

THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO AND FORM AN INTEGRAL PART OF THE PURCHASE ORDER ISSUED TO EASTERN METAL SUPPLY UNLESS OTHERWISE AGREED IN WRITING.

- 1. Interpretation.** The "Buyer" refers to the party issuing a purchase order or other written order and Eastern Metal Supply (its affiliates, subsidiaries or divisions) as identified on the face of the invoice is herein referred to as the "Seller". When used herein the word "Contract" means the Buyer's purchase order or other written order, the acknowledgment and acceptance by Seller and these terms and conditions. "Products" mean all required items, materials, supplies, goods, and services constituting the subject matter of the Contract. The provisions of this Contract are for the benefits of the Buyer and the Seller and not for the benefit of any other person.
- 2. Contract.** The Buyer acknowledges and agrees that it shall be bound by the Contract including these terms and conditions incorporated by reference and the Seller accepts this order only upon these terms and conditions to the exclusion of all other terms which the Buyer purports to apply under any purchase order. The Contract supersedes all prior representations, arrangements, communications, negotiations, understandings or agreements of whatsoever kind, whether written or verbal, between the parties in respect of the subject matter of the Contract or any part thereof and shall constitute the sole and only agreement between the parties in respect of such subject matter. The Contract must be accepted and confirmed by Seller. Any amendment to the Contract shall be of no force or effect unless made in writing and signed by authorized representatives of the Seller and the Buyer.
- 3. Price.** In consideration of the performance by the Seller of its obligations hereunder, the Buyer shall pay to the Seller, subject to the times, manner, and terms set forth in the Contract, the price set out on the purchase order to which these terms and conditions apply. The Contract price is exclusive of any allowance for taxes of any kind (including sales tax, goods and services taxes), shipping costs, or customs duties of any kind related to the Products. If applicable, such taxes, costs, and duties shall be for the account of the Buyer. Except as otherwise provided in Seller's price data publications, Buyer shall accept a standard shipping quantity tolerance (+/- 10%), unless exact control of quantity shipped is specifically required in the Contract.
- 4. Quality.** The Products shall conform to applicable industry standards (or aluminum industry standards for all aluminum sales and data publications unless both parties have agreed to specifications, plans, drawings, patterns, or samples ("Specifications") as appropriate forming part of the Contract. Buyer shall have five (5) days from delivery of the Products to inspect the Products and to provide written notification to Seller of any Product non-conforming to the Specifications, and thereafter the Products shall be conclusively deemed to be in compliance to the Specifications. Upon timely notification of any non-conforming Products, Seller shall have the right to inspect the non-conforming Products and if it agrees such Products fail to meet the Specifications, it shall either replace the non-conforming Products within a reasonable time or provide Buyer with a credit or refund of the Contract price of the non-conforming Products. Seller shall be entitled to the return of all non-conforming Products at its cost unless Seller directs otherwise.
- 5. Packing, Shipping, Title & Risk.** The Seller shall package all Products to good commercial standards. The Buyer shall select the transportation and carrier and, unless otherwise specified in the Contract, shall be responsible for all transportation and carrier costs, customs clearance and duties as applicable. Title to and risk of loss for contracted, deliverable Products shall pass from the Seller to the Buyer upon delivery specified at FCA Seller's Premises (INCOTERMS 2000).
- 6. Returns.** Buyer shall have the right to return Products meeting the Quality standards set forth in this Contract only upon providing Seller with written notice of its desire to return Products, no later than ten (10) days from the date of delivery of the Products, and only upon Seller's subsequent written authorization for such return. Seller may refuse to permit return of any Products that are custom designed to the Buyer's specifications or needs, or, in the determination of Seller, the Products cannot otherwise be re-sold to another buyer. Any authorized returned Products must be delivered to Seller, in accordance with the shipping instructions of the Seller, within thirty (30) days of Seller's authorization. All packaging, transportation and delivery costs of the returned Products shall be the responsibility of the Buyer. Upon delivery of the returned Products to the Seller, Seller shall inspect same to determine the Products are in substantially the same condition as originally delivered to the Buyer and in any case in a suitable condition for re-sale, and thereafter Seller shall issue Buyer a credit or refund for the Contract price of the returned Products, less Seller's handling and re-stocking fee of 20% of the returned Products' Contract price.
- 7. Payment.** Buyer agrees to pay the Seller's invoices Net 30 days (on approved credit and subject to other, separate credit terms and conditions), or as otherwise agreed in writing, from the delivery date of the Products. The Seller may complete or deliver all or any part of the Products in advance of the delivery schedule set out in the Contract, provided there are no restrictions to the contrary clearly specified on the Buyer's purchase order. Any balance not paid in full within thirty (30) days, shall accrue interest at a per diem interest rate equal to the maximum legal rate of interest permitted to be charged under the laws of the State of Seller's domicile. Such maximum rate of interest shall apply to any delinquent balance owed Seller until paid and shall apply to both pre-judgment and post-judgment amounts it being the intention that no lesser statutory rate for post-judgment interest take precedent over the terms of the Contract. Seller shall have the right to delay or cancel any shipping or delivery of Products to Buyer in the event Buyer fails to make any payment in accordance with the terms of this Contract or any other outstanding Contract with Seller or Buyer's credit account is otherwise delinquent.
- 8. Warranty.** The Seller warrants that its Products sold to Buyer shall conform to the Aluminum Association Standards and Data Specifications. A particular Product may also carry a further written warranty applicable to the specific Product, and such warranty information, if any, will be contained in written materials related to the Products and its use or may also be found on Seller's website as shown on the face of the invoice. **ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, SUCH AS, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY SPECIFICALLY AND WHOLLY EXCLUDED AND DISCLAIMED TO THE EXTENT THEY EXCEED THE WARRANTIES GRANTED HEREIN.** Seller shall not be liable under this warranty for: (a) maintenance, repair, installation, handling, packaging, transportation, storage, operation or use of Products which is improper or otherwise not in compliance with Seller's instructions; (b) Product alteration, modification or repair by anyone other than Seller or those specifically authorized by Seller; (c) accident, contamination, weather hazards, foreign object damage, abuse, neglect or negligence after Product shipment to Buyer; (d) damage caused by failure of a Seller-supplied Product not under warranty or by any hardware or software not supplied by Seller; (e) use of counterfeit or replacement parts that are neither manufactured nor approved by Seller for use in Seller's Products; (f) Products normally consumed in operation or which have a normal life inherently shorter than the foregoing warranty period; and (g) products manufactured by anyone other than Seller even if such products are a component of Seller's Products.
- 9. Applicable Law and Venue.** The Contract shall be interpreted and governed in accordance with the laws of the State of legal domicile of the Seller, without regard to conflicts of law principles. In the event of any legal dispute over the interpretation or enforcement of any provision of the Contract, action or suit shall only be brought in the applicable state or federal court having jurisdiction over the county, parish, district or circuit where Seller's principal office is located.
- 10. Excusable Delay.** A delay in the performance of an obligation of the Seller under the Contract that is caused by an event beyond the reasonable control of the Seller shall constitute an Excusable Delay. For greater clarity and as an example but not a limitation, it is agreed that any delay caused by any one or more of the following events shall be an Excusable Delay: (a) delay by the Buyer in performing any of its obligations under the Contract; (b) strikes, lock-outs or other labor shortages, disruptions or disturbances; (c) fire, flood, war, hostilities, insurrection, civil unrest, pandemic or public health crisis, blockage, terrorism; (d) perils of the sea, earthquake or other acts of God; (e) delay or refusal by any government, government department, authority or administrative agency to issue any permits, licenses or other approvals necessary for the performance of any of the obligations of the Seller under the Contract, or any revocation of the same, or any prohibition by such government, government department, authority or administrative agency of any such obligation; or (f) a delay caused by a failure by a third person engaged by the Seller as a supplier of any part of the Products if such delay is caused by or results from events that are beyond the reasonable control of the Seller. The Seller shall not be liable for the results of an Excusable Delay and the contracted date of performance or delivery shall be extended for a time that is reasonably necessary to compensate for such delay. If Seller cannot perform within such reasonable time, Seller shall have the option of terminating the Contract, in whole or in part, and refunding any payment, or portion of payment, under the Contract affected by such Excusable Delay without any further liability to Seller. Under no circumstances, however, shall Excusable Delay permit Buyer to withhold or delay payment when otherwise due under the Contract.
- 11. Confidentiality.** The Buyer and Seller agree that they will not disclose or make available to any third party any data or other information pertaining to this Contract which is identified as proprietary without obtaining the disclosing party's prior written consent. In all cases, Seller's pricing, rebates and discounts, assessments and fees, payment, credit and return policies shall be considered proprietary and confidential information to Seller and same shall not be disclosed by Buyer without the written consent of the Seller.
- 12. Data and Other Property Rights.** Neither the production or delivery of any Product shall be construed as granting, by any act or acceptance of fact, any right in or license under any present or future data, drawings, plans, details, models, schematics, ideas or methods disclosed under the Contract, or under any invention, patent, copyright, or trade secret now or hereafter owned or controlled by either the Buyer or Seller. The Seller shall have or retain the entire right, title and interest to all data first produced or specifically used by the Seller in the performance of the Contract, except for the Buyer-furnished data received by the Seller. The Seller grants to the Buyer the right to use the data delivered by the Seller hereunder solely for the purposes of the Contract and the Buyer's own use of the Products furnished by the Seller; provided that such data will not, without the prior written consent of the Seller, be disclosed or supplied in whole or in part to any third party or used in whole or in part for design, manufacture, re-procurement or any other purpose whatsoever. Further, the Seller shall have no obligation to deliver any data, which is not otherwise specifically stated to be a deliverable under the Contract. Extrusion dies, tools, printing plates or cylinders and other equipment acquired by Seller to perform its obligations under the Contract shall remain Seller's property and in its sole possession and control. Any die service or other equipment charges assessed by Seller on Buyer shall in no manner convey any property rights or licenses to such service or equipment, and Seller shall at all times maintain title and control of such equipment and may dispose of same at its discretion.
- 13. Patent Rights.** The Seller shall indemnify the Buyer against all claims, actions or proceedings against the Buyer alleging the infringement of any registered U.S. patent existing as of the effective date of the Contract in respect of any Products furnished by the Seller under the Contract; provided the Seller is given prompt written notice of such claim by the Buyer and given authority and such assistance and information as is available to the Buyer for resisting or for the defense of such claim. In the event of such action or proceeding, the Seller at its expense and option may: (a) secure for the Buyer the right to use the Product; or (b) replace the Product; or (c) modify the Product; or (d) take back the Product and refund the Contract price therefore less a reasonable sum for use, damage and obsolescence. The foregoing indemnity shall not apply to any infringement resulting from Products manufactured to designs, plans or specifications furnished by the Buyer or a third party, a component of a Product furnished by the Buyer or third party or from a modification or addition by other than the Seller to the Products after delivery. The Seller shall not be bound by any settlement of any charge or infringement made by the Buyer without the Seller's written consent.
- 14. Limitation of Liability.** **NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT, THE SELLER'S TOTAL LIABILITY RESULTING FROM OR IN CONNECTION WITH THIS CONTRACT SHALL NOT EXCEED THE AGGREGATE SUM PAID TO THE SELLER UP TO THE CONTRACT PRICE. IN NO EVENT WHATSOEVER SHALL THE SELLER BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF USE OR LOSS OF PROFIT ARISING TO THE BUYER OR ANY THIRD PARTIES, AND THE BUYER HEREBY AGREES TO INDEMNIFY AND SAVE HARMLESS THE SELLER FROM ANY SUCH THIRD PARTY CLAIMS WITHOUT LIMITATION.**



EASTERN METAL SUPPLY www.easternmetal.com • info@easternmetal.com

FL: 800-432-2204 • NC/DE/GA: 800-343-8154 • TX/LA: 800-996-6061 • MO/OH/IN: 888-822-6061