

SCM Metal Products, Inc.

TERMS AND CONDITIONS OF SALE

29 September 2009

1. **PRICES.** The prices and charges stated on the Invoice shall be adjusted to the goods, and other items covered by this order shall be invoiced at the prices and charges fixed by Seller at the time of and for each shipment under this order, provided that such prices and charges shall not exceed the prices and charges appearing in Seller's applicable price schedules, if any in effect at the time of each such shipment.
2. **PAYMENT.** Invoices submitted by Seller under this order are payable only in funds which are accepted at par in New York, New York. Whenever reasonable grounds for insecurity arise with respect to due performance by Customer, Seller may demand different terms of payment from those specified on the face of this order and may demand assurance of Customer's due performance. Any such demand may be oral or in writing and Seller may, upon making of such demand, stop production and suspend shipments hereunder, if within the period stated in such demand Customer fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of due performance. Seller may, at its option, treat such failure or refusal as a repudiation of the portion of this order which has not been fully performed or may resume production and may make shipment under reservation of possession or of a security interest and may demand payment against lender of documents of title.
3. **DELAYS.** If a specific shipping date (excluding an estimated date) is not designated on the face hereof or in a subsequent writing signed by Seller, Seller shall not be responsible for any delays in filling this order nor liable for any loss or damages resulting from such delays. If a specific shipping date is designated either on the face hereof or subsequently by Seller, Seller shall not be liable for any delays in filling this order caused by (a) accidents to machinery, indifferences with workmen, strikes, labor shortages, fires, floods, priorities required or requested by the Federal or any State government or any subdivision or agency thereof or granted for the benefit, directly or indirectly of any of them, delays in transportation or lack of transportation facilities, restrictions imposed by Federal or State legislation or rules or regulations thereunder, or (b) any cause beyond the control of Seller.
4. **EQUIPMENT.** Any equipment (including jigs, dies and tools, but excluding patterns for sand castings) which Seller constructs or acquires for use exclusively in the production of goods for Customer shall be and remain Seller's property and in Seller's possession and control, and any charges by Seller therefore shall be for the use of such equipment only. All such equipment will be used exclusively for the manufacture of goods for Customer. When for three (3) consecutive years no orders acceptable to Seller are received from Customer for goods to be made with any such equipment, Seller may make such use or disposition thereof as Seller desires without liability to Customer.
5. **WARRANTY.** Seller warrants that the goods to be supplied hereunder will conform to the description on the face hereof; that it will convey good title thereto that such goods will be delivered free from any lawful security interest or other lien or encumbrance unknown to Customer, and that for a period of one (1) year such goods will be free from defect in material and workmanship. **SELLER MAKES NO WARRANTY THAT THE GOODS SHALL BE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE; SELLER MAKES NO WARRANTY EXPRESS OR IMPLIED, EXCEPT SUCH AS IS EXPRESSLY SET FORTH HEREIN.** Seller shall not be liable for any incidental or consequential damages for any breach of warranty. Seller's liability and Customer's exclusive remedy being expressly limited to Seller's choice of (a) the repair of defective goods, (b) the replacement thereof with conforming goods at the FOB point shown on the face hereof, and (c) the repayment of the purchase price. Replacement of defective goods or repayment of the purchase price therefore will be made only upon return of the defective goods which may be returned at the cost Seller, only after inspection by Seller, and receipt by Customer of definite shipping instructions from Seller.

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6. **SOLE AGREEMENT ACTIONS.** Seller's acceptance of your order is expressly conditioned on your acceptance of any different or additional terms contained in our Invoice and these Terms and Conditions of Sale. Your order as supplemented or modified by the Invoice and your acceptance of the goods constitute the complete Agreement between the parties hereto and no modification thereof shall be binding upon the parties unless such modification shall be in writing accepted by the Customer and approved by the Seller. Where language in your order is in any way inconsistent with the terms and conditions hereof, it shall not be binding on the Seller and the language hereof shall control. New York law governs this transaction and the Federal and State Courts in the State where the invoice is issued shall have jurisdiction over any dispute arising hereunder. Any action against the Seller for breach of the Agreement must be commenced within twelve (12) months of such breach.
7. **PATENTS.** Seller agrees to indemnify Customer, its successors and assigns, against all judgments, decrees and costs (except when the goods sold hereunder are machines, in which event, against court assessed damages and costs) resulting from infringement of any United States Letters patent covering (a) standard commercial compositions offered for sale generally by Seller at the time of acceptance by it of this order, or (b) standard commercial forms, shapes or constructions offered for sale generally by Seller at the time of acceptance by it of this order, to the extent that such compositions, forms, shapes or constructions are supplied hereunder. Customer agrees, for the goods delivered under this order, to indemnify Seller, its successors and assigns, against all judgments, decrees and costs resulting from infringement of any United States Letters Patent to the extent that such infringement arises from designs, specifications or instructions furnished or expressly or implicitly required by Customer and different from the matters embraced by (a) and (b) of the preceding sentence. Neither party shall be entitled to indemnification under this clause as to any claim of infringement concerning which it does not give to the other party prompt notice in writing upon learning thereof and full opportunity, at the expense of such other party, to defend and dispose of such claim of infringement. The sale of the goods covered by this order shall not grant to Customer any right or license of any kind under any patent owned or controlled by Seller or under which Seller is licensed, but the foregoing shall not be understood to limit in any way the right of Customer to use and sell such goods, in the event that such goods are sold hereunder are covered by any such patent.
8. **RETURNED GOODS.** No goods may be returned without Seller's prior written authorization. If authorization is granted, goods returned within ninety (90) days from date of shipment for reasons other than our error, and in the original manufactured condition, will result in a full credit less a handling charge.
9. **FAIR LABOR STANDARDS ACT.** Seller warrants that all goods and services furnished hereunder have been produced in full compliance with all applicable laws and regulations, including the applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended and of regulations and orders of the U.S. Department of Labor issued under section 14 thereof. Seller shall also be in compliance with applicable requirements of Executive Order 11141 and 11246, as well as the Rehabilitation Act of 1973, as amended.
10. **SUBSIDIARIES AND AFFILIATES.** This order may be performed and all rights hereunder against Customer may be enforced by Seller or by any one or more of the corporations subsidiary to or affiliated with Seller or in part by Seller and in part by one or more of said subsidiary or affiliated corporations.
11. **WAIVER.** No provision hereof and no breach of any provision shall be deemed waived by reason of any previous waiver of such provision or of any breach thereof.
12. **FORCE MAJEURE.** The consequences, direct or indirect of labor troubles, fires or other casualty, riot, civil commotion, shortage or transportation, delays of subcontractors or suppliers, suspension or curtailment of production due to shortages of materials or government acts or requirements, and all like or different causes beyond the control of the Seller, shall excuse performance by the Seller to the extent by which such performance is prevented thereby.
13. **PASSAGE OF TITLE: RISK OF LOSS INSURANCE.** Title to the goods shall pass to the Customer and the Customer shall assume all risks of loss or damage to the goods from all causes upon delivery of the goods to the Customer's F.O.B. point of shipment. Customer shall have the duty to maintain insurance on the goods against such risks from the time title passes until payment of the full purchase price hereunder.
14. **TITLE RETENTION; SECURITY INTEREST.** If this Agreement provides for installment payments, the Customer conveys and grants to the Seller a purchase money security interest in the goods to secure the payment of the principal, interest and all obligations of the Customer to the Seller, as set forth in this Agreement. The Customer authorizes the Seller to sign and file appropriate financing statements.
15. **INDEMNITY.** Customer shall release, hold harmless, indemnify and defend Seller from and against any loss, liability, claims, suits and costs caused by, arising out of, or relating to the design of goods supplied hereunder or the design of the packages or containers in which they are shipped, if such goods, packages or containers are made in compliance with Customer's design or specification.