

TERMS AND CONDITIONS

1. **ACCEPTANCE.** The terms and conditions set forth herein contain the sole, entire and exclusive agreement between the Seller and the Buyer in this transaction superseding all prior discussions, proposals, negotiations, representations, and agreements. Any additional or conflicting terms, whether or not material, shall not, in any manner, by implication, by waiver, or otherwise, govern the relationship between Seller and Buyer. Any waiver, modification or amendment of these terms and conditions shall only be effective as against Seller if such waiver, modification or amendment is contained in a written instrument duly executed by or on behalf of Seller. Specification changes are subject to acceptance by Seller, to price revisions and to any adjustments necessary to cover material procured and processed and labor expended prior to receipt by Seller of revised specifications. Acceptance of this agreement by Seller is specifically conditioned upon the terms and conditions set forth herein.
2. **SHIPMENTS**
 - A) Shipment dates are based upon Seller's best judgment, are subject to production limitations and factory schedules, and hence are not guaranteed.
 - B) All sales, unless otherwise specified herein, are Ex Works (INCOTERMS 2000) Seller's plant. Buyer is solely responsible for notifying the carrier as to any damage to or loss in transit of goods.
 - C) Seller shall not accept claims for shortages unless such claims are received by Seller in writing within forty-eight (48) hours after delivery of goods to Buyer and are accompanied by a reference to Seller's shipping ship number. Seller shall be given a reasonable opportunity to inspect any shipment claimed by Buyer to contain a shortage. Use of goods by Buyer prior to such inspection by Seller shall constitute acceptance of the goods and a waiver of all claims by Buyer.
 - D) All metal accounts established or maintained by Seller shall be subject to Seller's Metal Account Terms and Conditions, the current form of which appears on each metal account statement.
3. **PRICE**
 - A) Unless other pricing arrangements are set forth on the face hereof, all orders shall be priced in accordance with Seller's prices in effect on the date of shipment. Seller reserves the right to revise any price previously quoted without notice to Buyer at any time prior to acceptance by Buyer.
 - B) Except as set forth on the face hereof, Seller's price does not include any tax or other charge now or hereafter imposed by law or regulation, domestic or foreign, upon any services or any goods or on the production, manufacture, sale, transportation, disposal or delivery thereof. Accordingly, in addition to the price specified herein, Buyer shall pay the amount of any such tax or other charge applicable to this transaction, or, in lieu thereof, Buyer shall provide Seller with appropriate evidence of exemption thereof from the proper governmental authority. At its option, Seller may initially pay any such tax or other charges for Buyer's account and thereafter invoice Buyer for it.
4. **PAYMENT**
 - A) Unless otherwise specifically agreed in writing by Seller, 1) payment for all goods or services shall be made by Buyer against Seller's invoice within thirty (30) days from date of invoice, terms net cash and 2) payment for precious metals shall be cash in advance.
 - B) If at any time, in Seller's opinion, the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, or, inadequate to meet the obligations hereunder, the terms of payment may, at Seller's option, be revised or withdrawn, and Seller may require cash or other satisfactory security before making further shipments to Buyer.
 - C) In addition to any other legal remedy, if Buyer fails to fulfill the terms of payment, Seller may, at its option, defer further delivery of goods or services hereunder or cancel all further delivery of goods or services to Buyer.
 - D) Seller shall have the right at any time without notice to set off any liability (whether to pay money or to credit, deliver, or transfer metal or otherwise) of Seller to Buyer against any liability of Buyer to Seller and in furtherance thereof, to convert metal to money or money to metal at market value at the date of such set-off.
 - E) If Seller commences collection action to recover unpaid invoices for goods sold and delivered, Seller shall be entitled to interest on the unpaid balance at the highest legal rate permitted from the due date of invoice, attorney's fees of 15% of the amount due, and costs of suit.
5. **FORCE MAJEURE**
 - A) Any delays in or any failure of performance or delivery by Seller shall not constitute default or give rise to any claims for damages if and to the extent caused, directly or indirectly, by acts of God, acts of the Buyer, acts, rules or regulations of governmental authority (civil or military, executive, legislative, judicial or otherwise), strikes or other concerted acts of workers, lockout, labor difficulties, fires, floods, storm, accident, earthquakes, tidal waves, or other natural disasters, epidemics, war, riots, rebellion, sabotage, insurrection, difficulties or delays in public transportation or in public or postal delivery services, car shortages, fuel shortages, inability to obtain from Seller's usual sources of supply, or inability to obtain suitable or sufficient energy, labor, machinery, facilities, supplies or materials, as and when required, failure of any third party to honor its contractual commitments, or by any other circumstances beyond Seller's control whether of a similar or dissimilar nature.
 - B) When any such circumstance or circumstances exist as set forth in 5(A), Seller shall have the right, in its sole discretion, to allocate its available production, deliveries, services, raw materials or other resources among any or all purchasers, as well as among divisions, departments, subsidiaries and affiliates of Seller, upon any such basis as Seller may determine, without any liability whatsoever for any failure to perform which may result therefrom. In any event, Seller may determine not to allocate any of its available production, deliveries, services, raw materials or other resources to Buyer, without any liability whatsoever for any failure to perform which may result therefrom.
6. **PATENT INFRINGEMENT AND TRADEMARK USE**
 - A) Seller agrees to defend Buyer in any suit alleging infringement by Buyer of any U.S. patent based on the manufacture and sale of the goods purchased by Buyer (except goods manufactured or sold by Seller in accordance with Buyer's specifications, requirements or designs) under this agreement and to indemnify Buyer against liability for any such infringement claim, provided that Buyer notify Seller within ten (10) days after receipt by it of any notice of commencement of any suit based upon such alleged infringement and provided further that Seller shall control and remain in control of any and all proceedings taken in defending such suit, including without limitation, utilization solely of counsel of Seller's own selection to defend such suit. The use of goods purchased hereunder in combination with other goods or in the operation of any process is beyond the control of Seller, and Seller shall have no obligation or liability whatsoever in connection with any suit claiming infringement by means of the use of such goods.
 - B) Buyer acknowledges ownership by Seller of the trademark(s) and/or trade name(s) appearing on all labels, literature and packing materials used and/or supplied by Seller. Unless otherwise expressly provided herein, no right, license and/or authorization is granted to Buyer to use Seller's name and/or trademark or trade name of Seller in conjunction with Buyer's marketing, promotion, use, distribution, disposition and/or resale of goods purchased hereunder. Neither Buyer nor any of its subsidiaries and/or affiliates shall 1) incorporate under or otherwise make use of the name of Seller and/or any of its subsidiaries or affiliates and/or 2) make use of any trademarks and/or trade names which, in the sole and exclusive discretion of Seller, are the same as and/or confusingly similar to the trademark(s) and/or trade name(s) appearing on such labels, literature and packing materials.
7. **WARRANTIES - REPRESENTATIONS**
 - A) Seller warrants: 1) that the goods delivered hereunder shall at the time of delivery conform to the specifications set forth herein, or if no specifications are set forth, Seller's standard specifications for the goods and 2) that services will be performed in a workman like manner and conform to the standard in the industry generally.
 - B) Seller's liability for goods delivered hereunder that are proven by Buyer to be in breach of the applicable warranty shall be limited, at Seller's option, to: 1) replacing or repairing such goods, or 2) refunding the sales price received by Seller for such goods. Seller's liability for services performed that are proven by Buyer to be in breach of the applicable warranty shall be limited, at Seller's option, to 1) re-performing the services or 2) refunding the price received by Seller for such services. All claims for breach of warranty must be presented to Seller in writing within ten (10) days after delivery to Buyer of the goods or services. Failure of Buyer to give such notice shall constitute a waiver by Buyer of all claims in respect thereto. Seller shall have an opportunity of verifying any breach of warranty before Buyer uses the goods. If requested by Seller, Buyer shall return the nonconforming goods to Seller strictly in accordance with Seller's written instructions concerning shipping, handling, insurance and other matters as to which Seller issues instructions. Failure to comply with these provisions shall invalidate any claim by Buyer for breach of warranty.
 - C) In no event shall Seller be liable for: 1) goods damaged in shipment or otherwise without fault of Seller; 2) defects in goods due to negligence (other than that of Seller), accident, abuse, improper care or storage, abnormal condition of temperature or moisture; 3) damage to goods which have been tampered with or altered in any way other than by Seller; or 4) expenses incurred by Buyer in attempting to correct any defects in or nonconformance of goods.
 - D) Recommendations by Seller, if any, covering the use, utilization, properties or qualities of goods delivered hereunder are believed reliable, but Seller makes no warranty whatsoever with respect thereto. Use or application of goods sold by Seller to Buyer hereunder is at the discretion of the Buyer without any liability or obligation on the part of Seller except as expressly warranted by Seller in writing.
THESE WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING BUT NOT BY WAY OF LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.
8. **LIMITATION OF DAMAGES.** In no event shall Seller be liable for incidental, consequential or special damages, including but not limited to lost profits, arising out of or relating to the transactions herein. In no event shall the aggregate liabilities of Seller to Buyer arising out of or relating to the transactions herein exceed the price paid by Buyer to Seller hereunder for the goods or services in respect of which such claim is made.
9. **INDEMNIFICATION.** Buyer assumes all risk and liability for loss, damages or injury to persons or to the property of the Buyer or others arising out of the use or presence of the goods purchased hereunder. Buyer agrees to indemnify and hold harmless Seller against any liability, damages, losses, costs, and expenses in connection with any suit or claim, including but not limited to, any loss of use, loss of profits, damages or injuries to person or property arising out of or relating to any use of goods purchased by Buyer herein, whether such claim is made by Buyer, Buyer's customers, or other third parties.
10. **CANCELLATION.** Seller may cancel this Agreement as well as any or all other outstanding transactions between Seller and Buyer at any time in the event that Buyer shall fail to perform or observe any term or condition hereof by giving Buyer ten (10) days written notice of cancellation. Cancellation hereunder shall not prevent Seller from pursuing any other remedy available to Seller by law or from seeking all such damages to which Seller may be entitled.
11. **GENERAL**
 - A) Buyer shall not assign or transfer this Agreement or the benefits thereof without the prior written consent of Seller.
 - B) This Agreement shall be governed by and construed according to the substantive laws of the State of Seller's facility shown on the face of this form, or, if none is shown, Seller's facility in which the goods are manufactured. Seller accepts alternate dispute resolution only by express written agreement applicable to the particular dispute and absent such agreement Seller reserves all right to limit dispute resolution to a court of competent jurisdiction.