



# Standard Terms and Conditions of Purchase

**1. Acceptance of Purchase Order.** Seller's agreement to furnish the materials or services hereby ordered, or Seller's commencement of such performance or acceptance of any payment, shall constitute Seller's acceptance of this Purchase Order. If this Purchase Order does not state price or delivery, then Bigelow Family Holdings, LLC d/b/a Mettle Ops ("Mettle Ops") will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller that are inconsistent with or in addition to these terms and conditions of purchase shall be void and of no effect. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by Mettle Ops's purchasing representative. These terms and conditions, together with any referenced exhibits, attachments, or other documents, constitute the entire agreement between the parties and supersede any prior or contemporaneous written or oral agreements pertaining to this subject matter. Additional or inconsistent terms or conditions proposed by Seller or included in Seller's acknowledgment hereof are hereby rejected by Mettle Ops and have no effect unless expressly accepted in writing by Mettle Ops.

**2. Shipping Instructions.** Seller shall be responsible for ensuring the proper packaging of materials hereunder. Any loss or damage, whenever occurring, which results from Seller's improper packaging or crating shall be borne by Seller. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless specified on the face page(s) of this Purchase Order. Seller shall at all times comply with Mettle Ops's written shipping instructions. Unless otherwise directed, all items shipped on the same day from and to a single location must be consolidated on one bill of lading or airbill, as appropriate. Seller shall submit all required shipping papers to Mettle Ops prior to final payment. For material purchased F.O.B. origin, Seller shall not insure and not declare a value except when transportation rates are based on "released value," in which instance Seller shall annotate on the bill of lading the lowest released value provided in applicable tariffs. Purchase Order number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, airbills, and invoices.

**3. Delivery; Notice of Delay.** Time is of the essence and failure to deliver in accordance with the delivery schedule under this Purchase Order shall be a material breach of this Purchase Order. No acts of Mettle Ops, including without limitation, modifications of this Purchase Order or acceptance of late deliveries, shall constitute waiver of this provision. Mettle Ops also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Mettle Ops's orders or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates. Seller shall notify Mettle Ops in writing immediately of any actual or potential delay to the performance of this Purchase Order and such notice shall include a proposed revised schedule and shall not constitute a waiver to Mettle Ops's rights and remedies hereunder.

**4. Termination for Convenience.** Mettle Ops may, by notice in writing, terminate this Purchase Order or work under this Purchase Order for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial termination, Seller is not excused from performance of the non-terminated balance of work under this Purchase Order. In the event of termination for convenience by Mettle Ops, Seller shall immediately cease performance under this Purchase Order. Mettle Ops shall be liable to Seller only for all reasonable and substantiated costs prior to the effective date of the termination, provided that Mettle Ops will not be obligated to pay more than the full price of this Purchase Order. Mettle Ops will have no further payment obligation in connection with such termination. Seller will promptly notify Mettle Ops of all completed or partially completed work and, at no additional expense to Mettle Ops and in accordance with

Mettle Ops's instructions, will promptly transfer possession of such work to Mettle Ops. Seller's obligations, including but not limited to obligations under the warranty, proprietary rights, and infringement provisions of this Purchase Order shall survive such termination.

**5. Termination for Default.** Mettle Ops may terminate this Purchase Order in whole or in part at any time for (i) breach of any one or more of Seller's obligations, representations and warranties under this Purchase Order and such breach is not cured within five (5) business days after written notice of such breach is delivered to Seller, (ii) failure to make progress so as to endanger performance of this Purchase Order, or (iii) failure to provide adequate assurance of future performance. In the event of partial termination, Seller is not excused from performance of the non-terminated balance of work under this Purchase Order. In the event of Seller's default hereunder, Mettle Ops may exercise any or all rights accruing to it, both at law, including without limitation, those set forth in Article 2 of the Uniform Commercial Code, or in equity. Seller's obligations, including but not limited to obligations under the warranty, proprietary rights, and infringement provisions of this Purchase Order shall survive such termination.

**6. Force Majeure.** Except for defaults of Seller's subcontractors at any tier, neither Mettle Ops nor Seller shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

**7. Disputes.** If a dispute arising out of this Purchase Order, the parties may commence litigation in any court of competent jurisdiction. Pending resolution or settlement of any dispute arising under this Purchase Order, Seller will proceed diligently as directed by Mettle Ops with the performance of this Purchase Order. Irrespective of the place of performance, this Purchase Order will be construed and interpreted according to the laws of the State of Michigan, without resort to its conflicts of law rules.

**8. Remedies.** Except as otherwise provided herein, the rights of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of either party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.

**9. Proprietary Rights.** Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied by Seller to Mettle Ops shall be disclosed to Mettle Ops on a non-proprietary basis and may be used and/or disclosed by Mettle Ops without restriction. All specifications, information, data, drawings, software and other items which are (i) supplied by Mettle Ops to Seller, (ii) obtained or developed by Seller in the performance of this Purchase Order, or (iii) paid for by Mettle Ops shall be proprietary to Mettle Ops, shall be used by Seller only for purposes of providing goods or services to Mettle Ops pursuant to this Purchase Order, and shall not be disclosed by Seller to any third party without Mettle Ops's express written consent. All such items supplied by Mettle Ops, obtained by Seller in performance of this Purchase Order, or paid for by Mettle Ops shall be promptly provided by Seller to Mettle Ops on the earlier to occur of Mettle Ops's request or Seller's completion of this Purchase Order. Any invention or intellectual property first made or conceived by Seller in the performance of this Purchase Order, or which is derived from or based on the use of information supplied by Mettle Ops, shall be the property of Mettle Ops; and Seller hereby assigns all Seller's right, title, and interest therein to

Mettle Ops. Upon request, Seller shall execute such further documents as may be necessary to perfect Mettle Ops's title thereto.

**10. Mettle Ops's Property.** All drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by Mettle Ops shall be and remain the property of Mettle Ops; and Mettle Ops has the right to enter Seller's premises and remove any such property at any time without being liable for trespass or damages of any sort. All such items shall be used only in the performance of work under this Purchase Order unless Mettle Ops consents otherwise in writing. Material made in accordance with Mettle Ops's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Mettle Ops's prior written consent. Seller has the obligation to maintain any and all property furnished by Mettle Ops to Seller and shall be responsible for all loss or damage to said property except for normal wear and tear.

**11. Release of Information / Publicity.** Seller shall not publish, distribute, or use any information developed under or about the existence of this Purchase Order, or use Mettle Ops's company name (or the name of any Mettle Ops division, affiliate, subsidiary, employee, director, or officer thereof), logo, trademark, service mark, or trade dress for the purpose of advertising, making a news release, creating a business reference, creating website content or for products or service endorsement without Mettle Ops's prior written approval. Seller's obligations under this section shall survive the termination or cancellation of this Purchase Order.

**12. Order of Precedence.** In the event of any inconsistency or conflict between or among the provisions of this Purchase Order, such inconsistency or conflict shall be resolved by the following descending order of preference: (1) this Purchase Order (subcontract, agreement, etc.), including order specific provisions which are typed or written on the face page(s) of this Purchase Order as additions to the preprinted terms; (2) general terms and conditions of purchase, including supplements thereto, attached hereto or incorporated by reference; and (3) documents incorporated by reference on the face page(s) of this Purchase Order. Mettle Ops's specifications shall prevail over those of the United States Government, and both of the foregoing shall prevail over Seller's specifications. In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, such inconsistency or conflict shall be resolved by the following descending order of preference: (i) specifications, (ii) drawings, (iii) designated type, part number, or catalog description, and (iv) samples. In cases of ambiguity in the specifications, drawings, or other requirements of this Purchase Order, Seller must, before proceeding, consult Mettle Ops, whose written interpretation shall be final.

**13. Warranty.** Seller represents and warrants that it has the full power to enter into this Purchase Order and to perform its obligations under this Purchase Order. Seller represents and warrants that the materials delivered pursuant to this Purchase Order shall be new, free from defects in workmanship, materials, and design and shall strictly conform to all the requirements of this Purchase Order. Seller further represents and warrants that the performance of work and services pursuant to the requirements of this Purchase Order shall conform to high professional standards. These warranties shall survive final acceptance and payment. This warranty entitlement shall inure to the benefit of both Mettle Ops and Mettle Ops's customers. As used in this Purchase Order, Mettle Ops's customer(s) shall include its direct and indirect customers, including but not limited to, direct sale end-users, higher tier subcontractors, prime contractors and the ultimate user under relevant prime contract(s). Seller shall be liable for and hold Mettle

Ops harmless for any loss, damage, cost, expense, or liability that Mettle Ops may suffer from breach of any of these warranties. Remedies shall be at Mettle Ops's election, including repair, replacement, or reimbursement of the purchase price of nonconforming materials and, in the case of services, either correction of the defective services at no cost to Mettle Ops or reimbursement of the amounts paid for such services.

**14. Inspection.** All material and workmanship shall be subject to inspection and test at all reasonable times and places by Mettle Ops or Mettle Ops's customer before, during and after performance and delivery. Mettle Ops may require Seller to repair, replace or reimburse the purchase price of rejected material or Mettle Ops may accept any materials and upon discovery of nonconformance, may reject or keep and rework any such materials not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging, and/or reinspection by Mettle Ops shall be at Seller's expense. If inspection and test are made on the premises of Seller or Seller's lower tier subcontractors, Seller shall furnish without additional charge all reasonable facilities, information and assistance necessary for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. The foregoing provisions of this Section 14 (Inspection) pertaining to inspection and test on Seller's premises are supplementary to and not in lieu of the other provisions of this Section. Mettle Ops's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of this Purchase Order.

**15. Counterfeit Parts.** Seller shall not deliver any part to Mettle Ops that is mislabeled or otherwise misrepresented as being of a different class, quality, or source than is actually the case, including (for example) refurbished parts that are represented as new parts and any parts designated as 'suspect' by the United States Government, such as parts listed in Defense Contract Management Agency alerts under the Government-Industry Data Exchange Program. If Mettle Ops determines that Seller has supplied parts in violation of the foregoing, or if Seller becomes aware of or suspects that it has furnished such parts, Seller shall immediately replace the suspect or counterfeit part with a genuine version conforming to the requirements of this Purchase Order. Notwithstanding any other provision of this Purchase Order, Seller is liable to Mettle Ops for Mettle Ops's costs in removing Seller-supplied suspect or counterfeit parts, reinserting replacement parts, and any testing made necessary by the substitution.

**16. Changes.** Mettle Ops has the right by written order to suspend work or to make changes from time to time in the services to be rendered or the materials to be furnished by Seller hereunder or the delivery date. If such suspension or changes cause an increase or decrease in the cost of performance of this Purchase Order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and to the extent that Mettle Ops agrees to such adjustments, this Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be asserted in writing within twenty (20) days from the date of receipt by Seller of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However, nothing herein shall excuse Seller from proceeding with this Purchase Order pending resolution of the claim. Failure by Seller to request for an adjustment within twenty (20) days will be deemed waiver of the right to equitable adjustment and will not excuse Seller from performing in accordance with the revised Purchase Order. Information, advice, approvals, or instructions given by Mettle Ops's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Mettle

Ops's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by Mettle Ops's purchasing representative and which states that it constitutes an amendment or change to this Purchase Order.

**17. Infringement.** Seller warrants that all work, materials, services, equipment, parts and other items provided by Seller pursuant to this Purchase Order, which are not of Mettle Ops's design, shall be free from claims of infringement (including misappropriation) of third party intellectual property rights and that any use or sale of such items by Mettle Ops or any of Mettle Ops's customers shall be free from any claims of infringement. Seller shall indemnify, defend and hold Mettle Ops and Mettle Ops's customers harmless from and against any claims, losses, damages, liabilities, costs and expenses (including attorneys' fees) arising out of claims, suits, or actions alleging such infringement. In the event that any product or service is alleged to infringe any third party intellectual property right, Seller may replace or modify infringing items with comparable goods acceptable to Mettle Ops of substantially the same form, fit, and function so as to remove the source of infringement. Seller's obligations under this Purchase Order, including those contained in Section 13 (see, Warranty) and in this Section 16 (Infringement), shall apply to all replacement and modified items. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Seller, at no expense to Mettle Ops, shall obtain for Mettle Ops and Mettle Ops's customers the right to use and sell said item.

**18. Taxes.** Unless this Purchase Order specifies otherwise, the price of this contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Purchase Order except for applicable sales and use taxes that shall be separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges, or exactions for which Mettle Ops has furnished a valid exemption certificate or other evidence of exemption.

**19. Assignments.** Seller may not assign any rights or delegate any of its obligations due or to become due under this Purchase Order without the prior written consent of Mettle Ops. Any purported assignment by Seller without such consent shall be void. Should Mettle Ops grant consent to Seller's assignment of this Purchase Order, such assignee shall be bound by the terms and conditions of this Purchase Order. However, Seller shall continue to be fully responsible and liable for full performance of all obligations under this Purchase Order Mettle Ops retains the right to assign this Purchase Order to (i) any affiliated company, (ii) any successor in interest, or (iii) Mettle Ops's customer. Mettle Ops has the right at any time to set off any amount owing from Seller to Mettle Ops or Mettle Ops's subsidiaries and/or affiliates against any amount due and owing to Seller or any of its subsidiaries and/or affiliates pursuant to this Purchase Order or any other contractual agreement between Mettle Ops and Seller or their respective subsidiaries and/or affiliates. Seller shall promptly notify Mettle Ops in writing in advance of any organizational changes planned by Seller, including name or ownership changes, mergers or acquisitions.

**20. Compliance with Law.** Seller warrants that all materials to be furnished and services to be rendered under this Purchase Order shall be manufactured, sold, used, shipped, and rendered in compliance with all applicable federal, state and local laws, regulations, codes, ordinances, standards, rulings, treaties and other requirements. Seller agrees to defend, indemnify and hold Mettle Ops harmless against any loss, cost, damage, penalty, fine, expense (including attorney's fees), or liability by reason of Seller's violation hereof. Nothing in this Purchase Order or in any

requirement under this Purchase Order shall be construed to mean that Seller shall perform any work in violation of any law. This Section 20 (Compliance with Law) operates in addition to and not in mitigation of any other requirements in this Purchase Order.

**21. Responsibility and Insurance.** Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this Purchase Order. Seller shall maintain such General Liability, Property Damage, Employer's Liability, and Workers' Compensation Insurance, Professional Errors and Omissions Insurance, and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance in such amounts as will protect Seller (and its subcontractors) and Mettle Ops from said risks and from any claims under any applicable laws. Seller shall provide Mettle Ops with certificates evidencing required insurance on request.

**22. Indemnity Against Claims.** Seller shall keep its work and all items supplied by it hereunder free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance of this Purchase Order by Seller or by any of its vendors or subcontractors. Seller may be required by Mettle Ops to provide a satisfactory release of liens as a condition of final payment. Seller shall, without limitation, indemnify, defend, and hold Mettle Ops and its customer(s) and their respective officers, directors, employees and agents harmless from and against (i) all claims (including claims under Workers' Compensation or Occupational Disease laws) and resulting costs (including attorney's fees), expenses, damages, and liability which arise from personal injury, death, or property loss or damage attributed to, or caused by, the goods, services or other items supplied by Seller pursuant to this Purchase Order except to the extent that such injury, death, loss or damage is caused solely and directly by the negligence of Mettle Ops, and (ii) all claims (including resulting costs, expenses, damages, and liability) by Seller's employees or subcontractors.

**23. International Transactions.** Payment will be in United States dollars unless otherwise agreed to by specific reference in this Purchase Order. Seller agrees that Mettle Ops, its subsidiaries, affiliates or its designees may exclusively use the value of this Purchase Order to satisfy any international offset obligations with Seller's country, subject to the offset qualifying laws, rules and regulations of that country.

**24. Export/Import Controls.** Seller shall control the disclosure of and access to technical data, information and other items received under this Purchase Order in accordance with U.S. export control laws and regulations, including but not limited to, the International Traffic in Arms Regulations (ITAR). Seller shall indemnify, defend, and hold Mettle Ops harmless for all liabilities, penalties, losses, damages, costs (including attorney's fees) or expenses that may be imposed on or incurred by Mettle Ops in connection with any violations of such laws and regulations by Seller. Seller shall immediately notify Mettle Ops if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended, or revoked. Seller will give immediate written notification to Mettle Ops if the items to be delivered or sold to Mettle Ops under this Purchase Order are restricted by export control laws or regulations prior to the delivery of the items. Seller will provide Mettle Ops with applicable ECCN information.

**25. Anti-Bribery.** Seller and its officers, directors, employees, and agents have not offered or provided and will not offer or provide, either directly or indirectly, any gift, payment, or other benefit of any kind to any person that constitutes a breach of any applicable domestic or foreign anti-bribery or corrupt practices law in either

the United States (including the Foreign Corrupt Practices Act) or any other country in which any products are sold or services are performed under this Purchase Order. Upon Seller's breach of the foregoing, Mettle Ops may terminate this Purchase Order immediately for default, without any 'cure' period.

**26. Gifts.** To avoid conflicts of interest, or the appearance thereof, Seller may not, directly or indirectly, provide anything of value (including cash, gift certificates, meals, travel, lodging, and entertainment) to an Mettle Ops staff member or an immediate family member thereof, whether by payment in advance or reimbursement of expenses, in excess of \$25 per person, per calendar year, without the express written approval of Mettle Ops's ethics officer.

**27. Severability.** If any provision of this Purchase Order or application thereof is found invalid, illegal or unenforceable by law, the remainder of this Purchase Order will remain valid, enforceable and in full force and effect, and the parties will negotiate in good faith to substitute a provision of like economic intent and effect.

**28. U.S. Government Contract Regulations.** If this Purchase Order is being issued in support of a U.S. Government contract

certain terms from the prime contract are listed on the 'Prime Contract Flowdowns' attachment to the Purchase Order, which is hereby incorporated by reference including any notes or modifications following each clause citation. The full text of all Federal Acquisition Regulation (FAR) and agency supplement clauses may be found on the Internet at <http://farsite.hill.af.mil/>, and copies may also be requested from your Mettle Ops Subcontract Administrator. Any reference in an incorporated clause to a disputes clause shall be interpreted as the Dispute Resolution clause of this Subcontract.

**29. Equal Opportunity for Veterans.** This contractor and subcontractor shall abide by the requirements of 41 CFR § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

**30. Equal Opportunity for Disabled Persons.** This contractor and subcontractor shall abide by the requirements of 41 CFR § 60-741.5(a). This regulation prohibits discrimination against qualified protected individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.