

**DATE:**  
09/23/21

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve submitting a credit application with Commercial Metals Company (CMC) for Kenton County School District construction projects.

**APPLICABLE BOARD POLICY:**

01.11 General Powers of the Board. The Board may borrow money on the credit of the Board.

**HISTORY/BACKGROUND:**

Commercial Metals Company is requesting a credit application be submitted in order to accept District purchase orders for purchases to be made for Kenton County School District construction projects.

**FISCAL/BUDGETARY IMPACT:**

None.

**RECOMMENDATION:**


Approval to Submit a credit application with Commercial Metals Company for Kenton County School District construction projects.

**CONTACT PERSON:**

Jennifer Weis-Smith

  
Principal/Administrator

  
District Administrator

  
Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.  
Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.

# Commercial Metals Company ("CMC")

and its Affiliates and Subsidiaries

## Credit Application

Federal Tax ID #: 61-6001301

Company Legal Name: Kenton County Board of Education

Physical Address: 1055 Eaton Dr.

City: Ft. Wright State: KY Zip: 41017

Contact: Misty Jones

Phone: (859) 344-8880 Fax: (859) 344-1531

E-mail: accounts.payable@Kenton.KySchools.us

Name (DBA): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

AP Contact: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Parent Company Name: \_\_\_\_\_

State Incorporated: \_\_\_\_\_

Business Start Date: \_\_\_\_\_

Type of Business: Corporation ☐ Partnership ☐ Sole Proprietorship ☐ Govt Organization - Ky Public School District ☒

### OWNER, PARTNERS, OR CORPORATE OFFICERS

	<u>Name</u>	<u>Ownership %</u>	<u>Title</u>	<u>Phone #</u>
1.				
2.				
3.				

### BANK REFERENCE

Bank: (SEE ATTACHED) Phone: \_\_\_\_\_ Checking Acct. No: \_\_\_\_\_  
Address: \_\_\_\_\_ Fax: \_\_\_\_\_ Loan Account No: \_\_\_\_\_  
Email: \_\_\_\_\_ Secured: ☐ How: \_\_\_\_\_  
Contact: \_\_\_\_\_

### TRADE REFERENCES

(At least one steel mill or steel service center contact required. Supplying fax numbers will help expedite processing)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

City: \_\_\_\_\_

City: \_\_\_\_\_

Contact: \_\_\_\_\_

Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

City: \_\_\_\_\_

City: \_\_\_\_\_

Contact: \_\_\_\_\_

Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

Please attach most recent audited financial statements and interim financial information.  
Sales tax exemption certificates, as may be applicable, must be on file with CMC prior to shipments.



## CREDIT APPLICATION AND SALES TERMS AND CONDITIONS

Except as otherwise agreed in a writing signed by Buyer and Commercial Metals Company, and/or its affiliates and subsidiaries (collectively "CMC"), all current and future sales between the parties are made subject to the following terms and conditions. CMC expressly rejects any different or additional terms or conditions contained in any documents submitted by Buyer. CMC's provision of credit, acceptance of any purchase order and/or sale of any goods are expressly made conditional on Buyer's assent to these terms and conditions. The applicable CMC sales order acknowledgement, proposal, bid, or offer, together with these terms and conditions constitute the entire agreement between CMC and Buyer relating to the sale of such goods by CMC. Terms or conditions contained in any document issued by Buyer that in any manner purport to alter, modify, change, suspend, or add to any term or condition contained herein shall be deemed excluded from such Buyer document and waived by Buyer. CMC and Buyer expressly agree that CMC may modify these terms and conditions from time to time, and such modifications shall be binding upon Buyer.

1. The purchase price of the goods shall be as stated on the face of the applicable CMC sales order acknowledgement, proposal, bid, or offer; provided, however, that if CMC announces a general price increase, the purchase price shall be revised to include such price increase. CMC may in its sole discretion add a surcharge to the price of goods predicated upon increases in the cost of raw materials or energy. Such surcharge may be adjusted by CMC periodically to reflect a change in such costs.

2. Buyer cannot modify, cancel, or otherwise alter orders without CMC's written consent. Any such cancellation, modification, or alteration shall be subject to conditions as negotiated at such time, which shall include protection of CMC against loss.

3. All deliveries are EXW (Incoterms – latest adopted version) loaded CMC shipping facility, freight prepaid or freight collect to destination. If shipped freight prepaid, the charge for freight and any surcharges will be added to the invoice. Neither freight charges nor tax is subject to any discount. Title and risk of loss pass upon delivery at CMC shipping facility. Risk of loss or damage in transit shall be borne by Buyer, and claims shall be made directly with carrier. Buyer may pick up the goods at CMC's shipping facility provided Buyer does so within 10 days after the date Buyer is notified of the availability of goods. CMC reserves the right to ship without further notification at any time after the 10-day period. Buyer shall indemnify and hold harmless CMC from and against any claims, damages or liabilities suffered by CMC resulting from any acts or omissions of carrier.

4. Delivery dates are approximate. CMC shall not be responsible for non-shipment of goods or delays in delivery or performance due to causes beyond its reasonable control, including, but not limited to, acts of God; acts of Buyer; strikes or other labor disturbances; CMC's inability to obtain, or material increases in the cost of, fuel, raw materials or parts; delays in transportation; repairs to equipment; fires; or accidents. Acceptance of goods upon delivery shall constitute a waiver by Buyer of any claim for damages on account of non-shipment or delays in delivery or performance.

5. **SUBJECT TO STANDARD MANUFACTURING VARIATIONS, CMC WARRANTS THAT THE GOODS FURNISHED HEREUNDER SHALL MEET SPECIFICATIONS SET FORTH ON THE FACE OF THE APPLICABLE CMC SALES ORDER ACKNOWLEDGEMENT, PROPOSAL, BID, OR OFFER. CMC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

6. No claim for damages for goods that do not conform to specifications will be allowed unless CMC is given immediate notice after delivery of goods to the first destination to which they are shipped and allowed an opportunity to inspect them. Goods for which damages are claimed shall not be returned, repaired, or discarded without CMC's written consent. **BUYER'S EXCLUSIVE REMEDY AGAINST CMC, AND CMC'S SOLE OBLIGATION, FOR ANY AND ALL CLAIMS, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL BE LIMITED TO CMC'S REPLACING GOODS THAT DO NOT CONFORM TO SPECIFICATIONS OR, AT CMC'S OPTION, REFUNDING THE PURCHASE PRICE. IN NO EVENT SHALL CMC HAVE ANY LIABILITY FOR DAMAGES IN AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE GOODS SOLD HEREUNDER, NOR SHALL CMC HAVE ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

7. CMC shall indemnify Buyer only for bodily injury (including death) or property damage to the extent directly caused by CMC's negligent acts or omissions.

8. CMC shall maintain commercial general liability, automobile liability, worker's compensation, and employer liability insurance coverage and shall, upon request, furnish Buyer with evidence of that coverage. CMC shall not name Buyer, or anyone else, as an additional insured or waive its rights of subrogation under insurance owned by CMC.

9. Payment shall be in U.S. dollars and shall be ~~"net 30"~~ unless otherwise specified in writing by CMC. **Net 30-60 Days**

10. All credit information supplied to CMC will be shared among, and made available to, any CMC affiliate or subsidiary for use in, or for the purpose of, determining credit worthiness, or for the enforcement of the terms of credit extension or contract terms. As a condition of the continued extension of credit, upon request by CMC, Buyer agrees to provide CMC with an updated credit application, updated financial information, and annual financial statements. If, in CMC's opinion, Buyer's credit becomes impaired, CMC may suspend performance until such time as CMC has received full payment for any goods already delivered or in process and is satisfied (in its sole discretion) as to Buyer's credit for future deliveries. If CMC suspends performance and later proceeds with such order, CMC shall be entitled to such extension of time for performance as is necessitated by the suspension.

11. In the event this application is made by a sole proprietorship or a partnership the signing of this application gives the Seller authorization to evaluate the Applicant's personal finances such as bank, financial statements, and/or personal credit report.

12. All taxes of any kind levied by any federal, state, municipal or other governmental authority, which tax CMC is required to collect or pay with respect to the production, sale, or shipment of goods sold to Buyer shall be the responsibility of Buyer. Buyer agrees to pay all such taxes and further agrees to reimburse CMC for any such payments made by CMC.

13. Checks or payments, whether full or partial, received from or for the account of Buyer, regardless of writings, legends, or notations upon such checks or payments, or regardless of other writings, statements, or documents, shall be applied by CMC against any amount owing by Buyer with full reservation of all of CMC's rights, without an accord and satisfaction of Buyer's liability.

14. In the event Buyer fails to make payment to CMC, or any affiliate of CMC, of any amounts due and owing to CMC or such affiliate (including any applicable surcharge or freight charge), CMC shall have the right to terminate any Buyer order or any unfulfilled portion thereof, and CMC or any affiliate thereof may terminate any other agreement between CMC or such affiliate and Buyer. CMC may charge interest on the outstanding balance at an annual rate of 18% or the highest rate allowed by law (whichever is less). CMC shall have the right to employ an attorney to collect the balance due, and Buyer agrees to pay all collection costs incurred by CMC, including its reasonable attorneys' fees.

15. This agreement shall be governed by the laws of the state in which CMC's shipping facility is located. **Kenton County, KY** Buyer, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the exclusive jurisdiction of the state and federal courts of that state for any litigation which may arise out of or be related to this agreement. Buyer waives any objection based on *forum non conveniens* or any objection to venue of any such action.

16. CMC reserves the right to enforce these terms and conditions at any time and none shall be deemed waived unless such waiver is in writing signed by a duly authorized officer of CMC. All rights and remedies granted herein are in addition to all remedies available at law or in equity.

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, (provided that the applicant has the capacity to enter into a binding contract); because all or a part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Washington, D.C. 20580. If CMC denies your Application or your request for an increase in credit, you have the right to a written statement of the specific reasons for the denial.

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THE UNDERSIGNED HEREBY MAKES APPLICATION FOR CREDIT AND AGREES THAT THE EXTENSION OF CREDIT AND SALE OF PRODUCTS BY CMC TO BUYER ARE EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO THE FOREGOING TERMS AND CONDITIONS OF SALE FOR ALL CURRENT AND FUTURE PURCHASES FROM CMC. BUYER ACKNOWLEDGES RECEIPT AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF SALE, WHICH MAY ONLY BE MODIFIED AS PROVIDED THEREIN. THE UNDERSIGNED AUTHORIZES ALL CREDIT REFERENCES, CREDIT-REPORTING AGENCIES AND ALL PREVIOUS AND EXISTING CREDITORS CONTACTED BY CMC TO FURNISH ANY CREDIT INFORMATION USEFUL IN ITS CREDIT INVESTIGATION OF THE APPLICANT, GUARANTOR, OR ANY INDIVIDUAL SIGNING THIS AGREEMENT, AND FOR CMC TO INVESTIGATE BUYER'S CREDITWORTHINESS, INCLUDING A REQUEST FOR A CREDIT REPORT, TO WHICH BUYER SPECIFICALLY CONSENTS. APPLICANT ACKNOWLEDGES THAT THE UNDERSIGNED IS FULLY AUTHORIZED TO SIGN THIS APPLICATION ON BEHALF OF THE APPLICANT AND THAT APPLICANT INDEMNIFIES CMC AND ALL REFERENCES, INSTITUTIONS, AGENCIES AND OTHER SOURCES CONTACTED REGARDING THIS APPLICATION, FROM ANY AND ALL LIABILITIES, DAMAGES, LOSSES AND CLAIMS ARISING OUT OF DISCLOSURE OF APPLICANT'S CREDIT, FINANCIAL OR OTHER INFORMATION. APPLICANT AGREES THAT CMC MAY RETAIN THIS APPLICATION AND ALL INFORMATION GATHERED, REGARDLESS OF APPROVAL OR DENIAL OF APPLICATION. APPLICANT, BY SIGNING THIS CREDIT APPLICATION AND AGREEMENT, DECLARES THAT ALL INFORMATION SUPPLIED TO CMC IS TRUE, COMPLETE, AND CORRECT.

COMPANY NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

**END OF DOCUMENT**