

TERMS AND CONDITIONS

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms that govern the sale of the goods ("**Products**") and services ("**Services**") between UMS METAL BUILDING SYSTEMS, LLC ("**Seller**") and the end buyer ("**Buyer**").

(b) The following: these Terms, the manufacturer's limited warranty attached hereto as Exhibit 1, the accompanying quotation (the "**Quote**"), the purchase order sent by Buyer ("**Purchase Order**"), and the Seller's purchase order confirmation email ("**PO Confirmation**") (collectively, this "**Agreement**") comprise the entire agreement between Seller and Buyer, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The acceptance of any order under this Agreement is expressly limited to these Terms and any additional or different terms suggested by the Buyer are hereby rejected as these Terms shall prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its Purchase Order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

(i) Seller does not represent, warrant or guarantee the accuracy, adequacy or suitability of the quantities and types of materials set forth in the Quote for the intended project. The party receiving this Quote shall be solely responsible for verifying all quantities, types and suitability of materials. Determining the need for and purchasing of any additional quantities or types of materials is the sole responsibility of the party receiving this Quote.

2. Delivery.

(a) The Products will be delivered within a reasonable time to be determined by Seller after Seller provides Buyer with the PO Confirmation, subject to availability of finished Products. Seller shall not be liable for any delays, loss, or damage in transit.

(b) Seller shall deliver the Products EXWORKS Franklin Park, Illinois, at Seller's manufacturer's facility (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Products. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products at the Delivery Point.

(c) If for any reason Buyer fails to accept delivery of any of the Products on the date fixed pursuant to Seller's notice that the Products have been delivered at the Delivery Point, or if Seller is unable to deliver the Products at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Products shall pass to Buyer; (ii) the Products shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Products until

Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses including, without limitation, storage, and insurance.

3. Title and Risk of Loss. Title and risk of loss pass to Buyer upon delivery of the Products at the Delivery Point. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Illinois Uniform Commercial Code.

4. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of Seller and Buyer. Seller reserves the right to make manufacturing alterations to the Product during the course of manufacturing the Product, insofar the alterations shall not materially impact the performance of the Product.

5. Inspection and Rejection of Products Delivered in Error. Buyer has the right to inspect the Products upon arrival. Buyer's inspection rights expire three (3) days after the arrival of the Products at the delivery destination. A failure to make inspection within that time waives notice of any defect that a reasonable inspection would have revealed. A rejection of the Products by Buyer is not effective unless written notice of rejection is given to Seller within three (3) days of delivery.

6. Price.

(a) Buyer shall purchase the Products from Seller at the price (the "**Price**") set forth in the Quote. Except as otherwise stated on the Quote and approved in writing by Seller, the prices set forth in the Quote shall only be valid for no more than thirty (30) days from the date of the Quote.

(b) Seller will make reasonable efforts to honor the prices and quantities in this Quote for thirty (30) days after issuance, but Seller reserves the right to pass through its price increases to the Buyer. This Quote is subject to product availability at the time of order and Seller reserves the right to allocate goods in the time of a shortage in its sole discretion. All products are subject to prior sale and may become temporarily or permanently unavailable at any time. Failure to order the quoted quantity of Products within thirty (30) days shall relieve Seller of any duty to sell at the price quoted.

(c) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

7. Payment Terms.

(a) Unless specifically stated otherwise in the Agreement, Buyer shall pay all invoiced amounts due to Seller within thirty (30) days of delivery of the Products. In the event the invoice is paid in installments, any late payment shall result in the entire owed amount becoming immediately due and payable.

(b) Buyer shall make all payments hereunder by wire transfer, check, or other payment method approved in writing by Seller, and in US dollars.

(c) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof.

(d) Without prejudice to any other rights, Seller may suspend further deliveries of any Products purchased if Buyer defaults in payment of any amounts due, or whenever Seller may deem itself insecure as to Buyer's performance, until Buyer remedies such default or provides assurance that satisfies Seller in its sole discretion, of Buyer's ability to perform. Seller may cancel any order at any time prior to payment by Buyer.

(e) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

8. Manufacturer's Limited Warranty.

(a) All Seller's Products are subject exclusively to the manufacturer's limited warranty attached hereto as Exhibit 1, and it contains the only warranty, express or implied, provided to Buyer.

(b) EXCEPT FOR THE MANUFACTURER'S LIMITED WARRANTY SET FORTH IN EXHIBIT 1, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

9. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER OR SELLER'S OWNERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ASSOCIATES, PARENTS, SUBSIDIARIES, OR AFFILIATES (COLLECTIVELY, "SELLER-RELATED PARTIES") BE LIABLE TO BUYER OR ANY THIRD

PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER OR ANY SELLER-RELATED PARTIES HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) BUYER AGREES THAT WITH REGARD TO ANY POTENTIAL CLAIM RELATING TO THE PRODUCTS IT SHALL WAIVE AND NOT SEEK ANY REMEDY OTHER THAN A CLAIM FOR BREACH OF THE MANUFACTURER'S LIMITED WARRANTY TO BE SOUGHT SOLELY AND EXCLUSIVELY FROM SELLER. IN PARTICULAR, CUSTOMER AGREES THAT IT SHALL NOT SEEK ANY REMEDY FROM ANY SELLER-RELATED PARTIES, AND BUYER HEREBY WAIVES ANY AND ALL OTHER POTENTIAL CLAIMS AGAINST SAID SELLER-RELATED PARTIES.

(c) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER.

10. Compliance with Law. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products.

11. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

12. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or

privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

14. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within thirty (30) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ninety (90) consecutive days following written notice given by it under this Section 16, either party may thereafter terminate this Agreement upon thirty days' written notice. The foregoing notwithstanding, no Force Majeure Event shall be a defense to a delay in payment from Buyer to Seller.

15. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

16. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement 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.

17. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

18. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Illinois.

19. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Illinois in each case located in the City of Chicago and County of Cook, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

20. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Quote or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

21. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

22. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information Governing Law, Submission to Jurisdiction, and Survival.

EXHIBIT 1

MANUFACTURER'S LIMITED WARRANTY

UMS METAL BUILDING SYSTEMS, LLC (“UMS METAL”) warrants that the purchased UMS METAL products (the “Product”) sold to the first end user (“BUYER”) shall be free from defects in material and workmanship at the time of shipment from UMS METAL’s facility or other place of shipment

I. METHOD FOR OBTAINING WARRANTY SERVICE

- (A) To obtain warranty service under this Manufacturer’s Limited Warranty, BUYER must provide UMS METAL with a written notice to 11417 Irving Park Road, Franklin Park, Illinois 60131 or ums@umsmetal.us, explaining any alleged defect with the part and lot number of the alleged defective Product along with pictures of the alleged defective Product within ten (10) days of its discovery. If such serial and model number is not provided by BUYER, or if Buyer does not include photographs, the request will be treated as improper service request and no service will be rendered by UMS METAL.

- (B) Within a reasonable period of time upon learning the alleged defect, at UMS METAL’s option, UMS METAL may choose, in its sole discretion, to either contact BUYER via phone or email or have a technician come to the site where the defective Product is installed to conduct an assessment.

II. WARRANTY SERVICES PROVIDED

- (A) If the Product shall be proved to UMS METAL’s satisfaction to be defective, UMS METAL’s obligations under this Manufacturer’s Limited Warranty shall be limited to replacing the Product, if such defect was caused solely by defective workmanship and materials. Such replacement shall be UMS METAL’s sole obligation and BUYER’s exclusive remedy hereunder.

IV. EXCLUSIONS FROM WARRANTY

This Manufacturer’s Limited Warranty does not cover Products that have been subject to:

- (A) Modifications, additions, alterations, tampering, or improper maintenance or repairs;
- (B) Damage due to improper handling;
- (C) Damage due to improper storage;
- (D) Normal wear and tear;

- (E) Physical damage to the Product as a result of unreasonable use and/or negligence;
- (F) Installation, operation or maintenance which is not in accordance with UMS METAL 's written recommendations and restrictions as contained in UMS METAL 's engineering manuals or any signage on the Product itself; and
- (G) Acts of God, including but not limited to lightning, flood, tornado, earthquake, or hurricane.

V. LIMITATIONS ON WARRANTY

- (A) This Manufacturer's Limited Warranty is provided by UMS METAL, and it contains the only express warranty provided to BUYER by UMS METAL. UMS METAL does not authorize any other person, including distributors, to give any other warranties on UMS METAL's behalf.

UMS METAL DISCLAIMS ANY EXPRESS WARRANTY NOT PROVIDED HEREIN AND ANY IMPLIED WARRANTY, GUARANTY OR REPRESENTATION AS TO PERFORMANCE, QUALITY AND ABSENCE OF HIDDEN DEFECTS, AND ANY REMEDY FOR BREACH OF CONTRACT, WHICH BUT FOR THIS PROVISION, MIGHT ARISE BY IMPLICATION, OPERATION OF LAW, CUSTOM OF TRADE OR COURSE OF DEALING, INCLUDING IMPLIED WARRANTIES OF WORKMANLIKE QUALITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. UMS METAL FURTHER DISCLAIMS, ANY RESPONSIBILITY FOR LOSSES, EXPENSES, INCONVENIENCES, SPECIAL, INDIRECT, SECONDARY OR CONSEQUENTIAL, INCIDENTAL, AND CONTINGENT DAMAGES WHATSOEVER, INCLUDING DAMAGES ARISING FROM OWNERSHIP OR USE OF PRODUCT.

IMPLIED WARRANTIES IN JURISDICTIONS WHERE THEY MAY NOT BE DISCLAIMED SHALL BE IN EFFECT ONLY FOR THE DURATION OF THE EXPRESS WARRANTY SET FORTH HEREIN.

IF BUYER HAS A CLAIM UNDER THIS MANUFACTURER'S LIMITED WARRANTY OR UNDER ANY IMPLIED WARRANTIES PROVIDED TO BUYER BY STATE LAW, BUYER MAY NOT FILE A COURT ACTION BASED ON THAT CLAIM ANY LATER THAN ONE (1) YEAR AFTER BUYER'S RIGHT TO FILE A COURT ACTION ACCRUES. IN THOSE STATES WHICH DO NOT ALLOW THIS LIMITATION ON THE TIME PERIOD FOR FILING A COURT ACTION, THIS PROVISION IS INAPPLICABLE.

VI. LIABILITY AND REMEDIES

UNDER NO CIRCUMSTANCES WILL UMS METAL OR ITS AFFILIATES BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE, INABILITY TO USE, OR THE RESULTS OF USE OF UMS METAL'S PRODUCTS OR UMS METAL'S SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY; INCLUDING WITHOUT LIMITATION DAMAGES RESULTING FROM LOST PROFITS, LOSS OF BUSINESS OR BUSINESS INTERRUPTION, WHETHER DIRECT OR INDIRECT, ARISING OUT OF THE USE,

INABILITY TO USE, OR THE RESULTS OF USE OF UMS METAL'S PRODUCTS OR UMS METAL'S SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY.

BUYER AGREES THAT WITH REGARD TO ANY POTENTIAL CLAIM RELATING TO UMS METAL'S PRODUCTS OR UMS METAL'S SERVICES, IT SHALL WAIVE AND NOT SEEK ANY REMEDY OTHER THAN A CLAIM FOR BREACH OF UMS METAL'S LIMITED WARRANTY TO BE SOUGHT SOLELY AND EXCLUSIVELY FROM UMS METAL. IN PARTICULAR, BUYER AGREES THAT IT SHALL NOT SEEK ANY REMEDY FROM ANY OWNERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ASSOCIATES, PARENTS, SUBSIDIARIES, OR AFFILIATES OF UMS METAL, AND BUYER HEREBY WAIVES ANY AND ALL OTHER POTENTIAL CLAIMS AGAINST SAID PARTIES.

UMS METAL'S TOTAL AGGREGATE LIABILITY TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING FROM OR OUT OF THESE TERMS (WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY BUYER TO UMS METAL UNDER THE APPLICABLE PURCHASE ORDER.

VII. MISCELLANEOUS

- (A) Any description of the Product, whether in writing or made orally by UMS METAL or UMS METAL's agents, specifications, samples, models, bulletins, drawings, diagrams or similar materials used in connection with BUYER's order, are for the sole purpose of identifying the Product and shall not be construed as an express warranty. Any suggestions by UMS METAL or UMS METAL's agents regarding use, application, or suitability of the Product shall not be construed as an express warranty unless confirmed in writing by UMS METAL to be such.