

Union Corrugating MetalPro Contractor Agreement

Rev. 05/20/2020

This **TRAINING AND REFERRAL AGREEMENT** (the “**Agreement**”) is effective as of the [] day of [], 20[] (the “**Effective Date**”) by and between Union Corrugating Company, a North Carolina corporation, having a place of business at 701 S. King St., Fayetteville, NC 28301 (“**Union**”), and [], a [], having a place of business at [] (the “**Contractor**”). Union and Contractor are referred to herein individually as “**Party**” and jointly, as the “**Parties.**”

- 1. General.** Union is engaged in the manufacture and sale of certain metal products and components (the “**Products**”). Contractor is engaged in the configuration, installation, assembly and construction of Products and structures incorporating the Products (collectively, the “**Contractor Services**”). Union desires to provide certain training services to the Contractor to enable the Contractor to more efficiently and effectively provide Contractor Services to the end users of the Products (the “**Customers**”). In connection with the sale of the Products to Customers, Union shall provide information to Customers regarding the identities of trained Contractors (the “**Referral**”).
- 2. Training Program.** Union shall provide the Contractor with the [Union MetalPro Contractor] training program set forth on Exhibit A (the “**Training**”) at such times and places as Union in its sole discretion determines.
- 3. Fees.** Contractor shall pay to Union the fees (the “**Fee**”) in the amounts set forth and pursuant to the terms and conditions set forth on Exhibit B.
- 4. Referral Pool.** Upon Contractor’s completion of the Training to Union’s reasonable satisfaction, Union may, in its sole discretion, enroll and include the Contractor in the list of preferred contractors maintained by Union and provided to Customers by Union from time to time (the “**Referral Pool**”). Inclusion in the Referral Pool is dependant upon (i) Contractor’s payment of all Fees owed to Union; (ii) Contractor’s participation in the ongoing services and training offered by Union from time to time in connection with the Training Program; and (iii) Union’s sole discretion. Union may include, reject or remove Contractors to or from the Referral Pool at any time and from time to time in its sole discretion, and undertakes no obligation to include or reject any Contractor to or from the Referral Pool or to otherwise provide information regarding Contractor to Customers or any other party.
- 5. Promotion of Products.** Contractor agrees to use its best efforts to implement, incorporate and otherwise use the Products in its provision of Contractor Services to Customers, including, without limitation, including a link to Union’s website at [www.unioncorrugating.com] on any website maintained or controlled by Contractor. In the event that Contractor is not in compliance with the foregoing, Union reserves the right to suspend or terminate Contractor’s inclusion in the Referral Pool.
- 6. Representations and Warranties.** Contractor represents and warrants to Union that all Contractor Services provided to Customers:

 - (i) will be provided in a professional and workmanlike manner, in accordance with reasonable commercial standards related to such Contractor Services;
 - (ii) will satisfy all applicable laws, regulations, certification requirements and agreed standards related to such Contractor Services; and
 - (iii) will strictly comply with the terms of this Agreement.
- 7. Liability/Indemnity.** Contractor will defend, indemnify and hold harmless Union from and against all liabilities, costs, damages, claims and expenses, including reasonable attorneys fees, arising from or related to any actual or alleged (i) breach by Contractor of any representation, warranty (express or implied), covenant, or obligation under this Agreement; (ii) action, claim or proceeding of any nature brought or threatened against Union by any Customer arising from or related to the Contractor Services provided by Contractor; (iii) defective or non-compliant Contractor Services; or (iv) negligent act or omission or willful misconduct of Contractor or its agents. Contractor agrees that the terms of this Section shall survive any termination of this Agreement.

UNION SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY LOST REVENUE, LOST PROFITS OR OTHER SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED ON BREACH OR DEFAULT UNDER THIS AGREEMENT OR ANY OTHER FORM OF ACTION WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF UNION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

UNION'S CUMULATIVE LIABILITY TO CONTRACTOR, ITS SUCCESSORS OR ASSIGNS FOR ANY CLAIMS HEREUNDER SHALL NOT EXCEED THE LESSER OF (1) \$500.00 OR (2) THE AMOUNT PAID TO UNION FROM CONTRACTOR UNDER THIS AGREEMENT.

8. Reward Program. Contractor shall be eligible to receive reward credit from Union equal to 1.5% of the Contractor's aggregate direct purchases of Products from Union or a Union approved dealer (the "**Reward**"), subject to the following terms and conditions:

- (i) Documentation evidencing Contractor's purchase of Products satisfactory to Union in its sole discretion must be provided to Union prior to accrual of any Reward, including, without limitation, dated invoices clearly showing the amount, price and type of Products purchased by Contractor, and, if applicable, contact information for the dealer such Products were purchased from (the "**Supporting Documentation**").
- (ii) Supporting Documentation must be received no later than 30 days after the end of each calendar quarter. Supporting Documentation received after the reporting deadline may be used to calculate Rewards accruable in the subsequent quarter; provided, that Union reserves the right in its sole discretion to reject Supporting Documentation received after the reporting deadline.
- (iii) Supporting Documentation must be received by Union no later than three months after the purchase of the applicable Products related to such Supporting Documentation. No Reward will accrue for Product purchases for which Supporting Documentation is not submitted within three months.
- (iv) The Reward(s) shall be issued by Union to Contractor on a quarterly basis, and shall be redeemable for cash, cooperative advertising, marketing materials, training fees, or as otherwise determined by Union in its sole discretion. Reward(s) expire if not exercised by Contractor within one year of issuance.
- (v) Union reserves the right to exclude Contractor from the Reward Program, and/or terminate or suspend the Reward Program or Rewards already issued to Contractor for any reason in Union's sole discretion, including, but not limited to, any discrepancy in the Supporting Documentation. The foregoing does not limit or waive any right or remedy Union may pursue against Contractor for damages due to fraudulent or inaccurate information supplied by Contractor.

9. Termination. Union may suspend performance of its obligations under the Agreement or terminate this Agreement immediately in whole or in part upon written notice to Contractor in the event that:

- (i) Contractor files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding;
- (ii) Contractor becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding and such petition or proceeding is not dismissed within thirty (30) days from filing of such petition or proceeding;
- (iii) Contractor ceases or threatens to cease to carry on business in the ordinary course;
- (iv) A change of control with respect to Contractor occurs; or
- (v) Contractor materially breaches any of its obligations, representations, warranties or covenants under the Agreement.

In addition to Union's right to include, reject or remove Contractor to or from the Referral Pool in Union's sole discretion, Union may terminate this Agreement by providing the Contractor with thirty (30) days advance written notice to that effect.

10. General Provisions

- (a) This Agreement may only be amended only by a written instrument explicitly referring to this Agreement, duly executed by both Parties. In the event of any litigated dispute between Union and Contractor regarding this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees as an element of damages in said dispute.
- (b) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
- (c) This Agreement constitutes the entire agreement and understanding of the Parties and merges all prior discussions and negotiations between them and supersedes any previous agreement whether oral or written with respect to the subject matter hereof. Except as otherwise provided herein, course of performance, course of dealing and usage of trade shall not apply to this Agreement.
- (d) This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the law of the state of North Carolina without regard to the conflict of law principles thereof.
- (e) Neither the failure nor delay of any party to this Agreement to assert or exercise any right, power, privilege or remedy under this Agreement or to enforce any term or provision hereof or thereof, shall constitute a waiver of such right, power, privilege or remedy.
- (f) Any notice, request, instruction or other document to be given hereunder by any party to the other shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, by facsimile or by overnight courier:

If to Union: Att: John Darke
 701 S. King St.
 Fayetteville, NC 28301
 Fax 910-483-8897

If to Contractor: **[insert name, address and fax nr. of Contractor]** or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided above.

- (g) Each Party is an independent contractor, not an agent, partner, employee or representative of the other. Neither Party has authority to make any statement, representation or commitment of any kind or to take any action binding upon the other, without the other Party's prior, written authorization.
- (h) The provisions of this Agreement are severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.
- (i) All terms and conditions of this Agreement which are destined (whether expressed or not) to survive the duration or termination of this Agreement shall so survive.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

[Contractor]

Name:
 Title:
 Date:
 Signature:

[Union Corrugating]

Name:
 Title:
 Date:

Exhibit "A"

Contractor will be enrolled in Union's Basic Installation Training for Through-Fastened and Screw Flange Standing Seam Products.

Exhibit "B"

Initiation Fee is \$250, due upon activation of the membership. After initiation, to remain active in the program, Contractor shall maintain a minimum purchase level of \$2,500.00 of Products per year (measured on an annual basis from the Effective Date of the Agreement), or, if such purchase level is not met each year, Contractor shall pay an annual fee of \$250.00.