



Russel Metals (USA)

1. Application of Terms and Conditions of Purchase

These terms and conditions of purchase ("**Terms**"), shall apply to any quote, purchase order, order acknowledgment, invoice or any other documents drawings, specifications or instructions to place an order ("**Order**", the Terms and Order together referred to as the "**Agreement**"), which is issued or accepted by either party for the purchase by Purchaser of Goods from Vendor, to the entire exclusion of all other terms and conditions. The Agreement represents the entire agreement between the Purchaser and Vendor with respect to the Goods. If there is a conflict or inconsistency between these Terms and any other part of an Order, these Terms shall prevail. Vendor's acceptance of an Order or its shipment of Goods shall constitute acceptance by the Vendor of these Terms. No additional or differing terms communicated by Vendor shall be binding and Purchaser shall not be deemed to accept any such other terms for failure to object to them in any communication received from Vendor. Any quote or order acknowledgement or other document sent by Vendor shall be for its own internal purposes and shall not constitute part of the agreement between the parties.

2. Standard of Performance

Vendor shall manufacture and provide the Goods (a) safely, efficiently, diligently and carefully in a good and workmanlike manner exercising the level of skill, care and diligence expected of a reputable and experienced manufacturer or party specializing in the provision of goods similar to the Goods, (b) in strict conformance with the relevant Order and any specification, drawing or other description supplied or advised by Purchaser to Vendor, and (c) in accordance with all applicable laws (including the United States Foreign Corruption Practices Act and the Canadian Corruption of Foreign Public Officials Act), ordinances, rules, regulations, code of ethics, permits and any export, import or other applicable license. Vendor shall furnish all skills, labour, supervision, equipment, materials and supplies required to provide the Goods to Purchaser.

3. Title, Delivery and Inspection

3.1 *Title and Delivery.* Unless otherwise specified in the Order, the Goods shall be delivered duty paid (DDP) to Purchaser's location. Title, ownership and risk of loss or damage to the Goods shall pass to Purchaser upon their delivery to Purchaser's warehouse. The Goods shall be delivered and completed at the location(s) specified on the Order by the delivery date, specified in the Order. Time is of the essence with respect to delivery of the Goods. All Goods shall be shipped and packed in a manner to provide adequate protection of the Goods while in transit.

3.2 *Inspection.* The Goods provided hereunder shall at all times be subject to Purchaser's inspection. Purchaser's inspection or failure to inspect, the Goods or the deliverables related thereto shall not relieve Vendor of any obligations under an Order. No informal acceptance or payment by Purchaser shall constitute a waiver of the foregoing.

4. Cancellation or Changes

Vendor shall not, without Purchaser's prior written authorization, alter, substitute, add or remove any of the Goods or the timing for their delivery and completion as specified in an Order. Vendor is not entitled to payment for any changes to the Goods or the supply of other goods unless specifically agreed to by Purchaser prior to such change being made. Purchaser may request that Vendor alter, substitute or add or remove any of the Goods.

5. Price, Payment and Taxes

5.1 *Purchase Price.* The purchase price ("**Price**") for the Goods shall be specified in the Order and shall be the sole compensation to the Vendor for the Goods. Unless otherwise specified in the Order, the Price is to be paid in US dollars. Vendor represents and warrants that the Price specified for the Goods in an Order do not exceed Vendor's current rates and prices for goods and services of the same or substantially similar quantity and quality to any other purchaser of its goods or services. Purchaser shall pay all undisputed amounts specified in each such invoice within such period as agreed to in the relevant Order. Each invoice shall reference the Order by number, and specify Vendor's tax identification number or any sales tax registration number if applicable. No amounts shall be considered due and owing by Purchaser if subject to a bona fide dispute. The parties agree to work

together in good faith to resolve any such bona fide dispute. Purchaser shall have no obligation to make payment to Vendor until Goods have been delivered in accordance with these Terms and the relevant Order.

5.2 *Taxes and Duties.* The Price owing to Vendor is inclusive of all custom duties, charges, taxes and all other costs and expenses in connection with the performance of an Order. Vendor shall obtain any available refunds or remission of duty paid by Vendor which shall be to the credit of Purchaser. Vendor is exclusively liable for, and shall pay before delinquency, all custom duties, charges, taxes and other amounts owing for the Goods and indemnify Purchaser from all claims and liabilities arising from Vendor's failure to do so.

5.3 *Property Interest.* Purchaser shall acquire a property interest and title to the Goods provided by Vendor on the earlier of delivery of the Goods, or upon Purchaser making payment for the Goods.

5.4 *Books, Records and Audit.* Vendor shall keep books, accounts, records and documentation ("**Records**") for the purpose of verifying the proper performance by Vendor of its obligations. Purchaser may audit all such Records for the purpose of verifying the proper performance by Vendor. Vendor shall keep such Records, and Purchaser's audit rights shall exist for thirty six (36) months from the last day of the calendar year in which the Goods are delivered.

6. Liens and Set Off

6.1 *Liens.* All Goods shall be free and clear of liens and other encumbrances. Vendor shall promptly pay all debts incurred by Vendor for labour, services, equipment, materials and supplies used in the performance of an Order. Vendor shall forthwith remove any lien which may be placed against any Goods or Purchaser's property. Vendor shall not be entitled to receive payment from Purchaser at any time any lien or encumbrance is registered against any Goods or Purchaser's property. If any lien or encumbrance is registered, Purchaser may take steps to remove or satisfy such lien or encumbrance and Vendor shall immediately reimburse Purchaser for all costs incurred by Purchaser (including legal fees on a solicitor, client basis) removing or satisfying such lien or encumbrance.

6.2 *Set Off.* Purchaser may withhold any sum due to Vendor under an Order and apply such sum against Vendor's obligations to third parties connected with an Order or as a set off against Vendor's indebtedness to Purchaser either under this Order or under any other agreement between the parties.

7. Warranty

Vendor warrants to Purchaser that any Goods provided shall (a) be in accordance with Vendor's standard of performance specified in Section 2; (b) not constitute or induce an infringement of any third party intellectual property rights; (c) be new and of the best available design, material, quality and workmanship; (d) be free from defects and deficiencies whether in design, materials, workmanship or otherwise; and (e) be in strict compliance with the relevant Order. In addition to the other remedies available to Purchaser as set out in Section 9, Vendor shall promptly repair, replace and correct, at its sole cost, any Goods that do not conform to the foregoing requirements.

8. Indemnity and Liability

VENDOR SHALL BE LIABLE FOR AND INDEMNIFY AND HOLD HARMLESS PURCHASER, ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND CONTRACTORS (COLLECTIVELY, THE "**PURCHASER INDEMNIFIED PARTIES**") FROM AND AGAINST ALL ACTIONS, INJURY, CLAIMS, LIABILITIES, LOSS, DAMAGES, DEMANDS, PENALTIES, FINES, EXPENSES (INCLUDING LEGAL EXPENSES), COSTS (INCLUDING COSTS TO INVESTIGATE, REPAIR AND REPLACE DEFECTIVE GOODS), OBLIGATIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE WHATSOEVER, THAT MAY BE ASSERTED OR BROUGHT AGAINST, OR SUFFERED OR INCURRED BY, THE PURCHASER INDEMNIFIED PARTIES FOR OR IN RESPECT OF, ARISING OUT OF OR IN CONNECTION WITH (I) THE GOODS PROVIDED BY VENDOR; (II) THE NEGLIGENCE OF, OR ANY ACTION OR OMISSION OF, VENDOR; OR (III) BREACH OF THIS AGREEMENT BY VENDOR.

9. Remedies

If any Goods are not provided in accordance with, or Vendor fails to comply with, any of the provisions of the Agreement, Purchaser may avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by Purchaser: (a) terminate any Order or the provision of any of the Goods; (b) reject all or some of the Goods or the related deliverables; (c) provide Vendor the opportunity at Vendor's expense either to remedy any deficiency in the Goods or provide any other necessary goods; (d) refuse to accept any further Goods without liability to Vendor; (e) take any action at Vendor's expense to make the Goods comply with these Terms or the Order; (f) claim such damages as may have been sustained by Purchaser in consequence of Vendor's breach of these Terms or an Order; (g) backcharge Vendor for any reasonable costs or expenses incurred by Purchaser related thereto; or (h) any other remedy available to Purchaser at law.

10. Confidentiality

Vendor shall maintain in confidence all proprietary information provided by Purchaser, including these Terms and any Order. Vendor shall not disclose any such confidential information to any third party nor use such information for any purpose other than the performance of an Order, without the prior written consent of Purchaser, except as required by law.

11. Termination

11.1 Purchaser may, at any time, terminate an Order upon reasonable advance written notice to Vendor whereupon Purchaser shall be relieved of all further obligations under an Order except for the payment of the balance outstanding for the Goods satisfactorily delivered as of the effective date of termination and any reasonable and documented out-of-pocket costs incurred by Vendor in connection with the Goods prior to termination of an Order (provided Purchaser shall not be responsible for the costs of any Goods which are ordinarily resalable), which shall be Vendor's sole relief in the event of such termination. The termination of an Order shall be without prejudice to the rights and remedies of the parties accrued prior to termination.

11.2 If Purchaser terminates an Order because Vendor breached any of its obligations under the Agreement or became insolvent, bankrupt, made an assignment to creditors or a similar event occurred, Vendor shall, promptly upon receipt of notice from Purchaser, reimburse Purchaser for any and all resulting costs and expenses. Upon termination Purchaser may remove from Vendor's possession all Goods, for which Purchaser has paid or is obligated to pay to the date of termination, (whether fabricated or not) without hindrance by Vendor or anyone claiming through Vendor.

12. Governing Law

The Agreement shall be governed by and construed in accordance with the laws of the State in which the Order is delivered and the federal laws of the United States applicable therein. The parties irrevocably submit to the exclusive jurisdiction of courts of such State.

13. Force Majeure

Neither party shall be responsible to the other for non-performance or delay in performance occasioned by acts of God, acts of civil or military authority, disruption of transportation, strikes, lockouts, trade actions, embargoes or such other events beyond the reasonable control of the party affected. In the event any such act of force majeure occurs and continues for five days, Purchaser may cancel its Order without any further obligation or liability.

14. Defined Terms

In these Terms the following words shall have the following meanings:

"**Goods**" means those goods, products and/or services to be supplied and delivered by Vendor to Purchaser as described in the relevant Order.

"**Purchaser**" means Russel Metals (USA) Inc. and its divisions, subsidiaries and affiliates.

"**Vendor**" The person, company, firm, partnership or such other legal entity that accepts Purchaser's Order and includes Vendor's divisions, subsidiaries and affiliates.

15. General Provisions

Purchaser and Vendor are independent contractors. The Agreement constitutes the final written expression of all of the agreements between the parties with respect to the subject matter, and supersedes all understandings and negotiations concerning the matters specified herein. Each of the parties shall at the request of the other without cost or expense execute and deliver any further documents and do all acts and things as reasonably required to carry out the intent of the Agreement. No failure or delay by a party in exercising any right, power or privilege shall operate as a waiver thereof. If any provision or part of a provision of the Agreement shall be found to be invalid or illegal by reason of any determination made by a court of competent jurisdiction or any governmental authority having jurisdiction in the circumstances, such provision or part of such provision shall be severed from this contract to the extent of such invalidity or illegality and the validity, legality or enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby. The subsequent execution by Purchaser of any of Vendor's forms, receipts, invoices, terms of services, bill of lading etc. shall not amend or modify the terms of The Agreement. The Agreement shall not be assignable by Vendor without Purchaser's prior written consent. Vendor acknowledges that Purchaser is purchasing the Goods to distribute them to its customers and accordingly agrees that Purchaser may assign the rights hereunder including warranties and indemnities to, among others, its customers. The obligations of Vendor to Purchaser shall survive termination of this Order. The Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. All orders shall be conditional upon granting of export licenses or import permits which may be required. Vendor shall obtain at its own risk and expense any required export license and import permits and Vendor shall remain liable to accept and pay for material if licenses are not granted or are revoked. All sales shall be in accordance with Incoterms, 2010 edition, as modified by the Agreement.