

TERMS AND CONDITIONS OF SALE

1. SELLER'S TERMS AND CONDITIONS. All sales by **Superior Metal Products, Inc. ("Seller")** are subject to all of the terms and conditions contained herein and upon no other terms and conditions. Seller's acceptance of Buyer's order is expressly made conditional upon Buyer's assent to all of Seller's terms and Seller objects to any terms or conditions at variance with, different from or additional to the terms set forth herein, unless such terms are set forth in a writing signed by a corporate officer of Seller. Any amendment to or any waiver, modification or deletion of, any of Seller's terms shall be ineffective unless such amendment, waiver, modification or deletion is accepted in a writing signed by a corporate officer of Seller.

2. BUYER'S ACCEPTANCE OF SELLER'S TERMS. Buyer's acceptance of Seller's terms shall be conclusively presumed by:

(a) Buyer's submission of a credit application to Seller; (b) Buyer's execution of any other document containing these terms and conditions of sale; or (c) Buyer's acceptance of delivery of any products ordered from Seller.

3. PRICES. All prices proposed by Seller to Buyer are confidential information of Seller, and Buyer shall take all reasonable actions to keep such prices confidential. Disclosure of Seller's prices to any third party for any reason whatsoever (other than as required by law or directly in connection with purchase of materials hereunder) is expressly prohibited.

4. TAXES. Unless otherwise indicated herein, Seller's prices do not include any taxes due or payable on account of the transactions between Buyer and Seller, and all such taxes shall be paid by Buyer.

5. PAYMENT. Buyer agrees to pay for all materials purchased from Seller "Net Thirty Days." Buyer agrees to pay all tools and dies purchased from Seller in 3 installments: 1/3 with submission of Purchase Order, 1/3 upon approved samples, with balance "Net Thirty Days". If payment is not made when due, Buyer agrees to pay a service charge on the amount past due at the rate of 1 ½% per month (18% per annum) or the maximum lawful rate, whichever is less.

6. SHIPPING AND RISK OF LOSS. All sales are made F.O.B. Point of Shipment. In all cases, title shall pass upon delivery to the carrier at point of shipment and thereafter all risk of loss or damage shall be upon Buyer. All items shown as Freight Allowed pertain to particular items and quantities. Any deviation after placement of order, including but not limited to changes in quantity or partial releases, will be subject to a price increase and/or additional freight charges. All labor or mechanical facilities required to unload shall be provided by Buyer without any cost to Seller.

7. DELIVERY. Delivery is to be discussed with Customer Service prior to order. Any and all delivery dates given by Seller prior to shipment constitute estimates only. Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and Seller will not accept any backcharge for losses or damages due to delay or inability to deliver.

8. DELAY. Seller shall not be liable to Buyer for any failure to perform, failure to deliver or for any delay in delivery due to an Act of God, act or omission of Buyer, any actions, events, conditions, inactions or any other cause beyond Seller's reasonable control. In the event of any such delay, the date for performance or delivery shall be extended for a period equal to the time lost by reason of delay.

9. VARIATION IN GOODS. All products sold by Seller are subject to normal variations in weight, color, size, quantities, etc., as are standard in the trade.

10. STORAGE FEES. If Buyer postpones delivery for more than thirty (30) days, Buyer agrees to pay reasonable storage fees.

11. SHORTAGES AND/OR DEFECTIVE OR DAMAGED PRODUCTS. Any claim for alleged shortages and/or defects or damage to products received by Buyer from Seller must be reported by Buyer to Seller in writing within five (5) days of receipt of the products. After such five (5) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall not have any right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such five (5) day period is a reasonable amount of time for such inspection and revocation.

12. CANCELLATION AND RETURNS. Buyer may not cancel any order for products or return any products without Seller's express written consent. Any cancellation authorized by Seller shall be subject to a cancellation charge of at least fifteen percent (15%). The amount of credit, if any, allowed to Buyer for returned goods shall be at the sole discretion of Seller. In the event Buyer cancels any order without Seller's written consent, Seller shall be entitled to recover any and all damages suffered by Seller.

13. EXCLUSION OF ALL EXPRESS AND IMPLIED WARRANTIES. ALL PRODUCTS BEING SOLD HEREUNDER ARE BEING SOLD "AS IS." ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY TYPE AND KIND IN CONNECTION WITH THIS SALE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED IN ALL RESPECTS AND FOR ALL PURPOSES. SELLER HAS NOT MADE ANY INDEPENDENT CHEMICAL OR PHYSICAL ANALYSIS OR ANY OTHER TYPE OF TEST ON ANY OF THE PRODUCTS WHATSOEVER. SELLER DOES NOT MAKE ANY REPRESENTATION AND DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY WITH REGARD TO THE CONTENT, ACCURACY, MANNER OR PREPARATION OF ANY GENERAL TRADE INFORMATION, THIRD PARTY CERTIFICATION OR REPORT SUPPLIED WITH THE PRODUCTS. SELLER MANUFACTURES TO THE DRAWINGS SUPPLIED BY THE CUSTOMER AND ASSUMES NO RESPONSIBILITY FOR DESIGN ERRORS.

14. BUYER'S ACKNOWLEDGMENT. Buyer acknowledges that Buyer must conduct its own testing to ascertain the specific chemical and physical characteristics of the products purchased hereunder. Buyer affirmatively states that Buyer is not relying on any representation, warranty or promise from Seller in connection with this transaction.

15. LEGAL ACTION. All actions filed by Buyer against Seller arising out of or related to this transaction, whether based on contract, tort or any other legal theory of recovery, must be commenced within the applicable statutory period, but in no event more than one (1) year from the date of Seller's invoice.

16. BUYER'S EXCLUSIVE REMEDY/SELLER'S LIMIT OF LIABILITY. BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ABSOLUTE LIMIT OF LIABILITY IN CONNECTION WITH ANY LAWSUIT, CLAIM OR CAUSE WHATSOEVER DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF THIS TRANSACTION, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY OF RECOVERY, SHALL IN ALL CASES BE STRICTLY LIMITED, AT SELLER'S SOLE OPTION, TO EITHER: (a) REIMBURSING BUYER FOR BUYER'S ACTUAL DIRECT DAMAGES UP TO THE AMOUNT OF THE PURCHASE PRICE OF THE PRODUCTS PURCHASED IN SUCH TRANSACTION; OR (b) REPLACING ANY ALLEGED NONCONFORMING PRODUCTS AT THE ORIGINAL POINT OF DELIVERY. AS A CONDITION PRECEDENT TO SELLER'S OBLIGATION TO REIMBURSE THE PURCHASE PRICE OR REPLACE THE PRODUCTS, BUYER MUST ASSIST SELLER IN ALL RESPECTS IN ITS INVESTIGATION OF THE BASIS AND LEGITIMACY OF ANY SUCH CLAIMS. BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES EVEN IF SUCH REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO BUYER OR ANY THIRD PARTY AND ALL SUCH DAMAGES ARE HEREBY DISCLAIMED.

17. HAZARDOUS ACTIVITIES. Unless otherwise agreed in writing by a corporate officer of Seller, products sold hereunder are not intended for use in connection with any hazardous activity or any other critical application where failure of a single component could cause substantial harm to persons or property. If so used, Seller disclaims all liability for any damage, contamination or other injury and Buyer shall indemnify and hold Seller harmless from such liability, whether as a result of breach of contract, warranty, tort (including negligence) or any other legal theory of recovery.

18. IMPROPER USE AND INDEMNITY. Buyer shall indemnify, defend, and hold Seller harmless from any claim, liability, damages, lawsuits, and costs (including attorney's fees), whether for personal injury, property damage or other, brought by or incurred by Buyer, Buyer's employees, or any other person, arising out of improper selection, improper application or other misuse of products purchased by Buyer from Seller.

19. PATENT INFRINGEMENT. If any material is furnished to Buyer's specifications, Buyer shall defend, indemnify and hold harmless Seller and its officers, directors, employees, agents, shareholders, affiliated companies, and their respective successors and assigns from or against any and all claims, liabilities, fines, penalties, fees, costs and expenses, including, without limitation, reasonable attorney's fees and other litigation costs, resulting from or in connection with any claim of patent infringement related to the processing of such material.

20. CREDIT APPROVAL. The performance of any work and all shipments shall be subject to the approval of Seller's Credit Department. Seller, in its sole discretion, may, at any time and for any reason, decline to perform any work or make any shipment, prior to the receipt of payment or adequate assurances of payment.

21. NON-WAIVER BY SELLER. Any waiver of any term, provision or other condition by Seller, whether by conduct or otherwise, shall not be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition hereof.

22. SOLVENCY. Buyer hereby represents and warrants to Seller that Buyer is solvent (on a balance sheet basis) and has the unrestricted ability to pay its debts in the ordinary course of business as and when such debts are due and payable. Buyer also acknowledges and agrees that each purchase order or request from Buyer to Seller shall constitute a written reaffirmation of Buyer's representation of solvency as of the date of Buyer's request, which representation shall be deemed to grant to Seller the maximum right of reclamation available at law or in equity under either under the Commercial Code or any other applicable state law, or in any bankruptcy or insolvency proceeding.

23. SET OFF. Seller is authorized to apply any sums now or hereafter owed to Buyer or any entity affiliated with Buyer toward the payment of any monies due Seller hereunder.

24. GOVERNING LAW. This transaction shall be governed in all respects by the laws of the State of Tennessee.

25. ATTORNEY'S FEES. In the event that Seller institutes a legal proceeding against Buyer to collect any monies due Seller hereunder, or if Seller successfully defends any lawsuit instituted by Buyer, whether based on contract, tort or any another legal theory of recovery, then Seller shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from Buyer.

26. SEVERABILITY. If any term or condition herein, or the application thereof to any person or circumstance, shall be deemed to be invalid or unenforceable, the remainder of these terms shall not be affected thereby, and all such terms, covenants or conditions shall be valid and shall be enforced to the fullest extent permitted by law.

27. ENTIRE CONTRACT. These terms and conditions constitute the entire understanding between the parties with respect to the terms governing the subject transaction and supersede all prior negotiations, discussions and preliminary agreements, if any. Except for representations set forth herein, neither party has relied on any promises or representations made by the other or any third party as an inducement to enter into the subject transaction.