

# ARLINGTON METALS CORPORATION

## TERMS AND CONDITIONS OF SALE

Arlington Metals Corporation ("Seller") and the party purchasing goods and/or materials ("Customer") hereby agree to the following Terms and Conditions of Sale ("Terms and Conditions"):

1. Customer's Acceptance of Terms - These Terms and Conditions of Sale constitute the final and entire understanding and agreement between Seller and Customer relating to the goods and/or materials ("Products") sold by Seller to Customer. Customer's acceptance of the Products is expressly conditioned on Customer's acceptance of these Terms and Conditions. Customer's acceptance is limited to these Terms and Conditions, and no different, inconsistent and/or additional terms and conditions submitted by Customer in acknowledging or accepting these Terms and Conditions or in issuing any purchase orders, releases, shipping instructions or other documents in connection with the Products, whether prior or subsequent, shall modify or amend these Terms and Conditions or be valid or binding against Seller, unless specifically accepted by Seller in writing. In the event of any conflict, discrepancy or inconsistency between these Terms and Conditions and the terms and conditions contained in any document submitted by Customer, these Terms and Conditions shall govern even if Customer's document expressly limits acceptance to Customer's terms and conditions. No course or pattern of dealings or conduct between Seller and Customer and no usage of trade shall be relevant to determine the meaning or intent of these Terms and Conditions even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity for objection.
2. Open Credit Account - Seller reserves the right in its sole discretion to approve, conditionally approve or disapprove any request by Customer for credit. The amount of credit Seller extends to Customer will be determined by Seller in its discretion and may vary from time to time. Customer shall notify Seller, in writing, of any error in any invoice within ten (10) days after the Customer's receipt of such invoice, and, if no such notice from Customer is received by Seller, the invoice shall be deemed to be correct and payable as delivered to Customer.
3. Open Account Payment Terms - TIME FOR CUSTOMER'S PAYMENT OF THE PURCHASE PRICE FOR THE PRODUCTS/SERVICES SHALL BE OF THE ESSENCE. All sums owing Seller by Customer shall be paid in accordance with the provisions of Seller's invoice or any written quotation issued by Seller and signed by Customer. In the absence of such express provisions, Seller's terms will be net thirty (30) days from the date of invoice, unless otherwise stated and agreed to. All sums past due and owing to Seller shall bear interest at the rate of the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law from the invoice date until paid in full. All payments made by Customer to Seller shall be applied in the following priority: (a) first to the amounts, if any, due to Seller for attorneys' fees and court costs, (b) second to the amounts, if any, due to Seller in the event of Customer's default, (c) third to the amount, if any, of interest due to Seller as a result of Customer's late payment and (d) finally to the balance of the purchase price due to Seller for the Products.
4. Customer's Representations and Warranties - Upon Seller's request from time to time, Customer will provide Seller with current financial information. Customer represents and warrants that any financial information provided to Seller will be true and correct in all material respects and shall fairly and accurately present the financial condition of Customer as of the date of such financial statements. Customer hereby authorizes Seller to review and evaluate Customer's credit background from time to time.
5. Security Interest - To secure Customer's full and prompt payment of the purchase price for the Products, Customer hereby grants to Seller a first priority, purchase money security interest in and to the Products and all products and proceeds therefrom. Customer authorizes Seller to file a UCC financing statement to perfect this security interest at any time.
6. Cancellation and Returns - Customer may not cancel any order of Products for Customer's convenience without Seller's prior written consent. Seller may, in its sole opinion, authorize Customer in writing to cancel Products normally carried in Seller's inventory. Any cancellation so authorized shall be

subject to a cancellation charge of 15% of the purchase price. Customer may not cancel any processed Products, specially manufactured Products, or Products not normally carried in Seller's inventory.

7. Approval of Sale - Prior Sale - No sale shall be final until approved by the corporate office of Seller. All quotations for Products normally carried in Seller's inventory are subject to prior sale, unless otherwise specified in writing by Seller. All quotations for specially manufactured Products and Products not normally carried in Seller's inventory are subject to mill availability.

8. Price - Basis of Invoices - Seller's price is subject to and contingent upon Customer purchasing the entire quantity of Products identified in Seller's quotation. If Customer purchases less than the entire quantity of Products identified therein, prices may vary. Seller shall invoice all Products in accordance with Seller's published schedule of weights, areas, sizes and lengths. All weights shall be based on actual weight, theoretical nominal, per piece and any other matrix or calculation as agreed to by both parties.

9. Force Majeure - Neither Customer nor Seller shall be liable for any delay, breach or nonperformance of these Terms and Conditions (other than the payment of money) wholly or partly due to any cause beyond such party's control ("Force Majeure") including, without limitation, acts of God; war; civil disturbances; acts of any foreign, federal, state, local or other governmental authority; non-availability, delay or diversion of shipping or other transport; lock outs, strikes or trade disputes; break down or interruption of any plant, machinery, equipment or utilities; shortage, non-availability or allocation of raw materials or commodities; any combination of the foregoing, or any other cause outside of such party's control whether similar to or different from those stated herein. On the happening of Force Majeure, the affected party shall advise the other party in writing with reasonable promptness and the affected party may suspend its performance during such Force Majeure without liability to the other party.

10. Title - Risk of Loss - All prices quoted by Seller are "Ex Works Seller's" loading dock. Title shall pass to Customer upon loading on the transportation facility (i.e. truck or railcar), irrespective of any freight allowance, prepayment of freight or delivery terms.

11. Inspection; Claims - Customer shall carefully inspect all Products and shipping documents promptly upon delivery. No claim for shortages or Products damaged during delivery will be valid or enforceable against Seller unless (a) Customer notifies Seller in writing specifying in detail the shortage or damage within five (5) days from the date of delivery; (b) Customer returns the damaged Products to Seller within ten (10) days following delivery; (c) upon return, Seller confirms such damage; and (d) Customer has fulfilled all of the payment terms. Customer'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 or damaged during transit. Customer shall be deemed to have waived any claim for shortages or Products damaged in transit if Customer fails to so notify Seller within five (5) days following delivery. Any processing or use of the Products by Customer, other than return to Seller, shall be conclusive as to Customer's acceptance of the Products as being satisfactory and in accordance with these Terms and Conditions.

12. Limited Warranty - Seller warrants to Customer for a period of six (6) months following delivery only that; (a) the Products shall conform to the description and specifications, subject to industry standard tolerances and variations; and (b) Seller has good title to the Products free and clear of liens, security interests or encumbrances by any party claiming by, through or under Seller. **SELLER, HEREBY DISCLAIMS AND CUSTOMER HEREBY WAIVES ANY AND ALL OTHER ORAL OR WRITTEN WARRANTIES IN RESPECT OF THE PRODUCTS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES UNLESS EXPRESSLY MADE IN WRITING AND SIGNED BY AN OFFICER OF SELLER.**

Seller's liability shall be limited, at Seller's option, to repair or replacement of non-conforming

Products or refund of the purchase price. The foregoing sets forth Seller's entire obligation and liability to Customer in respect of the Products, and Customer accepts the same as its entire right and sole remedy in relation to any breach by Seller of these Terms and Conditions. **IN NO EVENT OR CIRCUMSTANCE WHATSOEVER SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OF ANY TYPE OR NATURE EVEN IF SELLER HAS REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S TOTAL LIABILITY ARISING OUT OF OR IN ANY WAY RELATED TO THE PRODUCTS, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND/OR GROSS NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER CAUSE OF ACTION, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE ACTUALLY PAID BY CUSTOMER FOR THE PRODUCTS TO WHICH SUCH LIABILITY RELATES.**

13. Unofficial Communications - No agents, employees, or representatives of Seller have any authority to bind Seller to any affirmation, representation, guaranty or warranty other than those expressly set forth in these Terms and Conditions. Any technical advice furnished by Seller with respect to the selection or use of Products is given without charge, and Seller assumes no obligation or liability whatsoever for the advice given or the results obtained, all such advice being given and accepted at Customer's sole risk.

14. Taxes - All prices quoted by Seller are exclusive of all taxes. In addition to the purchase price, Customer shall pay or reimburse Seller the amount of all sales, use and ad valorem taxes, excises, duties and/or other governmental charges that Seller may be required to pay with respect to the Products.

15. Indemnification - Customer shall indemnify, defend, and hold harmless Seller, its affiliates, and the shareholders, directors, officers, employees, agents, successors and assigns of all of them (collectively, the "Seller Indemnified Parties") from and against any and all losses, claims, damages, injuries, liabilities, taxes, fines, penalties, costs or expenses (including attorneys' fees and court costs) incurred or suffered by any of the Seller Indemnified Parties to the extent directly or indirectly arising out of, relating to or resulting from (a) Customer's unloading, storing, handling, packaging, processing, fabrication, or use of the Products; or (b) any negligence, act, or omission of Customer, its employees, agents and anyone for whom Customer may be legally liable.

16. Default; Bankruptcy - Upon failure of Customer to make any payment required hereunder, without deduction, setoff or counterclaim, within ten (10) days after the same becomes due, or if Customer defaults in the performance of any other obligation, term, or condition, or if Customer shall make an assignment for the benefit of creditors, or in the event of a commencement of proceedings by or against Customer involving bankruptcy, insolvency, reorganization or arrangement, or in the case of other significant financial instability of Customer, Seller, without demand or notice of any kind and without prejudice to any other right or remedy of Seller, may (a) terminate the sale of all or any of the Products; (b) suspend the release of any Products on consignment to Customer and defer further deliveries; (c) require Customer to return or allow Seller to reclaim and/or pick-up any unpaid Products; (d) require Customer to pay the purchase price for any or all the Products not yet paid for in full (whether such Products are on-hand, in process or on-order, and whether or not delivered) and any other sums due from Customer to Seller, which Customer shall pay on Seller's first demand notwithstanding any credit period or other forbearance; (e) place any Products identified to Customer in storage at the cost and risk of Customer; (f) apply any payments made by Customer as Seller may elect without regard to any appropriation by Customer; (g) sell any or all of the Products at such price as may be available but without having any duty to Customer to do so at the best or any particular price, and collect any shortage in price from Customer; and/or (h) exercise any other right or remedy that Seller may have at law or in equity in the event of Customer's default. Seller is entitled to immediate relief from the automatic stay should Customer file for protection under the bankruptcy code. Customer agrees not to oppose relief from the automatic stay if sought by Seller.

17. Waiver - Any waiver of these Terms and Conditions, to be valid or binding, must be in writing and signed by the party against which such waiver is to be enforced, and shall not constitute a continuing waiver of any other breach or default, and acceptance by Seller of any payments with knowledge of any breach or default shall not constitute such waiver. No omission or delay by either party in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any

such right, power or privilege preclude any other or further exercise thereof or exercise of any other right, power, or privilege.

18. Governing Law and Venue - THESE TERMS AND CONDITIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH SELLER IS LOCATED WITHOUT REGARD TO ITS CHOICE OF LAW OR CONFLICTS OF LAWS PROVISIONS. ANY CLAIM, DISPUTE OR CONTROVERSY ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR THE PRODUCTS SHALL BE RESOLVED BY LITIGATION BROUGHT EXCLUSIVELY IN THE FEDERAL OR STATE COURTS HAVING JURISDICTION OVER SELLER'S LOCATION AND SELLER AND CUSTOMER IRREVOCABLY CONSENT TO THE JURISDICTION OF SAID COURTS.

19. Prevailing Party - In the event of any claim, dispute or controversy arising out of or relating to these Terms and Conditions, the prevailing party shall be entitled to recover its attorneys' fees and court costs from the non-prevailing party.

20. Assignment and Third Party Rights - Neither party may delegate or assign its rights or obligations without the other party's prior written consent, except that Seller may assign its rights and obligations to an affiliate upon prior written notice to Customer. Any delegation or assignment without such written consent shall be null and void, and without any legal force or effect. Notwithstanding Seller's consent to any assignment or delegation by Customer, these Terms and Conditions shall be fully binding on Customer, its successors and permitted assigns. These Terms and Conditions shall not be deemed or construed as granting or conferring any rights in or providing any basis for claims by third parties.

21. Severability - If any provision contained in these Terms and Conditions or the application thereof to the parties shall be finally determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision shall be deemed severed and deleted from these Terms and Conditions and replaced with a provision that is valid, legal and enforceable to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions of these Terms and Conditions and any other application thereof to the parties shall not in any way be affected or impaired thereby.

22. Acceptance/Enforceability of Copies - Seller may, at Seller's sole discretion, accept a facsimile copy, electronic copy, or photocopy of any order between Seller and Customer in lieu of an original document. Customer consents to Seller's use of such copy and waives any right to object to the use of a copy in place of the original and any right to require Seller to subsequently produce an original document.

23. Entire Agreement - These Terms and Conditions contain the final and entire agreement of the parties hereto with respect to the sale and purchase of the Products and all other transactions contemplated herein, and supersede all prior or contemporaneous discussions, negotiations, agreements or understandings, whether written or oral, between the parties relating to the subject matter hereof. These Terms and Conditions may be changed, amended, modified, revised or supplemented only by a written instrument signed by an authorized manager or officer of Seller.

24. Set-Off / Off-Set / Contra - Buyer shall be entitled at all times to set-off any amount owed by Seller at any time to the Buyer or any of Buyer's affiliated companies against any amount payable to Seller at any time by Buyer in connection with Purchase Order(s). Furthermore, Seller agrees to pay Buyer any monies due or owed to Buyer or any of its affiliates, divisions, etc. Buyer has the right if available, to offset-contra any unpaid invoices generated and owed to Buyer whether they be for products, services, processing, freight, etc. Any monies owed to the Seller by the Buyer, may be applied and offset-contra by the Buyer. Buyer will provide information supporting offset-contra. This offset-contra language is binding and supersedes any and all other language and/or stipulations that may be implied directly or indirectly in this agreement.