

SCM Metal Products, Inc.

CONDITIONS OF ACCEPTANCE

29 September 2009

1. Unless otherwise expressly provided on Seller's Invoice, Buyer shall pay cash in United States currency in accordance with the terms of sale described on Seller's Invoice. In any event should Buyer's credit responsibility become impaired in Seller's judgment, Seller may require cash in advance of each shipment. Seller shall be under no obligation to make any shipment when Buyer is in default under this agreement or any other sales agreement between Buyer and Seller.
2. Unless otherwise provided, Buyer agrees to pay any tax or other charge now or hereafter imposed by any federal, state or other governmental authority, with respect to or measured by the production, sale, shipment, use and/or price of any material covered hereunder.
3. Seller makes no warranty of any kind, express or implied except that the materials sold hereunder shall be of Seller's standard quality. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Buyer assumes all risk and liability whatsoever resulting from the use of such materials, whether used singly or in combination with other substances. Buyer agrees to examine and test the materials sold hereunder promptly after receipt and before materials are used and to notify Seller within fifteen (15) calendar days after receipt of the material in writing or by cable in case the materials are found to be defective or short in any respect. Failure to so notify Seller shall constitute a waiver of all claims with respect to the material and in any event the use of the materials shall be deemed to mean that the Seller has satisfactorily performed. Liability of the Seller, if any, hereunder shall in no event exceed in amount of the purchase price of the materials sold with respect to which any damages are claimed. Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the sale or use of the materials sold hereunder, and there are no oral agreements or warranties collateral to or affecting this agreement.
4. Seller shall not be liable for any failure to deliver or for any delay in delivering said material when any such failure or delay shall be caused directly or indirectly by fires, floods, accidents, explosions, sabotage, strikes or other disturbances (regardless of the reasonableness of the demands of labor), civil commotions, riots, invasions, wars (present or future), acts, restraints, requisitions, regulations or directions of Government, voluntary or mandatory compliance with any request of the United States Government, or any officer, department, agency or committee thereof for purposes of national defense, voluntary or mandatory compliance with any request for materials represented to be for purposes of (directly or indirectly) producing articles for national defense or completing national defense facilities, shortages of any labor, fuel, power, or raw materials, inability to obtain supplies, failures of normal sources of supplies, inability to obtain or delays or transportation facilities, any act of God or any cause (whether similar or dissimilar to the foregoing) beyond the reasonable control of Seller and/or Seller's normal sources of supply of any materials purchased for resale hereunder, affecting the production and/or delivery of any materials covered hereby shall be limited. Seller shall have the right (without liability) to prorate its available supply or its own manufacturing requirements and the requirements of all of its customers (including Buyer) in such manner as Seller deems equitable. If any such disability shall delay any shipment hereunder for more than ninety (90) days, such shipment may be cancelled (without liability) at Seller's option.
5. Unless otherwise expressly provided on Seller's Invoice, if materials shipped hereunder are sold on C.I.F. terms, Seller shall cover the shipment with war risk insurance (if obtainable) as defined by the American Institute of Marine Underwriters and/or the American Cargo War Risk Re-Insurance Exchange, and the entire amount of the premium for such insurance shall be for the account of and shall be paid by Buyer.
6. If for any reason beyond Seller's control it shall become impossible for Seller to ship in the usual manner any order received from Buyer (within sixty (60) days after the expiration of the stipulated shipping time), Seller reserves the right to cancel such order without liability to Buyer.
7. Seller's weights when determined at shipping point shall govern and be considered accurate if within 1% of specified weights.
8. Any controversy or claim arising out of or relating to this Order shall be governed by the laws of Delaware and shall be determined by a court of competent jurisdiction located therein.
9. Seller's acceptance of Buyer's order is expressly conditioned on Buyer's assent to any different or additional terms contained in these Conditions of Acceptance. Buyer's order as supplemented or modified by these Conditions of Acceptance and Buyer's acceptance of the goods constitute the complete agreement between the parties hereto and no modifications thereof shall be binding upon the parties unless such modification shall be in writing, accepted by Buyer, and approved by Seller. The terms and conditions herein supersede all previous communications either written or verbal concerning the subjects covered herein, and Seller specifically objects to any terms contained in Buyer's documents which are in any manner inconsistent with the terms and conditions herein. Where language in Buyer's order is in any way inconsistent with the terms and conditions hereof, it shall not be binding on Seller and language hereof shall control.