

## TERMS AND CONDITIONS OF PURCHASE

**1. ACCEPTANCE/ENTIRE AGREEMENT.** This writing is an offer by SIVYER STEEL CORP. ("Buyer") to buy the goods and/or services described on the face hereof and any specifications and data submitted to Seller herewith ("Products") from the seller to which this offer is addressed ("Seller"), subject to the terms and conditions set forth on the face and reverse sides hereof. This is not an acceptance of any offer by Seller to sell; and, except for any additional warranties given by Seller, Buyer hereby objects to any additional or different terms contained on any of Seller's quotation, acknowledgment, invoice or other forms, or in any other correspondence or communication from Seller. This offer expires 30 days from its date or upon prior written notification thereof to Seller, unless goods conforming hereto are subsequently shipped by Seller and accepted by Buyer. The terms of this offer, when accepted by Seller explicitly, by shipment of conforming goods or otherwise, shall constitute the entire agreement between the parties on the subject hereof, superseding all prior communications and negotiations. Such terms may not be modified except by a writing signed by both parties and specifically referring to this order.

**2. PRICES.** All prices are firm for the term of this Agreement, and no additional charges will be allowed unless specifically provided for on the face hereof. Notwithstanding the prices set forth herein, Seller agrees that if Seller sells the Products or similar products in like quantities to any third parties at a price less than the set forth herein, Seller shall make the same price available to Buyer. All time periods of determining payment due dates and availability of discounts commence with Buyer's receipt of the items or receipt of an invoice, whichever is later. Quantities listed in this order are estimates and may be revised by Buyer upon notice.

**3. PACKING AND SHIPPING.** All Products shall be suitably packed, conspicuously marked with Buyer's purchase order number (and bar code, if applicable), and shipped in accordance with shipping instructions specified herein and otherwise in accordance with the requirements of common carriers so as to obtain the lowest transportation cost. No charge shall be made to Buyer for packaging, boxing or cartage unless separately itemized on the face hereof. Any chemicals or other hazardous Products shall be packed and shipped in accordance with governmental and industry standards and accompanied by current MSDS's. Buyer shall not be liable for, and Seller shall indemnify Buyer against, any loss or damages resulting from the release of any such Products into the environment. Buyer shall have the right to route all shipments. If shipment is delayed, Buyer may, in addition to its other remedies, insist on air freight or other expedited delivery and charge Seller for any additional charges. Additional expenses, charges or claims incurred as a result of deviation from specified route, non compliance with other shipping instructions or improper description of the goods in shipping documents shall be Seller's responsibility.

**4. DELIVERY.** Unless otherwise specified on the face hereof, delivery shall be F.O.B. Seller's place of shipment. Seller shall deliver the Products within the time, which is of the essence, in the quantities, at the prices and in accordance with the other terms specified on the face hereof or in any document attached hereto or referred to herein. Seller shall promptly notify Buyer of any anticipated delay in delivery. Seller shall not unreasonably anticipate delivery by purchasing materials or manufacturing quantities in excess of what is reasonably required to meet Buyer's delivery schedule. Products received in advance of Buyer's delivery schedule may, at Buyer's option, be returned at Seller's expense or be accepted and payment withheld until the scheduled delivery date.

**5. INSPECTION.** Buyer shall have access to Seller's plant at all reasonable times to inspect any Products and/or work-in-process for production of such Products. Notwithstanding prior inspections, all items are subject to final inspection and approval at Buyer's plant or other place designated by Buyer, regardless of the date of payment. Buyer's inspection before, during or after manufacture and delivery shall not constitute a waiver of a subsequent rejection of any such goods by reason of undiscovered or latent defects.

**6. WARRANTIES.** In addition to its standard warranty and/or service guaranty, Seller warrants that all goods supplied hereunder shall be free and clear of all liens and encumbrances, good and merchantable title thereto being in the Seller, and that any goods and services supplied hereunder shall (i) be free from any defects in design, material or workmanship and be of good and merchantable quality; (ii) conform to the designs, specifications, drawings, descriptions and samples approved by Buyer, and be fit for the known purposes for which purchased hereunder; and (iii) comply and have been produced, processed and delivered in conformity with all applicable federal, state or other laws, administrative regulations and orders. The foregoing warranties shall survive inspection, delivery and payment and shall run in favor of Buyer, its successors and assigns and its customers, whether direct or indirect.

**7. REMEDIES.** If Seller breaches the foregoing warranties, or fails to perform or comply with any provision of this Agreement, Seller is liable to Buyer for all damages arising therefrom. Buyer expressly retains all its rights and remedies provided by law in the event of such breach. Without limiting the foregoing, Buyer may at its option (i) reject any non-conforming goods or services and require Seller to repair, rework or replace the same at Seller's risk and expense (including round trip transportation); (ii) repair or rework the non-complying goods or services and charge or recover the reasonable cost thereof against Seller; or, (iii) procure substitute goods or services from other sources and charge or recover the actual costs thereof against Seller.

**8. INDEMNITY.** Except for Products ordered in accordance with Buyer's design, Seller warrants that the sale or use of Products furnished hereunder will not infringe or contribute to infringement of any patent, copyright, trade secrets, trade name, trademark or any proprietary right of another in the United States or elsewhere, or subject Buyer or its customers (direct or indirect) to royalties in the United States or elsewhere, and Seller shall indemnify Buyer, its successors and assigns and its customers whether direct or indirect, against any and all losses, damages and expenses (including attorneys' fees and other costs of defending any infringement action) which they, or any of them, may sustain or incur as a result of an alleged breach of this warranty. If any Product or the use thereof is held to constitute infringement of any intellectual property right and the use thereof is enjoined, Seller shall, at its expense, either procure for Buyer, its dealers and customers, the right to continue using said Product or replace said Product with a substantially equal, but non-infringing product, acceptable to Buyer; or, if further use of the Product is not possible, Seller will accept the return of any unsold Product and refund to Buyer the purchase price and transportation costs therefor. Seller also shall hold harmless and indemnify Buyer, its successors and assigns and its customers whether direct or indirect, against any and all losses, damages and expenses (including attorneys' fees and other costs of defending any action) which they, or any of them, may sustain or incur as a result of any claim of negligence, breach of warranty or strict liability in tort in connection with the Products, except such as may be caused solely by the negligence of Buyer, its successors and assigns, and/or its customers.

**9. CHANGES; CANCELLATION.** Buyer may change or cancel any portion of this order without charge upon sixty calendar days' notice in the case of custom goods or services (i.e., supplied solely in accordance with Buyer's specifications) and thirty calendar days' notice for all other goods and services. Buyer shall also have the right to change or cancel any portion of this order without charge at any time for cause, including but not limited to breach or anticipatory breach of any of Seller's obligations hereunder, or Seller's insolvency, bankruptcy or dissolution. If Seller changes or cancels any portion of this order without notice or cause, Buyer shall reimburse Seller for its resulting direct costs (not consequential damages or lost profits) which are not otherwise recoverable through the sale of any changed or canceled goods or services and the exercise of other mitigation measures and which are claimed by Seller with supporting documentation within thirty calendar days of such change or cancellation.

**10. TOOLS, DRAWINGS, SPECIFICATIONS AND TECHNICAL INFORMATION.** Any and all tools, dies, jigs, fixtures, forms, patterns, molds and the like (together referred to as "tools"), drawings, specifications, photographs and other engineering and manufacturing information supplied by Buyer or its customer shall remain the property of Buyer or its customer and shall be identified as Seller's property, be treated as confidential information and be returned to Buyer or its customer upon completion of this order or upon demand. Seller shall insure, and bear the risk of loss of, any such property of Buyer in Seller's possession for performance of the contract. Tool charges convey ownership of the tools to Buyer. Seller shall use any tools for which Buyer has an obligation to pay, and any other tools or other property of Buyer, exclusively for Buyer, shall maintain the same at Seller's expense (unless otherwise provided on the face hereof) and shall deliver such tools (and other property of Buyer) to Buyer on demand. Buyer or its customer also shall have the right to remove or repossess the above-described tools and other property at any time upon termination or cancellation, with or without cause, of any order or part thereof, free of any claims by Seller for lien or otherwise against the same. Any information which Seller may disclose to Buyer with respect to the design, manufacture or sale or use of the Products shall be deemed to have been disclosed as part of the consideration for this order and Seller shall not assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use thereof.

**11. CONFIDENTIAL INFORMATION.** In addition to the confidentiality obligation imposed in paragraph 13 hereof, Seller also shall keep confidential, and not disclose to any third party, information specific to any of Buyer's purchases or proposed purchases (including without limitation the quantities, delivery dates and Buyer's intended use of any such purchases) without Buyer's express written consent. Seller shall in no event use (for sample, display or otherwise) Products manufactured specifically for Buyer or information related to such Products without Buyer's express written consent. At Buyer's request, Seller agrees to enter a separate confidentiality agreement applicable to Seller's sale of Products to Buyer, which agreement shall include restrictions comparable to those provided therein.

**12. GOVERNMENTAL COMPLIANCE; IMPORTS.** Seller hereby certifies that all Products furnished hereunder shall have been produced in compliance with all applicable Federal, state and local laws and regulations, including (i) the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the Administrator of the Wage and Hour Division issued under Section 14 thereof, (ii) the provisions of Executive Order 11246, as amended, relating to equal employment opportunity, (iii) the provisions of the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Rehabilitation Act of 1973 and the Americans with Disabilities Act, and all rules, regulations and orders issued thereunder. Any goods which are imported into the United States shall be duly marked and accompanied by certificates of origin. To the extent such goods are eligible for duty drawback, Buyer shall have all rights to apply for the same and Seller shall cooperate in providing necessary documents.

**13. MISCELLANEOUS.** Seller may not assign or delegate its rights or obligations hereunder without the prior written consent of Buyer. Unless separately provided for on the face hereof, any taxes, duties or other assessments on the purchase, sale, transportation, delivery or use of the Products shall be borne by Seller. Any waiver of any term hereunder shall be in writing signed by an authorized employee of Buyer, and such waiver shall not operate as a waiver of any other obligation or instance. Any items referred to in this order shall be deemed incorporated herein by such reference. Notices hereunder shall be given by certified mail and deemed given when sent to the last business address provided by the other party. This agreement shall be governed by and construed in accordance with the terms of the internal laws of the state of Buyer's principal corporate offices (and not by the CISG) and any disputes arising hereunder shall be heard exclusively in the state and federal courts sitting in such state, to whose jurisdiction and venue Seller hereby irrevocably submits.