

TERMS AND CONDITIONS OF PURCHASE

- 1. PROHIBITION AGAINST USE OF FUNDS FOR ILLEGAL PURPOSE.** Seller will not use any funds received from Kloeckner Metals Corporation or its subsidiaries (each of which shall be deemed a "Buyer") for any illegal or otherwise "improper" purpose. Seller will not pay any commission, fees or rebates to any employee of Buyer, nor favor any of Buyer's employees with gifts or entertainment of significant cost or value. If Buyer has reasonable cause to believe that Seller has violated these provisions, Seller agrees that Buyer or its representatives may, upon request, audit the records of Seller for the sole purpose of establishing Seller's compliance herewith.
- 2. SELLER'S ACCEPTANCE OF BUYER'S TERMS AND CONDITIONS.** Seller's acceptance of this order is expressly made conditional on Seller's assent to the terms and conditions set forth herein and upon no other terms and conditions. Buyer objects to any terms or conditions at variance with, different than or additional to the terms and conditions stated herein unless such terms and conditions are set forth in a writing signed by a corporate officer of Buyer. No amendment to, or waiver, modification or deletion of, any of the terms and conditions stated herein shall be deemed effective unless such amendment, waiver, modification or deletion shall have been accepted in a writing signed by a corporate officer of Buyer. Seller's assent to these terms and conditions shall be conclusively presumed from Seller's preparation or submission of submittals or samples to Buyer, the shipment or delivery of any goods, or the issuance of an invoice for any work or goods.
- 3. PRICES AND DISCOUNTS.** Unless otherwise agreed, prices shall remain fixed for the duration of Buyer's order. Seller warrants that the prices of the items covered by this order are not and shall not be in excess of Seller's lowest lawful prices for comparable quantities of similar items. If Buyer has reasonable cause to believe that Seller has violated this covenant, Seller agrees that Buyer or its representatives may, upon request, audit the records of Seller for the sole purpose of establishing Seller's compliance herewith. Any discount period provided herein shall begin either upon the date of delivery at destination, or the date of mailing of invoice, whichever is later.
- 4. PACKING AND SHIPMENT.** No charge will be allowed for packing or shipment unless stated on Buyer's order. Bills of lading must accompany each invoice. Orders not accompanied by packing lists will be conclusively presumed to be in the amount of Buyer's count and weight. All goods covered by this order shall be shipped "FOB destination." Risk of loss and title to all goods shall pass to Buyer only upon delivery to Buyer's specified destination. All transportation charges for goods must be prepaid and no charges for unauthorized transportation will be allowed.
- 5. CERTIFICATION.** When this order or the specifications referred to herein, requires documentation or certification, this requirement is a material requirement of this order and Seller's failure to provide such information prior to or at the time of delivery shall entitle Buyer to withhold payment until such documentation or certification is provided by Seller.
- 6. WARRANTIES/PROHIBITION AGAINST EXCLUSION OF WARRANTIES.** SELLER EXPRESSLY WARRANTS TO BUYER THAT ALL MATERIALS, WORK OR GOODS COVERED BY THIS ORDER WILL (a) CONFORM TO THE SPECIFICATIONS AND OTHER DESCRIPTIONS FURNISHED BY BUYER, (b) BE FREE FROM DEFECTS IN OR CLAIMS AGAINST GOOD TITLE THERETO, (c) BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP, (d) BE MERCHANTABLE IN ALL RESPECTS, AND (e) BE FIT FOR THE PARTICULAR PURPOSE FOR WHICH BUYER INTENDS TO USE SUCH GOODS. ANY ATTEMPT BY SELLER TO EXCLUDE, LIMIT, DISCLAIM OR RESTRICT ANY OF THE FOREGOING WARRANTIES, WHETHER CONTAINED IN SELLER'S ACKNOWLEDGMENT, INVOICE OR OTHERWISE, SHALL BE NULL, VOID AND UNENFORCEABLE AGAINST BUYER IN ALL RESPECTS. BUYER SHALL NOT BE DEEMED TO WAIVE ANY WARRANTY BY REASON OF RECEIPT, ACCEPTANCE OR PAYMENT. IF BUYER SHALL GIVE SELLER NOTICE OF ANY DEFECT OR NON-CONFORMITY WITHIN ONE YEAR FROM THE DATE OF DELIVERY, SELLER SHALL, AT NO COST TO BUYER, PROMPTLY FURNISH REPLACEMENT GOODS OR REFUND BUYER'S PURCHASE PRICE. ALL WARRANTIES SHALL RUN BOTH TO BUYER AND TO BUYER'S CUSTOMERS.
- 7. INSPECTION AND DEFECTIVE/NONCONFORMING GOODS.** All goods or work furnished by Seller shall be subject to inspection and verification of count, quality and conformity with Buyer's specifications. Buyer shall have the right to reject and return, at Seller's risk, any goods or work which fail to conform to Buyer's specifications. Alternatively, Buyer may, at Buyer's option, (a) correct or have corrected any such defect or nonconformity at Seller's expense; or (b) make an equitable adjustment to the price for such goods on account of the defect or nonconformity. Buyer's acknowledgment of receipt shall not release Seller from any liability for defects discovered after delivery. Buyer's payment to Seller shall not constitute acceptance.
- 8. DELIVERY.** Time is of the essence in connection with the delivery of any goods or work ordered by Buyer. Seller shall advise Buyer within ten (10) days of Seller's knowledge that any delivery may be delayed. In the case of delay, Buyer may consult with Seller as to possible rescheduling and alternative sources of supply, and Buyer may, at Buyer's option, (a) cancel any open order without incurring any liability to Seller; or (b) purchase similar merchandise on the open market in such quantities as Buyer deems necessary (but not exceeding the quantities set forth in Buyer's order) and Seller shall reimburse Buyer for any difference between the price paid by Buyer and the price set forth in Buyer's order.
- 9. COMPLIANCE WITH LAWS AND REGULATIONS.** Seller agrees that it will comply with all federal, state and local laws and regulations applicable to the production, sale, labeling and delivery of the goods and the performance of any work set forth herein. Seller shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin and shall not maintain any segregated facilities at Seller's facilities on the basis of race, creed, color, sex or national origin. Without limiting the generality of the foregoing, Seller certifies that the materials and work performed by Seller shall be in compliance with the requirements of the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1972, all as amended, and of the regulations issued pursuant thereto. Seller shall develop and maintain affirmative action programs to employ and advance minorities and minority business enterprises, handicapped workers, disabled veterans and veterans of the Vietnam era.
- 10. TAXES.** Except for any state or local sales, use or other taxes from which an exemption is available to Buyer for the purposes hereof, all prices payable by Buyer include all applicable federal, state and local taxes. Seller agrees to accept, apply and submit tax exemption certificates when supplied by Buyer, if acceptable, to the appropriate taxing authorities.
- 11. TERMINATION.** (a) Buyer shall have the right to terminate this order, at any time, without cause, for Buyer's convenience. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Buyer's instructions concerning the disposition of completed and partially completed items, work in progress and materials acquired pursuant to this order. In the event of a termination, without cause, Seller shall be reimbursed for the reasonable costs incurred by Seller prior to termination. (b) Buyer may terminate this order on ten (10) days written notice to Seller, if Seller: (i) fails to perform any of Seller's obligations under this order; or (ii) demonstrates an inability to perform this order in accordance with its terms; or (iii) becomes insolvent, makes a general assignment for the benefit of creditors or files a petition under any bankruptcy act or similar statute. Upon the termination of this order, Buyer may procure, upon such terms as Buyer shall deem appropriate, goods or services similar to the goods and services so described in this order and Seller shall be liable to Buyer for any excess costs incurred by Buyer.
- 12. SET OFF.** Buyer is authorized to apply any monies due Seller hereunder toward the payment of any sums which Seller or any company affiliated with Seller may now or hereafter owe to Buyer.
- 13. INDEMNITY.** Seller shall at all times indemnify, save and hold harmless Buyer, its directors, officers, employees, servants, agents, shareholders, and its affiliates (each an "Indemnified Party") from and against all legal actions, claims, judgments, loss, damages, costs, liabilities, charges or expenses, including, without limitation, reasonable attorney's fees, which an Indemnified Party may incur, be liable for, suffer or sustain on account of any damage, wrong, loss, death, or injury of any kind or nature whatsoever caused by or resulting from: (a) any act, breach, conduct, or omission of Seller related to or arising out of this transaction, including, without limitation, any alleged breach of warranty (whether express or implied); (b) any failure of the goods or work described herein to conform to any applicable specifications, descriptions or samples; (c) any defects in materials or workmanship; or (d) any claim or infringement of any patent in connection with the production of goods or performance of any work hereunder or the use of such goods. If this order includes performance of services or labor on Buyer's premises, Seller agrees to provide and maintain insurance coverage until such work is completed and accepted by Buyer and to furnish upon request certificates from its insurance carriers that it is covered by insurance adequate to provide workmen's compensation, general public liability and automobile public liability coverage with limits and with companies acceptable to Buyer.
- 14. SELLER'S EXCLUSIVE REMEDY/BUYER'S LIMIT OF LIABILITY.** SELLER'S SOLE AND EXCLUSIVE REMEDY AND BUYER'S ABSOLUTE LIMIT OF LIABILITY IN CONNECTION WITH ANY LAWSUIT, CLAIM OR CAUSE WHATSOEVER DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF THIS TRANSACTION WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY OF RECOVERY SHALL IN ALL CASES BE STRICTLY LIMITED TO THE CONTRACT PRICE FOR THE MATERIALS OR WORK ORDERED BY BUYER. SELLER ACKNOWLEDGES AND AGREES THAT THE FOREGOING EXCLUSIVE REMEDY SHALL BE SELLER'S SOLE REMEDY EVEN IF SUCH REMEDY FAILS IN ITS ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER. IN NO EVENT SHALL BUYER BE LIABLE FOR ANY PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO SELLER OR ANY THIRD PARTY.
- 15. ATTORNEY'S FEES.** In the event that Buyer must institute a lawsuit against Seller for any reason hereunder or if Buyer successfully defends any lawsuit instituted by Seller, then Buyer shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from Seller.
- 16. NON-WAIVER BY BUYER.** No waiver of any term, provision or other condition hereof by Buyer, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition.
- 17. SEVERABILITY.** If any term, covenant or condition herein, or the application thereof to any person or circumstance, shall be invalid or unenforceable, the remainder of these terms shall not be affected thereby, and all such terms, covenants or conditions shall be valid and shall be enforced to the fullest extent permitted by law.
- 18. GOVERNING LAW AND VENUE.** This order shall be governed in all respects by the laws of the State of Georgia and any and all actions commenced against Buyer with respect hereto shall be filed in the state or federal court in Fulton County, Georgia.
- 19. ENTIRE CONTRACT.** These terms and conditions constitute the entire understanding between the parties with respect to the terms governing the subject matter hereof and supersede all prior negotiations, discussions and preliminary agreements, if any. Except as set forth herein, neither party has relied upon any promise or representation made by the other or any third party as an inducement to enter into the subject transaction.