

These Terms and Conditions of Sale ("Agreement") apply to the sale of any and all goods and services by Pacific Metal Deck. ("Seller") to the applicant ("Buyer") named on page one (1) of this document.

1. Payment. All sales are cash upon delivery unless credit terms are established. Upon credit approval, and unless otherwise noted, terms are net cash thirty (30) days from invoice date, with a one-half (1/2)% discount if payment is made within ten (10) days from the invoice date. Payment will not be subject to retention of any description. All payments not made when due shall bear interest at the rate of 18% per annum from the due date (or the maximum interest rate allowed by the state in which the sale is made, whichever is less). If suit is brought by Pacific Metal Deck to enforce this Agreement, Buyer will pay reasonable attorneys' fees to Pacific Metal Deck, plus other costs of collection. A fee of \$25.00 will be assessed for any check received insufficient. Failure to timely pay any invoice will constitute a waiver of any and all causes of action, including future causes of action, whether known or unknown, including, but not limited to, indemnity and contribution, arising from or related to an order.

2. Binding of Order. Quotations and/or orders are revocable by Seller for any reason at any time before Pacific Metal Deck receives written notice of Purchaser's order on these Terms. Orders put on hold at Buyer's or its customer's request or for any other reason (including credit reasons) are subject to re-pricing.

3. Taxes. Buyer will pay all applicable taxes (i.e. sales, purchase, use, consumption, excise, etc.). Taxes are not included in quotations or order acknowledgements unless set forth as a separate line item.

4. Credit. Seller may withdraw, extend and/or reevaluate credit privileges at its sole discretion. Seller reserves the right to demand cash payment prior to delivery if Seller deems it necessary.

5. Cancellation. Buyer will not have the right to cancel an order after it has been accepted by Pacific Metal Deck without paying a cancellation charge, which will be based upon costs incurred with respect to the canceled order, as determined by Pacific Metal Deck. If, in the sole judgment of Pacific Metal Deck, it appears that Buyer may not be able to make payment when due, or if Buyer otherwise has not made payment to Pacific Metal Deck as required under a different order, Pacific Metal Deck shall have the right to suspend manufacture, shipment or delivery of any goods and services.

6. Buyer's Failure to Pay, Statutory Liens. If Buyer fails to pay invoice(s) when due, Seller may, without prejudice to other remedies, defer future shipments until the default is satisfied and/or cancel future shipments of any and all orders. In the event amounts due are turned over for collection, Buyer is responsible for all collection fees at cost and legal fees incurred by Seller or Seller's agent in the collection of amounts due. Any notes or judgments shall draw interest at the maximum legal rate per annum. At the request of Pacific Metal Deck, Buyer agrees to take all actions necessary to obtain statutory liens or security interests for the materials sold hereunder for the benefit of Pacific Metal Deck. Buyer will take no action that will compromise, prejudice, or remove a statutory lien or security interest obtained by or for Pacific Metal Deck. In the event Pacific Metal Deck deems it necessary to perfect a statutory lien, bond claim, or security interest to secure payment of its invoices, Buyer agrees to pay all attorneys' fees and costs incurred as a result.

7. Shipping. Freight and insurance charges from Pacific Metal Deck's facility or Pacific Metal Deck's supply point and Pacific Metal Deck's handling charges will be borne entirely by Buyer unless otherwise agreed in writing by Pacific Metal Deck. Failure of Buyer to provide complete instructions and/or directions to Seller at its office at least four (5) business days prior to date of shipment will extend shipping time to next available time for Seller to deliver after complete shipping instructions are received. All shipping dates are estimates. Pacific Metal Deck will not be liable (and Buyer agrees to forego making claims against Pacific Metal Deck) for delays in manufacture, shipping, or delivery caused in whole or in part by: (i) delays in receipt of or unavailability of materials, fuel, power or transportation; (ii) breakdown of equipment; (iii) strikes, lockouts or other differences with employees; (iv) labor or material shortages; (v) accidents, war, riots, fire, floods, storms, epidemic, acts of God or other casualties; (vi) acts or omissions of Buyer; (vii) government action, embargo, allocation, regulation or requirement; or (viii) other causes beyond Pacific Metal Deck's reasonable control.

8. Schedule of Delivery. Production of material will commence after Buyer accepts Seller's estimate and, when shop drawings exist, provides written approval of Seller's shop drawings. No material will be purchased or fabricated until these conditions are met. This final estimate accepted by both Seller and Buyer will form the basis for the schedule of deliveries.

9. Packaging. Unless requested otherwise, goods will be packaged in ordinary packaging pursuant to Seller's normal business standard. If Buyer requires additional packaging, Buyer shall inform Seller of specific packaging preferences at the time of order. Standard Pacific Metal Deck packaging for panels is steel strapping with dunnage placed on the bottom of the panels for forklift access.

10. Loading, Unloading & Delivery. Pacific Metal Deck is not responsible for the loading or unloading of goods. Any acts by Pacific Metal Deck to load or unload goods on a vehicle are done strictly at the direction of Buyer. Buyer shall be solely responsible for the size, weight and positioning of any load on the vehicle, whether owned by Buyer or contracted by Buyer through a third-party transportation company. Buyer bears all costs and risks involved in taking goods from the Seller's premises to the desired destination and agrees to fully indemnify Pacific Metal Deck for any claims or actions arising thereof.

11. Storage. Buyer shall pay any storage charges incurred by Seller as a result of Buyer's failure to take possession of goods on the date indicated on the initial order. Buyer shall assume all risk of damage and deterioration of the stored goods.

12. Specifications. Buyer agrees that all orders accepted by Pacific Metal Deck constitute the exclusive statement of the specifications for the good(s) and/or service(s) to be provided under such order. Pacific Metal Deck assumes that the good(s) and service(s) specified and described therein are in all respects the good(s) and service(s) required by Buyer. Buyer bears the sole responsibility for assuring compliance with all applicable building codes and correcting any nonconformity between the specifications appearing in the order accepted by Pacific Metal Deck and the good(s) required in fact by Buyer. Buyer must state in writing in its order if the good(s) must be produced, manufactured, or substantially transformed in the United States (Buy America Act), or consist wholly or partly of raw materials or components produced, manufactured, or

substantially transformed in the United States. If Buyer fails to notify Pacific Metal Deck of any such requirements, Buyer must accept delivery and pay for the Products regardless of any such requirements.

13. Non-Conforming Goods (the delivered goods are not the goods specified in the purchase contract).. Buyer shall inspect materials and deliver any notice of breach, nonconformity or revocation of acceptance, in detail, to Seller within twenty four hours after Buyer has discovered the defect or five business days after delivery to Buyer, whichever occurs first. Failure to inspect or give notice to Seller of rejected goods within said time shall constitute a waiver of the right to inspect and an irrevocable acceptance of the materials. Buyer represents that it is familiar with the nature of the goods furnished by Pacific Metal Deck and agrees that the time periods set forth in this Agreement for notice of nonconformity and notice of revocation of acceptance are reasonable. Seller shall have the right to replace or repair materials which do not meet specifications. Alternatively, at Seller's sole discretion, refund of the purchase price may be offered upon return of the materials, or an allowance may be granted for the degree of nonconformity. Any allowances must be mutually agreed to by Seller and Buyer.

14. No Returns of Conforming Goods. After an order has been placed, conforming goods cannot be returned by buyer.

15. Warranty. **EXCEPT FOR ANY EXPRESS WARRANTY SIGNED BY AN AUTHORIZED OFFICER OF Pacific Metal Deck REGARDING A SPECIFIC PRODUCT, THERE ARE NO OTHER GUARANTIES OR WARRANTIES, WHETHER ORAL, IN WRITING, EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE. FITNESS FOR A PARTICULAR PURPOSE.** Any warranties, if any, are not assignable and apply only to the first owner of the building for which the materials were purchased.

16. Limitation of Liability. **Pacific Metal Deck LIABILITY ARISING FROM CLAIMS RELATING TO THE DESIGN, SALE, HANDLING OR USE OF PRODUCTS, WHETHER BASED ON CONTRACT OR TORT, WARRANTY OR ANY OTHER LEGAL THEORY, WILL BE LIMITED TO THE**

PURCHASE PRICE OF THE GOOD(S). NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ELSEWHERE TO THE CONTRARY, IN NO EVENT WILL Pacific Metal Deck BE LIABLE FOR ANY PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY CLAIM FOR DELAY, LOSS OF EFFICIENCY, IMPACT, LOSS OF PRODUCTION OR LOST PROFITS) OR LIABILITY INCURRED BY BUYER WITH RESPECT TO ANY PRODUCTS FURNISHED OR TO BE FURNISHED BY Pacific Metal Deck.

17. Limitations Period. No claim, cause of action, or suit relating to this Agreement or any goods and/or services supplied by Pacific Metal Deck shall be brought by Buyer against Pacific Metal Deck after the expiration of one (1) year from the date of delivery of such goods and/or services. This provision shall not be construed reciprocally against Pacific Metal Deck in any action or suit brought by Pacific Metal Deck against Buyer.

18. Non-Waiver. Pacific Metal Deck's failure to assert any rights or remedies available under this Agreement or otherwise shall not be deemed to be a waiver of Pacific Metal Deck's ability to assert those rights or remedies at any other time during its performance and shall not be deemed to be a waiver of any other right or remedy.

19. Indemnification. Buyer agrees to indemnify, defend, and hold harmless Pacific Metal Deck, its affiliates, and their officers, directors, employees and representatives from and against any and all claims and liability for injuries or loss to persons or property, or fines, or other damages, including all costs, expenses, legal and otherwise, arising from or relating to in whole or in part any use or possession of goods and/or services sold hereunder, or any fraud, misrepresentation, negligent act, negligent failure to act (including the failure to properly store or handle goods), gross negligence, or violation of statute or government regulation, by Buyer.

20. Insurance. Buyer will maintain insurance coverage as required by applicable laws and appropriate for the projects undertaken by Buyer. Upon request, Buyer will provide Pacific Metal Deck a certificate evidencing such coverage.

21. Severance, Assignment, No Agency Relationship and No Third Party Beneficiaries. In the event that any provision in this Agreement is deemed illegal or unenforceable, all remaining provisions shall remain in full force and effect. Buyer may not assign its rights or delegate its duties under this Agreement or an order without the prior written consent of Pacific Metal Deck. It is understood that Buyer is an independent contractor and that no agency relationship at law or in fact exists between Buyer and Pacific Metal Deck. It is further understood that there are no intended third party beneficiaries to this order.

22. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, irrespective of the location of the work performed by the Seller or the location of the site to which the goods are shipped. The parties agree that the exclusive jurisdiction and venue for any dispute arising out of this agreement shall be San Bernardino County, California.

Applicant agrees that he/she has read and accepts the Seller's Terms and Conditions of Sale, and that said Conditions take precedence over any Terms and Conditions contained in the Buyer's purchase order or subcontract. The applicant further states that he/she is authorized and empowered to enter into this agreement binding the applicant to all of the Terms and Conditions of Sale listed above. COMPANY'S

NAME _____ TITLE _____

SIGNATURE _____ DATE _____

PHONE _____