

American Alloy Manufacturing Agreement Terms and Conditions

These Manufacturing Agreement Terms and Conditions ("Terms and Conditions") shall apply to all purchases of goods, labor, services, or combinations thereof made by Buyer from any of the affiliated companies and businesses of American Alloy, LLC. (collectively "Seller") and are incorporated into the Agreement between Buyer and Seller.

1. Acceptance. These Terms and Conditions and the Sales Order Confirmation are the only terms which govern the sale of the Goods by Seller to Buyer and such terms comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its Purchase Order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. **ANY SELLER TERMS AND CONDITIONS CONTAINED IN A PROPOSAL, QUOTATION, ACKNOWLEDGEMENT, PURCHASE ORDER, OR INVOICE SHALL NOT CONSTITUTE A PART OF THE CONTRACT OF SALE RESULTING AND ARE HEREBY REJECTED UNLESS SUCH TERMS AND CONDITIONS ARE SPECIFICALLY AGREED TO IN A WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER.**

2. Price. The prices and charges stated in the Sales Order Confirmation do not include any sale or other similar taxes that Seller is required to pay under applicable laws and regulations in respect of the Goods. In the event commodity prices change during the processing for fulfilling of an Order, Buyer shall be solely responsible for all such price increases and the prices set forth in the Sales Order Confirmation shall be adjusted upon written notice by Seller to Buyer.

3. Cancellation. In addition to any remedies that may be provided under these Terms and Conditions, Seller may terminate any Sales Order Confirmation with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under the Sales Order Confirmation and such failure continues for 10 days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Reasonable termination charges, computed by Seller, will be assessed in connection with such termination. For the avoidance of doubt, Seller's termination charges include, but are not limited to, applicable price for the Goods Seller has completed manufacturing prior to the effective termination date, work in progress, materials purchased, and applicable labor costs and restocking fees.

4. Disclaimer of Damages. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY TYPE OF INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR RESULT FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH DAMAGES SHALL INCLUDE BUT NOT BE LIMITED TO LOSS OF PROFITS OR REVENUES.**

IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR

THE GOODS SOLD PURSUANT TO ANY APPLICABLE SALES ORDER CONFIRMATION.

5. F.O.B. Title and Risk of Loss. Unless otherwise specified in writing by Buyer, title and risk of loss, or damage, to goods and services delivered hereunder shall pass to Buyer upon receipt by Buyer at Buyer's F.O.B. location or F.O.B. point as may be designated in the Purchase Order. Notwithstanding the foregoing, Buyer retains title to any scrap or other material supplied to Seller hereunder for toll services. Seller expressly agrees that it shall not grant any security interest to any party with respect to any scrap or other material supplied to Seller for toll services hereunder.

6. Force Majeure. Seller will not be liable for delays in filling this Order or failure in the performance of any of its obligations caused by accidents, labor disputes, shortages of labor, materials, fuel or power, pandemics, changes in law, acts of God, acts or omissions of Buyer, or any other reason beyond Seller's control.

7. Title and Risk of Loss. Seller shall take reasonable precautions in the application of standard commercial practice to prevent damage or loss prior to shipment. Title and risk of loss passes to Buyer upon delivery of the Goods and Buyer shall be solely responsible for maintaining any insurance against loss or damage in shipment. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Washington's Uniform Commercial Code.

8. Indemnification. Buyer will release, hold harmless, indemnify and defend Seller from any liability (including without limitation liability for negligence or strict liability) claims, losses, suits and costs resulting from the design of Goods supplied under the Sales Order Confirmation to the extent of Seller's negligence.

9. Inspection/Rejection. Buyer shall inspect the Goods within fifteen (15) days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in the Sales Order Acknowledgement; or (ii) product's label or packaging incorrectly identifies its contents. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at Spokane, Washington. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point. Buyer acknowledges and agrees that the remedies set forth in this section are Buyer's exclusive remedies for the delivery of Nonconforming Goods.

10. Insurance. Buyer shall maintain in effect, at Seller's expense, adequate insurance coverage protecting both Seller and Seller from any and all claims and liabilities for property damage, personal injury, death, and economic damage, to any person, that arises from the goods or their use or the performance of the services or any activities connected with the services. Buyer shall also maintain in effect, at Seller's expense, adequate employer's

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liability, and worker's compensation insurance. Upon Seller's request, Buyer shall cause Seller to be named as an additional insured under any or all of the policies and shall cause each insurer to agree not to cancel or materially modify the policies without giving Seller at least 30 days prior written notice and Buyer shall furnish to Seller policies evidencing compliance with the foregoing.

11. Invoice and Payment. Payment terms are Net 30 days, unless stated otherwise in the Sales Order Confirmation. Buyer agrees to pay amount shown on invoices within the 30-day period. Unpaid amounts beyond 60 days from invoice date shall be considered delinquent. Any payment not made when due shall be subject to interest to be paid by Buyer at the lesser of 1.5% per. If amounts remain unpaid exceeding 60 days from the invoice date, Seller may suspend performance with no penalty until the account is brought current. In addition to the late charge, Buyer agrees to pay all out-of-pocket collection expenses incurred by Seller (including any attorney fees and other costs) in any legal process collection fee requirement should Buyer fail to make timely payments or if Buyer breaches any of Buyer's other contractual obligations.

12. Relationship of Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Sales Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

13. Taxes. Buyer shall be responsible for all taxes assessed upon Buyer in connection with this transaction.

14. Waiver. Seller's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, right or privilege.

15. Warranty. Goods are warranted free from workmanship defect(s) for a period of 90 days from the date of invoice. Buyer agrees that Goods shall not be characterized as defective if operated within the intended parameters of application and design. Any electrical or physical alteration of Goods beyond original specification and without Seller's written certification agreeing to such alteration to in the Sales Order Confirmation shall cause the warranty to become null and void. For Turnkey assemblies, Seller offers a pass-through warranty on components based on the component manufacturer's warranty, for any defective components. Seller will repair or replace, free of charge, any defective Goods due to workmanship, or issue a credit for the sale price of the unit at Seller's sole discretion.

EXCEPT FOR THE WARRANTY SET FORTH HEREIN, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.

16. No Third-Party Beneficiaries. This agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal

or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms and Conditions.

17. Nondisclosure. In consideration of the disclosure of Proprietary and Confidential information by the parties to each other, both parties agree that the information relating to requirements, processes, specifications, schedules, materials, financial data and pricing exchanged between parties is hereby designated as Proprietary and Confidential whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Sales and may not be disclosed or copied unless authorized in advance by the other party in writing. Upon request, each party shall promptly return all Proprietary and Confidential materials received from the other party. Either party shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to the other party at the time of disclosure; or (c) rightfully obtained by the other on a non-confidential basis from a third party.

18. Severability. If any provision of these Terms and Conditions or any resulting Purchase Order are found by a court of competent jurisdiction to be prohibited or unenforceable, such provision shall be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of Seller in order to effect the provisions hereof.

19. Governing Law. The parties agree that the Purchase Order and these Terms and Conditions shall be governed by and construed in accordance with the laws of the state of Washington, without giving effect to any conflicts or choice of law provisions.

20. Disputes. Any suit, action or proceeding arising out of or relating to the Purchase Order shall be instituted in the appropriate state or federal court in Spokane, Washington and Seller irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Buyer and Seller hereby waive any venue or jurisdictional challenges, or defenses related to such jurisdiction and venue, unless both parties agree in writing that a lawsuit may be brought in another location or court. The substantially prevailing party in any such dispute shall be entitled to an award of its attorney fees and costs incurred.