

# METALLURGICAL PRODUCTS COMPANY

## TERMS OF USE

Effective Date: April 4, 2022

### Introduction

Welcome to Metallurgical Products Company (“MPC”, “we”, “us” or “our”). Through our [metprodco.com](http://metprodco.com) website (“Website”) we provide information (“Content”) related to our metals products (“Products”).

Your use of our Website is governed by these Terms of Use, and our privacy policy (available [here](#), and which may be amended from time to time and effective upon posting, and which is incorporated by reference herein (“Privacy Policy”)) (collectively, these “Terms”). Terms of sale for purchase of our Products is governed by our separate terms of sale.

**IMPORTANT – PLEASE READ CAREFULLY: THESE TERMS SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE WEBSITE. BY ACCESSING OR USING THE WEBSITE, YOU ARE ACCEPTING THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, YOU SHOULD NOT USE THE WEBSITE. THESE TERMS CONTAIN AN ARBITRATION PROVISION REQUIRING ALL CLAIMS TO BE RESOLVED BY WAY OF BINDING ARBITRATION, AND ALSO CONTAINS A CLASS ACTION AND JURY TRIAL RIGHT WAIVER.** Please carefully review the sections below for more information.

### Changes to the Terms

We regularly update and improve our Website and we may at times add, change, or remove features or content, and these Terms may also need to change. The current version of these Terms will be posted on our Website and will be effective immediately upon posting. By continuing to use the Website following any such change, you accept and agree to be bound by such modified Terms.

### Privacy

**Personal Information.** We will maintain and use your “Personal Information” as defined in, and according to our Privacy Policy, and which may be modified from time to time in our discretion, which modifications are effective as of the date posted on our Website. Your continued access or use of the Website indicates that you agree with such modifications.

**Use By Minors.** We do not knowingly collect or solicit Personal Information from children under 18. If you under 18, please do not send any Personal Information about yourself to us. If we learn we have collected Personal Information from a child under 18, we will delete that information as quickly as possible. If you believe that a child under 18 may have provided us Personal Information, please contact us.

### Availability

We shall use commercially reasonable efforts to provide continuous access to the Website. We do not guarantee that the Website will be accessible at all times. The Website may be unavailable during maintenance periods or during an emergency. In addition to normal maintenance, there may be events that will make the Website inaccessible for a limited amount of time due to unforeseen circumstances. We have the right to refuse to provide access to the Website or any part thereof.

We shall not be liable to you or any other person, firm or entity for any unavailability of the Website if such failure is due to any cause beyond our reasonable control.

### **Restrictions on Use of the Website**

You may use the Website only for lawful purposes and in accordance with these Terms. You agree not to use the Website:

- In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries);
- For the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information or otherwise;
- To transmit, or procure the sending of, any advertising or promotional material without our prior written consent, including any “junk mail”, “chain letter” or “spam” or any other similar solicitation;
- To impersonate or attempt to impersonate us, our employees, another user or any other person or entity (including, without limitation, by using email addresses or screen names associated with any of the foregoing);
- In any manner that could disable, overburden, damage, or impair the Website or interfere with any third party’s use of the Website, including their ability to engage in real time activities through the Website; or,
- To engage in any other conduct that restricts or inhibits anyone’s use, or which, as determined by us, may harm us or users of the Website or expose them to liability.

Additionally, you agree not to:

- Use any robot, spider or other automatic device, process or means to access the Website for any purpose, including monitoring or copying any of the material on the Website;
- Use any device, software or routine that interferes with the proper working of the Website;
- Introduce any viruses, Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful;
- Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Website, the server on which the Website is stored, or any server, computer or database connected to the Website;
- Attack the Website via a denial-of-service attack or a distributed denial-of-service attack; or,
- Otherwise attempt to interfere with the proper working of the Website.

### **Intellectual Property**

You agree that use of the Website does not constitute any basis for ownership of the Website and that we, our affiliates or our licensors own all legal right, title, and interest in and to the Website and all information, materials, images, software, photographs, articles, functions, text, and other content solely provided by or on our behalf on the Website. The Website and the selection and

arrangement thereof, are protected under the copyright laws and other intellectual property laws of the United States and other countries. We reserve all rights not expressly granted herein in and to the Website. Unless otherwise noted, our name and all other trademarks, service marks, trade names, logos or other designations of source displayed on the Website are our property, or that of our affiliates or licensors. All third party trademarks, service marks, trade names, logos or other designations of source are the property of their respective owners. Nothing on the Website shall be construed as granting any license or right not expressly set forth herein. Any unauthorized use of the Website will terminate the permission or license granted herein and may violate applicable law.

### **Disclaimers**

YOU ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE WEBSITE AND ITS CONTENT IS AT YOUR SOLE RISK. THE WEBSITE AND THE CONTENT ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS," AND WITH NO WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY LAW, WE MAKE NO ANY REPRESENTATIONS OR WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER, STATUTORY OR IMPLIED, AS TO (I) THE WEBSITE, OR (II) THE CONTENT. IN ADDITION, WE HEREBY EXPRESSLY DISCLAIM ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS. WE DO NOT REPRESENT OR WARRANT THAT THE WEBSITE IS OR WILL BE ERROR-FREE OR UNINTERRUPTED; THAT DEFECTS WILL BE CORRECTED; OR THAT THE WEBSITE OR THE SERVER THAT MAKES THE WEBSITE AVAILABLE IS FREE FROM ANY HARMFUL COMPONENTS. WE DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE INFORMATION ON THE WEBSITE IS ACCURATE, COMPLETE, OR USEFUL. WE DO NOT WARRANT THAT YOUR USE OF THE WEBSITE IS LAWFUL IN ANY PARTICULAR JURISDICTION, AND WE SPECIFICALLY DISCLAIM SUCH WARRANTIES. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO YOU TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO YOU AND THESE TERMS OF USE. BY ACCESSING OR USING THE WEBSITE YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE WEBSITE.

### **Limitation of Liability**

WE SHALL NOT BE LIABLE FOR ANY DAMAGES YOU OR ANY OTHER PERSON OR COMPANY MAY SUFFER RELATED TO OUR WEBSITE OR CONTENT OR THE USE THEREOF. NOTWITHSTANDING THE FOREGOING, YOU AGREE THAT IN NO EVENT WILL WE BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND DAMAGES RELATED TO THE AVAILABILITY, CORRUPTION OR DELETION OF THE WEBSITE ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE THE WEBSITE REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF,

KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THE FOREGOING INCLUDES, BUT IS NOT LIMITED TO, ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY US OR LAW ENFORCEMENT AUTHORITIES REGARDING YOUR OR ANY THIRD PARTY'S USE OF THE WEBSITE, ANY LOSS THAT MAY OCCUR DUE TO ANY LOSS OF THE USE OF THE WEBSITE, ACCESS DELAYS OR ACCESS INTERRUPTIONS TO THE WEBSITE, THE NON-DELIVERY OR MIS-DELIVERY OF DATA BETWEEN YOU AND US, EVENTS BEYOND OUR REASONABLE CONTROL, THE NON-RECOGNITION OF OUR HOSTING SERVERS, THE PROTECTION OR PRIVACY OF ELECTRONIC MAIL OR OTHER INFORMATION TRANSFERRED THROUGH THE INTERNET OR ANY OTHER NETWORK PROVIDER OR SERVICE ITS CUSTOMERS MAY UTILIZE, OR THE APPLICATION OF ANY POLICY SET FORTH HEREIN.

YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH US, OUR OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS ARISING OUT OF OR RELATING TO THE WEBSITE OR ANY USER CONTENT IS TO STOP USING THE WEBSITE. YOU ACKNOWLEDGE AND AGREE THAT WE, OUR OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS ARE NOT LIABLE FOR ANY ACT OR FAILURE TO ACT BY THEM OR ANY OTHER PERSON OR COMPANY REGARDING CONDUCT, COMMUNICATION, OR CONTENT ON THE WEBSITE. IN NO CASE SHALL THE TOTAL AGGREGATE LIABILITY OF US, OUR OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS TO YOU EXCEED ONE HUNDRED DOLLARS (US\$100).

SOME STATES OR COUNTRIES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR OTHER WARRANTY LIMITATIONS OR OTHER RESTRICTIONS, IN WHICH CASE THE ABOVE EXCLUSIONS OR RESTRICTIONS DO NOT APPLY TO YOU, BUT ONLY TO THE EXTENT REQUIRED BY APPLICABLE LAW.

**NOTICE TO CALIFORNIA RESIDENTS:** IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

### **Indemnification**

By utilizing the Website or Content you agree to indemnify and hold us and our officers, directors, employees, agents, and affiliates harmless from and against any and all liability, losses, costs, and expenses (including attorneys' fees) incurred by us through your use of the Website (or your posting or submission of user content, if permitted) in violation of these Terms (including, but not limited to, negligent or wrongful conduct, infringement of any third party's intellectual property, confidentiality, privacy or publicity rights). We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim. This section shall survive any termination of the Terms.

### **Cooperation with Law Enforcement and Government Agencies; Required Disclosures**

You acknowledge that we have the right to investigate and prosecute violations of these Terms, including intellectual property, publicity and privacy rights infringement and website security issues, to the fullest extent of the law. We may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms. You acknowledge that we have no obligation to monitor your access to or use of the Website, but we have the right to do so for the purpose of operating the Website, to ensure your compliance with these Terms or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental or regulatory body.

You understand and agree that we may disclose your Personal Information if required to do so by law, court order, legal process, or subpoena, including to respond to any government or regulatory request (after, if permitted, giving reasonable notice to you and using commercially reasonable efforts to provide you with the opportunity to seek a protective order or the equivalent (at your expense), or if we believe that such action is necessary to (a) conform to the law, comply with legal process served on us or our affiliates or partners, or investigate, prevent, or take action regarding suspected or actual illegal activities; (b) to enforce these Terms (including for billing and collection purposes), take precautions against liability, to investigate and defend ourselves against any third-party claims or allegations, to assist government enforcement agencies, or to protect the security or integrity of our Website; or, (c) to exercise or protect the rights, property, or the safety of us, our users or others.

### **Dispute Resolution**

**Time Limitation.** Any claim or action against us must be brought within twelve (12) months of the cause arising, otherwise such claim or action is permanently barred.

### **MANDATORY BINDING ARBITRATION**

Other than for the grounds set forth in in the section below labeled “Exceptions to Agreement to Arbitrate,” in the event of any dispute, claim, question or disagreement arising from or relating to the Terms or the breach thereof or the access or use of the Website, the parties hereto shall use reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the parties do not reach such solution within a period of thirty (30) days, then, upon notice by either party to the other, such dispute, claim, question or disagreement shall be resolved by binding arbitration in West Chester, Pennsylvania, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”), subject to the limitations of this Section. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction. Notice of a demand for arbitration shall be filed in writing with the other party hereto and with the AAA. The demand for arbitration shall be made within a reasonable time after the dispute has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations. The parties agree that one (1) arbitrator shall arbitrate the dispute. The arbitrator shall be selected by the joint agreement of the parties, but if they do not so agree within twenty (20) days after the date of the notice of a demand for arbitration referred to above, the selection shall be made pursuant to the Commercial Arbitration Rules of the AAA from the panels of business arbitrators maintained by the AAA. The decision of the arbitrator shall be made in writing and

shall be final. Judgment may be entered upon it in any court having jurisdiction thereof, and the decision shall not be subject to vacation, modification or appeal, except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act, the terms of which Sections the parties agree shall apply. The expenses of arbitration, including and the fees and expenses of the arbitrator and the AAA, shall be shared equally by the parties.

The arbitrator will have no authority to award attorneys' fees, punitive damages, or any other monetary relief not measured by the prevailing party's actual damages and each party irrevocably waives any claim thereto. The award may include equitable relief. The arbitrator will not make any ruling, finding, or award that does not otherwise conform to the Terms. The arbitrator may render a summary disposition relative to all or some of the issues, provided that the responding party has had an adequate opportunity to respond to any such application for such disposition.

The parties agree to treat all aspects of the arbitration as confidential, as provided in the AAA Rules. Before making any disclosure permitted by the Rules, a party shall give written notice to the other party and afford such party a reasonable opportunity to protect its interests. Further, judgment on the arbitrators' award may be entered in any court having jurisdiction.

**Exceptions to Agreement to Arbitrate.** You and we agree that we may bypass arbitration and go to court to resolve disputes relating to intellectual property (e.g., trademarks, trade dress, domain names, trade secrets, copyrights or patents) or your violation of the restrictions on use.

#### **Class Action Waiver**

Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. You agree that neither you nor we will seek to have any dispute heard as a class action or in any other proceeding in which either party acts or proposes to act in a representative capacity, and each party hereby waives any right to assert consolidated claims with respect to any disputes subject to arbitration under these Terms or any disputes between the parties. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.

#### **Waiver of Jury Trial**

Each party irrevocably and unconditionally waives any right we or you may have to a trial by jury for any legal action arising out of or relating to these Terms or the transactions contemplated hereby.

#### **Location of Operation.**

Our Website is operated in the United States of America, and we make no representation that content provided is applicable or appropriate for use in other locations. We make no claims that the Website or any of its content is accessible or appropriate outside of the United States. Access to the Website may not be legal by certain persons or in certain countries. If you access the Website from outside the United States, you do so on your own initiative and are responsible for compliance with local laws. Your use of the Website does not subject us to judicial process in or to the jurisdiction of courts or other tribunals in your jurisdiction or location.

#### **Communications/Notices**

By giving us any contact or other information, you agree to and do hereby consent to receive communications from us concerning us, your account or information, or the Website by email, mail, telephone, or other method, including communications that we are required to send to you

by law (e.g., data security incident notifications) (“**Communications**”). Other than Communications required by law to be sent to you, you may opt out of receiving all Communications by sending a notice to us that identifies your full name, user name and email address.

## **General**

**Governing Law.** For all legal proceedings arising out of use of the Website and/or relating to these Terms, these Terms and the relationship between you and us shall, irrespective of any choice of laws rules, be governed by and construed in accordance with the laws of the State of Pennsylvania. You understand and agree that your use of the Website and the Services as contemplated by these Terms shall be deemed to have occurred in the state of Pennsylvania. To the extent litigation is permitted pursuant to these Terms, you and we hereby irrevocably and unconditionally submit to the jurisdiction of courts located West Chester, Pennsylvania, or the court of competent jurisdiction closest thereto if no court of competent jurisdiction resides therein, and the parties consent to the personal jurisdiction of such courts and expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere. You and we irrevocably waive, to the fullest extent permitted by law, any objection that you may now or hereafter have to the laying of the venue of any proceeding brought in any such court or any claim that a legal proceeding commenced in such court has been brought in an inconvenient forum.

**Assignment.** You may not assign, convey, or transfer (whether by contract, merger or operation of law) (collectively, “assign” or variants) these Terms, in whole or in part, without our prior written consent, which may be granted or withheld by us in our sole discretion. Any attempted assignment in violation of these Terms will be of no power or effect. We may assign these Terms freely at any time without notice. Subject to the foregoing, these Terms will bind and inure to the benefit of each party’s permitted successors and assigns. We reserve the right to, and you hereby consent to, our right to disclose, transfer, and/or assign your Personal Information in connection with a merger, consolidation, restructuring, financing, sale, or other transaction or pursuant to any court proceeding. In addition, if a potential buyer is interested in purchasing us, you agree that we may provide the potential buyer with your Personal Information on a confidential basis and subject to the use restrictions in these Terms.

**Agreement.** These Terms, including the Privacy Policy (and updates to the foregoing), and any other terms agreed to by way of your express consent or your use of the Website shall constitute the entire and exclusive understanding and agreement between you and us regarding this subject matter, and shall supersede any and all prior or contemporaneous representations or understandings relating to this subject matter. In the event that any part of these Terms is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect. Upon termination of these Terms, any provision which, by its nature or express terms should survive, will survive such termination or expiration. The failure of us to exercise or enforce any right or provision of these Terms, including any failure to act with respect to a breach, will not constitute a waiver of such right or our right to act with respect to subsequent or similar breaches. The headings of sections and paragraphs in these Terms are for convenience only and shall not affect its interpretation.

**Relationship of the Parties.** The parties intend that no partnership, joint venture, employee, employer or other relationship is intended or will be created by these Terms. You agree not to hold yourself out as in any way sponsored by, affiliated with, endorsed by, in partnership or venture

with, nor as an employee or employer of us, any of our affiliates or respective service providers. There are no third-party beneficiaries to these Terms.

**Notices.** You agree that we may provide you with notices, including those regarding changes to these Terms, by email to the address you have provided. Our address for notices is set forth below in the section entitled "Contact Us."

**Contact Us.** Our contact information is: Metallurgical Products Company, PO Box 598, West Chester, PA 19381 USA; Email: [sales@medprodco.com](mailto:sales@medprodco.com). You may also visit our "Contact Us" website page [here](#).