

GAUTIER STEEL LTD. - TERMS AND CONDITIONS OF SALE

1. **GENERAL.** Buyer agrees that these terms and conditions of sale (the "Terms") are binding, and may not be added to, modified, superseded or otherwise altered (including by inconsistencies between Buyer's purchase order and the Terms) except by written instrument signed by an authorized representative of Seller and delivered to Buyer. The Terms shall operate as Seller's acceptance of Buyer's purchase order, but such acceptance is made expressly conditional on assent by Buyer 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.
2. **DESCRIPTION OF PRODUCTS.** Supplier agrees to sell and Buyer agrees to purchase, the product(s) (the "Products") described in the order acknowledgment (the "Order") into which the Terms are incorporated.
3. **PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES.** The Products are produced subject to (i) tolerances and variations in respect of dimension, weight, straightness, section, surface conditions, composition, mechanical properties, internal conditions and quality; (ii) deviations from such tolerances and variations consistent with practical testing and inspection methods and (iii) regular mill practices with respect to over and under shipments. Any representations, warranties or certifications by Seller shall be limited by the foregoing.
4. **PRICES AND TAXES.** Prices are agreed between Buyer and Seller in the Order. International, federal, state and local excise, sales, use, value-added and similar taxes and tariffs if applicable ("Taxes") are to be borne by Buyer unless Buyer provides Seller with a properly executed tax exemption certificate. Unless otherwise specified or required by law, all prices will be quoted and billed exclusive of Taxes which will be billed as separate, additional items on Seller's invoices.
5. **TERMS OF PAYMENT; LATE FEE.** Subject to prior approval and extension of credit by Seller, Buyer shall pay the net invoiced amount in United States currency within thirty (30) days from date of Seller's invoice. If Buyers 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 price of the Product only (and not on Taxes, surcharges, transportation or other costs). Any payments or part thereof remaining unpaid after thirty (30) days shall, in Seller's discretion, be charged a 1.5% per month late fee beginning the second month following delivery of shipment, not to exceed the maximum charge permitted by law. Seller reserves the right at any time to withdraw previously approved credit and in such event Buyer shall comply with any new payment terms established by Seller as a condition for delivery.
6. **DELIVERY AND TRANSFER OF TITLE.** Except as otherwise expressly approved in writing by Seller, all sales are FOB, Seller's manufacturing facilities. Seller's title and risk of loss pass to Buyer upon making delivery of the Products purchased hereunder to the carrier at Seller's manufacturing facilities, per the most current scheduled delivery date. All Products held by Seller at Buyer's request beyond the scheduled delivery date shall be at Buyer's risk of loss. All delivery times are approximate. Seller will endeavor to meet scheduled delivery dates but shall be excused from delays in delivery attributable in whole or in part to any cause beyond Seller's control including those set forth in Section 7. ***In no event will Seller be liable for any premium transportation, re-procurement, or other costs or losses incurred by Buyer for any reason, including, without limitation, as a result of Seller's failure to deliver product in accordance with indicated delivery schedules.***
7. **FORCE MAJEURE.** Seller shall be excused from performance, and have no liability from any such non-performance, where such non-performance is caused by any event beyond Seller's control, including but not limited to, acts of government, war, civil disturbances, terrorism, material or manufacturing unavailability, labor difficulties or disputes, failure of or delay in delivery by Seller's suppliers or carriers, commercial impracticability (irrespective of foreseeability at time of contracting), shortages of energy, raw materials, labor, or equipment, inadequate yield of product despite Seller's reasonable efforts, accident, fire, flood, storm or other Acts of God.
8. **ORDER CHANGES.** The Buyer is not permitted to cancel or modify purchase orders after Seller has accepted such purchase order, unless otherwise agreed to in writing by Seller.
9. **PATENT INDEMNITY.**
 - 9.1. Seller shall defend any suit brought against Buyer where such suit is based on a claim the Products directly infringe any duly issued U.S. patent, and Seller shall pay all damages finally awarded therein against Buyer, provided that Seller (A) is promptly informed and furnished a copy of each communication or notice in connection with such suit and the alleged infringement, and (B) is given authority, information and assistance necessary to defend or settle such suit.
 - 9.2. Seller shall not be obligated to defend or be liable for damages for any infringement arising out of (i) compliance with specifications of Buyer and/or an industry standard; (ii) any additions to or modifications of the Products by Buyer or any third party; (iii) use of the Products in combination with other goods after delivery by Seller; or (iv) misuse of the Products.
 - 9.3. If any suit or proceeding is brought against Seller based on a claim that the Products constitute direct infringement of any duly issued U.S. patent, and such claim arises from any of the reasons in Section 9.2 (i) through (iv) then Buyer shall defend and indemnify Seller on the same basis as would otherwise have been required of Seller to Buyer hereunder.
 - 9.4. ***The foregoing obligations (i) extend only to Buyer or Seller, respectively, (ii) state the sole and exclusive liability and remedy of the parties for intellectual property infringement or misappropriation, and (iii) are in lieu of all warranties, express or implied in regard thereto.***
10. **LIMITED WARRANTY.**
 - 10.1. Seller warrants that the Products supplied by it (i) shall be materially free from defects, latent and patent, in design, materials and workmanship; and (ii) shall materially conform to all specifications, drawings and descriptions furnished, specified or adopted by Buyer.
 - 10.2. The liability of Seller for breaches of the above warranty is solely and exclusively limited to replacement, repair or credit at the purchase price at Seller's sole discretion.
 - 10.3. The foregoing warranty extends to Buyer only, and not to Buyer's customers. ***Except for any warranty expressly included herein, Seller makes no other warranties express or implied, including, but not limited, to any implied warranty of merchantability, fitness for a particular purpose or non-infringement, nor shall this warranty be enlarged by representations, course of dealings, usage, services, trade, samples or otherwise.***
11. **ENFORCEMENT OF TERMS; NO WAIVER.** Any forbearance or failure of Seller to enforce any provision of the Terms or to exercise any right arising from any default of Buyer hereunder shall not affect Seller's rights, and no such forbearance or failure shall be construed as a waiver of Seller's rights to act or to enforce each and every such provision. Seller's exercise of any right or remedy

provided in the Terms shall be without prejudice to Seller'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 Buyer is located are waived by Buyer. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any sale hereunder.

12.2. Any disputes between the parties shall be settled at Seller'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 Seller 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 Buyer's 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 Seller 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 Seller's performance or breach, or from any Product furnished 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. Subject to the requirements of applicable law, Buyer shall keep the Terms and any Order contemplated hereunder, including the identity of Seller, 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.

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