



METALFORMING

METALFORMING, INC. TERMS and CONDITIONS FOR SERVICE WORK and PARTS

The following Terms and Conditions for Service Work and Parts (“Terms and Conditions”) apply to the provision of service work and/or to the sale of parts by Metalforming, Inc. (“MFI”) (the “Services”) to Customer unrelated to the sale of new equipment (the “Equipment”). “Customer” is more particularly identified in MFI’s accompanying Quotation (including, if applicable, any Annexes or Exhibits thereto) (collectively, the “Quotation”). These Terms and Conditions and any related Quotation issued by MFI exclusively form the binding contract between MFI and Customer for the provision of Services and/or the sale of parts and shall be referred to herein as the “Agreement.” “Party” refers to MFI or Customer and “Parties” refers to MFI and Customer.

1. SCOPE OF AGREEMENT BETWEEN MFI AND CUSTOMER. ACCEPTANCE BY MFI OF CUSTOMER’S ORDER OR CUSTOMER’S ACCEPTANCE OF MFI’S QUOTATION, IS EXPRESSLY LIMITED TO AND CONDITIONED UPON CUSTOMER’S ACCEPTANCE OF AND ASSENT TO, THESE TERMS AND CONDITIONS AND THOSE REFERRED TO HEREIN. ANY ADDITIONAL, INCONSISTENT OR DIFFERENT TERMS AND CONDITIONS CONTAINED IN CUSTOMER’S PURCHASE ORDER OR OTHER DOCUMENTS SUBMITTED BY CUSTOMER TO MFI AT ANY TIME, WHETHER BEFORE OR AFTER THE DATE HEREOF, ARE HEREBY EXPRESSLY REJECTED BY MFI. CUSTOMER ACKNOWLEDGES THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ITS PURCHASE ORDER OR OTHER DOCUMENTS, RECEIPT AND ACCEPTANCE BY CUSTOMER OF MFI PRODUCTS SHALL CONSTITUTE ACCEPTANCE BY CUSTOMER OF THESE TERMS AND CONDITIONS. ALL ORDERS ARE SUBJECT TO ACCEPTANCE BY MFI AT ITS OFFICE AT 100 INTERNATIONAL DRIVE, PEACHTREE CITY, GA 30269.

2. SERVICES.

a. The Services to be performed shall be generally described in the Quotation. Parts or equipment installed by MFI while performing the Services shall be governed by the provisions of this Agreement regarding the “Parts”. If possible, MFI will keep Customer reasonably informed regarding additional work to be performed or parts to be installed. Nevertheless, Customer shall pay for all Services performed and parts installed unless Customer expressly directs MFI not to proceed before the Services (including the commencement of any related travel) are performed or parts shipped or installed.

b. Customer is responsible for providing a clean, safe and suitable environment for the performance of the Services. If, in the reasonable opinion of MFI’s personnel, Customer’s environment is not clean, safe and suitable for the performance of Services, MFI may refuse to provide the Services and Customer shall be billed for all costs incurred in making the Service visit.

c. Parts will be billed at the price stated in the Quotation, or in the absence of a price stated in the Quotation, at MFI’s then existing sales prices for parts.

3. SAFETY OBLIGATIONS. Customer shall fully comply with all operating and maintenance instructions and warnings for the safe operation of the Equipment, whether provided orally or in writing. Customer will only allow the Equipment to be operated by trained operators at least eighteen (18) years of age familiar with the operating instructions and warnings associated with the operation of the Equipment. Training must be provided by MFI or an authorized representative designated by MFI, either in person or by remote video or computer link. Customer will not allow persons other than trained operators to be in the immediate vicinity of the Equipment while it is in operation. Customer will not disable or alter any safety features of the Equipment, including, but not limited to, any safety programming in any control system, and will not remove any warnings on the Equipment. Customer will operate the Equipment only as permitted by OSHA or other safety legislation and regulations applicable to Customer's industry, locality, and machine type.

4. SERVICE RATES, EXPENSES AND PAYMENT. Services are provided on an hourly rate basis plus travel and living expenses as stated in the Quotation. If not stated in the Quotation, all Services are performed according to MFI's then current Standard Rates for Service Work ("Standard Rates"), which are available on request, plus travel and living expenses. MFI may change hourly rates from time to time. Expenses are billed at actual cost without markup. All rates and expenses are stated in and payable in United States Dollars (USD). MFI shall invoice Customer for Services, expenses and parts after they are performed or installed. Payment is due within thirty (30) days of Customer's receipt of invoice. Larger projects, which such determination shall be made in MFI's sole discretion, may be billed in multiple invoices. MFI may for certain work and at MFI's discretion require advance payment or a down payment before beginning work or shipping parts. Any advance payment or down payment shall be applied to the subsequent invoice. Late payments shall bear interest at a rate of 1.5 percent (1.5%) per month, or, if such rate is not permitted by applicable law, the highest rate permitted by applicable law.

5. DIAGNOSTIC AND ONBOARDING SERVICES.

a) Services may involve diagnostic services to determine the extent of repairs believed needed to make Customer's Parts operational or to determine whether the equipment can be made operational. Services may also involve onboarding Services involving the installation and set-up of used equipment. Customer agrees that MFI assumes no responsibility for the condition or operability of the equipment. Customer acknowledges that such Services may result in a determination that the equipment cannot be repaired or made fully operational. Customer will pay for such Services, parts and expenses regardless of whether they are successful in making the equipment fully or partially operational. Customer and Customer's personnel shall follow all oral and written instructions provided by MFI regarding the use of serviced equipment. Customer assumes full responsibility for, and hereby releases MFI from liability for, the Services and associated installation of Parts ("Installation"). Customer shall defend, indemnify and hold MFI, its affiliates, officers, directors, employees, and agents from and against all loss, liability, cost, judgment, damages and expense, including attorneys' fees, which may be incurred by MFI arising out of or relating to the Services, Parts, or Installation; provided, however, that such defense, hold harmless and indemnity obligations shall not apply to claims caused by the sole negligence of the indemnitee.

b) Customer will advise MFI of any governmental safety regulations or industry standards applicable to the Equipment for Customer's location or which Customer desires the Equipment to meet. In the event any applicable or desired safety regulations or industry standards require the modification and/or certification of the Equipment, Customer shall directly pay for all costs for such modification and/or certification.

6. LIMITED WARRANTY FOR SERVICES; EXCLUSIVE REMEDY. For ninety (90) days following the completion of the Services (the "Services Warranty Period"), MFI warrants that the Services were performed by trained personnel and according to industry standards. Customer must notify MFI in writing of the specifics of the warranty claim and provide full access to MFI to inspect the equipment or parts. This limited warranty does not cover parts, which are governed by the Limited Warranty for Parts in Section 7. This limited warranty relates to the method of the Services only and IS NOT A WARRANTY OR GUARANTEE THAT CUSTOMER'S EQUIPMENT CAN BE MADE FUNCTIONAL OR RETURNED TO A CONDITION OF FUNCTIONALITY DESIRED BY CUSTOMER. This limited warranty does not cover the following: (i) diagnostic and onboarding services, (ii) claims caused by the failure of Customer or third parties to follow the instructions of MFI (or the instructions of any manufacturer or seller of any parts, components, or equipment), or (iii) failure to maintain parts or components, or abuse or misuse of the equipment, parts or components. In the event of a covered warranty claim, Customer's sole and exclusive remedy shall be for MFI to re-perform any services necessary to meet the limited warranty at MFI's sole expense, or, at MFI's option, for MFI to refund amounts received from Customer for the applicable Services and expenses.

7. LIMITED WARRANTY FOR PARTS; EXCLUSIVE REMEDY. During the Warranty Period (as defined below), MFI warrants that the Equipment shall conform to the description expressly stated in the Quotation and that the Parts, as delivered, will not contain defects in materials or workmanship. MFI will repair or replace, at MFI's sole option and subject to the terms, conditions and limitations stated in this Section 7, any Parts not conforming to the Limited Warranty. The Warranty Period is defined as the earlier of (i) one (1) year, or (ii) 2000 hours of operation of the Equipment, running from the date of installation of the Equipment; provided, however, if Customer for any reason delays installation for more than thirty (30) days after the date of delivery, the Warranty Period shall run from the date that is thirty (30) days after the date of delivery.

Customer must notify MFI of any claim of breach of warranty during the Warranty Period, within thirty (30) days of the date the basis for the claim first appears. In the event the warranty claim involves a replacement part or component that can be readily installed by Customer, MFI shall deliver the part or component to Customer for installation by Customer. MFI may send a replacement part to Customer in troubleshooting an issue. In the event that installation of the replacement part does not resolve the issue, Customer shall return the replacement part to MFI securely packed in its original packing material or equivalent. MFI shall bear the cost of shipping, unless otherwise provided by MFI. Any parts or components that are replaced shall be securely packed by Customer and shipped to MFI by standard ground shipping (unless otherwise specified by MFI) within ten (10) days of replacement; returned parts shall be MFI's property. Customer shall pay for unreturned replacement parts or components at MFI's list price and the cost of shipping.

The limited warranty does not cover the following: (i) THE PERFORMANCE CAPABILITIES OF THE EQUIPMENT UNLESS STATED IN WRITING IN A SEPARATE DOCUMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF MFI AND CUSTOMER ENTITLED "LIMITED PERFORMANCE WARRANTY." (ii) Parts or components that have a normal useful life shorter than the Warranty Period or which are replaceable during the course of normal scheduled maintenance. (iii) Equipment, parts or components obtained from sources other than MFI ("Third-Party Equipment"). (iv) Deficiencies, damages or defects caused by Customer's failure to install, operate, or maintain the Equipment, parts or components as instructed by MFI, or as stated in the manuals, abuse of the Equipment, or due to Customer's failure to operate and maintain the Equipment consistent with good industry operating practices. (v) Deficiencies, damages, or defects caused by service or installation not performed or approved by MFI. (vi) Deficiencies, damages, or defects resulting from Customer applying electricity or air to the Equipment prior to installation. (vi) Deficiencies, damages, or defects resulting from Customer modifying the Equipment with Third-Party Equipment, including, but not limited to modifications to, the control systems.

THIS LIMITED WARRANTY FOR PARTS IS MFI'S SOLE AND EXCLUSIVE WARRANTY FOR THE PARTS OR ANY RELATED SERVICES. THERE ARE NO OTHER WARRANTIES OR CONDITIONS. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER AGREEMENTS, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, WHICH ARE HEREBY DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, OR ANY IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY OR CONDITION OF NON-INFRINGEMENT. Customer is solely and exclusively liable for any products it makes using the Parts. Unless expressly provided by this Agreement, MFI makes no warranty or representation regarding dimensional accuracies of parts produced on the Equipment, which are the responsibility of Customer. In the event that any claim is made against MFI with respect to any products made by Customer with the Parts, Customer shall defend, indemnify and hold MFI, its affiliates, officers, directors, employees, and agents from and against all loss, liability, cost, judgment, damages and expense, including attorneys' fees, which may be incurred by MFI relating to products made by Customer with the Parts, including attorney's fees and costs of litigation, except that such defense, indemnity and hold harmless obligations shall not apply to claims, damages or loss arising from the sole negligence of the indemnitee.

8. NO OTHER WARRANTIES. THE LIMITED WARRANTY FOR SERVICES AND THE LIMITED WARRANTY FOR PARTS AS STATED HEREIN (OR AS MAY BE OTHERWISE EXPRESSLY STATED IN THE QUOTATION FOR USED PARTS AND SPECIAL CIRCUMSTANCES) ARE THE ONLY WARRANTIES MADE BY MFI. THERE ARE NO OTHER WARRANTIES OR CONDITIONS. THESE LIMITED WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER AGREEMENTS, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, WHICH ARE HEREBY DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, OR ANY IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY OR CONDITION OF NON-INFRINGEMENT.

9. TIME FOR PROVISION OF SERVICES AND PARTS. MFI strives to provide accurate information about lead and delivery times for Services and parts, but timing may depend on many variables outside the reasonable control of MFI. MFI may adjust the time for providing Services based on work load and in prioritizing work for other customers based on need. The availability of parts may be limited and certain parts may not be in stock. Certain parts may need to be sourced from outside the United States and may require long lead times. CUSTOMER AGREES THAT MFI SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR DELAYED PROVISION OF SERVICES OR DELIVERY OF PARTS. Customer agrees that any time stated for the performance of Services or the delivery of parts in the Quotation (or otherwise) is an estimate only.

10. TAXES, DUTIES AND TARIFFS. The cost of Services and parts does not include any federal, state, or local taxes, duties, fees, or charges that may result from the provision of Services or the sale of parts (including, without limitation, any sales, use and excise taxes). The cost of Services and parts does not include any taxes, duties, fees, or charges that might be imposed by foreign governments or their subdivisions (including, without limitation, any Canadian federal, provincial, or local sales, harmonized sales taxes, use, goods and services taxes or excise or value-added taxes). For parts procured from outside of the United States, the cost does not include any taxes, duties or charges associated with clearing the parts from the country of origin, nor any taxes, duties or charges associated with importing them into the country of its final destination. Except as specifically provided to the contrary herein, all taxes, duties, fees and other governmentally imposed charges of any nature shall be paid by Customer. If applicable law requires MFI to collect or pay any such taxes, duties, or charges, Customer shall, as may be applicable, pay the amount of such taxes to MFI for remittance to the appropriate governmental authorities, or reimburse MFI for the amount of such taxes paid by MFI. For greater certainty, and without limiting the generality of the foregoing, in the event that any government imposes or applies new tariffs or duties on the Services or parts, or upon materials and components utilized in manufacturing the parts after the date of the order, the sales price shall be correspondingly increased to account for such tariffs or duties, regardless of the percentage increase of the price.

11. GENERAL LIMITATIONS OF REMEDIES. IN NO EVENT SHALL MFI BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY TYPE, SUCH AS, WITHOUT LIMITATION, LOST PROFITS, LOST OR DIMINISHED PRODUCTION, COST OF EXCESS POWER OR COST OF EXCESS LABOR, DUE TO ANY CLAIM OR DEMAND ARISING OUT OF OR RELATING TO THE EQUIPMENT OR MFI'S PROVISION OF (OR FAILURE TO PROVIDE) GOODS, PARTS, OR SERVICES REGARDLESS OF THE LEGAL THEORY ON WHICH IT IS BROUGHT (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, FRAUD IN THE INDUCEMENT, NEGLIGENCE, STRICT LIABILITY, INTENTIONAL TORT, OR BREACH OF ANY STATUTORY DUTY OR CONDITION). MFI'S TOTAL LIABILITY TO CUSTOMER, TO THE FULL EXTENT PERMITTED BY LAW, SHALL UNDER NO CIRCUMSTANCES EXCEED THE SALES PRICE FOR THE SERVICES AND PARTS AS STATED IN THE QUOTATION, EXCEPT THAT THIS LIMITATION SHALL NOT APPLY TO CLAIMS BASED ON MFI'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. THIS SUBPARAGRAPH AND THE DAMAGES LIMITATION CONTAINED IN THIS SUBPARAGRAPH APPLY ONLY TO CLAIMS BETWEEN THE PARTIES AND NOT TO CLAIMS BY THIRD PARTIES AND DO NOT CONSTITUTE AND SHALL NOT BE CONSTRUED TO CONSTITUTE AN INDEMNITY PROVISION IN FAVOR OF EITHER PARTY INDEMNIFYING A PARTY FOR THIRD-PARTY CLAIMS RESULTING FROM THAT PARTY'S SOLE NEGLIGENCE.

THE PARTIES EXPRESSLY AGREE THAT MFI'S PRICING AND OTHER TERMS ARE BASED ON THE ENFORCEABILITY OF THIS LIMITATION, AND THAT THIS LIMITATION SHALL BE ENFORCED REGARDLESS OF WHETHER A REMEDY PROVIDED UNDER THESE TERMS AND CONDITIONS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

12. CONFIDENTIAL INFORMATION. Customer shall hold in strict confidence, and preserve as confidential the terms and conditions of this Agreement, the Quotation or any designs, drawings, plans, schematic sketches, photographs, renderings, performance data, specifications, or software, if provided by MFI to Customer (including, but not limited to, information that may be provided by Equipment manufacturers) (collectively, the "Confidential Information"). In addition, MFI may also designate other information in writing, Confidential Information and such information shall be subject to the provisions hereof. The confidentiality obligation shall apply for a period of five (5) years from the date of this Agreement, except that, for information that is a trade secret of MFI or the Equipment manufacturer, the obligation shall continue for so long as the information remains a trade secret. Customer further agrees that all such information is MFI's property (or that of the Equipment manufacturers) and to return all such information to MFI upon MFI's request, except that Customer may maintain a single copy of such information on a confidential basis if necessary for Customer to operate and maintain the Equipment. This provision shall not apply to any information that is in the public domain.

13. NO COPYING OR REVERSE ENGINEERING; RIGHTS TO DEVELOPMENTS. Customer shall not, without MFI's prior written consent, copy, duplicate, or reverse engineer all or any part of the Equipment, nor shall Customer cause or permit any third-party to do any of the foregoing. Customer shall not sell, lease, give or transfer the Equipment to any competitor of MFI. All inventions, developments, and improvements pertaining to the Equipment, whether by MFI or by joint efforts of the parties, shall be MFI's exclusive intellectual property (or, as may be applicable, the relevant Equipment manufacturer) and Customer hereby irrevocably assigns and agrees to assign (and shall undertake to assure that its employees, agents, representatives and contractors (collectively, "Customer Representatives"), as necessary, assign and agree to assign) any title, right or interest it, he, or she has or may have in such intellectual property to MFI (or, if applicable, the relevant Equipment manufacturer). Customer further agrees to execute (and, as necessary, have its employees, agents, representatives and contractors execute) any and all further assignments or other documents necessary for MFI (or, if applicable, the Equipment manufacturer) to seek patent, copyright, trademark, or other legal protection with respect thereto.

14. INDEMNIFICATION. Customer agrees to indemnify, defend and hold harmless MFI, its affiliates, officers, directors, employees, and agents from and against all loss, liability, cost, judgment, damages and expense, including attorneys' fees, which may be incurred by MFI in connection with any claims, actions, or demands by a third party arising out of or related to the goods or services delivered hereunder, including use and/or resale of Equipment by or on behalf of Customer or any Customer Representative, modifications to the Equipment by or on behalf of Customer or any Customer Representative, or Customer's breach of this Agreement.

15. FORCE MAJEURE. MFI shall be excused for delay in delivery or from performance of any other obligations under this Agreement and/or may suspend performance of this Agreement without any liability to Customer in the event and to the extent of any occurrence, matter, abnormality, contingency or cause which affects MFI's ability to provide or ship the Equipment or provide the Services or to comply with its other obligations under this Agreement and that is beyond MFI's reasonable control, including, but not limited to: acts of God, war, acts of terrorism, acts of piracy, civil strife, mobilization, riot, strike, lockout, work stoppage or other labor difficulties (whether at MFI or the manufacturers of the Equipment or at subcontractors or sub-suppliers of MFI or manufacturers of the Equipment), fire, extreme weather or other natural disaster, epidemics, pandemics, explosion, accident, delays of carriers or transport, loss in during shipment; embargoes, inability to obtain suitable and sufficient labor or raw materials, acts or orders of governments or governmental priorities, (each, a "Force Majeure" event). In the event of a Force Majeure event, the time for performance shall be suspended for a time equal to the Force Majeure event, plus a reasonable time to resume and ramp up performance and after which performance of the Agreement shall resume. In the event a Force Majeure event exceeds one-hundred and eighty (180 days), MFI may, at its sole option, terminate the Agreement. In the event of termination, MFI will refund any payments received from Customer under the Agreement.

16. GOVERNING LAW, JURISDICTION, VENUE and WAIVER. This Agreement and any additional terms to which the parties may subsequently agree shall be governed by and construed under the law of the State of Georgia without reference to conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods ("CISG") is expressly excluded from this Agreement. Any action for breach of warranty, breach of contract, or for other claims arising under or relating to this Agreement or the Equipment, or any Services provided by MFI, must be commenced no later than one (1) year after the cause of action has accrued. Any claim or dispute of any type or nature arising out of or relating to this Agreement or the Equipment, or any Services provided by MFI, and regardless of the legal theory on which it is based (including, without limitation, breach of contract, breach of warranty, fraud in the inducement, negligence, strict liability, intentional tort, or breach of any statutory duty or condition) or the relief sought (including, without limitation, damages or equitable relief) shall be brought solely and exclusively in the Georgia courts located in Fayette County, Georgia, or the United States District Court for the Northern District of Georgia, Newnan Division. Customer hereby consents to the personal jurisdiction and venue of said courts. Customer waives, to the maximum extent permitted by law, any defenses of lack personal jurisdiction, improper venue, or inconvenience of the forum as to any claims brought in said courts. Notwithstanding the foregoing, upon mutual written agreement of the parties, any claim or dispute of any nature arising out of or relating to this Agreement or the Equipment, or any Services provided by MFI shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

17. MISCELLANEOUS PROVISIONS.

- a) This Agreement may not be modified except by a writing signed by authorized representatives of MFI and Customer.
- b) This Agreement, or the purchase and sale of the Equipment or the provision of any Services by MFI to Customer shall not create, and shall not be construed to create, an agency, partnership, or joint venture relationship between the parties. Neither Party shall have any
- c) All waivers and consents by Customer or MFI shall be in writing. No waiver or consent by MFI or Customer of any breach or anticipated breach of any provision hereof by the other Party shall be deemed a waiver of any other contemporaneous, preceding or succeeding breach or anticipated breach, whether or not similar.
- d) Customer and MFI agree that it is their mutual intention that the Agreement should be enforced as written, and that each provision should be, to the maximum extent permitted by law, found to be valid and enforceable. Should any provision of the Agreement be declared invalid or unenforceable for any reason, the remaining provisions shall be unaffected and shall continue in full force and effect as if prepared with the invalid or unenforceable portion eliminated. All provisions regarding indemnification, warranty, liability, and limits thereon, and confidentiality, safety, and/or protections of proprietary rights and trade secrets shall survive expiration or termination of the Agreement.
- e) The provisions of the Quotation and these Terms and Conditions shall be construed consistently whenever it is reasonable to do so. In the event of a direct conflict between the provisions of the Quotation and the provisions of these Terms and Conditions, the provisions of the Quotation shall control. This Agreement shall not be construed against either Party based on any rule of construction, including, but not limited to, based on the contention that a Party drafted all or any part of the Agreement.