TERMS AND CONDITIONS OF SALE

1. SELLER'S TERMS AND CONDITIONS. All sales by Kloeckner Metals Corporation and its subsidiaries (collectively “Seller”) are subject to all of the terms and conditions contained herein and upon no other terms and conditions. Seller’s acceptance of Buyer’s order is expressly made conditional upon Buyer’s assent to all of Seller’s terms and Seller objects to any terms or conditions at variance with, different from or additional to the terms set forth herein, unless such terms are set forth in a writing signed by a corporate officer of Seller. Any amendment to or waiver, modification or deletion of, any of Seller’s terms shall be ineffective unless such amendment, waiver, modification or deletion is accepted in a writing signed by a corporate officer of Seller.

2. BUYER’S ACCEPTANCE OF SELLER’S TERMS. Buyer’s acceptance of Seller’s terms shall be conclusively presumed by: (a) Buyer’s submission of a credit application to Seller; (b) Buyer’s execution of any other document containing these terms and conditions of sale; or (c) Buyer’s acceptance of delivery of any products ordered from Seller.

3. PRICE. Price of all products shall be subject to change without prior notice and is firm on the date of this Sales Agreement. All prices proposed by Seller to Buyer are confidential information of Seller, and Buyer shall take all reasonable actions to keep such prices confidential. Disclosure of Seller’s prices to any third party for any reason whatsoever (other than as required by law or directly in connection with purchase of materials hereunder) is expressly prohibited.

4. TAXES. Unless otherwise indicated herein, Seller’s prices do not include any taxes due or payable on account of the transactions between Buyer and Seller, and all such taxes shall be paid by Buyer.

5. PAYMENT. Buyer agrees to pay for all materials purchased from Seller “Net Thirty Days.” If payment is not made when due, Buyer agrees to pay a service charge on the amount past due at the rate of 1 1/2% per month (18% per annum) or the maximum lawful rate, whichever is less.

6. SHIPPING AND RISK OF LOSS. All sales are made F.O.B. Point of Ship. In all cases, title shall pass upon delivery to the carrier at point of shipment and thereafter all risk of loss or damage shall be upon Buyer. All transportation, freight, insurance and other charges are for the account of Buyer. Any and all charges for transportation, freight, insurance or any other cost beyond Seller’s reasonable control. In the event of any such delay, the date for performance or delivery shall be extended for a period equal to the time lost by reason of such delay.

7. VARIATION IN GOODS. All products sold by Seller are subject to normal variations in weight, color, size, quantities, etc., as are standard in the trade.

8. STORAGE FEES. If Buyer postpones delivery for more than thirty (30) days, Buyer agrees to pay reasonable storage fees.

9. SHORTAGES AND/OR DEFECTIVE OR DAMAGED PRODUCTS. Any claim for alleged shortages and/or defects or damage to products received by Buyer from Seller must be reported by Buyer within five (5) days after receipt of the products. After such five (5) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall not have any right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such five (5) day period is a reasonable amount of time for such inspection and revocation.

10. CANCELLATION AND RETURNS. Buyer may not cancel any order for products or return any products without Seller’s express written consent. Any cancellation authorized by Seller shall be subject to a cancellation charge of at least fifteen percent (15%). The amount of credit, if any, allowed to Buyer for returned goods shall be at the sole discretion of Seller. Used goods, processed materials and manufactured materials may, under any circumstances, be returned to Seller in the event Buyer cancels any order without Seller’s written consent. Seller shall be entitled to recover any and all damages suffered by Seller.

11. EXCLUSION OF ALL EXPRESS AND IMPLIED WARRANTIES. ALL PRODUCTS BEING SOLD HEREUNDER ARE BEING SOLD “AS IS.” ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY TYPE AND KIND IN CONNECTION WITH THIS SALE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED IN ALL RESPECTS AND FOR ALL PURPOSES. SELLER IS NOT THE MANUFACTURER OF THE PRODUCTS BEING SOLD HEREUNDER AND SELLER HAS NOT MADE ANY INDEPENDENT CHEMICAL OR PHYSICAL ANALYSIS OR ANY OTHER TYPE OF TEST ON ANY OF THE PRODUCTS WHATSOEVER. SELLER DOES NOT MAKE ANY REPRESENTATION AND DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY WITH REGARD TO THE CONTENT, ACCURACY, MANNER OR PREPARATION OF ANY GENERAL TRADE INFORMATION, THIRD PARTY CERTIFICATION OR REPORT SUPPLIED WITH THE PRODUCTS.

12. BUYER’S ACKNOWLEDGMENT. Buyer acknowledges that Buyer must conduct its own testing to ascertain the specific chemical and physical characteristics of the products purchased hereunder. Buyer affirms specifically that Seller is not relying on any representation, warranty or promise from Seller in connection with this transaction.

13. PATENT INFRINGEMENT. If any material is furnished by Buyer’s specifications, Buyer shall defend, indemnify and hold harmless Seller and its officers, directors, employees, agents, shareholders, affiliated companies, and their respective successors and assigns from or against any and all claims, liabilities, fines, penalties, fees, costs and expenses, including, without limitation, reasonable attorney’s fees and other litigation costs, resulting from or in connection with any claim of patent infringement related to the processing of such material.

14. EXPORT LAWS. Seller’s obligations are subject to the export administration and control laws and regulations of the U.S. Government. Buyer shall comply fully with such laws and regulations in the export, resale or other disposition of the Products. By accepting this Sales Agreement, Buyer confirms that it is not a resident or citizen of any country embargoed by the U.S. Government.

15. IMPROPER USE AND INDEMNITY. Buyer shall indemnify, defend, and hold Seller harmless from any claim, liability, damages, lawsuits, and costs (including attorney’s fees), whether for personal injury, property damage or other, brought by or incurred by Buyer, Buyer’s employees, or any other person, arising out of improper selection, improper application or other misuse of products purchased by Buyer from Seller.

16. PATENT INFRINGEMENT. If any material is furnished by Buyer’s specifications, Buyer shall defend, indemnify and hold harmless Seller and its officers, directors, employees, agents, shareholders, affiliated companies, and their respective successors and assigns from or against any and all claims, liabilities, fines, penalties, fees, costs and expenses, including, without limitation, reasonable attorney’s fees and other litigation costs, resulting from or in connection with any claim of patent infringement related to the processing of such material.