

## **STANDARD TERMS AND CONDITIONS OF SALE**

### **1. ACCEPTANCE, GOVERNING PROVISIONS.**

Buyer's purchase order, or other offer to purchase Seller's Products, will be accepted when Seller sends Buyer a written acceptance, which may be transmitted physically or by electronic means, or when Seller begins to manufacture the Products for Buyer's purchase order. When Seller accepts Buyer's purchase order, it becomes an Order subject to these Standard Terms and Conditions of Sale (the "Terms"), unless Seller and Buyer have separately negotiated different terms and conditions in a signed written agreement that specifically supersedes these Terms.

Seller specifically objects to and rejects any other terms and conditions, whether contained in Buyer's purchase order or otherwise, unless Seller has specifically agreed to them in a signed writing. These Terms cannot and will not be modified by Seller's failure to object to such other terms and conditions, including without limitation any penalty clauses. No waiver of these Terms is valid or effective unless specifically in a signed writing by Seller.

If Buyer has any objections to these Terms, it must notify Seller within ten (10) days after receiving Seller's acceptance, otherwise Buyer's consent to these Terms is deemed given.

### **2. MODIFICATIONS AND CANCELLATIONS.**

Any changes that Buyer may want to make to the Order, including but not limited to items ordered, quantity ordered or delivery dates, must be agreed upon by the Seller in a signed writing, which may include an electronic signature. If any changes are agreed upon by the Seller, but require an adjustment in the price charged to Buyer or the delivery dates, Seller will notify Buyer of such changes. Unless Buyer objects to the changes within five (5) business days after Seller notifies Buyer of such, then Seller will implement the agreed upon changes with the adjusted price and delivery schedule. If Buyer objects to the adjusted price or delivery schedule, then the Order will not be changed.

If Buyer wants to cancel an Order, such cancellation must be received by Seller at least five (5) business days before the Order ships. If the Order includes any customized items that are not part of Seller's stock inventory, then the cancellation must be received before the Seller starts manufacturing the Order. In addition, by cancelling an Order, Buyer agrees to reimburse Seller for any direct losses, damages or expenses it incurs, such as, but not including, any restocking fees or rework fees, scrap fees, processing costs or material expenses.

### **3. PRICES & SURCHARGES.**

#### **PRICES & SURCHARGES ARE SUBJECT TO CHANGE WITHOUT NOTICE.**

Buyer will pay Seller the price that Seller has in effect for the Products on the date that the Order is shipped, unless they have entered into a separate written agreement that governs the pricing of the Products.

From time to time, Seller will also implement raw material or energy (including but not limited to fuel, electricity, or natural gas) surcharges as necessary and appropriate to reflect increases in Seller's costs for producing the Products, which will be added to the price of the product on Seller's invoice for the Products. Buyer will pay the surcharges as they are invoiced.

#### 4. TAXES AND OTHER CHARGES.

If Seller is required to pay any federal, state or local excise or other tax, assessment, license fee or charge ("Taxes"), or any increases thereof, due to the sale, production, transportation or use of the goods (other than taxes on Seller's income), then Seller will add such Taxes to the invoices and Buyer will pay them as they are invoiced, unless Buyer provides Seller with a tax exemption certificate acceptable to the authorities imposing the same.

#### 5. PAYMENT; CREDIT TERMS.

Terms of payment for all invoices are net cash 30 days, 1/2 of One Percent (0.5%) discount if paid within ten days, unless otherwise provided in a written agreement between Buyer and Seller.

If full payment is not received by Seller within thirty (30) days after the date of the invoice, Seller will charge interest at the New York prime rate then in effect plus one and one-half (1 ½%) per annum. In jurisdictions where this interest rate exceeds the highest legal rate of interest, Seller will charge Buyer the highest legal rate of interest allowable under applicable law. All payments received from Buyer will be applied first to any outstanding interest due, then to any outstanding invoices, beginning with the oldest. Seller may assess interest and recover for each invoice as a separate transaction, without reference to any other shipment or invoice. If Buyer fails to pay any invoice in full in accordance with these Terms, Seller may, at its option, defer or suspend any further shipments until Buyer has paid the invoices or may cancel any further performance of an Order, without affecting any of Seller's other rights under these Terms or at law.

Buyer's credit is subject to Seller's continuing approval. In the event Buyer's creditworthiness, in the opinion of Seller, is unsatisfactory or becomes impaired, Seller may limit, modify or cancel the credit of Buyer and demand advance payment, satisfactory security or a guarantee of prompt payment before shipment or delivery of the whole or any part of the Products without in any way affecting the obligation of Buyer to perform under these Terms. If Buyer refuses to give Seller the payment, security or guarantee demanded, or if Buyer is in default in any payment or if any proceedings, voluntary or involuntary, are instituted by or against the Buyer in bankruptcy or insolvency or under any provision of the U.S. Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, Seller shall have all of the rights of secured party under the UCC and may cancel this agreement, including any Orders placed by Buyer, refuse to deliver any undelivered Products and Buyer shall immediately pay to Seller the unpaid invoices for all Products delivered, and if any of the Products are custom for Buyer, Buyer will also pay for any Products that are in the process of manufacture, all tools and dies that were bought by Seller specifically for Buyer's Products, and for and all other damages, including loss of reasonable profits caused by Buyer's default.

In the event of Buyer's default or nonpayment of invoices and interest, Buyer shall pay all costs of collection and attorney's fees, if required for enforcement hereunder.

## 6. SHIPMENT; INSPECTION; ACCEPTANCE.

Except as otherwise agreed in writing, shipping terms and all prices are EXW (Incoterms 2010) Seller's factory and Buyer will pay for all insurance at its expense. Title and all risk of loss or damage will pass to Buyer when Seller makes a shipment available at Seller's shipping point.

Unless otherwise agreed between the Buyer and the Seller, all prices include standard packaging for shipping within the continental United States. If Buyer requests any additional packaging or packaging that complies with containerized or international shipping, Seller will charge Buyer an additional fee.

The date of the bill of landing shall constitute conclusive evidence of the date of shipment. All shipment or delivery dates are approximate. Seller reserves the right to ship Products in advance of any established delivery schedule or make partial shipment and/or transshipment. Each shipment hereunder shall be deemed a separate transaction. Buyer will not be excused from accepting any shipment or partial shipment of Products from Seller because of a prior non-conforming shipment or any prior delay or failure to ship.

Seller's weights will govern. Shipments may be within ten percent (10%) over or under the weight on the Order.

Buyer will inspect all Products within ten (10) days of receipt of a shipment. If Buyer has any claim for shortages or non-conformance that was determinable by its inspection, Buyer must make the claim in writing to Seller, stating full particulars in support of its claim, within 15 days after receipt of shipment. If Buyer has any claims for any non-conformance of the Products that is not determinable by its inspection, then Buyer must make the claim for such latent non-conformance in writing to Seller, stating full particulars in support of its claim, within 90 days after receipt of shipment. If Buyer fails to give such notice to Seller, it shall constitute Buyer's unqualified acceptance of the Products and a waiver of all claims of non-conformance by Buyer.

## 7. UNAVOIDABLE CIRCUMSTANCES.

**Seller is excused for any delay in the performance of orders or contracts, or in the delivery of shipment of Products, or for any damages suffered by Buyer by reason of such delay, when such delay is, directly or indirectly, caused by, or in any manner arises from floods; accidents; riots; acts of God; war; governmental interference or embargoes; strikes, labor difficulties or shortage of labor; shortage of fuel, power, materials or supplies; transportation delays; or any other cause or causes (whether or not similar in nature to any of these hereinbefore specified) beyond Seller's commercially reasonable control.**

Buyer acknowledges that all Orders are accepted with the understanding that they are subject to Seller's ability to obtain the necessary raw materials, and all Orders as well as shipments of Products are subject to Seller's factory schedules, governmental priorities (such as rated orders), and other government regulations, orders, directives and restrictions that may be in effect from time to time.

Shipments made within a reasonable time after specified date of delivery shall constitute an on-time delivery.

8. WARRANTY; LIMITATION OF LIABILITY:

Seller represents and warrants that the Products will meet its specifications when delivered to Buyer.

Buyer represents and warrants that any specification, plan, drawing or other information that is provided to Seller and incorporated into the Products, is free and clear of any third party intellectual property rights.

If any material shall be manufactured and/or sold by Seller to meet Buyer's particular specifications or requirements and is not part of Seller's standard line offered by it to the trade generally in the usual course of Seller's business, Buyer agrees to defend, protect and save harmless Seller against all suits at law or in equity and from all damages, claims and demands for actual or alleged infringement of any United States or foreign patent and to defend any suit or actions which may be brought against Seller for any alleged infringement because of the manufacture and/or sale of the material covered thereby.

**SELLER WARRANTS THAT THE PRODUCTS DELIVERED TO BUYER UNDER THESE TERMS WILL CONFORM TO THE SPECIFICATIONS STIPULATED IN THE ORDER. SELLER DOES NOT MAKE ANY OTHER WARRANTIES, GUARANTIES, OR REPRESENTATIONS, EXCEPT THOSE SPECIFICALLY CONTAINED IN THESE TERMS. SELLER SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, GUARANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR BUSINESS, PURPOSE OR USE, EVEN IF THE BUSINESS, PURPOSE OR USE IS KNOWN TO SELLER.**

If the Products delivered do not conform to the Order or the specifications, Buyer must notify Seller in writing and Seller may, at its option, either replace the non-conforming Products with conforming Products; rework the non-conforming Products to make them conforming; give Buyer a credit for the price paid by Buyer for the non-conforming Products; or refund Buyer the price it paid for the non- conforming Products.

**LIMITATION OF LIABILITY: SELLER'S LIABILITY IN CONNECTION WITH ANY BREACH OF WARRANTY OR A BREACH OF ANY OF THESE TERMS SHALL BE LIMITED TO THE VALUE OF THE GOODS TENDERED TO BUYER THAT WERE NON-CONFORMING. THE PARTIES AGREE THAT IN NO EVENT SHALL SELLER BE LIABLE FOR DEFECTS IN OR DAMAGES TO THE PARTS, GOODS OR PRODUCTS IN WHICH THE PRODUCTS ARE USED OR FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS OF PROFIT OF ANY KIND OR OF ANY OTHER NATURE BY REASON OF ANY ALLEGED BREACH OR DEFAULT UNDER THIS SUPPLY AGREEMENT NOR SHALL SELLER BE LIABLE FOR BUYER'S COURT COSTS OR ATTORNEYS' FEES.**

Seller's goods, like all cast metal, may include naturally occurring irregularities, including but not limited to porosity, slivers, inclusions or laminations/delaminations. Seller specifically disclaims any warranty, explicit or implied, that the Products are free of these irregularities. Buyer agrees to inspect and /or test the Products and any parts manufactured from the Products to ensure that they are suitable for the Buyer's intended purpose.

**BUYER MUST CONTACT SELLER FOR A RETURN AUTHORIZATION BEFORE RETURNING ANY PRODUCTS TO SELLER.**

## 9. INDEMNITY.

**Buyer agrees to indemnify, defend and hold harmless Seller, its affiliates, officers, directors, employees, agents and representatives from and against any liability, claim, loss, demand, damage, cost and expense (including attorneys' fees and litigation costs) relating to any claim of injury or damage of any kind to any person or property asserted to be caused by, resulting from or attributable to the nature or quality of the Products delivered hereunder, including without limitation claims of infringement of any third party's intellectual property rights based upon Seller complying with Buyer's specifications. If Buyer's employees or any other representatives enter upon the premises occupied by or under the control of Seller, Buyer shall take all necessary precautions to prevent the occurrence of injury or death to any person or damage to any property arising out of any acts or omissions of such employees or other representatives, and Buyer agrees to indemnify, defend and hold harmless Seller, its affiliates, assignees, officers, directors, employees, agents and representatives from and against any liability, claim, loss, demand, damage, cost and expense (including attorneys' fees litigation costs) relating to any claim of injury or damage of any kind to any person or property asserted to be caused by, resulting from or attributable to any act or omission of Buyer, its employees or other representatives.**

## 10. FEDERAL CONTRACTS – SEGREGATION.

When the Buyer is the Federal government, including any department, agency or corporation thereof, and in the event that any portion of these terms and conditions conflicts with the solicitation or any amendments thereto, or with any applicable federal procurement law or regulation, such solicitation or amendment, law or regulation shall control. The invalidation of any portion of these terms and conditions due to conflict with such solicitation or amendment, law or regulation, or for any other reason, shall not affect the validity of any remaining portions of these terms and conditions.

## 11. NON-WAIVER.

Seller's or Buyer's waiver of any breach or failure to enforce any of these Terms at any time will not in any way affect, limit or waive such party's right thereafter to enforce strict compliance with every term and condition hereof, and any such waiver or failure will in no way affect either party's right to enforce any other provision of this contract.

## 12. ASSIGNMENT.

This contract, including any Order and these Terms, and any rights or obligations hereunder is not assignable or transferable by either party in whole or in part without the prior written consent of the other party. Any such purported assignment without such consent shall be void, except that Seller may assign this contract without consent of Buyer to an affiliated corporation or in connection with a sale or other transfer of the business or part or all of the assets, to which this contract relates.

## 13. AMENDMENT.

These Terms, and the Order, are intended as the final expression of the parties' agreement and the complete and exclusive statement of the terms and understanding. No statements, agreements or understandings, oral or written, shall vary or modify these Term, and neither party shall claim any amendment, modification or release from any provision hereof by reason of a course of performance, usage of trade, course of dealing or mutual agreements unless such agreement is stated in writing signed by both parties, and specifically states it is an amendment to these Terms. No modification or addition to these Terms will be effected by the acknowledgment or acceptance by Seller of any purchase order, acknowledgment, release or other form submitted by Buyer containing other or different terms or conditions unless stated on the face of Seller's confirmation, and any such other or different terms or conditions are hereby rejected by Seller.

These Terms may be amended by Seller from time to time by publishing the amended Terms on Seller's web site at this address: [wieland-metalservices.com](http://wieland-metalservices.com)

## 14. APPLICABLE LAW.

This order and the Terms shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to the state's conflict of law provisions.