

# WESTERN BRANCH METALS, LC

## TERMS AND CONDITIONS OF SALE

1. Any order received by Western Branch Metals, LC, hereinafter referred to as Seller, shall be construed as a written acceptance of Seller's offer to sell and be filled in accordance with the terms and conditions of sale set forth herein. No other terms and conditions shall apply unless specifically accepted by Seller in writing.
2. Each order shall be subject to, and Seller shall be excused from any prohibition, failure, interruption or delay in manufacture or delivery which may be occasioned by sabotage, fire, flood, explosion, labor dispute, strike, work stoppage, riot, insurrection, war, act of God, *priorities granted by, at the request of, or for the benefit of raw materials or supplies*, or any other cause beyond Seller's control. In the event of any such prohibition, failure, interruption or delay, Seller may, at its option, extend the delivery time or cancel the order, in whole or in part. DAMAGES FOR BREACH OR DELAY ARE EXPRESSLY LIMITED TO THE REPAIR OR REPLACEMENT OF MATERIALS, AT THE SELLER'S SOLE OPTION, AND IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, OR FOR CLAIMS FOR LABOR OR OTHER COSTS RESULTING FROM FAILURE OF OR DEFECT IN MATERIAL OR DELAY IN DELIVERY.
3. Seller intends to comply with all Federal, State or local laws and regulations applicable to the performance by Seller of each order, provided, however, that any failure of Seller to so comply shall be a defense to or excuse Buyer from, performance by Buyer of any order.
4. Seller will, at its sole option, repair or render credit any material which if properly selected stored and used by the Buyer, shall prove defective within one year from the date of shipment. No claim shall be allowed by any party other than the Buyer, and no assignment of any claim by Buyer to a third party shall be effective unless approved in writing by Seller. In no event shall Seller's liability for defective material exceed the purchase price thereof. *Specifically, and without limitation, any labor costs, nor shall Seller be liable for any loss or damage resulting from the use of the material. It is stipulated that all materials, and any losses or damages incurred therefrom, are commercial.* EXCEPT AS SPECIFICALLY SET FORTH IN THIS PARAGRAPH, PROVISION TO THE CONTRARY, SELLER NEITHER MAKES, NOR ASSUMES ANY LIABILITY UNDER, ANY WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, AND NO STATEMENT, WARRANTY, REPRESENTATION OR ASSURANCE OF ANY REPRESENTATIVE OR AGENT OF SELLER WHICH IS NOT SPECIFICALLY SET FORTH IN THIS PARAGRAPH SHALL BE BINDING UPON SELLER.
5. All prices and extras, and all freight or transportation rates, are subject to change, without notice, to reflect Seller's prices and extras, and applicable freight or transportation rates in effect as of the date of shipment. Unless otherwise agreed, freight will be charged from the point of shipment by Seller.
6. Failure by Buyer to make any payment due hereunder, or on request to give proper shipping instructions, or to accept delivery at times stated, or to comply with all terms of any contract between Buyer and Seller shall give Seller, in addition to all other available remedies, the right at its option to deduct any undelivered quantities of material from the total quantity of material to be furnished whether under this or any other contract between Buyer and Seller retains title to all material as security until payment for same has been received.
7. Any excise, levies or taxes which Seller is required to pay or collect, under any existing or future law or regulation (domestic or foreign) upon or with respect to the sale, purchase, delivery, storage, processing, use consumption or transportation of any of the material covered hereby shall be in the responsibility of the Buyer and Buyer agrees to pay the amount thereof to Seller upon request.
8. The purchase price shall be due and payable in full, delivery shall occur, and risk of loss shall pass to Buyer upon Seller's delivery of the material to a carrier or freight forwarder at the point of shipment. Transportation shall be at Buyer's sole risk and expense, and any claim for loss or damage in transit shall be against the carrier only.
9. An order cannot be modified or canceled by Buyer without the written consent of Seller, and in no event shall any order be modified or canceled for any portion thereof already delivered by Seller to the carrier or freight forwarder, except upon terms, satisfactory to Seller, which shall protect and indemnify Seller against all loss.
10. Seller may, at any time or times, suspend performance of any order and/or require payment in cash, security or other adequate assurances satisfactory to Seller when, in Seller's sole opinion, the financial condition of Buyer or any reasonable grounds for insecurity exist.
11. Buyer hereby indemnifies Seller against any liability whatsoever for patent, trademark or trade name infringement in any way arising out of the preparation or manufacture of any material in accordance with Buyer's specifications.
12. The terms and conditions contained herein constitute the entire contract between Seller and Buyer, and supersede any prior understandings and agreement between the parties relating to the subject matter of this purchase. No modification hereof shall be of any force and effect unless in writing and signed by the party claimed to be bound thereby, and no modification shall be effected by an acknowledgment or acceptance by Seller of a purchase order from Buyer containing any different or additional terms and conditions, which terms and conditions, to the extent inconsistent, shall be deemed superseded by the terms or conditions set forth herein and in the other documents delivered by Seller to Buyer. A waiver of any of the terms or conditions hereof shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed. If any provision of these terms and conditions, or the application of such provision to any person or entity, shall be deemed by a court of competent jurisdiction to be invalid or unconscionable, the remainder of such terms and conditions, and the application of such provisions to other persons, entities or circumstances, shall remain in full force and effect.
13. This agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. It is stipulated by the Seller and Buyer that this agreement was negotiated, executed and performed in Suffolk, Virginia and that venue and personal jurisdiction over the parties shall exist only in Suffolk, Virginia.