

# **TECHMETALS, INC. TERMS AND CONDITIONS OF SALE**

The following Terms and Conditions apply to all orders placed with Techmetals, Inc. for electroplating, grinding, coating, metal finishing, research, consulting, or any other related services. Any additional or different terms of conditions proposed by Customer are objected to and are hereby rejected. Customer hereby assents to and shall be bound by each and every term and condition set forth herein, notwithstanding and irrespective of any terms and conditions in Customer's purchase order or other purchase documents (whenever issued) which may be different than or inconsistent with those stated herein. Techmetals, Inc. is referred to as "Techmetals" and the entity or person who is ordering the services or products is referred to as the "Customer."

1. **Warranty.** Techmetals warrants that processing and finishing shall meet Customer's specifications supplied in writing with the order. When specification revision level is not called out by customer, customer will accept specification revision level on file at Techmetals. Such processing and finishing shall be free from defect in material or workmanship. If the Customer specifies methods and procedures to be followed, Techmetals will assume no responsibility for the correctness of such methods and procedures or the result when they are followed. The warranty contained in this Section 1 expires at the close of one (1) year after the order to which this warranty applies. No Terms or Conditions of any Purchase Order or similar document submitted by applicant will become part of any agreement with Techmetals, Inc. unless accepted in writing.

2. **Limitation of Warranty; Disclaimer.** THE FOREGOING WARRANTY IN SECTION 1 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY TECHMETALS. TECHMETALS' LIABILITY FOR ANY CAUSE IS LIMITED TO THE COST OF DIRECT LABOR AND MATERIAL OF THE DEFECTIVE PRODUCT PRIOR TO TECHMETALS' PROCESSING OF THE PRODUCT OR TWO TIMES OUR PROCESSING CHARGES ON SUCH MATERIAL, WHICHEVER IS LESSER. IN NO EVENT SHALL TECHMETALS BE LIABLE FOR CUSTOMER'S OR ANY OTHER PERSONS' CONSEQUENTIAL OR INCIDENTAL DAMAGES RESULTING FROM TECHMETALS' PERFORMANCE UNDER ANY ORDER, INCLUDING BUT NOT LIMITED TO, ANY DAMAGES THAT RESULT IN ANY WAY FROM CUSTOMER'S OR ANY OTHER PERSONS' RELIANCE OR USE OF ANY PRODUCTS OR MATERIALS WORKED ON OR PROVIDED UNDER ANY ORDER, EVEN IF TECHMETALS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

3. **Shortages in Weight or Count.** No claim for shortage in weight or count will be allowed unless made in writing and presented or mailed within ten (10) working days after receipt of material or merchandise by the Customer or the Customer's consignee to whom delivered, provided however, a shrinkage of quantity in the processing of five percent (5%) shall be allowed without charge or liability.

4. **Defects; Right of Inspection.** Any material or merchandise found, upon Techmetals' inspection, to be improperly processed by us will be furnished without charge provided:

- a) That notice of defect is given in writing to Techmetals within ten (10) working days from the date of delivery,
- b) That Techmetals is given the opportunity to inspect the material or merchandise prior to return,
- c) That materials or merchandise returned are in the same condition as when originally delivered by Techmetals.

Processing or assembly of any such rejects by the Customer or any other party shall constitute a waiver of any liability on Techmetals' part.

5. **Risk of Loss.** Techmetals assumes no liability for any loss or damage to merchandise or material while in transit to or from Techmetals' factory, whether in trucks or vehicles owned by Techmetals, the Customer, or any third person acting in Techmetals or the Customer's behalf. Merchandise or materials to be shipped by Techmetals shall be F.O.B. to Techmetals' location.

6. **NADCAP, ITAR, and other customer required specifications.** Techmetals requests customers to notify Techmetals on RFQ's and/or PO's of job requirements such as NADCAP, required plating specifications, or

other information necessary for Techmetals to run the job properly. These regulations and certifications are taken seriously by Techmetals. This paragraph serves as a formal request for such information on your RFQ and/or PO. In the event such information is not provided Techmetals may make the determination that they are not required.

7. **Operations.** In the event that results of metal finishing operations are unsatisfactory due to metal imperfections, changes in grade or composition of materials, manufacturing and/or fabrication imperfections, usages for which the plating or other finishing operation was not reasonably designed, and similar variables over which Techmetals has no control, the Customer will be required to pay the contracted amount for finishing operation(s) performed. Techmetals reserves the right, at Techmetals' option, either to reject or make an extra charge for finishing any base metal below Techmetals' agreed standard. Techmetals assumes no responsibility for defective plating, grinding or other finish on materials or merchandise previously plated or finished by others.

8. **Materials Cost Adjustment.** THESE PRICES ARE BASED ON CURRENT METAL PRICES ON THE LME "LONDON METALS EXCHANGE". PRICES ON PARTS MAY BE ADJUSTED QUARTERLY BY TECHMETALS TO REFLECT CHANGES IN METALS COST AS LISTED ON THE LME. THE NEW PRICES WILL BE EFFECTIVE ON ALL PARTS PLATED AFTER GIVING CUSTOMERS 15 DAYS WRITTEN NOTICE.

9. **Non-insurer.** Techmetals shall not, under any circumstances, be considered as an insurer of Customer's material or merchandise and shall not be liable, regardless of cause, for loss by fire, explosion, theft, pilferage, vandalism, casualty, or acts of God while such material or merchandise is in Techmetals' possession. The provisions of this Section may be altered or modified by separate written agreement and any liability Techmetals' assumes will be covered by a separate charge for such coverage.

10. **Quotations.** Quotations are open for acceptance thirty (30) days from issuance. After thirty (30) days, prices and terms are subject to change without notice, unless otherwise specified.

11. **Force Majeure.** All quotations, orders, agreements, or modifications thereof, are contingent upon and subject to any and all occurrences beyond Techmetals' control, including but not limited to strikes or boycotts (whether occurring at Techmetals' factory, Customer's plant or factory, the plant or factory of any supplier, either of the Customer or of Techmetals', or elsewhere), accidents, thefts, fires, war, shortage of materials, equipment, casualty, or acts of God. Techmetals shall not be liable for failure to perform any agreement for such causes.

12. **Special or Experimental Operations.** For special prototype(s), First Article(s), Sample(s) or experimental processing, and finishing, Techmetals' charges are not contingent upon the success of the work or the benefit derived therefrom by the Customer.

13. **Delivery, Storage and Transportation.** Deliveries made by us within ten (10) days of the time specified shall be deemed in full compliance with the time agreed upon. Techmetals reserves the right to make partial or installment deliveries, for which the Customer shall pay at the contract price. Defective delivery or non-delivery with respect to any installment or partial delivery under this contract shall be a severable breach and shall not give the Customer the right to treat the entire contract as breached.

During storage and transportation of Customer's material or merchandise; Customer's containers used for delivery to Techmetals shall be used for reshipment and any damage resulting from the use of such containers shall be at the Customer's risk. Should Customer desire other packaging or containers, Techmetals will charge for material and handling and will provide such service upon receipt of a written order.

In the event parts are damaged during shipment and you fail to provide Techmetals written request for insurance, you assume responsibility for damage of parts above the carriers' payment.

14. **Ownership.** Special tools, racks and fixtures required for the performance of the work herein described which have been designed and/or built by Techmetals shall be and remain Techmetals' property whether or not the Customer is charged with time and/or materials in connection therewith.

15. **Change of Ownership.** Techmetals, Inc. must be notified in writing, and by certified mail of any change in ownership, the name or the business structure under which credit is established.

16. **Cancellation of Order.** In the event of Customer's cancellation of order, the Customer shall reimburse Techmetals for the work completed and work in process and for tooling and engineering expenses incurred in connection with such order.

17. **Security.** All Customer's merchandise in our possession shall be subject to a general lien for all monies owing by the Customer to Techmetals, whether or not due or payable, and whether or not such monies are owing to Techmetals for work, labor, or services rendered, or materials or equipment used in connection with such merchandise.

18. **Payment and Finance Charge.** All invoices are due per Techmetals, Inc. payment terms and shall be considered delinquent if past agreed payment terms. C.O.D. restrictions may be placed on any delinquent account and thereafter subject to a FINANCE CHARGE computed by a single monthly periodic rate of 1 ½% being an ANNUAL PERCENTAGE RATE OF 18%. All amounts due for purchases are payable to P.O. Box 635488, Cincinnati, OH 45263.

19. **Default.** In the event of bankruptcy or insolvency proceedings involving Customer, or in the event of the appointment of an assignee for the benefit of creditors or of a receiver, or if Customer is insolvent or fails to perform any obligation arising from this order or the terms and conditions contained herein, including, but not limited to, default of payment, Techmetals may, without any liability whatsoever and without

prejudice to any other rights or remedies which Techmetals may have at law or in equity, immediately terminate in whole or in part, further performance by Techmetals of its obligations arising from this order or the terms and conditions contained herein.

20. **Extension of Credit.** If applicable, any Customer receiving an extension of credit authorizes its creditors, banks and financial institutions to release credit, banking and financial data to Techmetals. Techmetals shall have the right to obtain and review any financial documents of Customer upon any request. Should it be necessary to assign the account balance on an extension of credit to a licensed collection agency or to an attorney for legal action, all subsequent collection charges and/or legal fees shall be paid by Customer. Techmetals reserves the right to place any credit account with an overdue balance on "Shipment Hold".

21. **Confidentiality.** Customer agrees not to use or disclose any information to a third person that it now has or may hereafter acquire concerning racking, fixturing, chemical processes or procedures; Techmetals use in its metal finishing process concerning the items disclosed herein, which are the subject matter of this order. If the Customer violates any of the terms herein provided, Customer shall pay Techmetals' damages.

22. **Miscellaneous.** The provisions hereof shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to conflict of law principles. The parties hereby consent to the exclusive jurisdiction and venue of the courts located in Montgomery County, Ohio. In the event any provision hereof shall be deemed to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the provisions shall continue in full force and effect. The headings contained in these Terms and Conditions are inserted for convenience only and in no way define, limit, or extend the scope or intent of any provision of these Terms and Conditions. Failure of Techmetals to insist on performance of any of these Terms and Conditions or requirements of the underlying order, shall not be construed of a waiver of such Terms and Conditions or requirements and shall not affect the right of Techmetals thereafter to enforce each and every term, condition or requirement hereof.

The provisions hereof constitute the entire agreement between the parties. Any changes, alterations, waivers, or modifications with respect either as to the job performed or the terms of the sale, or any other matter set forth herein must be in writing and signed by a duly authorized representative of Techmetals. These Terms and Conditions shall apply to this and any future order or agreement for the processing of any materials or merchandise.