

## TERMS OF PURCHASE

**Offer and Acceptance; Controlling Terms.** These Terms of Purchase, together with any purchase order provided by Custom Alloys, Inc. ("CAI") to any provider ("Seller") of any metal alloy, scrap, products, supplies, goods, and/or materials (collectively, "Goods"), constitute an offer to purchase by CAI and are not an acceptance of any offer or terms which may have been submitted by Seller. Seller may accept this offer to purchase and shall be bound to supply the applicable Goods in accordance with these terms and conditions either by execution of the acknowledgment copy of the order, or acceptable electronic transmission, delivery of the Goods to CAI or by any other statement, act or course of conduct which constitutes acceptance under applicable law. Upon acceptance, the applicable purchase order and these Terms of Purchase shall constitute the entire agreement ("Agreement") between CAI and Seller (except for any additional warranties given by Seller), superseding any and all previous or contemporaneous communications and negotiations. Unless specifically agreed to in writing by CAI, signed by a duly authorized representative of CAI, no additional or different term or condition (except additional warranties given by Seller) of any quotation, acknowledgement, invoice or other form supplied by Seller shall become part of this Agreement, notwithstanding CAI's failure to specifically object to such terms or conditions. IT IS AGREED THAT THESE TERMS OF PURCHASE SHALL GOVERN ALL PURCHASES BY CAI FROM SELLER.

**Condition.** It is a condition of this Agreement that Seller on its own behalf and on behalf of its subcontractors certifies that it and they have complied with all of the provisions of all applicable federal, state and local laws and of all rules, regulations and orders issued thereunder, in the manufacture or production and sale of the Goods specified herein. Under no circumstances shall CAI accept any Product that is radioactive or otherwise considered a hazardous substance by any federal, state or local law, rule or regulation.

**Prices.** Unless otherwise indicated in this Agreement, the price stated on the applicable purchase order ("Purchase Price") shall include any and all applicable sales, use, and/or excise taxes, and any other fees, expenses, and charges with respect to which CAI and Seller have agreed that CAI shall be responsible. The Purchase Price shall be considered a firm, fixed price. CAI shall not be responsible or liable for any amount in excess of the Purchase Price and shall be subject to no additional charges or expenses.

**Shipping.** If a shipping term is not specified in the applicable purchase order, shipping terms in the United States are delivered CAI's location, and shipping terms outside the United States are DDP (Delivered Duty Paid) CAI'S location (INCOTERMS 2010). All Goods must be shipped in accordance with the shipping instructions stated on the applicable purchase order or as otherwise specified by CAI, including without limitation, with respect to the required delivery date. Shipping charges shall be paid by Seller unless otherwise agreed by CAI and Seller in the applicable purchase order. Seller shall package the Goods in accordance with standard commercial practices. Each container shipped must be clearly marked to show the applicable purchase order number and contain a packing sheet.

**Delivery.** Time is and shall remain of the essence in the delivery of Goods ordered by CAI. Unless otherwise expressly stated in a purchase order, Goods must be received by CAI within thirty (30) days following the date of the applicable purchase order. Seller shall notify CAI immediately if at any time it appears that the required delivery date may not be met and Seller shall specify (a) the reasons therefor, (b) the steps being taken to correct the problem, and (c) the new anticipated delivery schedule. CAI may, at its option, either accept the new delivery schedule or terminate the purchase order, or exercise any of its other remedies set forth herein. CAI's acceptance of late delivery shall not constitute a modification of this Agreement or a waiver of CAI's right to reject late deliveries.

**Inspection and Rejection.** All Goods are subject to inspection, testing and approval by CAI after delivery. Buyer may reject any Goods which are radioactive, hazardous, or do not conform to the Warranty provided herein. In the case of rejection, CAI may exercise any remedy set forth herein or otherwise available in equity or at law, in its sole discretion. Exercise of these remedies shall not be exclusive of any other remedies provided in equity or at law, or which are otherwise available to CAI.

**Warranty.** Seller expressly warrants that (i) the Goods to be delivered by Seller will conform to the description set forth in each applicable purchase order, including without limitation, the composition of the Goods set forth therein (and excluding foreign substances in any material), (ii) will be clean, merchantable, of good quality and workmanship and free from radioactivity, hazardous substances, and other defect as determined such by CAI, and (iii) the use of any of the Goods will not infringe on any third party rights, including without limitation, ownership or intellectual property right. Seller represents and warrants that in performing its obligations under any purchase order it will be in compliance with all applicable federal, state and local laws, rules and regulations. These warranties shall survive acceptance and payment, and inure to the benefit of CAI, its successors, assigns and customers.

**Remedies.** In the event of rejection, breach of any Seller's Warranty, non-delivery, partial delivery, or late delivery, CAI may at its option (i) cancel the applicable purchase order without liability therefor, (ii) require Seller to replace the Product, (iii) replace the Product in the open market after due notice and within a reasonable time and recover from Seller the difference between the market price of the Product at the time of replacement and the Purchase Price, and (iv) obtain any other remedy or relief provided by law including, without limitation, the right to a setoff against any amount Seller is due from CAI on any purchase order or otherwise. Deliveries in excess of those authorized by CAI shall be at Seller's risk of loss, may be returned to Seller or disposed of by CAI without incurring any liability to Seller and Seller shall pay CAI for all expenses (including, without limitation, transportation expenses) in connection with such deliveries.

**Indemnity.** Seller shall indemnify, defend, and hold harmless CAI and the consumers of the Goods from and against any and all claims, demands, causes of action, actions, liabilities, losses, damages and expenses, including attorneys' fees (including, without limitation actual, general and special damages for injuries or damage to any person or property) arising out of: (a) a breach of any term or condition of any purchase order by Seller, its employees, agents or representatives, (b) any breach of Seller's representations, warranties, or obligations hereunder, or (c) any wrongful act or omission of Seller, its employees, agents or representatives hereunder.

**Environmental.** Notwithstanding any other warranty or limitation of warranty herein, Seller represents and warrants that the material and Goods transferred, or to be transferred, by Seller to CAI pursuant to any purchase order or this Agreement: (a) is not and does not contain any "hazardous waste" (as that term is defined in any applicable federal and state law, and implementing regulations), (b) does not contain any "hazardous substance" (as that term is defined in any applicable federal and state law, and implementing regulations), and (c) does not contain any substances that would render the material unfit for its intended use. Seller shall indemnify, defend and hold harmless CAI, its officers, directors, employees, customers, agents and their representatives from and against any and all loss, liability, cost and expense (including, without limitation, statutory and common law liability, investigation and remediation costs, court costs, attorneys' and consultants' fees, personal injury and property damage) arising out of or relating to any breach by Seller of this representation and warranty. In addition, if the material and/or Goods are rejected by CAI because of a breach of this representation and warranty, CAI shall have no responsibility for or title to the rejected material. Seller shall have sole responsibility for, and shall ensure, proper management of the material to prevent any release or threat of release to the environment. Unless Seller makes other arrangements, Seller shall return all such rejected material to its point of origin at Seller's expense. If Seller refuses to remove the rejected material, CAI may return it to its point of origin at Seller's expense, or may otherwise manage the material and arrange for its disposal at Seller's expense. Seller agrees to assume any and all liability for such shipment or management, and any and all liability resulting from return or disposal of rejected.

**Events of Default.** Seller shall be deemed to be in default hereunder if it violates any of the terms this Agreement or of any purchase order, if it fails timely to perform any of its obligations, or if it performs or fails to perform any other act, whether pursuant to an agreement or otherwise, which gives CAI reasonable grounds to feel insecure with respect to Seller's future performance under a purchase order or this Agreement. Seller further shall be deemed to be in default hereunder upon the occurrence of any of the following events, or of any other comparable event:

insolvency of the Seller; Seller's filing of a voluntary petition in bankruptcy; the filing of any involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from the date of filing; the appointment of a receiver or trustee for Seller provided such appointment is not vacated within thirty (30) days from the date of such appointment; or the execution by Seller of an assignment for benefit of creditors. Upon default by Seller hereunder, CAI may terminate any or all outstanding purchase orders without liability, and exercise any rights and remedies as may be provided hereunder or by operation of applicable law.

**Confidentiality.** Seller agrees to treat as confidential, not to disclose and not to use for any purpose other than to fulfill CAI's purchase orders and to otherwise perform under this Agreement, all information regarding the fact that CAI is a customer of Seller, details of CAI's purchase orders and any other confidential or proprietary information of CAI including, without limitation, pricing. Seller's obligations under this paragraph shall survive the cancellation, termination or completion of any purchase order and this Agreement.

**Assignment.** Seller may not assign a purchase order or this Agreement or any of its rights or obligations hereunder or thereunder to any third party without CAI's prior written consent. For purposes of this provision, a merger, stock sale or other transfer by operation of law shall be deemed an "assignment" for which consent is required hereunder.

**Governing Law and Forum.** This Agreement will be interpreted according to the laws of the State of Illinois. Seller hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Illinois and of the United States of America located in Illinois for any proceedings relating to this Agreement (and agrees not to commence any proceeding relating thereto except in such courts). Seller hereby irrevocably and unconditionally waives any objection to the laying of venue, and agrees not to claim that any proceeding brought in any such court has been brought in an inconvenient forum.

**Severability.** In the event a provision of this Agreement is determined to be invalid, illegal or unenforceable, it will not affect the validity, legality or enforceability of any other provision of this Agreement and CAI and Seller agree that the remaining provisions will be deemed to be in full force and effect.

**Waiver.** CAI's failure to require Seller's performance of any obligations hereunder shall in no way affect its rights to require such performance at any time thereafter.