



Where Quality Isn't Expensive.....It's Priceless!

DIVERSIFIED METALS

INCORPORATED

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TERMS AND CONDITIONS OF PURCHASE

Seller shall mean the supplier whose name and address are set forth on the purchase order and
Buyer shall mean Diversified Metals, Inc.

1. **ACCEPTANCE:** Seller, by accepting this order, agrees that it is fully responsible to Buyer to furnish the materials and/or services supplied herein, in accord with Buyer's conditions of purchase. No changes or modifications will be accepted by Buyer without its written consent. Buyer will not be bound by any provisions, printed or otherwise, at variance with this order, that may appear on any acknowledgement form used by Seller, such provisions being hereby expressly rejected. Delivery shall constitute acceptance on Buyer's conditions only.
2. **PRICE:** Buyer shall not be billed at prices higher than stated on this purchase order unless authorized by a Purchase Order Change Notice issued and signed by Buyer. Seller represents that the price charged for the items or services covered by this order is the lowest price charged by Seller to Buyers of a class similar to Buyer, under conditions similar to those specified in this order; and that prices comply with applicable statutes and government regulations in effect at time of quotation, sale or delivery. Seller agrees that any general price reduction made on merchandise of the type covered by this order subsequent to the placement of this order and prior to receipt of shipment will be applicable to this order. Discounts will be calculated from date material is received at destination. Invoices will be payable only on completion of an order or an individual item on an order. No invoices for partial shipments will be honored without approval of the Purchasing Department.
3. **TAXES:** Except as otherwise provided herein and unless prohibited by statute, the Seller agrees to pay any Federal, State or Local Sales Use Tax, Transportation tax or other excise tax which may be imposed upon the articles ordered hereunder or by reason of their sale, use or delivery.
4. **ORDER OF PRECEDENCE:** In the event of any inconsistency in the ordering data, the inconsistency shall be resolved by giving precedence in the following order:
 - The purchase order
 - A waiver or PO supplement
 - DMI's Customer requirements (EB 2678)
 - The drawing
 - The specificationsIf any discrepancy, differences or conflicts exist, contact DMI purchasing.
The seller shall not proceed except at its own risk.
5. **NONCONFORMING MATERIALS:** The seller is not authorized to perform material review action of nonconforming material with the intent of delivering such nonconforming materials without the express written authorization from Diversified Metals, Inc. Disposition of any departure from drawing, specifications or other purchase order requirements must be approved by Diversified Metals, Inc. Previous disposition shall not be considered as precedence.



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6. MALPRACTICE PREVENTION AND FALSE, FICTITIOUS AND FRAUDULENT STATEMENTS:

- Malpractice – Any intentional or inexcusable deviation from established engineering, production, certification or inspection requirements or procedures and is a dereliction of professional duty or a failure of professional skill that results in less than contract compliance.
- False, fictitious or fraudulent statements or entries on the certifications may be punished as a felony under federal statutes, including U.S. Code Title 18 Chapter 47 Code § 1001
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry

These guidelines apply to all aspects of work performed by direct suppliers and their sub-tier suppliers, including manufacturing, inspection and services.

Supplier and their sub-tier suppliers shall ensure their employees are aware of:

- Their contribution to the product or service conformity
- Their contribution to product safety
- The importance of ethical behavior
- Detection or use of counterfeit parts. Reference AS6174A

7. **PACKING:** Seller shall be responsible for safe packing which must conform to the requirements of carriers' tariffs. Seller shall separately number all cases, packages and containers and mark Buyer's purchase order number on the exterior of all shipping packages. Buyer's part number shall be marked on each individual package. An itemized packing slip, bearing Buyer's purchase order number shown on this order, must be placed in each container. No extra charge shall be made for packaging or packing materials unless authority is expressly incorporated in this order.

8. **DELIVERY:** Time is of the essence in this contract, and if delivery of items or rendering of services is not completed by the time promised, the Buyer reserves the right without liability, in addition to its other rights and remedies, to terminate this contract by notice effective when received by Seller, as to stated items not yet shipped or services not yet rendered, and to purchase substitute items or services elsewhere and charge the Seller with any loss incurred. Any provisions herein for delivery of articles or the rendering of services by installments shall not be construed as making the obligations of Seller severable. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk.

9. **INSPECTIONS-REJECTIONS:** Materials or equipment purchased hereunder are subject to Inspection and approval at the Buyer's destination. Buyer reserves the right to reject and receive full credit for any article or articles which are defective as to material, workmanship, quality or otherwise, or which are not in conformity with the specifications, drawings or the sample approved by Buyer. Without extra cost to Buyer, Seller will immediately, upon receipt of written instruction by Buyer, replace all rejected material, including material damaged because of unsatisfactory packing by Seller. Rejected articles shall not be submitted for acceptance without concurrent notice of their prior rejection. Seller will be notified of defective material or material not in accordance with specifications of Buyer and such material will be returned to the vendor, COLLECT. Seller may advise Buyer of any preferred routing for return of rejected material and whether or not the shipment should be protected by insurance or full declaration of value at the time of acceptance of this order. In the absence of such information from the Seller regarding such shipments, Buyer reserves the right to declare full valuation or insure (whichever is applicable) for the benefit and at the expense of the Seller. Payment for any article hereunder shall not be deemed an acceptance thereof.



10. **RECORD RETENTION:** The seller shall retain document files indefinitely. Document files shall include copies of purchase order, invoice, packing list and certifications.
11. **TERMINATION:** Buyer may at any time terminate this order in whole or in part by written, telegraphic or verbal notice confirmed in writing. If this order is terminated for convenience of Buyer, any claim of Seller shall be settled on the basis of reasonable costs it has occurred in the performance of this order. Seller shall keep adequate records of all costs relating to the performance of this order which shall be subject to audit by the Buyer in the event of cancellation. However, the Buyer may terminate this agreement without any liability to the Seller in the following circumstances: a) the breach by the Seller of any of the conditions hereof, including breach of warranty, b) if the Seller becomes insolvent or makes a general assignment to the benefit of creditors or if a petition under the Bankruptcy Act, is filed by or against the Seller or c) if at any time the Seller shall default in performance or fail to make progress in the work so as to endanger performance and providing that Seller shall not remedy such default within ten (10) days after written notice to the Buyer. In the event that the Buyer terminates this Agreement for the causes listed in the next preceding sentence, Seller shall be liable to Buyer for any costs in excess of the contract price herein stated incurred by the Buyer in completing the production of the material herein contracted for, or the increased costs of obtaining the material or services herein contracted for from another source. Upon receipt of notice of any termination, the Seller shall, at the Buyer's option, transfer title and deliver to the Buyer such completed material or work in process as may be directed by the Buyer. In such event the Buyer shall pay Seller for, or credit Seller for, the value of such completed material or work in process at the fair market value such material in its then completed state.
12. **ADVANCE MANUFACTURE AND SHIPMENTS:** Seller shall not manufacture in advance of Seller's normal Flow Time or deliver any material in advance of the schedule set forth in this order without Buyer's written permission. Buyer reserves the right to return shipping charges collect, all material received at Buyer's plant in advance of the schedule shown in this order. Seller may request Buyer's written consent to advance manufacture and/or delivery at time of returning acknowledgement of this order.
13. **WARRANTY:** By accepting this order, Seller warrants that the articles are free from defects in materials, workmanship and fabrication, and that all merchandise delivered shall be of the quality, quantity, size, and description and dimensions specified, and shall be strictly in accordance with buyer's specifications, drawings and approved sample, if any, that they are merchantable and that they are suitable for the purpose designated. These warranties shall survive acceptance and payment, and shall run to Buyer its successors, assigns, customers and the user of its products and shall not be deemed to be exclusive. Seller shall be liable for all direct, and indirect and consequential damages resulting from breach of this warranty. This warranty is in addition to any warranties of additional scope given by Buyer to Seller, and warranties implied by law.
14. **INDEMNIFICATION:** Seller agrees that Seller will indemnify and hold harmless Buyer, its officers and employees, from any loss, cost, damages, expenses, or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, or as a result of, the performance of such services, and/or delivery and/or installation, whether arising out of the actions of Seller, or of its employees, or subcontractors; and Seller agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above, and will maintain proper workmen's compensation insurance covering all employees engaged in the performance of such services and/or delivery and/or installation.
15. **ASSIGNMENTS AND SUBCONTRACTS:** This order shall not be assigned or transferred without written consent of Buyer. Seller agrees that it will not subcontract the furnishing of any of



the completed or substantially completed articles required by this order, without prior written approval of Buyer.

16. **CHANGES IN SPECIFICATIONS:** The Buyer reserves the right at any time to make changes in any one or more of the following: a) the work to be performed or materials furnished; b) methods of shipment or packing; c) place of delivery and d) time of delivery.
If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by Seller for adjustments under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of notice of the change. Price increases or extensions of time for delivery shall not be binding on Buyer unless evidenced by a Purchase Order Change Notice issued and signed by Buyer.
17. **TRANSPORTATION AND RISK OF LOSS:** Cost of transportation to Buyer's plant or other destination set forth herein, along with risk of loss in transit, shall be borne by the Seller.
18. **PROPERTY FURNISHED TO SELLER BY BUYER:** Unless otherwise agreed in writing, all special dies, molds, patterns, jigs, fixtures, and any other property furnished to the Seller by the Buyer or specifically paid for by the Buyer for use in the performance of this contract shall be, and shall remain the property of the Buyer, and shall be subject to removal upon Buyer's instruction. Such material shall be used only in filling orders from the Buyer. Seller shall use reasonable care in the protection and preservation of such material while in its custody or control. Seller shall be liable for loss of or damage to, such material only when such loss or damage results from the Seller's negligence. Seller's invoices for special tools, dies, jigs, fixtures, molds, patterns, and the like shown as a separate item on the face of this order will not be paid by Buyer until production quantities or samples are received from Seller, and are accepted by Buyer.
19. **SET-OFF:** Buyer shall have the right at any time to set-off any amount owing by Seller to Buyer or any of its affiliated companies against any amount due and owing to Seller on this order.
20. **PATENT PROTECTION:** To the extent that the articles or materials delivered hereunder are not manufactured pursuant to designs originated by Buyer, Seller guarantees that the sale and/or use of any or all articles or materials delivered hereunder will not infringe any United States or foreign Patents, and agrees that Seller will save Buyer and/or its customers harmless from any loss, damage or liability which may be incurred on account of infringement or alleged infringement or patent rights with respect to such articles or materials, and that it will, at its own expense, defend any action, suit or claim in which such infringement is alleged; provided Seller is duly notified as to suits or claims against Buyer.
21. **TITLE TO NEW INVENTIONS:** If this is a non-government order for experimental, developmental or research work, Seller hereby assigns to Buyer all right, title and interest for the entire world in and to any invention conceived or first actually reduced to practice during performance of this order. Seller will promptly furnish Buyer written disclosure of any such invention and course to be executed, and acknowledge any document required to secure patent protection therefore.
22. **RIGHTS IN DATA:** Buyer retains ownership of all proprietary data disclosed to Seller by Buyer in connection with this purchase order. Seller shall not disclose proprietary data to others, except where prior to disclosure to Seller by Buyer a) proprietary data is already known to the general public or b) Seller had knowledge of proprietary data. For the purposes of this Paragraph, "proprietary data" means all design, engineering, and technical information (whether patentable or not) and other information concerning Buyer's trade secrets; such other information includes, but is



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not limited to, secrets of manufacture contained in Buyer's manufacturing methods or processes, treatments and chemical composition, plan layout and tooling, to the extent that such other information is not disclosed by inspection or analysis of the goods covered by this purchase order. If incidental to the performance of this order, Seller shall disclose to Buyer any unpatented information concerning the Seller's products, manufacturing methods or processes, then unless otherwise expressly agreed in writing, Buyer shall have the right to use such information for any purpose.

23. **CONFIDENTIAL RELATIONSHIP:** Seller agrees to treat as strictly secret and confidential all specifications, drawings, blueprints, nomenclature, samples, models and other information supplied by Buyer, a foreign domiciled Trust Organization. Unless the written consent of Buyer is first obtained, Seller shall not in any manner advertise or publish or release for publication any statement mentioning Buyer or the fact that Seller has furnished or contracted to furnish to Buyer articles required by this order, or quote the opinion of any employees of Buyer. The Seller shall not disclose any information relating to this order to any person not entitled to receive it.
24. **NOTICE OF LABOR DISPUTES:** Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay its timely performance under this purchase order, Seller will immediately give written notice thereof to Buyer.
25. **INDUSTRIAL LAWS AND TAXES:** The Seller agrees that neither the Seller nor any of the persons furnishing materials or performing work or services which are required by this order are employees of Buyer within the meaning of, or the application of, any Federal or State Unemployment Insurance law or Old Age Benefit Law or other Social Security Law or any Workman's Compensation Industrial Accident Law or other Industrial or Labor Law. The Seller hereby agrees at its own expense to comply with such laws and to assume all liabilities or obligations imposed by any one or more of such laws with respect to this agreement.
26. **COMPLIANCE WITH LAWS:** In accepting this order, Seller represents that it has, and will continue during the performance of this order to comply with, the provisions of all federal, state and local laws and regulations from which liability may accrue to Buyer from any violation thereof. By acceptance hereof, Seller certifies compliance with this Federal "Fair Labor Standards Act," as amended, in the performance of this order.
27. **NO WAIVER OF CONDITIONS:** Failure of Buyer to insist upon strict performance of any of the conditions of this order shall not constitute a waiver of such conditions or a waiver of any default.
28. **MODIFICATION OF AGREEMENT:** This order contains all the agreements, and conditions of these transactions and no agreement or other understanding in any way modifying the conditions hereof will be binding unless made in writing as a change order or supplement and signed by Buyer.
29. **APPLICABLE LAW:** This contract shall be construed in accord with the laws of the State of Massachusetts.
30. **ADDITIONAL CLAUSES APPLICABLE TO GOVERNMENT CONTRACTS:**
 - a) Seller shall comply with the obligations of the "Contractor" as contained in the attached clauses of the FAR and DFARS and Presidential Executive Orders relating thereto in effect on the date of this order which are hereby incorporated herein and made applicable to this order.



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“COMPLIANCE WITH LAWS: In accepting this order, Seller represents that it has and will continue during the performance of this order to comply with the provisions of all federal, state and local laws and regulations, including “The Fair Labor Standard Act” of 1938, as amended, and the Occupational Safety and Health Act of 1970 and with the regulations and standards issued pursuant thereto.”

- b) **PATENT RIGHTS.** If this order is for \$3,000 or more, having experimental, developmental or research work, then, unless otherwise specified in this order. Seller shall comply with the obligations of the “Contractor” as contained in ASPR 9-102.2 (b) “Patent Rights” (License).
- c) **RIGHTS IN DATA.** Seller shall comply with the obligations of the “Contractor” as contained in ASPR 9-203.1 “Data” and, if stated on the face of this order with the obligations contained in one or more of the following: ASPR 9-203.2 “Provision of Addition to Basic Data Clause for use in Supply Contracts”. ASPR 9-203.5 “Limited Rights Provision for Addition to Basic Data Clause” and ASPR 9-203.4 “Provision for Addition to Basic Data Clause for use in Contracts for Experimental Developmental or Research Work.”
- d) **GOVERNMENT AUTHORIZATION TO SUPPLIER.** To the extent authorized by the U.S. Government by a direct contract with Seller for the manufacture of products for direct sale to the U.S. Government, and to the extent that such use will not interfere with Seller’s performance of this or other orders from Buyer in effect at the time the Seller enters into such direct contracts with the Government and upon prior written notice to Buyer of such government authorization and the contract number; the Seller shall have the right to use items mentioned in Article 14, which the Government owns or has the right to use or has the right to authorize others to use.
- e) **TERMINATION SETTLEMENT FORMULA.** In the event of termination, cancellation or reduction of this order, except for default of the Seller, settlement of fixed price orders shall be made by negotiations in accordance with Section 8-706 of the Armed Services Procurement Regulations and settlement of CPFF orders shall be made in accordance with Section 8-702, substituting Buyer for the Government and Seller for the Contractor.

If Seller refuses to accept this Order exactly as written, Seller will so advise the Buyer upon receipt of the Order and before Seller makes any shipment. Upon requests by the Buyer, the Seller agrees to furnish waivers or releases from other suppliers or subcontractors for the purchases covered by this Order. Buyer will not be responsible for any goods delivered or services rendered without a Purchase Order. Our order number must appear on all invoices, packing lists, correspondence, etc. Seller warrants that the Seller is in full compliance with the Anti-Kickback Act as amended (41 U.S.C. 51-54) and shall hold Buyer harmless from any liability resulting from failure of such compliance. Seller warrants that it is in compliance with the Procurement Integrity Act (41 U.S.C. 423), that it knows of no violation or possible violation of the Act, that it will comply with the Act, and that it will report any violation or possible violation of the Act to the Buyer. Seller hereby indemnifies Buyer from any loss, cost or damage (including but not limited to price or fee adjustments under FAR 52-203-10) caused to Buyer by Seller’s violation of the Act, or by Seller’s failure to comply with the Act. Seller warrants that it, and its principals, are not debarred, suspended, or proposed for debarment by the Federal Government.

Rev. 4 – 3/26/18 Added Section 4 Order of Precedence and Section 6 Malpractice Prevention and FFF
Rev. 3 – 9/25/17 Added Section 4, Nonconforming Material and 8, Record Retention
Rev. 2 - 02/23/09