

AVIVA METALS, INC.

TERMS AND CONDITIONS

- 1. Acceptance** – The Purchase Order constitutes Aviva Metals offer to purchase and is expressly limited to the terms hereof. The order becomes a binding contract of the terms set forth herein when it is accepted either by acknowledgement by the Seller or by the Seller's commencement of performance hereof. No revisions or modifications to this Order shall be valid unless approved in writing by an authorized representative of Aviva Metals. In the event of a conflict of Seller's proposal and Aviva Metals Purchase order, the terms of this order shall govern.
- 2. Inspection** – All materials or articles ordered will be subject to final inspection and approval by Aviva Metals. Aviva Metals reserves the right either to reject and hold, at Seller's expense subject to Seller's disposal, all materials or articles not conforming to drawings and/or specifications and/or samples if required under the terms of this Purchase Order, or to return material freight collect at Aviva Metals discretion. No goods returned as defective shall be replaced without an order. If any merchandise fabricated by Seller from material furnished by Aviva Metals is rejected by Aviva Metals due to Seller's fault or failure to meet the requirements of drawings, specifications, and/or samples required under the terms of this Purchase Order, Seller shall, at Aviva Metals option, either replace such merchandise at its own expense or pay Aviva Metals the replacement cost of the material used therein. Seller will be charged replacement costs of Aviva Metals materials or tools damaged while in Seller's possession.
- 3. Traceability** – The supplier shall establish and maintain a documented heat lot control system that assigns a unique number to each heat lot or batch and shall be traceable through all fabrication, machining and heat treat processes.
- 4. Right of Entry** – Aviva Metals, our customer, our customer's final customer and regulatory agencies shall have the right to verify the quality of work, records, and material at your facility. When Aviva Metals or our customers intend to perform Inspection and verification at the supplier's premises, the Aviva Metals PO shall state the arrangements and method of product release/approval.
- 5. Supplier Records** – Supplier is responsible for inspection of all material under the referenced purchase order to all applicable drawing requirements and specifications prior to delivery. Supplier shall prepare records evidencing all inspections made under this order. Acceptance by Aviva Metals does not relieve the supplier of any responsibility from meeting all engineering drawing and specification requirements. Aviva Metals requires suppliers to keep/archive full documentation and traceability of their production for 10 years, including certificates and test reports.
- 6. Quality System** – The supplier is required to maintain the quality system in effect at time of quality approval to guarantee the product or service will meet the requirements of the purchase order and applicable specifications. If a defect is suspected post shipment the supplier is required to notify Aviva Metals of the potential defect. The supplier's quality system is subject to the approval of Aviva Metals's quality department. This approval may be obtained via written quality survey or an on-sight quality audit and is subject to a periodic re-approval.
- 7. Shipping Tolerance** – Unless otherwise specified on our Purchase Order, shipping tolerances will be +/- 10% by weight. Any deviation from this tolerance requires written approval from Aviva Metals Purchasing Department.
- 8. Preservation** – Suppliers must exercise reasonable care when packaging and preserving material for transport to Aviva Metals. The material must be in good order; damage and corrosion free upon receipt into a Aviva Metals facility. The supplier is expected to have documented standards for protection and preservation that are based on experience and industrial standards as appropriate to the product shipped. Failure to properly protect the material will be cause for reject and subsequent return and debit of the material supplier.
- 9. General Warranty** – Seller warrants that all of the articles and all of the materials furnished under this Order are free and clear of all liens and encumbrances whatsoever and that Seller has a good and marketable title to same and Seller agrees to hold Aviva



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Metals free and harmless against any and all claimants to said merchandise. Seller further warrants that all of the articles and all of materials furnished under this Order will be free from defects in materials and workmanship, will conform to applicable specifications, drawings, samples or other descriptions given and shall be fit and sufficient for the purpose intended, merchandisable, of good material and workmanship, and free from defect. Said express warranty shall remain in effect as to each material and each article for a period of 12 months after it is applied to a use for which it was designed, except that said warranty shall be deemed to have been satisfied with respect to articles of Aviva Metals design, with respect only to conformity and design, if at the time of final inspection by Aviva Metals in the normal course of Aviva Metals operations, at destination, they are not found to be defective. The foregoing period and time may be extended by written agreement and shall be deemed to be extended for such greater period of time as may be specified in Seller's standard warranty or service guarantee. The aforesaid express warranty shall be in addition to any standard warranty or service guarantee given to Aviva Metals by Seller. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive.

- 10. Termination** – (a) If the merchandise covered by this order is standard stock merchandise; Aviva Metals at its option may cancel at any time any unshipped portion of this order without further obligation hereunder except to make payment subject to other applicable terms hereof, for the merchandise actually shipped prior to such cancellation. (b) If this Order covers merchandise manufactured or fabricated to the specifications of the Buyer, or special specifications prepared by Seller for Aviva Metals, Aviva Metals may terminate such work under this Purchase Order in whole, or part, at any time by written or telegraphic notice to Seller; and upon such termination in whole or in part of such work under this Purchase Order Seller will stop work immediately, notify subcontractors to stop work, and protect property in Seller's possession in which Aviva Metals has or may acquire an interest. (c) Except where such termination is occasioned by a default or delay of Seller, other than one due to causes beyond Seller's control and without Seller's fault or negligence, Seller may claim reimbursement, on forms which Aviva Metals will furnish on request for Seller's actual costs incurred up to and including the date of termination which are properly allocable to or apportionable under recognized accounting practices to the terminated portion of the Purchase Order, including liabilities to subcontractors which are so allocable and acceptable finished units at contract price not previously billed or paid for, but excluding any charge for interest or any materials which Seller may be able to divert to other orders. Seller may also claim a reasonable profit on the work actually done by Seller prior to such termination, the rate of which shall not exceed the rate used in establishing the original purchase order price. The total of such claims shall not, however, exceed the canceled commitment value of this Purchase Order.
- 11. Patent and Trademark Protection** – To the extent that the articles or materials delivered hereunder are not manufactured pursuant to design originated by Aviva Metals or pursuant to a Aviva Metals directed process, Seller guarantees that the sale or use of any or all articles or materials delivered hereunder or processes used will not infringe on any patent, trademark, or copyright and agrees that. Seller will save Aviva Metals and its successive customers harmless and indemnify Aviva Metals and its successive customers against all claims losses, and damages to defend Aviva Metals and its successive customers against all claims and legal actions and to pay all claims, judgments, awards, costs, and expenses, including attorneys' fee which Aviva Metals may incur or become liable to pay under the patent laws of the United States or other countries resulting from the use of any goods purchased hereunder or by reason of trademark or copyright infringement arising out of the sale, marketing, packaging or advertisement of the merchandise furnished by Seller on account of infringement or alleged infringement of any patent, trademark, or copyright with respect to such articles, materials or processes and that Seller will, at its own expense, in the event any and all portion of the goods purchased hereunder are held to constitute an infringement and the uses enjoined, procure for Buyer the right to continue using said goods royalty free or replace same to Aviva Metals's satisfaction with noninfringing goods of equal quality and performance. In the event this Purchase Order covers materials, machinery, equipment and/ or manufacturing apparatus, the development or design of which is the concept or is paid for or suggested by Aviva Metals, all patent rights incident thereto shall automatically become the exclusive property of Aviva Metals, and Seller shall cooperate with Aviva Metals in obtaining all such patent rights for Aviva Metals. Aviva Metals shall have no obligation to deal with Seller in connection with the repair or replacement of any patented or unpatented element incorporated in any goods purchased hereunder. However, nothing contained herein shall prevent Aviva Metals and its successive customer to participate in the defense of any action for copyright, patent, or trademark infringement.



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- 12. Insurance, Risk of Loss, and Indemnification** – (a) Whenever Seller shall, by virtue hereof, have in its possession materials, tooling, models, patent, drawings, and other personal property belonging to Aviva Metals or furnished by Aviva Metals to Seller or otherwise in Seller's custody or possession, Seller shall be deemed to be and insure thereof and shall be responsible for its safe return to Aviva Metals. Seller shall maintain at all times during the performance of said work adequate worker's compensation insurance to cover all of its general and special employees engaged in such work and insurance to insure against any claims for injury or to death of persons or destruction or damage of property (including Aviva Metals employees and property) which may arise from Seller's actions or omissions in the performance of said work by Seller. Such insurance shall specifically include contractual liability coverage. In the event Seller is required to enter the premises owned, leased, occupied, or under the control of Aviva Metals for the performance of services ordered hereunder or during delivery or installation of materials or articles by Seller, Seller shall obtain and present to Aviva Metals; prior to the performance of said services, a certificate of insurance from an insurance company acceptable to Aviva Metals evidencing coverage for general liability and workmen's compensation in amounts acceptable to Aviva Metals. (b) Unless otherwise provided in the order, Seller shall have title to and bear the risk of any loss or damage to the items purchased hereunder until they are delivered in conformity with this order at the f.o.b. point specified on the face of the Order, upon such delivery, title shall pass from Seller, and Seller's responsibility for loss or damage shall cease except for loss or damage resulting from Seller's negligence or failure to comply with this Order. Passing of title upon such delivery shall not constitute acceptance of the items by Buyer. (c) Notwithstanding anything to the contrary contained in this Order, Seller shall, be an independent contractor and agrees to indemnify and hold harmless Aviva Metals, its officers, directors, and employees from any cost, damage, expense, or other loss or liability, incurred or paid, arising out of or on account of the claims of or suits, whether in law or in equity, which may be asserted or brought against any of the indemnified parties hereunder, for property damage or destruction, personal injury or death, or any other damages of whatsoever nature or kind, including claims of consequential loss and breach of contract as a result of performance of the work, products, or the workmanship, or the actions or omissions of the Seller or its employees, agents, or sub-contractor. Seller agrees to pay and/or reimburse Aviva Metals for any expenditures, including attorneys' fees and amounts paid in settlement, that Aviva Metals may make or become liable for in connection with the investigation, settlement, defense, or otherwise by reason of such claims or suits, and, if requested in writing by Aviva Metals, will defend any such suits with counsel acceptable to Aviva Metals at the sole cost and expense of Seller; Seller agrees to pay and to discharge any judgment, orders, or decrees rendered or entered against any of the indemnified parties for any matter indemnified hereunder; Aviva Metals may retain any money due or become due to Seller sufficient to reimburse Aviva Metals against any such claims, demands, judgments, or liability.
- 13. Assignment** – No right; interest, or obligation under this Purchase Order may be assigned by Seller without the written permission of Aviva Metals. Any attempted assignment thereof shall render it voidable at the option of Aviva Metals. Aviva Metals's written permission allowing Seller to make an assignment of payments under this Purchase Order shall be subject to set-off or recoupment for any present or future claim or claims which Aviva Metals may have against Seller. Seller agrees that Aviva Metals may assign its rights and/or delegate its duties in whole or in part.
- 14. Cancellation for Insolvency** – In event of any suspension of payment or the institution of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or under any provision of the United States Bankruptcy Act or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of either party, or in the event of breach of any of the terms hereof, including warranties of Seller the other party shall be entitled to cancel this contract forthwith, without liability for loss of anticipated profit.
- 15. Confidential** – The Seller shall not disclose any details connected with this Order to any third party except as may be required to ensure performance, except as herein specified, without first obtaining the written consent from Aviva Metals.
- 16. Tools and Materials** – Title to and the right of immediate possession of all tooling, designs, patterns, drawings and materials furnished by Aviva Metals to Seller for use hereunder shall be and remain in Aviva Metals, in all stages of construction. When the cost of dies and tools of negatives and plates involved in the manufacture or production of parts covered by this Order are included in the



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price per unit, then such dies and tools or negatives and plates become the property of Aviva Metals upon completion of orders. Any dies and tools or negatives and plates otherwise paid for by the Aviva Metals shall forthwith become its property.

- 17. Payment** – Payment for material on this Order shall not constitute an acceptance thereof, but all material shall be received subject to Aviva Metals's inspection and rejection. Payment shall be made as stated on this Order less customary cash discounts, unless otherwise specifically arranged for and stated on this Order; or in the event that merchandise has not been received, Aviva Metals reserves the right to withhold payment until merchandise has been received and checked and does not waive the right to deduct the cash discount. When invoices subject to discount are not mailed on the date of shipment, discount period will begin on the date invoices are received in Aviva Metals office. Aviva Metals count will be accepted as final on all shipments not accompanied by packing list. Payment of this Order will be subject to deduction of any valid claim against Seller arising from this or any other transaction.
- 18. Force Majeure** – Seller shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control, including an act of God, way mobilization, insurrection, rebellion, civil commotion, riot, acts of an extremist or public enemy, sabotage, labor dispute, lockout, strike, explosion, fire, flood, storm, accident, drought, equipment failure, power failure, inability to obtain suitable or sufficient labor or material, delay of carrier, embargo, law, ordinance, rule or regulation, whether valid or invalid, including but not limited to priority, requisition, allocation or price control, or other causes beyond its reasonable control. Similarly, Aviva Metals shall not be liable for failure to take delivery of the goods for any of the above causes beyond Aviva Metals control if it renders it impossible for Aviva Metals to receive or use the goods. When only a part of Seller's or Buyer's capacity to perform is excused under this paragraph, Seller or Buyer must allocate production, deliveries, or receipt of deliveries among various customers or suppliers then under contract for similar goods during the period when Buyer or Seller is unable to perform. The allocation must be effected in a commercially fair and equitable manner. When either Seller or Buyer claims an excuse for non-performance under this paragraph, it must give notice in writing to the other party. When an allocation has been made, notice of the estimated quota made available for Buyer or Seller, as the case may be, must be given. Seller shall not be obligated to sell, nor shall Buyer be obligated to purchase, at a later date, that portion of the goods which Seller is unable to deliver or Buyer is unable to receive or use because of any of the afore-mentioned causes beyond the control of the parties. No goods are to be tendered by Seller after the expiration of the time specified herein without the consent of Aviva Metals.
- 19. Entire Agreement** – In accepting this Order or making any deliveries hereunder, Seller agrees to all of the terms and conditions stated on this Purchase Order. This Purchase Order, together with any written documents which may be attached hereto, and/or incorporated by specific reference, constitutes the entire agreement between the parties and supersedes all previous communications between them, either oral or written. All such previous communications are hereby abrogated and withdrawn, and no stipulations, representations, or agreements by Buyer or any of its officers, agents or employees shall be binding on the Buyer unless reduced to writing and attached to and incorporated in this Purchase Order by reference as above provided and no local, general or trade custom shall alter or vary the terms hereof.
- 20. Construction** – This contract shall be construed in accordance with the laws of the State of Texas. The provisions hereof are severable, and, in the event any is held to be unenforceable, the remaining provisions will continue in full force and effect. Failure of Buyer to insist on timely performance by Seller of any obligation created hereby shall not constitute a waiver.
- 21. Full and Final Agreement** – This agreement constitutes the full and final agreement between the parties and supersedes all previous oral or written communications. A party may modify this Agreement only with written permission of the other party. No term or provision in this Agreement shall be deemed waived and no breach excused by consent, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse of any other different or subsequent breach.
- 22. Supplier must adhere to the requirements of the AS9120 Aerospace Quality Standard, specifically clause 8.4.3. This includes:**
- a. complying with Aviva's stated requirements for processes, products or services to be provided, including relevant technical data.



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- b. complying with Aviva's stated requirements for approval of product and services, methods, processes and equipment and release of products and services
- c. employee competency based on the requirements of supplier's quality system
- d. interactions must be limited to the Aviva Purchasing or Accounting departments
- e. acknowledgment that Aviva will monitor supplier's performance
- f. granting access of Aviva or their customer for purposes of verification activities if required
- g. complying with Aviva's stated test, inspection and verification requirements
- h. using Aviva-approved statistical techniques for product acceptance if applicable
- i. acknowledging the need to implement a quality system including the use of Aviva-approved special process sources if applicable. All purchasing requirements shall be flowed down to these approved special process sources. The supplier shall notify Aviva immediately of unexpected anomalies, non-conformances, changes in product or process, changes in suppliers or manufacturing location. Aviva reserves the right to approve such changes or incidents before work is allowed to proceed. The supplier shall assure counterfeit products are not used in this contract.
- j. acknowledges Aviva's right of access may be limited to only those records and products applicable to Aviva's contract.
- k. ensuring employees are aware of their contribution to product and/or service conformity, as well as their contribution to product safety and importance of ethical behavior.



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