



CHAMPLAIN SPECIALTY METALS, INC STANDARD SALES CONTRACT TERMS AND CONDITIONS

The sale of the goods described on the reverse side (the "Order") is made by Seller to Buyer (both as described on the Order and the Sales Quotation), subject to the following terms and conditions (the Order together with these Sale Contract Terms and Conditions are hereinafter referred to as the "Contract"):

1. **PRICE.** Unless otherwise expressly provided in the Order, the stated prices do not include duties or sales, use, gross receipts, excise or similar taxes and, the amount of any such present or future taxes or duties or increases therein applicable to the goods covered by this Contract or to the manufacture, production, transportation or sale thereof, shall be added to the price and paid by the Buyer or in lieu thereof, Buyer shall provide Seller with tax-exemption certificates acceptable to the relevant taxing authorities. Unless otherwise expressly provided on the invoice hereof, the prices stated are F.O.B. Seller's factory.

2. **PAYMENT.** Unless otherwise expressly provided on the reverse side hereof, all payments are to be made net 30 days after date of invoice. Seller may at any time require full or partial payment in advance of delivery, or in advance of manufacture, or satisfactory assurances or security from Buyer that invoices will be paid when due if in Seller's judgment the same at any time becomes necessary. If payment is not made when due, interest at the lower of 1 1/2 % per month or the highest rate permitted by applicable law will be charged thereon and paid by Buyer from the due date thereof until paid. In the event Buyer does not pay within the terms of this Contract, all collection costs incurred by Seller, including attorneys' fees, will be paid by Buyer. Time and terms of payment are of the essence and if any default therein be made by Buyer or if the financial responsibility of Buyer shall at any time become impaired or unsatisfactory to Seller, Seller shall have the right to terminate this Contract or to defer or to discontinue further shipments hereunder until past due payments are made or satisfactory assurances of Buyer's financial responsibility are received by Seller (without prejudice, however, to any rights or claims which Seller may have in law or in equity) and such right shall continue irrespective of any prior failure on the part of Seller to exercise such right. Each shipment is to be considered a separate sale.

3. **WARRANTY. IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, SELLER WARRANTS ONLY THAT THE GOODS COVERED HEREBY WILL CONFORM TO THE DESCRIPTION ON THE ORDER, THAT SELLER WILL CONVEY GOOD TITLE THERETO, FREE FROM ANY LIEN OR ENCUMBRANCE, AND THAT THE GOODS WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE AND SERVICE AND PROVIDED THE GOODS HAVE NOT BEEN REPAIRED, ALTERED OR NEGLECTED AND HAVE BEEN PROPERLY STORED PRIOR TO INSTALLATION. ANY CLAIM ON ACCOUNT OF DEFECTIVE GOODS OR FOR ANY OTHER CAUSE WHATSOEVER WILL CONCLUSIVELY BE DEEMED WAIVED BY BUYER UNLESS WRITTEN NOTICE THEREOF IS GIVEN TO SELLER WITHIN 12 MONTHS OF SHIPMENT OF THE GOODS TO WHICH SUCH CLAIM RELATES. SELLER WILL BE GIVEN REASONABLE OPPORTUNITY TO INVESTIGATE ALL CLAIMS.**

THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES FOR ANY BREACH OF WARRANTY OR ANY DAMAGES FOR NEGLIGENCE OR FOR THE COST OF REMOVAL, TRANSPORTATION OR REINSTALLATION OF DEFECTIVE OR REPLACEMENT GOODS. SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY SHALL BE EXPRESSLY LIMITED TO THE REPAIR OF DEFECTIVE GOODS, OR THE SHIPMENT OF EQUIVALENT GOODS F.O.B. THE SHIPPING POINT INDICATED ON THIS ORDER HEREOF, OR THE REPAYMENT OF THE PURCHASE PRICE OR THE GRANTING OF A REASONABLE ALLOWANCE ON ACCOUNT OF ANY DEFECTS, AS SELLER IN ITS SOLE DISCRETION MAY ELECT.

4. **DELAYS.** The scheduled dates for shipment of the products are estimated based on current and anticipated manufacturing capabilities and may be quoted as weeks after receipt of order. All delivery dates are estimates only, and Seller shall not be liable for any damages relating to failure to ship the products as of a certain date. Seller shall not be liable for any delay in fulfillment of or failure to fulfill this Contract arising from any factory or labor conditions, fire, failure or delay in Seller's usual sources of supply by the acts or omissions of Buyer, its agents, subcontractors or material suppliers, or any cause not reasonably within the control of Seller. **These events beyond Sellers control include but are not limited to: Failure of Critical Carbon Steel Processing Equipment, Worker shortage(s) and Non-conforming Raw Material supply.** In the event of any delay in delivery or failure to manufacture due to a cause beyond Seller's control, unless otherwise agreed, the time for delivery shall be deemed extended for a period equal to the period of delay.

5. **TRANSPORTATION AND DELIVERY.** Unless otherwise provided on the invoice hereof, all deliveries of

goods are F.O.B. Seller's factory and Seller assumes no liability for loss or damage to the goods after shipment at Seller's factory, and risk of loss with respect to the goods passes to Buyer at the said F.O.B. point. Seller reserves the right to ship and bill 10% more or less in quantity of the products than the quantity specified on the face hereof.

6. **INSPECTION**. Buyer shall inspect the products immediately on its receipt, and shall within fourteen (14) days after arrival give written notice to Seller of any matter by reason whereof it may allege that the products are not in accordance with the agreement. If Buyer shall fail to give such notice, the products shall be deemed to be in all respects in accordance with the agreement terms. All products made to special specifications are deemed to be inspected and accepted before shipment is made, and may not be canceled.

7. **CHANGE ORDERS**. No changes or modifications to the Contract shall be binding on Seller or Buyer without the written consent of both Seller and Buyer.

8. **RETURNS AND BACKCHARGES**. Goods delivered hereunder may not be returned by Buyer without the prior written approval of Seller. No backcharges for repairs, corrections or changes in construction of the product shall be made by Buyer without the prior written approval of Seller.

9. **TECHNICAL ADVICE**. Technical advice and specifications regarding the goods sold hereunder solicited from Seller shall be used by Buyer at its own risk. **SELLER DISCLAIMS ALL LIABILITY FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES SUFFERED AS THE RESULT OF THE USE OF SUCH TECHNICAL ADVICE OR SPECIFICATIONS. BUYER IS RESPONSIBLE FOR PERFORMING ANY TESTING NEEDED TO ENSURE WIRE IS APPROPRIATE FOR AN APPLICATION.**

10. **CANCELLATION**. This contract is not subject to cancellation by the Buyer except with Seller's prior written agreement and after full payment by Buyer of Seller's cancellation charges which shall be equal to all amounts incurred by Seller for materials, labor and overhead in respect of the canceled goods plus reasonable contract profits.

11. **INDEMNITY**. Buyer shall indemnify and hold the Seller harmless from and against any and all claims, demands, liabilities, costs and expenses (including attorneys' fees) that Seller may incur because of any action brought by a third party: (i) any claims related to infringement or alleged infringement of the rights of any third party based on products made by Seller in accordance with Buyer's instructions, designs and drawings, or incorporation of Seller's products in Buyer's products except to the extent that such claims are based exclusively on Seller's products not designed in accordance with Buyer's instructions, designs and drawings; and (ii) any claims related to express or implied warranties as to Seller's products, except to the extent such claims arise out of a breach by Seller of the warranties set forth in the Contract.

12. **MISCELLANEOUS**.

- (a) The waiver by Seller of any term, provision or condition hereunder shall not be construed to be a waiver of any other terms, provisions or conditions hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.
- (b) This Contract and all questions of validity, interpretation, performance and nonperformance shall be governed by the laws of the State of Vermont without reference to its principles of conflict of laws.
- (c) Buyer is hereby notified of Seller's objection to any of Buyer's terms inconsistent herewith and to any additional terms proposed by Buyer in accepting this Contract and such inconsistent or additional terms shall not become a part of this Contract unless expressly accepted in writing by Seller. Neither Seller's subsequent lack of objection to any such terms, nor the delivery of goods, shall constitute an agreement by Seller to any such terms.
- (d) This Contract supersedes all prior negotiations and understandings of the parties and contains the complete and final agreement between Seller and Buyer concerning the subject matter hereof and no other agreement in any way modifying any of the said terms and conditions will be binding upon Seller unless made in a writing specifically referring to this Contract and signed by Seller.