

TERMS AND CONDITIONS OF SALE BY RANDALL METALS CORPORATION

The sale of goods and the provision of services by Randall Metals Corporation, its affiliate, and its employees (the “Seller”) are subject to these Terms and Conditions (“Terms and Conditions”). The purchaser of any service or product (the “Buyer”) agrees to be bound by these Terms and Conditions.

The Buyer and Seller agree that the 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 sales order issued by Seller, or Seller’s acceptance of a purchase order from Buyer, shall be subject to these Terms and Conditions.
- b. Buyer accepts these Terms and Conditions by (i) accepting the goods delivered by Seller, (ii) paying for the goods delivered by Seller, or (iii) using the goods delivered by Seller.
- c. Any modification, addition, cancellation, or other alteration to any order must be in writing and signed by authorized representatives of both Buyer and Seller.
- d. Seller reserves the right to reject any purchase order for goods submitted by Buyer.

2. TERMS OF PAYMENT

- a. Prices for the goods shall be the prices set forth on Seller’s price list in effect at the time of purchase, unless otherwise agreed to in writing by Seller and Buyer. Such prices shall exclude all taxes, fees and duties, which exclusion include, without limitation, all: (a) sales, use, franchise, license, excise, VAT and other taxes; (b) export or import duties; and (c) inspection fees, all of which shall be paid by Buyer unless a proper exemption certificate is furnished.
- b. Payment for all goods ordered by Buyer shall be made in the currency set forth in the invoice and shall be paid in full, without offset or deduction net 30 days from the date of invoice.
- c. Payment by letter of credit shall be irrevocable, confirmed and without recourse, payable to Seller in the currency set forth in the invoice. The letter of credit shall permit partial shipments and shall be in form and content satisfactory to Seller. The amount stated in the letter of credit shall be for an amount of ten percent (10%) over or below estimated value. The letter of credit shall be established within twenty days from the date of confirmation and shall remain in force until the sales contract shall be completely performed.

d. Interest shall be charged at an amount equal to ten percent (10%) per month, or the maximum rate permitted by law, on all amounts past due.

e. All costs, charges and expenses (including collection costs and attorneys' fees) incurred by Seller in collecting any past due balances or other amounts owed to Seller by Buyer shall be reimbursed by Buyer. In the event that Buyer's failure to pay any sum when due, or in the event that Seller incurs any collection costs, charges or expenses, any amounts paid by Buyer shall first be applied against interest accrued, then against collection costs and finally to the goods purchased.

f. Delay by the Buyer in establishing payment shall extend the time of performance by the Seller or, at the Seller's sole and absolute discretion, may deem it to be a default by Buyer and may terminate the agreement pursuant to Section 11 of the Terms and Conditions, wherefore the Buyer shall thereupon be liable for all damages.

e. At its reasonable discretion, including for delay of delivery by the Buyer, Seller may bill goods or services to Buyer at the contract price. Goods will be stored at Buyer's sole risk, expense and account.

f. The price of sale can be increased by Seller to the extent that Seller's cost of the material or Seller's cost of performing its obligations may be increased as a result of: (i) any imposition of, or increase in, freight transportation costs, surcharges, currency adjustments, insurance costs, storage and handling, shipping, port congestion, or similar charges, (ii) any imposition of, or increase in, any tariff, duty, tax, impost, assessment, or other legislative or governmental levy. If the goods could not be permitted to be imported into the country, Buyer shall bear all responsibility for disposition of the goods. Buyer agrees it shall pay any increase upon request by Seller, and Buyer indemnifies Seller from all such costs.

3. DELIVERY

a. Delivery within thirty days after date specified for delivery shall be deemed timely delivery. Thereafter shipment prior to written receipt of cancellation shall constitute timely delivery. All goods shall be shipped F.O.B Seller's facility, freight prepaid and added to invoice unless negotiated differently.

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. Any delivery not in dispute shall be paid for separately regardless of any other dispute.

d. Delivery or tender within ten (10%) percent of the quantity specified shall constitute compliance with contract. Seller shall not be liable for delayed shipment due to inability to obtain shipping space to port of destination.

4. CLAIMS AND LIMITATIONS

a. Buyer shall be deemed to have accepted the goods and his right to cancel, reject or to make any claim against Seller, shall be deemed to have expired and to have been waived, unless Buyer shall have first complied with the following conditions: (i) Buyer must have immediately discontinued use of any item claimed to be defective; (ii) written notice of claim from Buyer shall have been received by Seller within twenty (20) days of the date of the delivery of the goods to Buyer.; (iii) Buyer provides proof of alleged claim and provides opportunity for Seller fully to inspect and review the claim. A failure to notify Seller that goods delivered by Seller are defective within the twenty (20) day period shall constitute a waiver of such claim For an international shipment, the inspection may include a third-party surveyor designated by the seller who will inspect the shipment in its entirety under practices and standards acceptable to the Seller, and at time of such inspection at least eighty (80%) percent of the shipment shall still have been unopened and in original packing. Seller or its agent shall have been given a reasonable opportunity to be present during inspection of goods by surveyor.

b. Processing or in any manner changing the form of goods constitutes acceptance and waiver by Buyer of any claim. Any damage to the goods by the Buyer or due to Buyer's negligence, even after a claim has been filed, constitutes waiver by Buyer of any claim.

c. Seller shall notify Buyer if the claim has been accepted. If it is found that Seller has made a good delivery, the costs of inspection and testing of the claim, including the costs of any surveys, shall be paid by Buyer.

5. LIMITATION OF LIABILITY

a. In no event will the Seller be liable to buyer for damages of any nature, such as but not limited to consequential, special, indirect, punitive or exemplary damages, costs, expenses or losses (including lost profits or opportunity costs) arising from contract, tort (including negligence) or any other cause of action, even if informed of the possibility of such damages. Seller's sole liability and the exclusive remedy of Buyer or anyone claiming through Buyer for any cause of action arising in connection with the goods, including but not limited to, the recommendation, purchase, shipment, storage, handling, or use of the goods is expressly limited to, at Seller's option, replacement of the non-conforming goods or a refund of the purchase price thereof; or the reimbursement for the difference between (i) the contract price of the goods or services proven to have failed to meet the specifications set forth on the sales contract, less (ii) the market value on the contract delivery date of any goods or services delivered or to be delivered or to be delivered, or provide credit for thereof. This provision shall apply both to patent and latent defects.

b. . No action at law or in equity and no proceeding for arbitration shall be brought by Buyer against Seller unless brought within one (1) year from the date of the delivery of the goods to Buyer or from the date of the Seller's breach of contract, whichever is earlier.

5. SECURITY INTEREST

a. Buyer hereby grants to Seller a security interest in the products sold hereunder until Buyer has completed payment of the purchase price in full, plus accrued interest, if any, and fully performs the other terms and conditions hereof, at which time Seller's security interest is satisfied. Notwithstanding the foregoing, Seller claims no security interest in products acquired directly by Buyer from a third party and delivered to Seller for storage or processing.

6. SPECIFICATIONS AND SHIPPING INSTRUCTIONS

a. Buyer must submit reasonable specifications and shipping instructions with order, or within time required in sales contract. If Buyer fails to do so, Seller at its option may (i) treat the contract as breached by Buyer and hold Buyer liable for all damages sustained thereby, or (ii) bill and hold goods.

b. Goods shall be furnished in accordance with reasonable specifications set forth on the sales contract. Seller shall not be liable for normal defects, nor customary variations from the specifications. The Seller gives no warranty, express, or implied, as to description, quality, merchantability, fitness for any particular purpose, productiveness, or any other matter, of any goods which the Seller shall supply to Buyer under this agreement. The Seller shall be in no way responsible for the proper use and service of the goods, and the Buyer hereby waives all rights of refusal and return of goods. .

7. SHIPPING AGENT

a. If Seller shall act as shipping agent for Buyer, Seller will take out any necessary documents as such shipping agent of Buyer, who must state how material is to be delivered on such documents. If Buyer shall not furnish the necessary instruction, Seller will make declarations according to its best judgment but will not in any case be responsible for any fines or other charges due to errors or incorrect declarations. All charges, including charges on invoices and certificates of origin, are for account of Buyer and, if prepaid by Seller, shall be added to the amount of the invoices and repaid by Buyer in accordance with the terms of payment provided for in the sales contract.

8. DEFAULT BY BUYER

a. Upon breach by Buyer of any installment, Seller, at his option, may treat such breach as severable or as a breach of the entire contract, on giving written notice of such election to Buyer. If Buyer breaches this contract or any installment thereof, in addition to all other rights provided by law, Seller may sell the goods at public or private sale without notice to Buyer and Buyer shall be liable for the difference between the contract price and the amount received on such sale, together with the costs and the expenses of such sales. At such sale, Seller may become the Buyer of such goods.

9. PASSING OF TITLE

a. Title to goods, or any instalment thereof, passes to Buyer when delivered by Seller or his agent to a common carrier or licensed trucker, consigned to Buyer or his agent, subject to Seller's right of stoppage in transit. If strike, embargo or any other cause beyond Seller's control prevents delivery to Buyer or his agent, or delivery to carrier or trucker, title passes as soon as goods have been set aside by Seller or his agent and invoiced to Buyer. In such event, payment shall be made in accordance with the invoice as though goods have been shipped. If shipping instructions are not received for goods or any instalment before the delivery date, title passes when goods are set aside and invoiced.

10. FORCE MAJEURE AND CONTINGENCIES BEYOND SELLER'S CONTROL

a. Seller shall not be liable or deemed to be in breach of these Terms & Conditions, for any delay in performance or inability to perform occasioned by any cause beyond its control, including but not limited to Acts of God; the elements; strikes; fires; floods; accidents; riots; war; embargoes; governmental acts or regulations; acts, neglect or omissions of third parties; inability to obtain material; enemy action; inadequate or interrupted transportation facilities; labor disputes; or any other causes (whether or not similar in nature to any of these specified) beyond its control. If Seller is rendered unable by force majeure to carry out any or all of its obligations under these Terms & Conditions, then Seller shall give notice to Buyer, and upon the giving of such notice the obligations of Seller shall be suspended as may be necessary under the circumstances.

b. Seller may also cancel the whole or remainder of the sales contract without liability if delay, non-delivery or non-shipment lasts for more than sixty (60) days beyond the final delivery date.

11. TERMINATION

a. Seller may terminate any such agreement immediately by written notice to Buyer if Buyer fails to make any payment due within thirty (30) days after issuance of written notice of breach to Buyer from Seller.

b. Any such agreement shall terminate without notice in the event Buyer makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudged insolvent or bankrupt, applies for appointment of a receiver or trustee for any substantial part of its property, commences any proceeding under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation. Seller reserves the right to terminate any such agreement immediately in the event of any change of ownership or control of a majority of Buyer's outstanding equity

12. MODIFICATION OF LINE OF CREDIT

a. The sales contract is subject to Buyer's credit limit as determined at any time by Seller. Seller reserves the right to limit or cancel Buyer's credit line upon notification to Buyer. On demand by Seller and notwithstanding the selling terms stated on the sales contract, Buyer shall pay cash in advance for all unpaid goods and services. Upon failure by Buyer to make such payment within ten (10) days, Seller shall have, in addition to the other rights set forth in this contract or granted

to it by law, the right to cancel the contract, bill all or any part of the undelivered goods or services at public or private sale, and hold Buyer responsible for any financial loss incurred.

13. INDEMNIFICATION.

a. To the extent permitted by applicable law, Buyer shall indemnify, defend, and hold Seller harmless from and against any and all actual, alleged, or threatened claims, liabilities, and costs and expenses (including attorneys' fees) resulting from or arising out of any actual or alleged acts or omissions of Buyer, including without limitation, the operation of its business, the transportation, handling, storage, repackaging, relabeling, modification, distribution, sale, use, application and/or disposal of the goods or any breach of these Terms & Conditions.

14. APPLICABLE LAW; INTERPRETATION AND MODIFICATION.

a. These Terms & Conditions shall be deemed to have been entered into in the State of Illinois and shall be governed by the laws of the State of Illinois, without reference to conflicts of laws principles. All controversies and disputes arising out of, or in relation to this contract, or any modification or breach thereof, shall be adjudicated exclusively in the Courts of Chicago in accordance with the laws in the State of Illinois, or in the jurisdiction of the Seller's choosing.

b. There are no oral understandings, representations, warranties or agreements relative to this contract which are not fully expressed herein.

c. No cancellation or modification of this contract shall be valid unless (i) posted by the Seller on its website; (ii) included by the Seller in the sales contract; or (iii) in writing signed by the party to be charged therewith. Unless this contract is specifically modified in its entirety, any unaltered terms and condition of this contract shall remain in force.

14. MISCELLANEOUS

a. Buyer may not assign any rights nor delegate any obligations under these Terms & Conditions without Seller's prior written consent. Seller may assign any of its rights or obligations hereunder.

b. If any portion of these Terms and Conditions is held invalid or unenforceable, such portion shall be severed from the remaining parts and such holding will not affect the validity and enforceability of any other provision contained herein.

c. Failure of Seller to enforce any of the provisions of these Terms and Conditions will not be construed to be waiver of any provisions hereunder nor will any such failure prejudice the right of Seller to take any action in the future. Any waiver must be made in writing and signed by Seller.