# TERMS AND CONDITIONS OF PURCHASE BY RANDALL METALS CORPORATION

The purchase of goods or services by Randall Metals Corporation, its affiliates, and its employees (the “Buyer”) is subject to these Terms and Conditions. The provider of any product or service (the “Seller”) agrees to be bound by these Terms and Conditions.

Buyer and Seller agree that these Terms and Conditions are accepted in good faith by both parties as the controlling and final terms and conditions. Buyer and Seller further agree that there should not be a “battle of forms” as described in Section 2-207 of the Uniform Commercial Code. The terms hereof shall control regardless of whether or when the Buyer has submitted or sent a purchase contract. Seller’s commencement of performance is not to be construed as acceptance of any of Buyer’s terms or conditions.

## 1. OFFER & ACCEPTANCE

a. Any purchase order issued by Buyer, or Buyers acceptance of a sales order from Seller, shall be subject to these Terms and Conditions.

b. Seller accepts these Terms and Conditions by (i) acknowledgement of the Buyer’s purchase order/contract, quotation, order acknowledgement or invoice forms without written objection sent to Buyer within ten (10) days after receipt of this acknowledgement; (ii) delivery to Buyer of a sales order; (iii) commencement of performance by Seller; or (iv) Seller’s shipment of all or any part of the goods or services ordered.

c. These terms and conditions together with the specifications, drawings, or other documents referred to on the face of the purchase order, attached to the purchase order, or any documents incorporated by reference, supersede any prior or contemporaneous communications, representations, promises, or negotiations, whether oral or written.

d. If Seller becomes aware of any ambiguities, issues or discrepancies regarding an order, Seller will immediately submit the matter to Buyer for resolution.

e. Seller may not modify, cancel, or otherwise alter any order without Buyer’s written consent.

## 2. TERMS OF PAYMENT

a. Payment shall be made in U.S. dollars and shall be at least net 30 days from the receipt of invoice and conforming goods unless negotiated differently. Payment will be scheduled for the first payment cycle following the net terms of the purchase order.

b. After each shipment made or service provided, Seller will submit an invoice listing the description of the goods and/or service provided, including, as applicable, part numbers, quantities, and units of measure, taxes, tariffs, duties, and total pricing. Any incidental charges such as royalties, selling commissions, non-recurring engineering, or other incidental charges must be separately itemized and identified on the invoice. The invoice must also include the following information in English, and in the destination country’s official language if required:

(a) name and address of Seller and the Buyer entity purchasing the goods; (b) name of shipper (if different from Seller); (c) Buyer's purchase order number(s); (d) country of export; (e) detailed description of the goods; (f) Harmonized Tariff Schedule number; (g) country of origin (manufacture) of the goods, or if multiple countries of origin, the country of origin of each part shipped; (h) weights of the goods shipped; (i) currency in which the sale was made; (j) payment terms; (k) shipment terms used; and (l) all rebates or discounts. If applicable, the invoice will be accompanied by a signed bill of lading or express receipt evidencing shipment. Payment of an invoice does not constitute acceptance of the goods and is subject to appropriate adjustment should Seller fail to meet the requirements of the purchase order.

c. Delay by the Seller in performance, in the Buyer's reasonable opinion, may deem it to be a wrongful termination of the purchase order/contract by the Seller and the Seller shall thereupon be liable for all damages.

d. Buyer may deduct any amount owing from Seller to Buyer as a setoff against any amount due or owing to Seller.

**3. DELIVERY**

a. Seller will deliver goods and services in accordance with the quantities and date(s) specified on the purchase order/contract. If delivery dates are not stated, Seller will offer its best delivery date(s), which will be subject to acceptance by Buyer.

b. The goods are to be delivered to the destination stated by the Buyer at the time the order is placed, and the Buyer guarantees that the goods will be shipped to that destination, and agrees to furnish, if required by Seller, a Landing Certificate duly signed by the Customs Authorities at the port of destination, certifying that the goods have been landed and entered at that port.

c. Seller will, at its expense, deliver goods by the most expeditious shipping method if the delivery schedule is endangered for any reason other than Buyer's fault. If goods are delinquent to Buyer's requirements, Seller will grant Buyer first priority for goods allocation and shipment.

d. All items will be packaged in accordance with Buyer's instructions or, if none are specified, in accordance with good commercial practice in a manner sufficient to ensure receipt in an undamaged condition.

e. All containers will be properly marked for identification per the instructions on the purchase order and contain a packing slip that details, at a minimum, the purchase order number(s), product part number, detailed product description, quantity of product shipped, and final delivery address. Items shipped in advance of Buyer's delivery schedule may be returned at Seller's expense. Seller will give notice of shipment to Buyer when the goods are delivered to a carrier for transportation. The purchase order number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading and air waybills.

f. All goods, unless specifically exempted by the destination country's governing authorities, must be marked with the country of origin (manufacture) of the Goods in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container permits.

g. Seller will provide Buyer with the Harmonized Tariff Schedule number, country of origin information or certificates, manufacturer's affidavits, applicable free trade agreement ("FTA") certificates, and any other documents or information Buyer may require to comply with international trade regulations or to lawfully minimize duties, taxes, and fees. Seller will provide Buyer all documents, records, and other supporting information necessary to substantiate the goods' qualification under such FTA. Seller will exert reasonable efforts to qualify the goods under FTAs.

h. Within one business day after Seller delivers the goods to the carrier, Seller will send Buyer a complete set of shipping documents including the commercial invoice, packing list, and air waybill or three original parts of the combined bill of lading, clean without notation, and any other documents necessary to release the goods to Buyer's custody.

i. Whenever anything delays or threatens to delay the timely performance of an order, Seller must immediately give notice to Buyer of all relevant information with respect to such delay. If Seller's delivery is delayed, Buyer may, at Buyer's sole option, cancel deliveries or elect to extend the period of performance.

## 4. FORCE MAJEURE & EXCUSABLE DELAY

a. Any delay or failure of either party to perform its obligations shall be excused if and to the extent that the party is unable to perform due to Acts of God, restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority, or acts of war. The party affected by an excusable delay will promptly provide notice to the other, explaining in detail the full particulars and expected duration of the excusable delay, and will use its best efforts to remedy the delay if it is capable of being remedied.

b. If government authorities declare or otherwise impose preliminary or final countervailing duties, antidumping duties, or other taxes or duties on the goods to be imported under a purchase order, Buyer reserves the right to terminate the purchase order.

## 5. PERFORMANCE ASSURANCE PLAN

a. If Buyer, in its sole discretion, determines there is a significant risk that Seller will fail to meet its performance or delivery requirements under a purchase order, Buyer may require Seller to perform under a Performance Assurance Plan. The Performance Assurance Plan may include specific reporting and performance requirements reasonably tailored to ensure Seller's adequate performance under identified provisions of the purchase order. Any failure by Seller to satisfy the terms of the Performance Assurance Plan is a material breach of the purchase order.

## 6. SHIPPING TERMS

a. When the point of delivery is Seller's location, Seller bears all risk of loss or damage to the goods and title passes to Buyer upon delivery of the goods to the carrier designated or approved by Buyer.

b. When the point of delivery is Buyer's location, Seller bears all risk of loss or damage to the goods and title passes to Buyer upon delivery of the Goods at Buyer's location.

c. In all other cases, Seller will deliver the under agreed upon Incoterms. If not terms are specified on the face of the purchase order or in a separate agreement, goods shall be delivered DDP at Buyer's location.

d. The foregoing does not relieve Seller of any responsibility for hidden damages discovered after acceptance of the Goods. Title and risk of loss to goods subject to a consignment stock agreement pass upon release of the goods from the consignment stock.

e. Buyer may direct Seller to ship the goods to Buyer or to any third party designated by Buyer.

f. Seller assumes all responsibility and liability for any shipments requiring any government import clearance.

## 7. QUALITY ASSURANCE & INSPECTION

a. All goods and services may be inspected and tested by Buyer, its customers, and end users at all reasonable times and places

b. In its standard inspection and testing of the goods and services, Seller will use an inspection system accepted by Buyer in writing.

c. No inspection, tests, approval, design approval or acceptance of the goods or services relieves Seller from responsibility for warranty or any latent defects, fraud or negligence.

d. If the goods or services are defective, damaged or otherwise not in conformity with the requirements of the purchase order, Buyer may, by claim to Seller: (i) rescind the purchase order as to such Goods; (ii) accept such goods or services at an equitable reduction in price; (iii) reject such goods or services and require the delivery of replacements; or (iv) require payment from Seller to cover the costs of the defective, damaged, or nonconforming goods and services. Seller must promptly take such action requested by Buyer to resolve the claim. If Seller fails to deliver required replacements or payment promptly, Buyer may: (x) correct any retained defective, damaged, or nonconforming goods or services at Seller's expense; (y) replace the defective, damaged, or nonconforming goods with goods or services from another supplier and charge the Seller the cost thereof, including any incidental costs; and/or (z) terminate any outstanding or future purchase orders for cause.

e. Seller agrees to allow Buyer, during normal business hours, to make reasonable inspections of the facilities where Seller and its sub-tier suppliers manufacture or process the goods or provides the services.

## 8. WARRANTY

a. Seller warrants to Buyer and its customers, and end users that all goods and services (including all replacement or corrected goods or services) will: (a) be free from defects in material, workmanship, and design, even if the design has been approved by Buyer; (b) conform to applicable drawings, designs, quality control plans, specifications and samples and other descriptions furnished or specified by Buyer; (c) be merchantable; (d) be fit for the intended purposes and operate as intended; (e) comply will all applicable national and local laws; (f) be free and clear of any and all liens, restrictions, reservations, security interests or encumbrances; and (g) not infringe any patent, published patent application, or other intellectual property rights of any third party existing as of the date of delivery, and not utilize misappropriated third party trade secret information.

b. The warranty period will be for a period of 36 months from the date of delivery to the end user or such longer period of time as may have been accepted by Buyer from Buyer's customer or the date on which any longer or broader government requirement covering the goods or services ends. These warranties will survive any delivery, inspection, acceptance or payment by Buyer.

c. The warranties provided are cumulative and in addition to any warranty provided by law or equity. Any applicable statute of limitations runs from the date of discovery.

## 9. CHANGES FROM BUYER

a. Buyer may direct changes in the drawings, designs, specifications, method of shipment or packing, quantity, or time or place of delivery of the goods or services; reschedule the services; or require additional or diminished services.

b. Only authorized Buyer representatives may issue changes, in writing, to a purchase order.

c. If any change causes an increase or decrease in the cost of, or the time required for, performing under a purchase order, an equitable adjustment will be made in the purchase order price, delivery dates or both, and the purchase order will be modified in writing accordingly.

d. Any claim for adjustment under this provision may, at Buyer's option, be deemed to be waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within 30 days from the date of the receipt by Seller of the Buyer-directed change to a purchase order.

## 10. SELLER DESIGN AND PROCESS CHANGES

a. Without the advance written approval of Buyer's authorized representative, Seller will make no changes to the design, materials, manufacturing location, sub-tier suppliers, or processes (a) specified in the purchase order or documents referenced therein; (b) used in similar prior orders; or (c) in place at time of issuance of the purchase order.

b. Changes to a process include, but are not limited to, changes to the production process, changes in manufacturing equipment, or changes between a manual and automated process. This requirement applies whether or not there is a cost impact associated with the change and regardless of the type of change, including product improvements.

## 11. TERMINATIONS

a. Buyer may terminate a purchase order if the Seller commits a material breach of the purchase order, or these terms and conditions, and fails to remedy the breach within 30 calendar days following receipt of notice specifying the grounds for the breach. A material breach includes, but is not limited to, failure to deliver, late delivery or delivery of nonconforming goods or services.

b. Termination of a purchase order by Buyer will entitle Buyer to all damages and remedies available at law or equity. Additionally, Seller grants to Buyer a fully paid up, non-exclusive, irrevocable license to Seller's intellectual property rights embodied or used in the goods or services for Buyer to make, have made and sell goods or services using such intellectual property rights to fulfill Buyer's obligations to Buyer's customer(s).

c. Buyer's sole liability to Seller, and Seller's sole and exclusive remedy, is payment for goods or services received and accepted by Buyer prior to the date of termination, payment for which can be set off against any damages to Buyer.

d. To the extent that any portion of a purchase order is not terminated, Seller will continue performance of that portion not terminated.

## 12. GENERAL INDEMNIFICATION

a. Seller will, at its expense, defend, indemnify and hold harmless Buyer and its subsidiaries, affiliates and agents, and their respective officers, directors, shareholders, and employees, and Buyer's customers from and against any and all loss, cost, expense, damage, claim, demand or liability, including reasonable attorney and professional fees and costs and the cost of settlement, compromise, judgment or verdict incurred by or demanded of an Indemnity arising out of, resulting from or occurring in connection with Seller's actual or alleged negligence, willful misconduct, or breach of the terms of this Purchase Order.

b. Seller will have the right to conduct the defense of any such claim or action, and all negotiations for its settlement; provided, however, in no event will Seller enter into any settlement without Buyer's prior written consent, which will not be unreasonably withheld.

c. Seller represents and warrants that there is nothing that will directly, indirectly, actually or potentially restrict or prevent Seller in any way from fulfilling all its obligations, duties, and services under a purchase order, including without limitation any exclusivity or non-compete arrangement.

## 13. INSURANCE

a. Seller will maintain insurance with a carrier having a minimum AM Best rating of "A", covering at least the following insurance: commercial general liability (including product liability, and for services to be performed, completed operations liability) in a sum no less than $5 million; automobile liability in a sum no less than $5 million; worker's compensation in an amount no less than the applicable statutory minimum requirement; and employer's liability in an amount of no less than $1 million. Prior to the delivery of any goods or services, Seller will provide to Buyer certificates of insurance evidencing that Seller maintains the foregoing insurance, which will provide that such coverage will not be changed without 30 days advance written notification to Buyer from the carrier(s).

b. Except where prohibited by law, Seller will require its insurers to waive all rights of recovery or subrogation against Buyer, its subsidiaries and affiliated companies, and its and their respective officers, directors, shareholders, employees and agents.

c. The amount of insurance carried in compliance with the above requirements is not to be construed as either a limitation on or satisfaction of the indemnification obligations in a purchase order.

## 14. CONFIDENTIALITY & NON-COMPETITION

a. All information, including without limitation specifications, samples, drawings, materials, know how, designs, processes and other technical, customer information, business or financial information, that: (a) has been or will be supplied to Seller here under by or on behalf of Buyer; or (b) Seller will design, develop or create in connection with a purchase order are deemed to be "Confidential Information" of Buyer. All Confidential Information is deemed to be work made for hire and made in the course of services rendered and all rights thereto belong exclusively to Buyer, with Buyer having the sole right to obtain, hold and renew, in its own name or for its own benefit, patents, copyrights, registrations or other appropriate protection. To the extent that exclusive title or ownership rights in such Confidential Information may not originally vest in Buyer as contemplated here under, Seller irrevocably assigns transfers and conveys to Buyer all right, title and interest therein.

b. Buyer's Confidential Information will remain the property of Buyer, may not be used by Seller for any purpose other than for performing under a purchase order from the Buyer, may not be disclosed to any third party, and will be returned to Buyer upon the earlier of Buyer's written request or completion of the purchase order. If, with Buyer's prior written approval, Seller furnishes Confidential Information to a sub-tier supplier, Seller will bind the sub-tier supplier to confidentiality requirements substantially identical to this provision and Seller will remain responsible to Buyer for any breach of this provision by its sub-tier suppliers.

c. No disclosure, description or other communication of any sort will be made by Seller to any third person of the fact of Buyer's purchase of goods or services here under, the terms of a purchase order, the substance of any discussions or negotiations concerning a purchase order, or either party's performance under a purchase order.

d. Seller may not use Confidential Information to directly, or through a third party, approach a customer or prospective customer of the Buyer.

## 15. COMPLIANCE & REPORTING

a. Seller shall follow and abide by the regulations and best practices laid out as part of the following: (a) Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Conflict Minerals Reporting); (b) Public Law 108-282 – Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA); (c) California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); (d) Registration, Evaluation, Authorization and Restriction of Chemicals (REACH); (e) Restriction on the use of Hazardous Substances (RoHS); and (f) Toxics in Packaging Legislation (TiPL).

b. Seller agrees to submit to Buyer, within thirty days of Buyer's written request, any and all information, documents and certifications reasonably required by Buyer to accurately complete and fulfill reporting obligations under all applicable regulations and best practices.