



## United Performance Metals, US – Terms and Conditions of Sale

These standard terms and conditions (these “Terms and Conditions”) govern the sale of goods and/or materials and/or the provision of any services (“Goods and/or Services”) by United Performance Metals, LLC. (“Seller”) to the person or business entity buying such Goods and/or Services (“Buyer”). These Terms and Conditions are incorporated into each and every purchase order received from Buyer which may establish in addition to these Terms and Conditions essential commercial terms not in conflict with these Terms and Conditions. In the event of any conflicting provisions in any purchase order or any other document received from Buyer, these Terms and Conditions shall control and Seller shall proceed with the sale under the assumption that these Terms and Conditions are the sole terms and conditions binding on the parties. Buyer and Seller expressly agree that Seller may modify these Terms and Conditions from time to time without notice, and such modifications shall be binding upon Buyer. Accordingly, each request for quote, order, acceptance of Goods and/or Services and/or payment to Seller by Buyer shall be deemed an acknowledgment and acceptance by Buyer of these Terms and Conditions as then in effect. These Terms and Conditions, as may be subsequently modified by Seller from time to time without notice, are incorporated by reference into all documents issued by Seller to Buyer in connection with the sale and/or provision of Goods and/or Services; provided, however, that these Terms and Conditions shall only apply to the sale of Goods and/or Services by Seller in or to locations within the United States.

### 1. NO MODIFICATIONS/ ENTIRE AGREEMENT.

Seller’s provision of credit to Buyer, if any, acceptance of any purchase order and/or sale or provision of any Goods and/or Services to Buyer are all expressly conditioned upon Buyer’s acceptance of these Terms and Conditions as then in effect. SELLER HEREBY REJECTS ANY TERMS OR CONDITIONS WHICH ATTEMPT TO ALTER, MODIFY OR CHANGE IN ANY WAY ANY PROVISION HEREOF, OR OTHERWISE ATTEMPT TO SUSPEND, CONTRADICT OR ADD TO ANY TERM OR CONDITION CONTAINED HEREIN, AND BUYER HEREBY WAIVES ALL SUCH TERMS OR CONDITIONS; THUS, SUCH SHALL NOT BE BINDING ON SELLER UNLESS EXPRESSLY AGREED TO IN A SEPARATE WRITTEN INSTRUMENT SIGNED BY SELLER’S AUTHORIZED REPRESENTATIVE. SELLER OBJECTS TO ANY DIFFERENT, INCONSISTENT, CONFLICTING, SUPPLEMENTAL OR ADDITIONAL TERMS OR CONDITIONS AND HEREBY REJECTS SUCH, WHETHER CONTAINED IN PREVIOUS OR SUBSEQUENT PROPOSALS OR COMMUNICATIONS (WHETHER ORAL OR WRITTEN) FROM OR WITH BUYER OR IMPLIED BY TRADE, CUSTOM, PRACTICE, COURSE OF DEALING OR USAGE IN THE TRADE. BUYER AND SELLER AGREE THAT THESE TERMS AND CONDITIONS, AS MAY BE SUBSEQUENTLY MODIFIED BY SELLER FROM TIME TO TIME, ARE ACCEPTED IN GOOD FAITH BY BOTH PARTIES AS THE COMPLETE AND FINAL EXPRESSION OF THE TERMS AND CONDITIONS GOVERNING TRANSACTIONS BETWEEN THEM, AND FURTHER AGREE THAT THERE SHALL BE NO “BATTLE OF THE FORMS” AS DESCRIBED IN SECTION 2-207 OF THE UNIFORM COMMERCIAL CODE.

### 2. ORDERS.

Buyer may not cancel or modify an order in whole or in part without Seller’s prior written consent, to be given or denied in Seller’s sole and absolute discretion, and which Seller may condition upon an adjustment of price and/or other terms and Buyer’s reimbursement to Seller of its costs and damages in connection with the order and its cancellation. Orders by telephone are accepted at the risk of Buyer, and shipments made before receipt of written confirmation are for the convenience of Buyer. To avoid the possibility of duplication, Buyer’s confirming order must be clearly marked “Confirmation.” Confirmation orders not so marked may, at Seller’s election, be treated as original open orders.

### 3. PRICE.

The purchase price of any Goods and/or Services sold and/or provided shall be as stated on the applicable Seller order acknowledgment or accepted purchase order; provided, however, that Seller may upon prior notice to Buyer assess a surcharge on the sale of any Goods and/or Services and/or without prior notice choose to pass along any price increase in Seller’s cost of the subject Goods and/or Services or surcharge imposed on Seller by its supplier(s), including, but not limited to, any such surcharge predicated upon an increase in the cost of raw materials or energy, all after the date of the applicable Seller order acknowledgment or accepted purchase order. Such a surcharge by Seller or by Seller’s supplier(s), as well as any price increase, which is passed along will result, respectively, in an increase in

price effective for any Goods and/or Services scheduled for shipment beginning immediately on either the date established by Seller as the effective date of such surcharge as noted in the notice provided or on the date such increase in Seller's cost of the subject Goods and/or Services or surcharge is imposed on Seller by its supplier(s). Any price change resulting from a pass along of a surcharge or an increase of Seller's cost may, as previously noted in this Section 3, be made effective by Seller without prior notice to Buyer and may be further adjusted by Seller periodically to reflect additional changes in costs to Seller. In any case, Seller shall be bound as to purchase price only upon shipment and/or acceptance by Buyer of all or any part of the Goods and/or Services ordered.

#### 4. DELIVERY AND PERFORMANCE.

Unless specifically agreed to by Seller in a separate signed writing, Seller does not guarantee any certain date of delivery and Seller shall not be liable to Buyer for any losses, costs, damages, charges or expenses incurred by Buyer or any other person or entity arising directly or indirectly out of a failure to deliver on any particular date, nor will any delay entitle Buyer to terminate or rescind its purchase. Seller reserves the right to defer delivery, to cancel the order or reduce the volume of Goods and/or Services delivered, all without liability of any kind whatsoever to Buyer, if Seller is prevented from or delayed in the carrying on of its business due to causes beyond Seller's control, including, without limitation, strikes, lockouts or other labor difficulties, floods, fires, earthquakes, hurricanes or other unusually severe weather conditions, embargoes, war or other outbreak of hostilities, acts of terrorism, acts of God, acts of Buyer, market shortages, unavailability of Goods and/or Services or necessary materials, supplies or transportation services, any shift in raw material costs that prohibit or materially reduce the supply of Goods and/or Services or necessary materials or supplies from Seller's suppliers, inability to obtain shipping space, machinery breakdowns, delays of carriers or suppliers, governmental acts and regulations or other contingency the non-occurrence of which was a basic assumption on which the purchase order was accepted. In such a case, Seller shall have no obligation to purchase substitute goods or make other substitute arrangements in order to complete delivery to Buyer or to ship substitute goods from any other facility.

Buyer's right, under the Uniform Commercial Code (the "UCC"), to reject due to delay in delivery is waived unless notice thereof is presented to Seller in writing within five (5) days after delivery.

#### 5. INSTALLMENTS.

Unless otherwise expressly agreed with Buyer by Seller in a separate written document, Seller shall have the right to make delivery in installments. All installments shall be separately invoiced and paid as billed without regard to subsequent deliveries. Failure of Buyer to pay for any installment when due shall excuse Seller from making further deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept and pay for remaining installments.

#### 6. VARIATIONS IN SIZE AND LENGTH.

Goods and/or Services are subject to the following variations in size and width/length:

- a) if cut to special size, material will be subject to the tolerances and variations consistent with usual trade practices and/or UPM process capability;
- b) if standard/as is stock size, defined mill and/or specification on variations shall govern. Buyer agrees to accept, without objection, any Goods and/or Services which are within the aforementioned standards.

#### 7. WARRANTY; DISCLAIMER.

Seller will furnish Goods and/or Services of the quality specified; provided, however, that Seller's affirmative statements, if any, with regard to the character of Goods and/or Services in product information, including, but not limited to, price lists or other information, shall not be binding. If Goods and/or Services are defective or are not in substantial conformity with the specifications, subject to the tolerances and variations consistent with usual trade practices, Seller will replace such with conforming Goods and/or Services at Seller's facility where such Goods and/or Services are delivered for inspection in accordance with this Section 7 (or if Seller and Buyer agree that such Goods and/or Services are not available for delivery to Seller for such an inspection, after inspection and confirmation by Seller of a defect or nonconformity originating with Seller, at the point of initial delivery) or will, at Seller's election, allow Buyer a credit or refund for the purchase price, provided that (i) Buyer has notified Seller of the defect or nonconformity within ten (10) days after the delivery of the Goods and/or Services (failure to give such notice constitutes acceptance and an irrevocable waiver of all claims); (ii) the Goods and/or Services have been properly worked or used by Buyer; and (iii) Seller has been given a reasonable opportunity to inspect the Goods and/or Services. Buyer may not return, repair or dispose of any allegedly defective or nonconforming Goods and/or Services without Seller's consent. Upon receipt of consent from Seller to return allegedly defective or nonconforming Goods and/or Services, and shipping instructions, Buyer shall return to Seller F.O.B. Seller's destination, all such Goods and/or Services allegedly not conforming to specifications, or otherwise allegedly defective. Goods and/or Services returned must be returned in the same condition as when received by Buyer. Goods and/or Services found by Seller to be

defective or not to conform to specifications shall, upon return, be replaced or repaired by Seller without any additional charge, or, at Seller's option, Seller may credit the purchase price of such Goods and/or Services to Buyer by issuing Buyer a credit memo or good funds or by setting off the purchase price of such Goods and/or Services against monies owed to Seller by Buyer. Seller will also credit Buyer for reasonable transportation charges on returned defective or nonconforming Goods and/or Services. Returned Goods and/or Services which are found by Seller to be free from defect and to conform to specifications or otherwise not suffer from a defect or nonconformity which originated with Seller shall be held at Seller's facility for Buyer's disposition. Should no such disposition instructions be received from Buyer within thirty (30) days of notice of Seller's finding, Seller may do with the Goods and/or Services as it wishes, including, but not limited to, selling such for its scrap value; provided that Buyer is given a credit toward the amount owing to Seller for such Goods and/or Services in the amount of such scrap value. Replacement or repaired Goods and/or Services will be warranted for the remainder of the original warranty period.

Buyer agrees that no oral or written representation, guaranty or warranty made by Seller, its employees, agents or representatives, other than as expressly set out in these Terms and Conditions, shall be binding on Seller.

The warranty in this Section 7 is expressly in lieu of all other warranties, expressed or implied, and of all other obligations or liabilities on Seller's part.

**SELLER EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES AND AGREES THAT BUYER TAKES SOLE RESPONSIBILITY FOR THE SELECTION OF AND SPECIFICATIONS FOR THE GOODS AND/OR SERVICES AND THEIR FITNESS FOR ANY PURPOSES INTENDED BY BUYER OR BUYER'S CUSTOMER(S).**

#### **8. LIMITATION OF SELLER'S LIABILITY.**

**IN NO EVENT SHALL SELLER'S LIABILITY, REGARDLESS OF THE CAUSE THEREOF, EXTEND BEYOND REPLACEMENT OR REPAIR OF GOODS AND/OR SERVICES OR GIVING BUYER CREDIT FOR THE PURCHASE PRICE OF GOODS AND/OR SERVICES SOLD OR PROVIDED, EITHER AT SELLER'S ELECTION, NOR SHALL SELLER HAVE ANY LIABILITY FOR LOSS OF TIME, COST OF LABOR EXPENDED, OR FOR ANY SEPARATE, SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL DAMAGES RESULTING FROM REJECTION OF FINISHED PARTS BY BUYER OR BUYER'S CUSTOMER(S).**

#### **9. INDEMNITY.**

To the fullest extent permitted by law, Buyer shall, at Buyer's sole cost and expense, indemnify, defend, release and hold harmless Seller, its officers, directors, agents and employees, from and against any and all claims, demands, lawsuits or proceedings of any kind brought or threatened against Seller and/or its officers, directors, agents and employees based on any claim, in whole or in part, that the Goods and/or Services as fabricated or manufactured by Seller in accordance with drawings, specifications or other information provided by Buyer fail to (i) be adequate for a particular purpose, (ii) comply with any product liability law, rule or regulation pertaining thereto and/or (iii) be adequate for any use to which the Goods and/or Services are put after shipment by Seller to Buyer, and Buyer shall pay all costs, expenses, damages, liabilities and losses incurred by Seller, its officers, directors, agents and/or employees, as a result of any such actual or threatened claim, demand, lawsuit or proceeding, including, but not limited to, reasonable attorney's fees.

#### **10. PATENT INFRINGEMENT OR TRADE SECRET VIOLATION CLAIMS.**

Buyer expressly warrants to Seller that Goods and/or Services fabricated, manufactured or sold by Seller to Buyer in accordance with drawings, specifications or other information provided by Buyer shall not infringe upon any valid United States patent, copyright, or trademark, or knowingly violate any trade secret or other proprietary right of any third party. To the fullest extent permitted by law, Buyer shall, at Buyer's sole cost and expense, indemnify, defend, release and hold harmless Seller, its officers, directors, agents and employees, from and against any and all claims, demands, lawsuits or proceedings of any kind brought or threatened against Seller and/or its officers, directors, agents and employees based on any claim, in whole or part, that the Goods and/or Services as fabricated or manufactured by Seller in accordance with drawings, specifications or other information provided by Buyer or the sale thereof infringes any patent, copyright or trademark or knowingly violates any trade secret or other proprietary right of any third party, and Buyer shall pay all costs, expenses, damages, liabilities and losses incurred by Seller, its officers, directors, agents and/or employees, as a result of any such actual or threatened claim, demand, lawsuit or proceeding, including, but not limited to, reasonable attorney's fees.

## 11. SECURING LOADS.

Buyer is responsible for the securing of all loads of Goods and/or Services transported from Seller's facility in Buyer's vehicle, as well as for flagging or otherwise marking such for transport. If a third party freight carrier transports Goods and/or Services purchased by Buyer from Seller's facility, such freight carrier shall be responsible for securing the load and flagging or otherwise marking the Goods and/or Services for transport. In no event, shall Seller have any liability to Buyer or any third party for any (i) damage to, or loss of, any vehicle used to carry Goods and/or Services purchased by Buyer from Seller, whether such vehicle belongs to Buyer or a third party, or to any other vehicle belonging to a third party; (ii) damage to, or loss of, the Goods and/or Services purchased by Buyer from Seller or to a third party's property (real or personal); (iii) injury to any person (whether the driver of the vehicle carrying the Goods and/or Services or an unassociated third person); or (iv) any other loss of any kind, resulting from a failure by Buyer or a freight carrier to properly secure a load of Goods and/or Services or flag or otherwise mark for transportation such Goods and/or Services purchased from Seller and transported from Seller's facility in Buyer's vehicle or on a vehicle belonging to a freight carrier. To the fullest extent permitted by law, Buyer shall, at Buyer's sole cost and expense, indemnify, defend, release and hold harmless Seller, and its officers, directors, agents and/or employees, from and against any and all claims, demands, lawsuits or proceedings of any kind brought or threatened against Seller and/or its officers, directors, agents and employees resulting, in whole or in part, from any failure by Buyer or a third party freight carrier to properly secure a load of Goods and/or Services or flag or otherwise mark for transportation such Goods and/or Services purchased from Seller and transported from Seller's facility in Buyer's vehicle or on a vehicle belonging to a freight carrier, and Buyer shall pay all costs, expenses, damages, liabilities and losses incurred by Seller, its officers, directors, agents and/or employees, as a result of any such actual or threatened claim, demand, lawsuit or proceeding, including, but not limited to, reasonable attorney's fees.

## 12. CLAIMS AGAINST COMMON CARRIERS.

Delivery of Goods and/or Services to a common carrier shall constitute delivery to Buyer and upon such delivery to a common carrier, all risk of damage shall be borne by Buyer, and Buyer shall be responsible for obtaining insurance, if desired, on the Goods and/or Services while in transport. If Buyer discovers a shortage in Goods and/or Services delivered or if the Goods and/or Services have been damaged in transit, Buyer must make a note to that effect upon the receipt Buyer gives the carrier or his, her or its agent. Also, Buyer must request that a similar notation be made on the freight bill. Damaged Goods and/or Services must not be unloaded until inspected and such damage noted in writing. If there is justification for a claim, Buyer will file such promptly with the carrier. If the Goods and/or Services were shipped F.O.B. destination, Buyer must take the above steps, notify Seller immediately, and Seller will file a claim with the carrier. Failure to comply with this Section 12 shall be deemed an express acceptance of the Goods and/or Services by Buyer in an "AS IS" condition with no right to credit, refund or any other remedy.

## 13. LITIGATION AND COLLECTION.

Venue in any legal action brought by either Buyer or Seller in connection herewith or with Goods and/or Services shall be deemed proper in any of the following locations, which locale shall be at the choosing of Seller, in its sole and absolute discretion: (i) the county and state of the principal location of Buyer; (ii) the county and state of any location of Buyer to which Seller has delivered Goods and/or Services, if different from Buyer's principal location; (iii) the county and state of any location of Seller from which Goods and/or Services have been sold, provided or shipped to Buyer; (iv) the county and state of Seller's district or districts offering credit to Buyer for the purchase of Goods and/or Services or (v) the county and state of the principal location of Seller. Buyer hereby agrees that it will submit to the personal jurisdiction of the court wherein venue is chosen by Seller in accordance with the preceding sentence.

If any default is made in payment of amounts due for the sale of Goods and/or Services or upon any other breach of these Terms and Conditions, as such may be subsequently modified by Seller from time to time without notice, Buyer agrees to pay Seller's reasonable costs of collection and/or compliance, including, but not limited to, reasonable attorneys' fees and costs, not to exceed the amount allowed by any applicable statute.

## 14. FREIGHT CHARGES.

If the agreed purchase price for Goods and/or Services was based on freight being allowed to destination (whether such freight charges were agreed to be included in the purchase price or to be charged as a separate line item), any change in applicable freight rates, including, but not limited to, any applicable fuel surcharges assessed by Seller upon prior notice to Buyer or without prior notice passed along by Seller to Buyer from a third party carrier, between the date of quotation and/or acceptance of purchase order and the time of shipment will result in a corresponding change in price. If the agreed purchase price was based on there being sufficient Goods and/or Services for a carload or truckload shipment and Buyer has ordered shipments to be made in less than carload or truckload amounts, then Buyer must pay the difference between carload/truckload and less than carload or truckload freight. If price is quoted F.O.B.

trucks, it shall mean on the nearest accessible road or street to the building operation, and not unloaded from the trucks.

Except as otherwise provided herein, Seller shall not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. If such charges are by the terms of sale included (whether in the price itself or as a separate line item), any increase in rates, including, but not limited to, any increase in applicable fuel surcharges, whether assessed by Seller or passed along by Seller to Buyer from a third party carrier, becoming effective prior to the shipment date of the Goods and/or Services ordered, shall be the responsibility of Buyer.

#### 15. TAXES, DUTIES, BROKERAGE AND OTHER FEES.

In addition to the agreed purchase price for Goods and/or Services, Buyer shall pay to Seller any and all applicable taxes imposed by any present or future law on the sale, manufacture, delivery, use and/or other handling of Goods and/or Services, whether such taxes are characterized as goods and services tax, sales tax, use tax, excise tax, value added tax, business transfer tax or otherwise (collectively, "Taxes"), but excluding income taxes normally paid by Seller, and all other reasonable charges for ancillary services and costs such as forming, galvanizing and other services, including, but not limited to, special packaging and the cost of performing any tests or inspections required by Buyer which are not regularly performed by Seller. Also, when shipping is ExWorks or F.O.B. shipping point (as defined by Incoterms 2000) from a non-United States' locale, the price quoted shall not include any applicable duties or brokerage fees. In such a case, Buyer shall pay to Seller's designated customs broker or Buyer's own custom broker, as applicable, any and all such brokerage fees, surcharges, customs, duties and Taxes (collectively, "Brokerage Fees"), and, to the fullest extent permitted by law, Buyer agrees, at Buyer's sole cost and expense, to indemnify, defend, release and hold harmless Seller, its officers, directors, agents and employees, from and against any and all claims, demands, lawsuits or proceedings of any kind brought or threatened against Seller and/or its officers, directors, agents and employees for any such unpaid Brokerage Fees, and Buyer shall pay all costs, expenses, damages, liabilities and losses incurred by Seller, its officers, directors, agents and/or employees, as a result of any such actual or threatened claim, demand, lawsuit or proceeding, including, but not limited to, reasonable attorney's fees.

#### 16. FINANCIAL RESPONSIBILITY.

Reasonable doubt on the part of Seller concerning the financial responsibility of Buyer (including, but not limited to, Buyer's failure to pay on the net due date for Goods and/or Services) shall entitle Seller to stop operation/production, decline shipment, or stop any Goods and/or Services in transit without any liability whatsoever to Buyer, until such time as the Goods and/or Services have been paid for or until Seller is furnished reasonably satisfactory proof of Buyer's financial responsibility, as determined in Seller's sole and absolute discretion. If Seller suspends performance and later proceeds with fulfillment of such order, Seller shall be entitled to such extension of time for performance as is necessitated by the suspension.

#### 17. TITLE.

Notwithstanding delivery and passing of risk, Goods and/or Services sold by Seller to Buyer shall remain the property of Seller until Buyer has paid to Seller the agreed purchase price therefor (together with any accrued interest) and no other sums whatsoever are due from Buyer to Seller therefor. Until title to the Goods and/or Services passes to Buyer in accordance with this Section 17, Buyer shall: (i) hold the Goods and/or Services on a fiduciary basis and shall not part with possession otherwise than in the ordinary course of business; (ii) take proper care of the Goods and/or Services; (iii) take all reasonable steps to prevent damage to or deterioration of the Goods and/or Services; and (iv) keep the Goods and/or Services free from any charge, lien or other encumbrance. From delivery until title to the Goods and/or Services passes to Buyer, Buyer shall insure the Goods and/or Services for their full value with a reputable insurer, and on request, Buyer shall produce the policy or policies of insurance to Seller. Further, until title to the Goods and/or Services passes to Buyer, Buyer shall hold the proceeds of any claim under any such insurance policy or policies in trust for Seller and shall immediately account to Seller with the proceeds.

#### 18. PURCHASE MONEY SECURITY INTEREST ("PMSI").

In accordance with the UCC, Buyer hereby grants, and Seller hereby retains, a PMSI in all Goods and/or Services sold by Seller to Buyer, along with any products into which such Goods and/or Services are converted or included by Buyer and the proceeds of sale or other transfer by Buyer of any and all said products or of the Goods and/or Services themselves, until such time as Seller is fully paid all amounts owing by Buyer for such Goods and/or Services, at which time said PMSI shall be immediately released. In the event Seller is not timely paid for any Goods and/or Services, in addition to any other rights to which Seller may be entitled hereunder or at law or equity, Seller shall have all rights granted under the UCC in regard to enforcement of its PMSI. Seller reserves the right to, and Buyer acknowledges and agrees that Seller may, notify any of Buyer's secured creditors of Seller's PMSI. Buyer also authorizes Seller to file with appropriate authorities financing statement(s) and/or other documents deemed necessary by Seller to give notice of Seller's PMSI. Buyer shall take all reasonable steps and cooperate with Seller in perfecting Seller's PMSI.

## 19. TERMINATION.

If, at any time, (i) Buyer fails to pay to Seller any amount in full when due, or otherwise fails to perform any other obligation owed to Seller; (ii) Buyer becomes insolvent or makes an assignment for the benefit of creditors or is adjudged bankrupt or a receiver or trustee of Buyer's property is appointed; or (iii) a levy, execution or attachment is made of any material portion of Buyer's property, Seller may, in its sole and absolute discretion, terminate the contract with Buyer for the purchase and sale of Goods and/or Services as created hereby and refuse to make further deliveries and/or repossess any Goods and/or Services for which Seller has not been paid in full (in cash or cleared funds) or continue to perform but refuse to make any shipments except upon the receipt of payment in full (in cash or cleared funds) prior to shipment. All amounts payable to Seller are due immediately upon termination pursuant to this Section 19 despite any other provision to the contrary herein.

## 20. CONTROLLING LAW.

These Terms and Conditions and the contract by and between Buyer and Seller for the purchase and sale of Goods and/or Services created hereunder is deemed made in Ohio and shall be governed as to validity, interpretation, construction, effect, and in all other respects, by the laws of the State of Ohio, without giving effect to the conflict of laws principles thereof. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions or the sale of goods or services from Seller to Buyer.

## 21. WAIVER.

Neither any failure nor any delay on the part of Seller in exercising any rights hereunder shall operate as a waiver of any of Seller's rights. Any waiver by Seller of any breach of, or any default under, any provision of these Terms and Conditions by Buyer will not be deemed a waiver of any subsequent breach or default. All rights and remedies granted herein are in addition to all remedies available at law or in equity.

## 22. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

Seller agrees that it:

(a) Will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. In furtherance of this goal, Seller will comply with Executive Order 11246, as amended, and its implementing regulations, along with Department of Labor regulations. Seller incorporates by reference herein the equal opportunity clause contained in 41 C.F.R. § 60-1.4(a).

(b) Will not discriminate against any employee or applicant for employment because he or she is a special disabled veteran (as the term is defined in 41 C.F.R. § 60-250.2(n)(1)), disabled veteran (as the term is defined in 41 C.F.R. § 60-300.2(n)), veteran of the Vietnam era (as the term is defined in 41 C.F.R. § 60-250.2(p)), recently separated veteran (as the term is defined in 41 C.F.R. §§ 60-250.2(r) and 60-300.2(q)), other protected veteran (as the term is defined in 41 C.F.R. §§ 60-250.2(q) and 60-300.2(p)) or Armed Forces service medal veteran (as the term is defined in 41 C.F.R. § 60-300.2(r)) in regard to any position for which the employee or applicant for employment is qualified. Seller agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled individuals without discrimination based on their status as a special disabled veteran, disabled veteran, veteran of the Vietnam era, recently separated veteran, other protected veteran or Armed Forces service medal veteran in all employment practices. In furtherance of this goal, Seller will comply with Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and its implementing regulations, along with Department of Labor regulations. Seller incorporates by reference herein the equal opportunity clauses contained in 41 C.F.R. §§ 60-250.5(a) and 60-300.5(a).

(c) Will not discriminate against any employee or applicant for employment because they are an individual with a disability (as the term is defined in 41 C.F.R. § 60-741.2(n)(1)) in regard to any position for which the employee or applicant for employment is qualified. Seller agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices. In furtherance of this goal, Seller will comply with Section 503 of the Rehabilitation Act of 1973, as amended, and its implementing regulations, along with Department of Labor regulations. Seller incorporates by reference herein the equal opportunity clause contained in 41 C.F.R. § 60-741.5(a).

## 23. PAYMENT TERMS AND DISCOUNT.

Payment in full is due at time of delivery. Issuance of credit to Buyer by Seller shall be in Seller's sole and absolute discretion. If credit is extended to Buyer, standard payment terms shall be ½% discount from the purchase price if paid within ten (10) days of invoice date by cash or check, net thirty (30) days, unless otherwise stated in a separate writing signed by an authorized agent of Seller. Time shall be of the essence in payment. No payment shall be deemed to have been received until Seller has received

cleared funds. No discount is allowed if payment of other invoices to Buyer are past due. Freight charges, surcharges and other special charges of any nature are not subject to a discount.

In the event Buyer fails to make payment to Seller of any amounts due and owing (including any applicable surcharge or freight charge) by the net due date, Seller may charge interest on the outstanding balance at an annual rate of 18% or the highest rate allowed by law (whichever is less) until paid in full. Payments after accrual of such interest charges shall be applied first against such interest charges and secondly against past due invoices. In the event of any such failure to make timely payment, Seller reserves the right to revoke credit terms, if any, extended to Buyer. Buyer's account shall also be charged with any fees associated with insufficient funds.

Buyer shall make all payments due to Seller for Goods and/or Services sold without any deduction whether by way of set-off, counterclaim, abatement or otherwise, unless Buyer has a valid court order requiring an amount equal to such deduction to be paid by Seller to Buyer.

In no event shall Seller be responsible for any costs associated with the processing of invoices to Buyer with a third party or otherwise at Buyer's request and any such costs shall be separately paid or handled by Buyer at its sole cost and expense.

#### 24. EXPORT.

If Buyer exports the Goods and/or Services outside of the United States, Buyer agrees to comply with all relevant laws and regulations, including, but not limited to, those of the United States Department of Commerce and the United States Export Administration Act, so as to insure that the Goods and/or Services are not exported in violation of any applicable law or regulation.

#### 25. ASSIGNMENT.

Buyer may not assign its rights or obligations hereunder (whether voluntarily, involuntarily, by operation of law, transfer of majority or controlling interest or otherwise) without the prior written consent of Seller. These Terms and Conditions shall be binding upon Buyer and its successors and permitted assigns.

#### 26. SEVERABILITY.

If any provision of these Terms and Conditions shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and Conditions, and the remaining Sections shall continue in full force and effect.

#### 27. EXCLUSIVE AGREEMENT.

The contract by and between Buyer and Seller for the purchase and sale of Goods and/or Services created hereby constitutes the entire agreement by and between Buyer and Seller with regard to the subject matter hereof and shall exclusively determine the rights and obligations of Buyer and Seller with regard to the purchase and sale of Goods and/or Services, any prior course of dealing, custom or usage of trade or course of performance notwithstanding, and may not be modified by Buyer except in separate writing signed by an authorized agent of Seller.

#### 28. FOREIGN CORRUPT PRACTICES ACT.

Seller, in connection with the sale of Goods and/or Services to Buyer hereunder, and Buyer, while acknowledging that it is an independent contractor from Seller, in connection with any purchase order, the purchase of Goods and/or Services hereunder and the resale of such, agree to comply with the United States' Foreign Corrupt Practices Act, as amended from time to time (the "FCPA"), by not paying, offering or agreeing to pay, authorizing the giving of, or causing to be paid, directly or indirectly, any money or other thing of value to any foreign official (as defined in the FCPA) to obtain or retain business or influence such foreign official in the performance of his or her duties.

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