

## **RANDALL METALS CORPORATION PROCESSING AGREEMENT**

This Metal Processing Agreement (“Agreement”), between Randall Metals Corporation (“Randall”) and Customer, its affiliates and subsidiaries (“Customer”) and together with Randall, the “Parties”, shall set forth the terms and conditions related to Randall’s processing of Customer’s metal products (“Materials”) for the Customer (the “Services”).

### **1. TERMS AND CONDITIONS**

The commercial relationship between Randall and Customer related to the Services shall be governed and controlled by these terms and conditions. Any quotation produced by Randall (“Quotation”) or purchase order produced by the Customer (“P.O.”) is subject to this Agreement, and all terms set forth in such Quotation or PO are incorporated herein by reference only to the extent they are mutually agreed between the Parties through valid execution and do not conflict with, or attempt to modify, this Agreement. Without waiver for any failure of Randall to object to additional, conflicting or inconsistent terms, the terms of the Agreement shall prevail over any additional, conflicting or inconsistent terms in any P.O. or any other non-Randall documents related to the Services, unless agreed to by an authorized agent of Randall in a separate written agreement executed between the Parties and specifically referencing this Agreement. At its sole discretion, Randall may receive and accept Materials (as defined below) from the Customer for the Services on an ad hoc basis or without reference to a P.O. or Quotation; however, such Services will be rendered subject to this Agreement. The Customer represents and warrants that any affiliate of the Customer will be subject to the terms and conditions of the Agreement, mutatis mutandis, as if the affiliate were the Customer under the Agreement.

### **2. ACCEPTANCE OF AGREEMENT**

Customer is deemed to have accepted this Agreement by delivery, or arranging for delivery, of its Material to a Randall location.

### **3. PRICING AND PAYMENT TERMS**

All prices are F.O.B. Randall’s facility, unless otherwise specifically stated by Randall in writing. Payment is due upon customer pick-up or delivery unless Customer received prior payment terms or credit approval from Randall. All prices herein are based on the Services referenced on the Quotation and normal course labor. Special labor, material, warehousing, transportation or other charges are additional costs to the Quotation.

### **4. TITLE AND RISK OF LOSS**

All title to and risk of loss of Materials remain with Customer at all times. Notwithstanding the foregoing, upon Randall’s completion of the Services to Customer Material, Randall shall not have any liability for damage that occurs to Customer Materials between the Product completion and Customer’s receipt of the Materials. All Materials shall be stored in a commercially reasonable manner, unless specifically directed on a Quotation.

## **5. TAXES AND OTHER CHARGES**

Customer shall pay or reimburse Randall and its affiliates for all taxes, duties, and other governmental charges imposed upon Randall or its affiliates with respect to sale, use, and provision of Services to Customer, or Randall's purchase or use of materials for the Services, except for the income taxes of Randall and its affiliates. If Customer believes the Services are exempt from any taxes imposed, Customer shall furnish Randall with a tax Certificate of Exemption or other documentation satisfactory to Randall.

## **6. CANCELLATION OF ORDERS**

Settlements, orders and deliveries shall at all times be subject to the approval of Randall or its affiliates. Once Customer Materials are received by Randall, orders may not be canceled by the Customer for work already in process or completed. Randall will use best efforts to support partial cancellations to the extent notification is received in a timely manner.

## **7. INSPECTION AND CLAIMS**

Customer shall promptly notify Randall about any Materials claimed to be non-conforming and shall hold the Materials without rework and further use for Randall's prompt inspection and determination of whether any resolution is necessary. Claims for shortages, non-conformity, or other errors which are not made to Randall in writing within thirty (30) days after Customer's receipt of delivered Materials or pick-up by Customer, constitute waiver of all claims by Customer. Receipt of Materials without immediate notification to Randall in writing of non-conformity shall be deemed to be acceptance of the Materials as conforming to the Quotation, P.O. and the Agreement, and the Customer waives all claims against Randall related to the Materials. The Parties acknowledge and agree that Customer has an affirmative duty to timely inspect the Materials upon receipt of the Materials. Customer shall provide Randall with all reasonable information to support any claim, including description, pictures, samples, and access to the Materials.

## **8. LIMITATION OF LIABILITY**

Randall's or its affiliates' sole liability and customer's exclusive remedy for any cause of action arising out of or related to the agreement or anything done in connection therewith is expressly limited at Randall's option to redo product application or pay an amount not to exceed Randall's sales price (without interest) for the Services involved. Randall shall not reimburse customer, honor back charges, or accept payment due held back for any work conducted by the Customer or a third party. The amount due for the services performed on the materials shall be deemed earned in full and due upon Randall's completion of the Services.

## **9. FORCE MAJEURE**

If the Parties' obligations hereunder are subject to delays caused by strikes, labor disputes (whether in Randall's facility or in a facility of Randall's suppliers or affiliates), fires,

transportation, acts of God, acts of a public enemy, riots, sabotage, acts of Government, weather, or any other cause beyond Randall's reasonable control. Randall and its affiliates will not be liable for any damage, loss, fault or expenses arising from such delays.

#### **10. ABANDONMENT OF MATERIALS**

Customer's failure to take its Materials within sixty (60) days (unless agreed otherwise by the Parties in writing) after notification from Randall or an affiliate that such Materials are available for pick-up constitutes Customer's abandonment of such Customer Materials. Therefore Randall, in its sole discretion, may dispose of the Materials including their sale with prior notice to Customer, and any proceeds may be applied to any amounts owed to Randall by Customer. The Parties agree that this Agreement, the Quotation, and the P.O. may be used by Randall and its affiliates to enforce its or their rights hereunder.

#### **11. SECURITY INTEREST AND LIENS**

Customer grants Randall a security interest in all Customer Materials and any other property of Customer in Randall's possession and control, and any substitutions, replacements, additions and proceeds of such property (collectively, "Collateral"), to secure payment of any sums hereunder that may come due to Randall. Customer agrees to execute all documents necessary to perfect and maintain such security interest, and authorizes Randall to take any actions necessary to perfect and maintain such security interest and its interests in the Collateral generally. Additionally, Randall retains the right to file liens along with any required notices in accordance with the laws governing such liens.

#### **12. MATERIAL CONDITION AND PROCESSING STANDARDS**

Unless accepted by Randall, all material shall be in prime condition and in the specifications claimed by the Customer. If accepted by Randall, Randall will process non-prime Material on a best effort basis, but shall not be responsible for ensuring the quality of the Material. Randall is not responsible for processing damage to the Material due to the quality of the material or the defects in the Material. Materials shall be subject to Randall's standard manufacturing variations and tolerances.

**13. NO WAIVER OF RIGHTS** Any consent or permission by Randall to any act or omission that otherwise would be a breach of any covenant or condition, or any waiver by Randall of the breach of any covenant or condition, shall not in any way be held or construed to operate so as to impair the continuing obligation of such covenant or condition, or otherwise operate to permit other similar acts or omissions. No breach shall be deemed to have been waived unless and until a written waiver therefor is signed by Randall. The failure of Randall to seek redress for violation of or insist upon the strict performance of any covenant or condition of this Agreement, or the receipt by Randall of any payment with knowledge of any violation, shall not be deemed a consent to or waiver of such violation, nor shall it prevent a subsequent act that would otherwise constitute a violation, from in fact being a violation.

#### **14. GOVERNING LAW**

The Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to choice of law principles.

#### **15. ARBITRATION AND VENUE**

With the exception of actions by Randall to enforce liens or collect past due amounts, Randall and Customer agree that any controversy or claim arising out of or relating to the Agreement, its formation, its breach, or its termination, including but not limited to claims relating to Products, shall be settled by final and binding arbitration in Chicago, Illinois by the American Arbitration Association under its Construction Industry Arbitration Rules and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof for enforcement. Claims brought under the Agreement must be brought within one (1) year after the date after the date the Services were provided by Randall under which such claim arises. Except for laws that require venue in a state other than Illinois for enforcement of any liens, the Parties agree that venue of any legal action or proceeding and the rights and obligations of the Parties shall lie exclusively in the appropriate federal or state courts in Chicago, Illinois.

#### **16. WAIVER OF JURY TRIAL**

Customer expressly waives the right to a trial by jury of any matters arising out of or relating to the agreement, or any transactions contemplated hereby, which are not covered by arbitration.

#### **17. INTEGRATION AND SEVERABILITY**

Randall and Customer agree that the terms of this Agreement, and any mutually-agreed and executed agreement modifying this Agreement, constitute one integrated agreement between the Parties and are not severable; however, in the event that one or more of the provisions contained in any such Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such offending provision shall be struck from the Agreement and such invalidity, illegality or unenforceability shall not affect any other provisions contained in this Agreement. To the extent that a provision is deemed invalid, illegal or unenforceable in any respect, an arbitrator or court of competent jurisdiction shall produce an alternative valid, legal, and enforceable provision fulfilling the intentions of the Parties in the invalid, illegal or unenforceable provision.

#### **18. REPRESENTATIONS**

The Parties expressly warrant, represent and state to each other that (i) no representation, promise or agreement that is not expressly stated herein has been relied upon in entering into the Agreement, (ii) the Parties are each sophisticated in commercial contract negotiations, and (iii) the Agreement has been fairly and equitably negotiated between the Parties with the benefit of

representation by competent attorneys experienced in commercial contract negotiations. No waiver, alteration, modification, supplement or rescission of any of the terms of the Agreement, any P.O. and any other documents and instruments executed between the Parties shall be effective or binding unless made in writing and signed by all Parties.

## **19. CONSEQUENTIAL DAMAGES AND INDEMNIFICATION**

In no event, shall Randall or its affiliates be liable for consequential or indirect damages arising out of or in connection with the agreement, including without limitation, breach of any obligation imposed on Randall hereunder or in connection herewith. Consequential damages for purposes hereof shall include without limitation, loss of use, income or profit, or losses sustained as the result of injury (including death) to any person or loss of or damage to property. Customer shall indemnify, defend, and hold harmless Randall, its affiliates, parents and subsidiary companies, and their owners, officers, employees and agents against all liability, cost or expense which may be sustained by any of them on account of loss, damage or injury, related to the customer materials or products whether caused in whole or in part by Randall. Notwithstanding anything to the contrary, Randall's liability to the Customer shall not exceed the lesser of the order value or \$50,000.00.

## **20. TERMINATION AND SURVIVAL OF TERMS**

Without terminating the Agreement, Randall shall have the immediate right to cancel all pending P.O.s or Services upon (a) Customer's breach of any of its payment obligations hereunder if not cured within five (5) days of Randall's written notification (email shall suffice); (b) Customer's material breach of any of its representations, warranties, covenants or agreements contained herein; and/or (c) Customer's failure to provide adequate assurance of future performance. If Randall terminates the Agreement, Randall shall be entitled to payment for Services delivered to Customer up to the date of termination. Additionally, all terms regarding arbitration, indemnification by and continuing liability of Customer in the Agreement shall survive the termination of the Agreement, including but not limited to the terms of paragraphs 8, 9, 11, 12, 15 and 19 of this Agreement.

## **21. ASSIGNMENT RESTRICTIONS**

Customer shall not assign its rights and obligations under the Agreement, any P.O. or any other documents and instruments executed between the Parties, without the prior written consent of Randall. Any purported assignment in violation of this provision is null and void.

## **22. THIRD PARTY RIGHTS**

Except as otherwise expressly provided for in the Agreement, nothing herein, expressed or implied, is intended or shall be construed to confer upon Randall or give to any person, firm, corporation or legal entity, other than the Parties hereto, any rights, remedies or other benefits

under or by reason of the Agreement. The Parties hereto are independent contractors and in the interpretation of the Agreement or any part of it, no rule of construction or interpretation shall apply to the disadvantage of any party on the basis that that party prepared the Agreement or seeks to rely on the terms and conditions of the Agreement.

### **23. BINDING NATURE AND AUTHORITY**

The Agreement is between and binding upon the Parties hereto, their respective successors, heirs and permitted assigns. Customer and Randall represent that their respective authorized agents signing the Agreement have the authority to bind Customer and Randall to the Agreement on the Effective Date.