

GAUTIER STEEL LTD. - TERMS AND CONDITIONS OF PURCHASE

1. **GENERAL.** Seller agrees that these terms and conditions of purchase (the "Terms") are binding, and may not be added to, modified, superseded or otherwise altered (including by inconsistencies between Seller's terms of sale and the Terms) except by written instrument signed by an authorized representative of Buyer and delivered to Seller. The Terms shall operate as Seller's acceptance of Buyer's purchase order (which incorporates the Terms) (the "Order"), and Seller's acceptance is made expressly conditional on assent by the parties to the Terms, which Buyer and Seller agree shall constitute the sole, entire final agreement between Buyer and Seller in respect of the sale contemplated hereunder. The Terms supersede all previous or contemporaneous communications, transactions, and understandings, whether oral, or written, and shall also apply even if Buyer accepts the Seller's delivery unconditionally despite knowledge of terms and conditions of the Seller that conflict with or deviate from the Terms.
2. **DESCRIPTION OF PRODUCTS.** Seller agrees to sell and Buyer agrees to purchase, the product(s) (the "Products") described in the Order.
3. **PRICES.** Prices are agreed between Buyer and Seller in the Order. The price set forth therein is firm, and not subject to change without Buyer's express written consent. All international, federal, state and local excise, sales, use, value-added and similar taxes and tariffs, if applicable, are to be borne by Buyer only where required to be borne by Buyer as specified or required by law.
4. **TERMS OF PAYMENT.** Buyer shall pay the net invoiced amount within sixty (60) days from date of Seller's invoice. If Buyer pays the net invoiced amount within ten (10) days of the date of the Seller's invoice, a 1.5% discount shall be applied to the net invoiced amount.
5. **DELIVERY AND TRANSFER OF TITLE.** Seller is responsible, as a bailee, for loss of, and damage to, any property owned by Buyer and possessed by Seller contemplated under the Terms ("Buyer's Property"), including responsibility for loss and damage which occur despite Seller's exercise of reasonable care, but excluding normal wear and tear. Seller shall (i) properly house and maintain Buyer's Property on Seller's premises, and (ii) refrain from commingling Buyer's Property with the property of Seller or with that of any third party. Buyer's Property shall not be used by Seller for any purpose other than those described in the Terms. Seller authorizes Buyer (at Buyer's sole option) to file financing statements evidencing Seller as the debtor/bailee and Buyer as the secured party/bailor of Buyer's Property. Seller will indemnify and defend Buyer against claims or liens adverse to Buyer's ownership of Buyer's Property. Upon Buyer's request, Seller shall immediately deliver Buyer's Property to a carrier selected by Buyer, properly packed and marked in accordance with the requirements of the carrier and Buyer, at Buyer's option F.O.B. Carrier, Seller's facility or F.O.B. Buyer's facility, freight collect. Seller waives, to the extent permitted by law, any lien or other rights that Seller might otherwise have on any of Buyer's Property.
6. **SHIPPING.**
 - 6.1. If delivery dates for the Products are not specified in the Order, Seller shall procure materials and fabricate, assemble, and ship the Products as authorized in shipment releases or other written authorizations issued by Buyer. Deliveries will be made only in the quantities and on the dates specified by Buyer. Buyer may return over-shipments to Seller at Seller's risk and expense. Buyer may, from time to time, and with reasonable notice, change or temporarily suspend shipping schedules specified in the Order or shipment release/authorization]
 - 6.2. Seller shall pack and ship the Products in accordance with the requirements of Buyer and the carrier transporting such Products. Seller shall mark each package in accordance with Buyer's instructions and any additional instructions of the carrier. Seller will reimburse Buyer for costs incurred as a result of improper packing, marking, routing, or shipping.
 - 6.3. Seller shall not charge separately for packing, marking or shipping unless Buyer authorizes such charges in writing, in which case Seller shall add such charges to its invoice as a separate item and attach supporting data.
 - 6.4. Buyer may require shipment of the Products by a more expeditious method of transportation if Seller fails to meet shipping deadlines set forth in Order or shipping release. Seller shall bear the cost difference of such expedited transportation.
 - 6.5. Seller shall bear the risk of loss for any loss, damage or injury which results from, or occurs during shipment of the Products.
7. **ACCEPTANCE AND INSPECTION.** Receipt of the Products does not constitute acceptance. All of the Products are subject to Buyer's right of inspection and rejection. Any such inspection shall not relieve Seller of its obligations hereunder. Products that are rejected may be returned to Seller at Seller's expense, or retained and corrected at Buyer's election. Seller shall cooperate with Buyer in determining appropriate method(s) of correction. Seller shall reimburse Buyer for all expenses of correcting the non-conforming Products.
8. **EXPORT/IMPORT.** For each international shipment, Seller shall include a price invoice with the master packing slip and upon request shall furnish all other required export/import documents. Export credits and customs drawbacks shall belong to Buyer or its designee. Upon request, Seller shall furnish in satisfactory form all documents required to obtain export credits and customs drawbacks or to satisfy any other government requirement, including certificates that identify the country of origin of the materials used in the Products and the value added in each country.
9. **WARRANTY AND INDEMNITY.**
 - 9.1. Seller warrants, whether or not it is a merchant of the Products provided under the Terms, that all the Products supplied by it: (i) shall be of good quality and free from defects, latent and patent, in design, materials and workmanship; (ii) shall conform to all specifications, drawings and descriptions furnished, specified or adopted by Buyer; (iii) shall be merchantable and suitable and sufficient for their intended purpose; and (iv) shall be free of any lien or claim of any third party.
 - 9.2. Seller shall indemnify and hold Buyer harmless against all costs damages, losses, claims and expenses (including actual costs for attorneys, experts and consultants, settlement costs and judgments) occasioned by, resulting from, or arising out of any claim by a third party for death, personal injury, or property damage which results from: (i) any defect or alleged defect in the Products supplied by Seller; (ii) any noncompliance or alleged noncompliance by Seller with any of its representations, warranties or obligations under the Terms; or (iii) any negligence or fault or alleged negligence or fault of Seller in connection with the design or manufacture of the Products.
 - 9.3. Seller shall defend any suit brought against Buyer where such suit is based on a claim the Products directly infringe any patent, and Seller shall pay all damages finally awarded therein against Buyer.

10. PROPRIETARY RIGHTS.

10.1. Except as otherwise stated in the Terms, neither party transfers to the other party any patent, trade secret, trademark, copyright or other intellectual property right owned by such party ("Intellectual Property Right").

10.2. Seller grants to Buyer a nonexclusive, royalty free, irrevocable license of Seller's Intellectual Property Rights to: (i) use, sell, and modify the Products and incorporate the Products into other products for use or sale; and (ii) in the case where Seller is unable to perform or has breached the Terms, to make the Products or have the Products made by an alternate source. Buyer may share with third parties any drawings or other information provided by or through the Seller and related to the Products.

11. ENFORCEMENT OF TERMS; NO WAIVER. Any forbearance or failure of Buyer to enforce any provision of the Terms or to exercise any right arising from any default of Seller hereunder shall not affect Buyer's rights, and no such forbearance or failure shall be construed as a waiver of Buyer's rights to act or to enforce each and every such provision. Buyer's exercise of any right or remedy provided in the Terms shall be without prejudice to Buyer's right to exercise any other right or remedy provided by law or equity.

12. GOVERNING LAW AND DISPUTES.

12.1. The Terms and the rights and duties of Buyer and Seller shall be governed by the laws of the Commonwealth of Pennsylvania, USA. Any conflicting rights under the law where Seller is located are waived by Seller. The United Nations Convention on Contracts for the International Sale of Products shall not apply to any sale hereunder.

12.2. Any disputes between the parties shall be settled at Buyer's option either by (i) arbitration in Pittsburgh, Pennsylvania, in accordance with provisions of the regulations regarding conciliation and arbitration of the American Arbitration Association, by one or more arbitrators appointed in the means prescribed in the said regulations, or (ii) by a court of competent jurisdiction in Pittsburgh, Pennsylvania.

13. LIMITATION OF REMEDIES AND DAMAGES.

13.1. ***In no event shall Buyer be liable for special, incidental or consequential damages including but not limited to, loss of profits or revenue, loss of data, loss of use of the product, damage to associated equipment, rework, recall costs, downtime of plant or equipment, cost of substitute equipment or products or claims of Seller customers for such damages, whether as a result of breach of contract, an equitable claim, warranty, tort (including negligence) or otherwise.***

13.2. ***Notwithstanding anything herein to the contrary, the cumulative financial obligations of Buyer for any claim(s) of any kind, whether based upon breach of contract, warranty, tort (including negligence or otherwise), for any loss or damage arising out of, or resulting from the Terms, or from Buyer's performance or breach, or from any Product procured hereunder, shall in no event exceed the aggregate monies actually paid to Seller for the Product which gives rise to the claim(s).***

14. CONFIDENTIALITY. Seller shall keep the Terms and any Order contemplated hereunder, including the identity of Buyer,

confidential and will not disclose them to anyone, other than legal counsel, financial consultants and agents and representatives who need to know such information in connection with the transaction(s) contemplated hereby. Subject to the requirements of applicable law, neither Seller nor any of its respective agents or representatives, shall make any news releases or other public disclosure with respect to the transactions without the prior written consent of Buyer.

15. CONFLICT WITH APPLICABLE LAW: SEVERABILITY. A ruling by any court that one or more of the provisions contained in the Terms is invalid, illegal or unenforceable in any respect shall not affect any other provision of the Terms so long as the material substance of the transactions contemplated herein is not affected in any manner adverse to any party

16. ASSIGNMENT. Seller shall not assign the Terms or any right or interest herein without the prior written consent of Buyer. Any assignment in contravention of the foregoing shall be null and void.