirements of air, sea, rail or motor carrier freight classification. Seller shall be liable for any increase in freight charges caused by or arising from Seller’s failure to follow shipping instructions specified on the Order. When the type of carrier is not specified, routing must be via lowest cost transportation which satisfies Buyer’s required delivery date.

**3. DELIVERY.** All shipments are to arrive on the date indicated in the Order, with time being of the essence. Any future delivery dates will be established by mutual agreement between the parties. If the Seller is unable to make delivery on the date specified in the Order, then Seller shall promptly notify Buyer in writing. Unless delay is due to causes beyond Seller’s reasonable control, Buyer reserves the right, together with any other rights at law or in equity, to elect any of the following: (a) extend the delivery date; (b) procure the Goods from another vendor and charge Seller for the difference between the price paid for the Goods and the price in this Order; or (c) cancel the particular release. In the event Buyer elects to cancel a particular release due to Seller’s inability to timely deliver the Goods, Seller shall credit Buyer for the price attributable to the cancelled release and the amount of the Order shall be adjusted accordingly. Buyer’s acceptance of any late delivery shall not release Seller of its obligation to make

future deliveries in accordance with the delivery schedule established in the Order or be deemed a waiver of Buyer's rights hereunder. Title and risk of loss shall pass to Buyer upon receipt of the Goods at the destination designated in the Order and Seller assumes all risk of loss until receipt by Buyer at such destination.

**4. ACCEPTANCE AND REJECTION OF GOODS.** Payment of this Order is specifically conditioned upon Buyer's acceptance of the Goods; provided, however, that payment shall not be deemed to constitute acceptance of any non-conforming Goods. Buyer shall accept the Goods or give Seller notice of rejection or revocation of acceptance within a reasonable time following Buyer's receipt of the Goods. No prior payment, passage of title, inspection, test or failure to discover any defect or other non-conformance shall relieve Seller of Seller's obligation to deliver conforming Goods under this Order or impair any rights or remedies of Buyer.

**5. PRICES.** Seller represents and warrants to Buyer that the prices set forth on the Order are less than or equal to the prices offered by Seller to customers purchasing similar products, in similar quantities and/or similar terms. If, due to market conditions or Seller-sponsored promotion(s), the current price for the Goods is less than the prices specified in the Order, Buyer shall receive the benefit of such lower prices and any other price reductions at the time of shipment.

**6. TAXES.** Unless specifically set forth on the Order, Buyer will not pay extra or additional charges, duties or taxes of any kind. Seller will pay all contributions, taxes and premiums payable under federal, state and local laws measured on the payroll of employees engaged in performance of Services under this Agreement, including FICA and unemployment compensation premiums, and all excise, transportation, occupational and other taxes applicable to the Goods and Services to be provided by Seller.

**7. MANUFACTURE.** If the Order is identified as a "blanket" or "open" purchase order or issued pursuant to a "master agreement" between the parties ("Master Agreement"), Buyer will release specific quantities against the Order in accordance with Buyer's requirements and all releases will reference to the number assigned to the blanket order or the Master Agreement. Release dates will be given as far in advance as possible to permit Seller the time to schedule production accordingly. Buyer shall not be obligated to purchase any Goods listed in a blanket order or the Master Agreement, except as released by Buyer.

**8. SPECIFICATIONS.** All Goods ordered to Buyer's drawings and/or specifications must comply with the drawings, specifications, cut sheets, technical data, instructions and such other terms specified by Buyer (collectively, "Buyer's Designs"). In the event any ambiguity, discrepancy or questions arise from Buyer's Designs, Seller shall immediately notify Buyer in writing and refer to Buyer for a decision, interpretation or further instructions. Seller understands and acknowledges that Buyer's Designs are proprietary, and Seller shall not use, replicate or repurpose Buyer's Designs, or any portion thereof, for any purpose.

**9. QUALITY CONTROL; INSPECTION.** Seller shall establish and maintain a quality control system acceptable to Buyer. Upon reasonable advance notice from Buyer, Seller shall permit Buyer to review procedures, practices, processes and related documents to confirm the acceptability of Seller's procedures. Seller shall have a continuing obligation to promptly notify Buyer of any violation of, or deviation from, Seller's approved quality control procedures. At no additional cost to Buyer, Goods and Services shall be subject to inspection, monitoring and testing at reasonable times and places, including Seller's subcontractors' locations. Buyer shall perform inspections, monitoring and tests so as not to unduly delay the performance of its obligations hereunder. If Buyer performs an inspection or testing at Seller's facility or at any facility operated by Seller's subcontractors, Seller shall furnish, and

require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of such inspections and tests.

**10. WARRANTIES.** Notwithstanding anything in any specifications, drawings or other documents which are part of this Order, Seller expressly warrants that all Goods shall be new, merchantable, fit for the purpose for which intended and free from all defects, including, but not limited to, defects in workmanship or material. Seller shall notify Buyer in writing when any discrepancy in Seller's processes or Goods are discovered or suspected, irrespective of whether the Goods have been delivered or are to be delivered under this Order. Seller shall perform the Services in a good and workmanlike manner and in accordance with the highest applicable industry standard. Seller shall comply with all applicable laws in the manufacture, sale and delivery of the Goods and/or the performance of the Services. The warranties herein shall survive Buyer's acceptance of Goods or Services and shall be transferable to Buyer's customers.

**11. DEFAULT.** Each of the following constitutes an event of "Default" by Seller: (a) failure to complete Services and/or deliver Goods within the time or with the quality specified or guaranteed in this Agreement; (b) failure to comply with any provisions of this Order, including the breach of any representation, warranty or guarantee; or (c) adjudication of Seller as bankrupt, Seller making a general assignment for the benefit of creditors, or the appointment of a receiver on account of Seller's insolvency.

**12. BUYER'S REMEDIES.**

Upon Seller's Default:

(a) Buyer may immediately, in addition to any other right or remedy Buyer may have at law or in equity: (i) terminate the relationship and/or any pending Orders with Seller and obtain a return of all amounts paid to Seller for Goods and Services not yet provided, or, at Buyer's option and without liability to Seller, suspend the performance of the Services or the delivery of Goods until Seller provides satisfactory evidence that such Default has been cured; (ii) finish Services or correct any non-conformity at Seller's expense by whatever method Buyer deems expedient; (iii) reject, repair or replace non-conforming Goods or Services; (iv) procure substitute Goods or Services from another source, in which case Seller will be liable to Buyer for any additional costs or expenses incurred by Buyer; or (v) require Seller to correct or cure any non-conformity at Seller's expense.

(b) Buyer shall also be entitled to a right of set-off and may withhold, from time to time out of monies due Seller, amounts sufficient to fully compensate Buyer for any loss or damage resulting from any Default or breach by Seller.

(c) Notwithstanding the foregoing, Buyer may, in its sole discretion, extend the delivery or completion schedule or waive any deficiencies in performance, provided, however, that no such waivers or extensions will be binding unless in writing and signed by an Authorized Representative of Buyer.

**13. TERMINATION FOR CONVENIENCE.** Buyer may at any time by written notice to Seller terminate all or any part of this Order for Buyer's convenience, irrespective of whether or not Seller is in Default. If Buyer exercises its right to terminate for convenience, then Seller shall cease all performance on the Order and Buyer's only obligation shall be: (a) for standard stock Goods, to pay Seller for conforming Goods actually accepted or Services satisfactorily completed prior to the termination; or (b) for specially manufactured or fabricated Goods made to Buyer's specifications, to pay Seller for (i) the agreed upon price for completed Goods that conform to Buyer's specifications, plus (ii) costs

reasonably incurred by Seller in connection with partially completed Goods prior to the date of termination. Such costs shall be determined by sound accounting principles but shall not exceed the price allocable to such Goods in Buyer's Order, less any prior payments made under this Order. Upon such payment, Seller shall deliver any completed Goods, incomplete Goods, and raw materials associated with the manufacture or fabrication of such Goods to Buyer in accordance with the terms specified herein.

**14. FORCE MAJEURE.** Buyer may cancel this Order, without liability, with respect to any unshipped Goods or incomplete portion of any Services if Buyer finds it commercially impractical to accept the Goods or Services due to causes beyond Buyer's reasonable control, including a Force Majeure Event. The time for Seller's shipment of Goods or for the performance of Services shall be equitably adjusted in the event Seller is unable to deliver the Goods or perform the Services due to a cause Force Majeure Event. A "Force Majeure Event" shall include, without limitation, (a) acts of God; (b) an act or omission of the other party; (c) an act of civil or military authority, governmental priority or other allocation or control; (d) fire; (e) unusually inclement weather; (f) strike or labor difficulty; (g) riot or other civil disturbance; (h) insolvency or other inability to perform by the manufacturer providing the products offered; (i) epidemic or pandemic; or (j) delay in transportation and/or any other commercial impracticability.

**15. INDEMNIFICATION.**

(a) Seller agrees to defend, indemnify and hold Buyer harmless from all losses, costs, damages, liabilities and expenses (including attorneys' fees and claims asserted by Buyer's customers) arising from or related to Seller's acts, omissions or failure to comply with the Terms of this Order. Seller shall also defend and indemnify Buyer, its successors, assigns, agents and users of its products from and against loss, damage or liability, including, but not limited to, costs, expenses and attorneys' fees which are or may be incurred as a result of any suit, claim, judgment or demand involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any Goods supplied by Seller pursuant to this Order.

(b) In the event Buyer shall be named as a defendant in any legal actions or proceedings before any body or tribunal in any jurisdiction as a result of the Goods and/or Services or Seller's breach of any term in this Order, Seller agrees to defend Buyer, and Buyer's officers, directors and employees, with counsel acceptable to Buyer, in Buyer's reasonable discretion.

(c) Buyer shall have the right, in Buyer's sole discretion, to join Seller, and its successors and assigns, as a defendant in any action or proceeding arising from Buyer's use, sale or other disposition of any Goods provided by Seller.

(d) Buyer agrees to promptly notify Seller of any such claim, action or proceeding and Seller agrees to allow Buyer to participate in the defense of any claims, dispute or proceeding, at Buyer's cost and expense.

**16. INSURANCE.** Seller shall maintain, and require its subcontractors to maintain, in effect through the entire term of any Order, Buyer liability insurance coverage (in an "occurrence" policy form), which liability insurance shall include Seller's indemnity obligations under this Order. Seller shall also maintain: (a) workers' compensation insurance as required by law; (b) Employer's Liability Insurance; (c) property insurance covering finished Goods, work in process and Seller equipment and plant; and (d) automobile insurance. Policies maintained under this Section will be primary, not excess or contributory, to any other applicable policies Buyer might have. The insurance required by this Order: (x) shall be with insurance companies and in amounts satisfactory to Buyer in Buyer's reasonable

discretion; (y) shall be primary in relation to any insurance maintained by Buyer; and (z) shall not limit Seller's liability to Buyer under this Order or limit the rights or remedies available to Buyer at law or in equity. Seller agrees to provide proof of such insurance coverage upon Buyer's request.

**17. ASSIGNMENTS AND SUBCONTRACTING.** This Order may not be assigned, delegated or subcontracted, in whole or in part, without the express prior written consent of an Authorized Representative of Buyer. Buyer's consent to assignment, delegation or subcontracting will not relieve Seller from any obligations under this Agreement or any Order. This Agreement and all Orders issued to Seller by Buyer shall be binding upon any and all successors in interest, assigns or heirs of Seller.

**18. COMPLIANCE WITH LAWS.** In the performance of this Agreement and any Order issued by Buyer, Seller will comply with all applicable federal, state and local laws, codes, regulations and ordinances, including, but not limited to, all applicable: (a) environmental laws; (b) international trade laws, including, but not limited to, laws and regulations regarding export controls, economic sanctions, trade embargoes, anti-boycott restrictions, and anti-corruption laws; (c) laws and regulations addressing human trafficking and slavery; and (d) equal employment opportunity laws, regulations and requirements, including those set forth in Executive Order 11246, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and regulations issued thereunder, and laws prohibiting discrimination against any person because of veteran status, disability, race, creed, color, national origin, religion, age or sex in any term or condition of employment, which are incorporated herein by this reference. Specifically, Seller and its subcontractors, suppliers and vendors will abide by all applicable laws and will take affirmative action in advance to employ individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. Seller shall take commercially reasonable measures to ensure that Seller's subcontractors, suppliers and vendors also comply with such laws and regulations.

**19. PERMITS.** Seller will obtain, at its sole expense, all necessary permits and licenses before beginning Services and will make copies of all such permits and licenses available to Buyer upon request.

**20. WAIVER OF CONSEQUENTIAL DAMAGES.** As an inducement to Buyer to purchase Goods and Services from Seller, Seller agrees that its sole remedy against Buyer shall be limited to actual damages incurred by Seller. SELLER WAIVES ANY RIGHT TO RECOVER CONSEQUENTIAL DAMAGES AND/OR INCIDENTAL DAMAGES FROM BUYER, INCLUDING BUT NOT LIMITED TO DELAY DAMAGES, LOST PROFITS, EXTENDED OVERHEAD AND COSTS INCURRED IN MITIGATION OF DAMAGES.

**21. MODIFICATION; WAIVER.** No changes or additions to these Terms shall be binding upon Buyer unless expressly accepted in writing by an Authorized Representative of Buyer. Seller hereby acknowledges that the failure of Buyer to approve any waiver, alteration or modification proposed by Seller shall constitute a rejection of said waiver, alteration or modification and the provisions of this Order and these Terms as stated herein shall be given full force and effect. Waiver by Buyer of any breach of any provision herein shall not be considered a waiver of any other or future breach of the same or any other provision. All rights and remedies available to the Buyer shall be taken and construed as cumulative, that is in addition to any other rights or remedies provided herein or by law or in equity.

**22. EFFECT OF INVALIDITY.** If any invalid, unenforceable or illegal provision of this Order and these Terms would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary for it to take effect, and the remainder of these Terms shall not be affected thereby and shall remain in full force and effect.

**23. NOTICE.** Any notice or other communication given to a party under or in connection with an Order or these Terms shall be in writing, addressed to the party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may specify in writing, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier.

**24. APPLICABLE LAW.** The validity, performance, and all matters relating to the interpretation and effect of this Agreement shall be governed by the laws of the State of California.

**25. DISPUTE RESOLUTION; ARBITRATION.** In the event of any controversy or claim arising out of or relating to this Order, or a breach thereof, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. If the parties do not reach settlement within a period of sixty (60) days following a written request to meet and confer concerning a dispute, then, upon notice by any party to the other(s), any unresolved controversy or claim shall be submitted to arbitration administered by the American Arbitration Association in accordance with its current Commercial Arbitration Rules; provided, however, that in the case of an international transaction, the arbitration shall be administered by the International Centre for Dispute Resolution in accordance with the provisions of its International Arbitration Rules. The demand for arbitration may be served at any time following the earlier of: (a) a party's refusal to meet and confer; (b) the conclusion of the meet and confer process; or (c) the expiration of sixty (60) days following the written request to meet and confer. The arbitration hearings shall be conducted in English, before a single arbitrator. All hearings shall be scheduled promptly and shall be conducted in Los Angeles, California. The arbitration award may be confirmed and enforced by any court having jurisdiction over the award debtor.