



Terms & Conditions of Sale

In these terms and conditions of sale (hereinafter the "Terms"), American Stainless Corp. is referred to as "Seller". The party to whom Seller's quotation or invoice is addressed, or who is seeking to purchase goods is referred to as "Buyer". Seller and Buyer are collectively referred to as the "Parties". All sales from Seller to Buyer are subject to these Terms and form a binding contract between Seller and Buyer. Any purchase order, acknowledgement, or other communication from Buyer that contains terms and conditions inconsistent with these Terms will not be binding upon Seller, unless acceptance of such terms and conditions is made in writing by a duly authorized representative of Seller.

1. Quotations

Any fee quotation provided by Seller to Buyer shall not constitute an offer.

2. Acceptance of Orders

Any Purchase Order submitted to Seller by Buyer for the supply of any product or material (hereinafter "Product") shall not be binding on Seller until either accepted by Seller in a written confirmation or fulfilled by delivery of the Product(s) identified in the order ("Accepted Order").

3. Pricing

Seller's invoice price supersedes all previous quotations and proposals. Unless stated otherwise, pricing is subject to change at any time and pricing errors are subject to correction. Quoted prices do not include any applicable property, sales, use, privilege or export taxes, custom duties or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on, or measured by, any transaction between the Parties. Prices are not fixed until Buyer's order is accepted by Seller. Failure by Seller to collect or charge any applicable tax when due shall not relieve Buyer of its obligation to pay the same.

4. Payment

Upon approved credit application with Seller, Buyer agrees to pay Seller within thirty (30) days from the receipt of the invoice therefore. A discount of one (1%) percent of the total invoice shall be granted in the event payment in full is received on or before the tenth (10th) day from the invoice date. A late payment charge in the amount of the greater of: (i) 1.5% percent per month; or (ii) the maximum rate allowed pursuant to applicable law per month may be charged for each month, or any portion thereof, for payments not received within thirty (30) days.

5. Quantity

Shipping tolerances shall be +/- 10% of the quantity ordered based on weight, length, or count; unless otherwise agreed upon in writing. Delivery of Product within this tolerance shall constitute full delivery.

6. Shipping Terms

Shipping terms will be FCA / Ex-Works in accordance with INCOTERMS 2010 standards. The shipping point will be at Seller's facility, Buffalo, NY. Seller's liability as to delivery and risk of loss ceases upon acceptance of Products by the carrier at the shipping point, and the carrier shall at all times from the acceptance of the Products be the Buyer's agent. Estimated shipping dates are estimated only, and Seller shall not be liable for any losses, damages, etc., due to any such delay. If shipments are delayed by Buyer, invoices may be rendered on the dates Seller is prepared to make shipments. If completion of manufacture is delayed by Buyer, invoices may be rendered when delay is ascertained, based upon percentage of

completion.

7. Force Majeure

If Seller's performance of any obligation is delayed due to unavailability of Product(s) or any other cause beyond Seller's reasonable control by reason of fire, strike, lock-out, labor dispute, war, epidemic, pandemic, embargo, flood, delay in transportation, lack of critical materials, lack or unavailability of trailers and/or railway cars, failure of carriers or sub-trades, shortage of manpower, restrictive governmental laws or regulations (including any trade actions, export controls, tariffs, customs or duties) or to any other cause or reason beyond Seller's commercially reasonable control (a "Force Majeure"), notwithstanding that such Force Majeure may have existed at the time of submission or acceptance of an Accepted Order, Seller shall not be liable and any portion of an Accepted Order not filled or shipped will be retained as an Accepted Order and delivered as soon as possible. However, Seller may elect to cancel the Accepted Order, without liability, if Seller believes the Product(s) will not become available within a reasonable period of time in Seller's sole discretion. Seller also reserves the right to apportion Product(s) among its customers in such manner as Seller considers equitable, and such determination shall be conclusive and binding on Buyer, without liability to Seller.

8. Limited Warranty

Seller warrants that the Product(s) sold to Buyer are sold in conformance with the specifications set out in the material specifications of the test report. **THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. WE MAKE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE, OR OF CONFORMANCE OF ANY PRODUCT(S) WITH ANY SAMPLE. PRODUCT(S) SOLD BUT NOT MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER BUT ARE SOLD ONLY WITH THOSE WARRANTIES PROVIDED BY THE MANUFACTURER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND WHAT IS HEREIN PROVIDED FOR.**

9. Limitation of Liability: Exclusion of Damages

Seller's liability with respect to any claim by Buyer or any third party arising out of or in any way relating to any Product sold by Seller to Buyer (including without limitation such product's sale, use or transportation) will be limited solely to the cost of such Product and any such claim must be filed within twenty eight (28) days after the delivery of such Product. **SELLER WILL NOT BE LIABLE TO BUYER, OR TO ANY THIRD PARTY, FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, LOST PROFITS OR OTHER LOSSES OF BUYER, OR ANY THIRD PARTY, ARISING OUT OF, OR IN ANY WAY RELATING TO, THE SALE, USE, PROCESSING OR TRANSPORTATION OF SUCH PRODUCT.**

10. Acceptance of Product

Buyer shall carefully inspect all products and shipping documents promptly upon delivery. No claim for shortages, products damaged during delivery, or product nonconforming to requirements will be valid or enforceable against Seller unless: (i) Buyer notifies Seller in writing specifying in detail the shortage, damage or nonconforming condition within five (5) days from the date of delivery; (ii) Buyer returns the product in question to Seller within ten (10) days from the date of delivery; (iii) upon return, Seller confirms condition; and (iv) Buyer has fulfilled all of the payment terms. Buyer's notice must be accompanied by the original freight bill, with notation on the face thereof by an authorized agent for the carrier as to the products

claimed to be short, damaged during transit, or otherwise nonconforming. Buyer shall be deemed to have waived any claim for shortages, product damaged in transit, or nonconforming product if Buyer fails to so notify Seller within five (5) days following delivery. Any use of the products by Buyer, other than return to Seller, shall represent Buyer's acceptance of the products as being satisfactory and in accordance with these Terms and Conditions. Seller will not honor any claims for damages caused by Buyer's improper storage of the goods.

11. Default

If Buyer: (i) fails to pay all or any part of any sum when due, (ii) fails to observe or perform any of its other obligations under these Terms; or (iii) becomes insolvent, is adjudicated as bankrupt, voluntarily files, or permits the filing of, a petition in bankruptcy or seeks any similar relief under any bankruptcy laws or related statutes, or a receiver is appointed for its assets, or (iv) makes an assignment for the benefit of creditors then all sums due or to become due from Buyer to Seller, may at Seller's sole option, become immediately due and payable, and concurrently, or in the alternative, Seller may, at its sole option, terminate any existing order(s) between the Parties and exercise any other remedies available to Seller under applicable law.

12. Costs and Expenses: Indemnification

Buyer will be responsible for all costs and expenses, including without limitation court costs, attorneys' fees and disbursements incurred by Seller in enforcing any term or condition herein contained. If Seller is made a defendant in any proceeding, action, mediation or arbitration by Buyer, any person or entity deriving title from Buyer, or any other third party on the basis of breach of warranty, negligence, strict liability, tort or any other theory of law or equity, which directly or indirectly arises from or relates to the sale, use, processing, or transportation of the Product(s), Buyer will indemnify hold Seller harmless from all costs and expenses incurred by Seller in connection with such proceeding, action or arbitration, including without limitation court costs, reasonable attorneys' fees and disbursements.

13. Cancellation and Returns

Buyer may not cancel, return or change any order of Products for Buyer's convenience without Seller's prior written consent. Any cancellation, return or change so authorized may be subject to a cancellation or change charge. Buyer may not cancel, return or change orders for any processed Products, specially manufactured Products, or Products not normally carried in Seller's inventory.

14. Compliance with Laws

Seller will provide the Product in compliance with all applicable laws, rules and regulations. Buyer will comply with all laws, rules and regulations applicable to the possession, transportation and use of all Products sold to Buyer hereunder, including all applicable United States import and export control laws and regulations, and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products delivered by Seller.

15. Governing Law: Jurisdiction: Venue

The transactions between Seller and Buyer shall be governed by the laws of New York, and Buyer agrees to submit exclusively to the jurisdiction and venue of the Courts of the Eighth Judicial District of New York State, in Erie County, and the Federal Courts for the Western District of New York in Erie County, New York, with respect to any dispute arising out of any transaction between Seller and Buyer; provided, that Seller may, at its option, commence proceedings in any jurisdiction where Buyer carries on business

or owns any assets. **SELLER AND BUYER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF ANY SUCH DISPUTE.**

16. Entire Agreement; Amendment; Waiver

These Terms and the contents of any Accepted Order constitute the entire agreement between the Parties with respect to the sale of Seller's products to Buyer, superseding all prior representations, agreements or understandings, written or oral, between the Parties with respect to such sale. These Terms cannot be amended orally or by any course of conduct by either party, but may only be amended by a written agreement executed by both Parties. The failure by Seller to: (i) enforce any provision hereof will not be construed as a waiver of such provision or of Seller's right to enforce such provision; and (ii) object to provisions contained in any purchase order or other communication from Buyer will not be construed as a waiver of these Terms nor an acceptance of any such Buyer provisions.

17. Successors and Assigns; Assignment

These Terms will be binding upon the Parties and their respective successors and assigns; provided, however, that Buyer shall not assign any of its rights or obligations hereunder without Seller's prior written consent, which consent may be withheld in Seller's sole discretion.

18. No Right of Set-Off

Each Accepted Order constitutes a separate and distinct contract when accepted by Seller and Buyer may not withhold payment of an invoice or offset same, in whole or in part, against sums Buyer claims are due it by Seller with respect to another Accepted Order, invoice or for any other cause or reason whatsoever.

19. Rights Not Exclusive

Seller's rights hereunder are in addition to and not in lieu of any other rights and remedies available to Seller at law or in equity.

20. Notices

All notices of claims or disputes given by either party with respect to any communications, Accepted Order or these Terms shall be in writing and sent by: (i) first class mail with a copy by certified mail, return receipt requested, postage pre-paid; (ii) overnight delivery service, charges prepaid, and addressed as follows: (a) if intended for Seller, to its address at the location to which an Accepted Order was placed, and (b) if to Buyer, the address last known to Seller. Notice will be effective the first business day after notice is sent.