

Northstar Steel Fabricating, Inc. Terms and Conditions for Sale of Products and Services

Form TC-1

Notice: Sale of any Products or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer. Any order to perform work and Seller's performance of work shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation, Seller's quotation shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance.

1. Definitions.

"Seller" means Northstar Steel Fabricating, Inc. a Wisconsin Corporation, its subsidiaries, affiliates, divisions, successors, and assignee providing Products or performing Services under the contract.

"Buyer" means the entity to which Seller is providing Products or Services under the Contract.

"Products" means the materials, machinery, equipment, components, supplies, or other goods Seller has agreed to supply to Buyer under the Contract.

"Services" means the services Seller has agreed to perform for Buyer under the Contract.

"Contract" means either the contract agreement signed by both parties, or the Seller's final quotation accepted by Buyer in writing, for the sale of Products or Services, together with these Terms and Conditions, the agreed scope(s) of work, and Seller's order acknowledgment. In the event of any conflict, these Terms and Conditions shall take precedence over other documents included in the Contract.

"Contract Price" means the agreed price stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

"Insolvent/Bankrupt" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.

"Terms and Conditions" means these "Terms and Conditions for Sale of Products and Services", together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

"Site" means the premises where Products are used or Services are performed, not including Seller's premises from which it performs Services.

“Hazardous Materials” means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material, or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States (“U.S.”) or the country of the Site.

## 2. Payment

2.1 Buyer shall pay Seller for the Products and Services by paying all invoiced amounts in U.S. dollars, without set-off for any payment from Seller not due under this Contract, within 30 days from the invoice date. If Seller’s final quotation states a percentage of the Contract Price shall be invoiced at specific times or under specific conditions (“Progress Payments”) Seller shall issue invoices at those specific times and conditions, otherwise, Seller shall issue invoices upon delivery of Products to Buyer EXW(Seller’s facility or warehouse)(Incoterms 2010) and as Services are performed. For each calendar month, or fraction thereof, the payment is late, Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.

2.2 As and if requested by Seller, Buyer shall at its expense establish and keep in force payment security in the form of an irrevocable, unconditional, sight letter of credit or bank guarantee allowing for pro-rata payments as Products are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract (“Payment Security”). The Payment Security shall be (a) in a form, and issued or confirmed by a bank acceptable to Seller, (b) payable at the counters of such acceptable bank or negotiating bank, (c) opened at least sixty (60) days prior to both the earliest scheduled Product shipment or Services are invoiced as performed (“Progress Payments”), and (d) remain in effect until the latest of ninety (90) days after the last scheduled Product shipment, completion of all Services, and Seller’s receipt of the final payment required under the Contract. Buyer shall, at its expense, increase the amount(s), extend the validity period(s) and make other appropriate modifications to any Payment Security within ten (10) days of Seller’s notification that such adjustment is necessary in connection with Buyer’s obligations under the Contract.

2.3 Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative, and in effect and all applicable Progress Payments have been received. For each day of delay in receiving Progress Payments or acceptable Payment Security, Seller shall be entitled to a matching extension of the schedule. If at any time Seller reasonably determines that Buyer’s financial condition or payment history does not justify continuation of Seller’s performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments,

request additional forms of Payment Security, suspend its performance or terminate the Contract.

### 3. Taxes and Duties

Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this contract ("Seller Taxes"). Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than Seller's Taxes ("Buyer Taxes"). The contract price does not include the amount of any Buyer Taxes. If the buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Contract Price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

### 4. Deliveries; Title Transfer; Risk of Loss; Storage

4.1 Upon Buyer's written acceptance of Products as in conformance with all requirements Seller shall deliver Products to Buyer EXW Seller's facility or warehouse (Incoterms 2010). Buyer shall pay all delivery costs and charges. Partial deliveries are permitted. Seller may deliver products in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the work without interruption.

4.2 Title to Products shall pass to Buyer upon delivery in accordance with Section 4.1.

4.3 Risk of Loss shall pass to Buyer upon delivery pursuant to Section 4.1.

4.4 If any Products to be delivered under this contract cannot be shipped when ready due to any cause attributable to Buyer or its other contractors, Seller may ship the Products to a storage facility, including storage at the place of manufacture, or to an agreed freight forwarder. If Seller places Products into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due. (iii) all expenses and charges incurred by Seller related to the storage shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Products available to Buyer for delivery.

### 5. Indemnity

Each of Buyer and Seller (as an “Indemnifying Party”) shall indemnify the other party (as an “Indemnifying Party”) from and against claims brought by a third party, on account of personal injury or damage to the third party’s tangible property, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of Seller’s indemnity obligation, no part of the Products is considered third party property.

## 6. Disclaimer of Warranties and Limitations of Liability

- 6.1 Seller expressly disclaims all warranties express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose.
- 6.2 Seller hereby assigns to Buyer any rights it may have under any warranty extended by a third party covering a product or component sold by Seller to Buyer.
- 6.3 Seller shall not be liable under any circumstances for loss of profit or revenues, loss of use of equipment or systems, interruption of business, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer’s customers for any of the foregoing types of damages.
- 6.4 Buyer is solely responsible for the design, selection and application of fabricated equipment, Products, components and materials purchased from Seller. Any drawings, specifications, or information prepared by or furnished by Seller are for reference purposes only, and Seller makes no warranty or representations concerning the accuracy of such materials or information. Seller has no responsibility for the design, selection and application of Products, components and materials purchased by Buyer.
- 6.5 If Buyer is supplying Products or Services to a third party, or using Products or Services at a facility owned by a third party, Buyer shall either (i) indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Article 6, or (ii) require that the third party agree, for the benefit of and enforceable by Seller, to be bound by all the limitations included in this Article 6.
- 6.6 For purposes of this Article 6, the term “Seller” means Seller, its affiliates, subcontractors and suppliers of any tier, and their respective employees. The limitations in this Article 6 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Seller’s liability.

6.7 The total liability of Seller for all claims of any kind arising from or related to the formation, performance or breach of this Contract, or any Products or Services, shall not exceed the (i) Contract Price, or (ii) if Buyer places multiple order(s) under the Contract, the price of each particular order for all claims arising from or related to that order and ten thousand US dollars (US \$10,000) for all claims not part of any particular order.

## 7. Seller's Right to Subcontract

Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without Seller's prior written consent (which consent shall not be unreasonably withheld) shall be void.

## 8. Confidentiality

8.1 Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Contract. "Confidential Information" means (a) information that is designated in writing as "confidential" or "proprietary" by Disclosing Party at the time of written disclosure, (b) information that is orally designated as "confidential" or "proprietary" by Disclosing Party at the time of oral or visual disclosure and is confirmed to be "confidential" or "proprietary" in writing within (20) days after the oral or visual disclosure, and (c) drawings and sketches that are designated in writing as "confidential", "proprietary", or "the property of" by Disclosing Party at the time of visual disclosure. In addition, prices for Products and Services shall be considered Seller's Confidential Information.

8.2 Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and use of Products and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, (a) Seller may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders, or other permitted

third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information.

8.3 The obligations under this Article 8 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided the Receiving Party intending to make disclosure in response to such requirements of process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

8.4 Each Disclosing Party warrants that it has the right to disclose the information it discloses. As to any individual item of Confidential Information, the restrictions under this Article 8 shall expire ten (10) years after the date of disclosure. Article 8 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

## 9. Intellectual Property

9.1 Nothing in the Contract is to be construed as a grant or assignment of any license or other right to Buyer of any of Seller's or its affiliates' intellectual property rights, whether patent, trademark, trade secret, copyright or otherwise. Buyer shall indemnify and defend Seller from all loss and liability resulting from or related to claims that design elements for the Products or Services that were provided by Buyer infringe the intellectual property rights of third parties.

9.2 Each party shall retain ownership of all Confidential Information and intellectual property it had prior to the Contract. All new intellectual property conceived or created by Seller in performance of this Contract, whether alone or with any contribution from Buyer, shall be owned exclusively by Seller. Buyer agrees to deliver assignment documentation as necessary to achieve that result.

## 10. Termination and Suspension

- 10.1 Buyer may terminate the Contract (or the portion affected) for cause if Seller (i) becomes Insolvent/Bankrupt, or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Seller shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.
- 10.2 If Buyer terminates the Contract pursuant to Section 10.1, (i) Seller shall reimburse Buyer the difference between that portion of the Contract Price allocable to the terminated scope, and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Contract Price allocable to Products completed, (b) lease fees incurred, and (c) amounts for Services performed before the effective date of termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved, and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates.
- 10.3 Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (i) becomes Insolvent/Bankrupt, or (ii) materially breaches the Contract, including but not limited to, failure or delay in Buyer providing Payment Security, making any payment when due, or fulfilling any payment conditions.
- 10.4 If the Contract (or any portion thereof) is terminated for any reason other than Seller's default under section 10.1, Buyer shall pay Seller for all Products completed, lease fees incurred and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates as set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are not milestones and/or rates in the Contract, at Seller's then-current standard time and material rates. In addition, Buyer shall pay Seller a cancellation charge equal to 80% of the Contract Price applicable to uncompleted made-to-order Products and 15% of the Contract Price applicable to all other uncompleted products.
- 10.5 Either Buyer or Seller may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is an excusable event (as described in Article 11) lasting longer than one hundred and twenty (120) days. In such case, Buyer shall pay to Seller amounts payable under Section 10.4, excluding the cancellation charge for uncompleted products.

10.6 Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension, including, but not limited to, expenses for repossession, fee collection, demobilization/remobilization, and costs of storage during suspension. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

## 11. Excusable Events

Seller shall not be liable or considered in breach of its obligations under this Contract to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbances, or acts or omissions of any governmental authority or of the Buyer or Buyer's contractors or suppliers. In an excusable event occurs, the schedule for Seller's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event. If acts or omissions of the Buyer or its contractors or suppliers cause the delay, Seller shall also be entitled to an equitable price adjustment.

## 12. Changes

12.1 Each party may at any time propose changes in the schedule or scope of Products or Services. Seller is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

12.2 The scope, Contract Price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in Buyer's Site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. However, no adjustment will be made on account of a general change in Seller's manufacturing or repair facilities resulting from a change in laws or regulations applicable to such facilities. Unless otherwise agreed by the parties, pricing for additional work arising from such changes shall be at Seller's time and material rates.

12.3 It shall be acceptable and not considered a change if Seller delivers a Product that bears a different, superseding or new part or version number compared to the part or version number listed on the Contract.

## 13. Compliance with Laws, Codes, and Standards

13.1 Seller shall comply with laws applicable to the manufacture of Products and its



performance of Services. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Products and Services.

- 13.2 Seller's obligations are conditioned upon Buyer's compliance with all U.S. and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Products other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.

#### 14. Environmental, Health, and Safety Matters

- 14.1 Buyer shall indemnify Seller for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were, (i) present in or about Buyer's equipment. (ii) improperly handled or disposed of by Buyer or Buyer's employees, agents, contractors or subcontractors, or (iii) brought, generated produced or released on Site by parties other than Seller.

#### 15. Governing Law and Dispute Resolution

- 15.1 All disputes arising in connection with this Contract, including any question regarding its existence or validity, shall be resolved in accordance with this Article 15. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within twenty (20) business days after giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may commence court proceedings.
- 15.2 This Contract will be governed by the laws of the State of Wisconsin. The United Nations Convention on Contracts for International Sale of Goods shall not apply to this Contract. The Wisconsin State Courts of Oneida County, Wisconsin (or if there is exclusive federal Jurisdiction, the United States District Court for the Western District of Wisconsin) will have exclusive jurisdiction over and be the sole venue for the resolution of any dispute arising out of this agreement, and Buyer hereby consents to the jurisdiction of such courts. Reasonable attorneys fees and cost will be awarded to the prevailing party in the event of litigation involving this agreement.

#### 16. Inspection and Factory Tests

Seller will apply its normal quality control procedures in manufacturing Products. Seller shall attempt to accommodate requests by Buyer to witness Seller's factory tests of Products, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work.

## 17. General Clauses

- 17.1 This Contract may be signed in multiple counterparts that together shall constitute one agreement.
- 17.2 The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract shall be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to Products and Services sold under this Contract are limited to the rights, remedies, and obligations stated in this Contract. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing.
- 17.3 Except as provided in Article 6 (Disclaimer of Warranties and Limitations of Liability) and in Section 17.4 (no nuclear use), this Contract is only for the benefit of the parties, and no third party shall have right to enforce any provision of this Contract.
- 17.4 Products and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, and Buyer warrants that it shall not use or permit others to use Products or Services for such purposes, without the advance written consent of Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers, and subcontractors) harmless against all such liability. Consent of Seller to any such use, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability.
- 17.5 If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic affect and is valid and enforceable.
- 17.6 Buyer shall notify Seller immediately upon any change in ownership of more than fifty percent (50%) of Buyer's voting rights or of any controlling interest in Buyer. If Buyer fails to do so or Seller objects to change, Seller may (a) terminate the Contract, (b) require Buyer to provide adequate assurance of performance (including but not limited to payment), and/or put in place special controls regarding Seller's Confidential information.
- 17.7 The following Articles shall survive termination or cancellation of the Contract: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17.

