

## **Terms & Conditions**

**All sales of goods or services by Hoebarth Corporation dba California Metals, are made subject to the following terms and conditions, unless expressly stated otherwise in a separate document signed by both Hoebarth Corporation dba California Metals and Buyer. Hoebarth Corporation dba California Metals expressly objects to any different or additional terms, additions, revisions or modifications contained in Buyer's purchase order or any other document or communication submitted by Buyer. Buyer's acceptance of this offer is expressly limited to Buyer's assent to the following terms and conditions:**

- 1. Offer and Acceptance.** The purchase order between Buyer and Seller is an offer by Hoebarth Corporation dba California Metals ("California Metals") to sell the goods or services referenced in the purchase order between Buyer and California Metals (the "Products") to Buyer. Buyer may accept this offer orally, in writing, or by performance, as long as Buyer's acceptance does not alter these terms and conditions ("Terms"). California Metals shall not be bound to any different, additional, or modified term, condition, or provision, unless such term, condition, or provision is specifically accepted by California Metals, in a separate writing, signed by both California Metals and Buyer. Buyer's objection to any of these Terms must be set forth in a separate writing signed and dated by Buyer and delivered to California Metals prior to or contemporaneous with Buyer's purchase order or other form of acceptance. Unless California Metals agrees to Buyer's objection in writing, the objection is rejected and shall not become a part of the agreement. California Metals' failure to object to any term or condition contained in any communication from Buyer shall not be deemed a waiver of these Terms, nor shall it be deemed an endorsement or

acceptance of any term or condition set forth by Buyer. No course of dealing or custom and usage contrary to these Terms shall apply. Notwithstanding the foregoing, California Metals may correct any typographical or clerical errors, including, but not limited to, errors in price, specifications, quotations, or acknowledgments.

2. **Lapse.** The offer contained herein shall lapse if Buyer fails to make a definite and seasonable expression of acceptance of these Terms within 15 days of the date of the purchase order between Buyer and Seller.
3. **Entire Agreement.** These Terms, and any additional or different terms expressly agreed upon in writing by both California Metals and Buyer, constitute the entire agreement between California Metals and Buyer with regard to this sale and expressly supersede and replace any prior or contemporaneous agreements, whether written or oral, relating to the purchase order between Buyer and Seller, including any terms and conditions on any of Buyer's documents or purchase orders. This agreement shall be binding upon the parties and their successors and assigns. If any provision of this agreement is held to be invalid or unenforceable, that provision shall be severed from the agreement and the remainder of the agreement shall remain in full effect.
4. **Prices.** Prior to the acceptance of a purchaser order by both Buyer and Seller, all prices indicated in the purchase order between Buyer and Seller are subject to change without notice. Unless otherwise agreed, prices are quoted in U.S. dollars and do not include freight or delivery charges, taxes (sales, excise, use, ad valorem, etc.), or any export or import duties. Such charges may be prepaid by California Metals and added to Buyer's invoice. Notwithstanding anything to the contrary contained herein or in any other California Metals or Buyer document, California Metals reserves the right to adjust any prices quoted hereon at any time or from time to time in order to reflect or account for any changes in such prices caused, necessitated by or resulting from any litigation, investigation, negotiation, policy, order, settlement, trade

action, governmental policy or order or any other actions taken under the laws, rules, treaties and/or regulations (collectively, "Rules") of any country or subdivision thereof, including but not limited to Rules relating to trade, export, import, commerce, taxation or national security.

5. **Shipment, Delivery, Inspection.** All shipments are E.X.W., with transportation expenses and insurance paid by Buyer. The risk of loss or damage to the Products in transit shall fall upon the Buyer, whose responsibility it shall be to file claims with the carrier and/or the insurance company. If California Metals pays for freight charges, California Metals shall select the method and carrier for delivery of all Products. If Buyer pays for freight charges, Buyer may, at its option, select the method and carrier for the delivery of all Products, but only upon written notification to California Metals. All scheduled or quoted delivery dates are approximate and based upon prompt receipt of all necessary information from Buyer. Buyer shall examine all Products promptly upon receipt. Buyer shall notify California Metals in writing, within 5 days of delivery, of any shortage or nonconformance. If rejection is intended, Buyer shall specify all grounds for rejection. Failure to provide California Metals with such notice shall be deemed an unqualified acceptance of the delivered Products by Buyer. California Metals also reserves the right to ship the product on multiple skids and/or shipments.
6. **Delays.** California Metals shall not be liable for loss, damage, or non-performance resulting from delays in receipt of final specifications or instructions from Buyer, events of force majeure, or other causes beyond California Metals' reasonable control. Quantities are subject to availability. In the event of production difficulties or Product shortages, California Metals may allocate sales and deliveries at its sole discretion. In the event of such a delay, California Metals' performance shall be excused and the delivery date shall be extended for a period equal to the time lost by reason of the delay.

7. **Payment.** The payment terms stated in the purchase order between Buyer and Seller are conditioned upon approval of the Buyer's credit and may be withdrawn or amended by California Metals at any time. Upon request, Buyer shall furnish sufficient information to enable California Metals to assess Buyer's creditworthiness. All payments shall be made in the currency in which the prices have been quoted. All invoices shall be due and payable 30 days from the date thereof. All payments shall be without deductions for back-charges, other accounts between California Metals and Buyer, or other similar circumstances, which shall be settled independently of the payment of the invoice. Payment shall not prejudice claims on account of omissions or shortages in shipment, but no such claim will be allowed unless California Metals is notified in writing within 5 days of receipt of the shipment of such omission or shortage. All amounts past due shall accrue interest at a rate of 1.5 % per month from the due date, until paid in full. In such event, California Metals may require that all subsequent deliveries be paid for in advance or upon delivery. California Metals shall also have the right to suspend deliveries or discontinue any of the work to be performed by California Metals until amounts past due are paid in full. Further, Buyer agrees to pay all attorney's fees, litigation expenses and other costs allowable by law, incurred by California Metals to collect upon amounts owed by Buyer to California Metals.
8. **Title and Security Interest.** Title shall not pass, and California Metals shall have a security interest in all Products and the proceeds thereof, until California Metals receives payment in full. Buyer authorizes California Metals to file any and all financing statements and other documents required to perfect California Metals' security interest, and Buyer agrees to cooperate in filing all such documents and statements. Buyer's failure to pay the purchase price, when due, shall give California Metals the right to repossess the Product without liability.

Furthermore, California Metals retains all other rights and remedies of a secured party under applicable law.

9. **Cancellation.** Buyer may cancel its order at any time upon written notice to California Metals, together with payment to California Metals for the purchase price less any costs saved by California Metals as a result of the cancellation.
10. **Warranty, Disclaimers, and Remedies.** Subject to standard manufacturing variations, California Metals warrants that the Product furnished under the purchase order between Buyer and Seller, will comply with the specifications set forth in a Purchase Order or associated with the Product itself. **CALIFORNIA METALS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND ALL OTHER WARRANTIES.**
  - Further, Buyer disclaims any reliance on any sales descriptions or representations made by any employee or agent of California Metals, or any brochure, catalog, pamphlet, advertisement, or other product or sales literature. Buyer agrees that California Metals' employees and agents have no authority to issue or make any warranty other than the warranty to comply with California Metals' specifications. No statements or recommendations made in any such advertisements or literature shall be construed as representations regarding any particular application or use of the Product.
  - **Buyer's sole and exclusive remedy for breach of warranty or contract shall be the repair or replacement of a defective Product or, at California Metals' option, a refund of the purchase price, provided that:** (1) Buyer provides prompt written notice to California Metals of any alleged defect, and returns the Product to California Metals, freight prepaid; (2) the Product has not be altered or modified by anyone other than California Metals; and (3) the Product has been properly stored,

installed, maintained, and used by Buyer. California Metals is not responsible for return Products lost in transit.

- Defective Products replaced by California Metals shall become the property of California Metals. Repaired or replaced Products will be shipped to the Buyer F.O.B. California Metals' plant. If the Product sold is not manufactured or created by California Metals, California Metals will extend the warranty to Buyer that California Metals received from the original manufacturer or creator, to the extent assignable. California Metals is not responsible for any charges relating to warranty work that has not been authorized by California Metals in writing. Should California Metals provide Buyer with advice or assistance concerning any Product, free of charge, California Metals shall not be subject to any liability, whether in contract, tort (including strict liability and negligence), or otherwise.

**11. Limitation of Liability. UNDER NO EVENT OR CIRCUMSTANCE SHALL California Metals BE LIABLE TO CUSTOMER FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR PERSONAL INJURY, PROPERTY LOSS, OR ECONOMIC LOSS, ARISING DIRECTLY OR INDIRECTLY FROM ANY BREACH OF WARRANTY, BREACH OF CONTRACT, MATERIAL OR OTHERWISE, OR FROM ANY ACT OR OMISSION OF CALIFORNIA METALS' EMPLOYEES OR AGENTS, TORTIOUS OR OTHERWISE. UNDER NO CIRCUMSTANCE OR THEORY OF LAW SHALL CALIFORNIA METALS' LIABILITY FOR ANY CLAIM BROUGHT BY BUYER EXCEED THE PURCHASE PRICE OF THE PRODUCT.**

**12. Patents and Intellectual Property.** The sale of a Product by California Metals does not convey any license, by implication, estoppel, or otherwise, to use or practice any patent or other intellectual property of California Metals covering the Product or its parts. California Metals makes no warranty that the Products will be delivered free of the rightful claim of any third person by way of infringement or the like.

Buyer shall indemnify, defend, and hold California Metals harmless against any damages, liabilities, costs and expenses (including reasonable attorney fees and court costs) arising out of any claim that the Product purchased infringes a valid United States patent, copyright, trademark, trade name, proprietary right, or claim of unfair trade or unfair competition, as a result of or arising from California Metals' compliance with Buyer's designs, specifications, or instructions, or relating to a system or combination in which the Product is only one component.

13. **Assignment; Subcontracting.** Any assignment by the Buyer of this agreement or any of Buyer's rights or obligations under this agreement, without prior written consent of California Metals, shall be null and void, and shall entitle California Metals to cancel such agreement without liability. California Metals shall be permitted to engage one or more subcontractors and assign its duties and obligations under the Terms or any purchase order between Buyer and California Metals to any third-party in its discretion.
14. **Disclosure of Information.** Any information, suggestions, or ideas given by the Buyer to California Metals in connection with California Metals' performance are not secret or confidential, except as may be otherwise agreed to, in a separate writing, signed by both California Metals and Buyer.
15. **Notice.** Any notice required or contemplated by this agreement shall be in writing and shall be delivered personally or sent by prepaid registered mail. Notice sent by registered mail shall be deemed received on the second day following the date mailed.
16. **Waiver.** No failure by California Metals to exercise any right accruing to it by virtue of the parties' relationship or under contract between California Metals and Buyer shall operate as a waiver thereof or preclude the exercise of any other right or privilege of California Metals.

17. **Governing Law, Venue, and Limitation of Actions.** These Terms and the parties' relationship shall be governed by and construed in accordance with the Uniform Commercial Code as adopted by the State of California, as if the relationship arose in or was to be performed entirely in California. Whenever a term defined by the Uniform Commercial Code is used in these provisions, the definition contained in the Uniform Commercial Code shall control. The exclusive venue and jurisdiction for the resolution of all disputes between the parties arising out of or in connection with this agreement shall be the state or federal courts located in Los Angeles County, California. Any action for breach of contract or any other claim arising out of the parties' business relationship must be commenced within one year after the cause of action has accrued.