

## **Northern States Metals Company d/b/a Solar FlexRack Terms and Conditions**

- 1) **Applicable Terms.** These Terms and Conditions govern the purchase and sale of goods and/or services (“Product”) set forth in the Northern States Metals Company d/b/a Solar FlexRack (“Seller”) Quote and shall govern any resultant purchase order/contract document (“Purchase Order”) issued by Buyer. Collectively, the Seller’s Quote, the Purchase Order, and these Terms and Conditions shall create the “Contract.” Except to the extent mutually agreed to in a signed writing between the Parties, any conflict between the Contract and any other document, including, without limitation, Buyer’s documents or forms, the terms and conditions of the Contract shall prevail.
- 2) **Payment.** Buyer shall pay a twenty (20%) down payment toward the total value of the Purchase Order within ten (10) days of the date of NSMC’s acceptance of Buyer’s Purchase Order. Buyer shall pay all subsequent invoices due net thirty (30) days from the date of electronic receipt of NSMC’s invoice. All invoices and payments shall be denominated in United States Dollars. In the event Buyer fails to pay any amount due and owing under the Purchase Order, such past due amounts shall be subject to an interest charge equal to the 30 day LIBOR interest rate plus 300 basis points per annum.
- 3) **Delivery.** Delivery of the Product shall be in material compliance with the mutually acceptable delivery schedule in the Contract, which Product shall be delivered at Seller’s factory (“Designated Delivery Location”) DDP (Delivered Duties Paid) or, in the event customer’s carrier handling delivery, EXW (EX Works) in accordance with Incoterms 2010 at Buyer’s risk and expense. All Product shall be subject to Buyer’s inspection during the thirty (30) day period following delivery to the Designated Delivery Location. Freight will be billed at an apportioned rate per shipment until such time as the agreed upon freight budget is met or reconciled and billed at the end of the shipments to meet the agreed upon freight budget, whichever comes first. Unless otherwise agreed upon in writing, freight shall be billed at actual cost.
- 4) **Ownership of Materials.** All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by Seller, and all related intellectual property rights, shall remain Seller’s property. Seller grants Buyer a non-exclusive, non-transferable license to such intellectual property rights solely for Buyer’s use of the Product. Seller warrants and represents that it owns all right, title and interest in and to the Product, or if not the owner, Seller has full authority to sell the Product on behalf of such owner. Seller further warrants that the Product is free from any and all security interests, claims, demands, liens or other encumbrances, and that Product title shall pass in accordance with the specified Incoterms.
- 5) **Changes.** Buyer and Seller (the “Parties”) may amend or modify the Contract only by a mutually executed writing. This includes any changes necessitated by a change in applicable law occurring after effective date of the Contract.
- 6) **Warranty.** Seller guarantees to Buyer that (i) the Product shall materially conform to the description in the Contract, consist of new materials and equipment of good quality, and be free from liens and material defects in material and workmanship, and (ii) to the extent applicable, Seller shall perform all installation work in a skillful manner and in compliance with requirements of the Contract. Seller shall, at its cost and expense, promptly correct improper or defective work, materials, or equipment for a period of one year from the date of final acceptance. Pursuant to Seller’s standard Product warranty agreement, which shall be issued upon payment in full of the Contract, Seller warrants to Buyer or to the project owner, as directed by Buyer, that during the Product warranty period Seller shall, at its cost and expense, promptly repair or replace a Product defect in material or workmanship.
- 7) **Indemnity.** The Parties shall indemnify, defend and hold each other harmless from any claim, cause of action or liability incurred by the other as a result of third party claims for property damage and/or personal injury, including death, to the extent caused by the other Party’s negligence or willful misconduct in

connection with the Contract. The Party providing the indemnification shall have the sole authority to direct the defense of and settle any indemnified claim. The Party's indemnification is conditioned on the other Party (a) promptly notifying the other Party of any claim, and (b) providing reasonable cooperation in the defense of any claim.

- 8) Force Majeure. Any delay or failure of either Party to perform under the Contract shall be excused to the extent caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, accident, war or civil disturbance, delay of carriers, change in law or other act of government or any other cause beyond such Party's reasonable control.
- 9) Cancellation. If Buyer cancels or suspends its order under the Contract, Buyer shall pay Seller for (i) all goods delivered, work in progress, and reasonable services performed up to the date of cancellation or suspension; and (ii) if such cancellation or suspension is for any reason other than a Seller default, any other reasonable direct costs incurred by Seller as a result of such cancellation or suspension.
- 10) WAIVER OF CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY. EXCEPT FOR ANY LIQUIDATED DAMAGES PROVISION AGREED TO BY THE PARTIES, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, USE, DATA, BUSINESS, OR GOODWILL, AND THE SELLER'S TOTAL AGGREGATE LIABILITY SHALL NOT EXCEED THE PURCHASE PRICE. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY.
- 11) Confidentiality. Seller agrees to keep the confidential or proprietary information of Buyer that Seller receives or becomes aware of in connection with the Contract ("CI") in the strictest confidence and not to disclose any CI to any party other than as required by law. Upon Buyer's request, Seller will return all documents containing CI and retain no copies thereof. Seller agrees that its obligation to protect CI is ongoing and shall not cease upon completion or termination of the Contract. In the event that the Parties hereto have a separate non-disclosure and/or confidentiality agreement executed as between them then that document shall prevail in the event of a conflict with this Article 11.
- 12) Miscellaneous. If any Contract term is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. Buyer may not assign or permit any other transfer of the Contract without Seller's prior written consent. The Agreement shall be governed by the laws of the State of Ohio without regard to its conflict of laws provisions.