



a division of Russel Metals Williams Bahcall

## 1. Application of Terms and Conditions of Sale

These terms and conditions of sale ("**Terms**") shall apply to any quote, purchase order, order acknowledgement, invoice and any other document used 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 sale by Vendor of Goods to Purchaser, 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. No additional or differing terms communicated by Purchaser shall be binding and Vendor shall not be deemed to accept any such other terms for failure to object to them in any communication received from Purchaser. Any purchase order or other document sent by Purchaser to Vendor shall be for its own internal purposes and shall not constitute part of the agreement between the parties.

## 2. Price and Payment

The purchase price ("**Price**") for the Goods shall be specified on the Order. Unless otherwise specified in the Order, the Price is to be paid in US dollars. The Price is payable without offset, back charge, retention, holdback or withholding of any kind. The Price is subject to adjustment to reflect Vendor's prices in effect at the time of shipping and is subject to change. All quotations are subject to change without notice and prior to delivery of Goods. All invoices are due 30 days after the date of Vendor's invoice, with an interest charge of 1.5% per month (18% per annum) applying on past due invoices. If Purchaser defaults on any payment when due or refuses to accept delivery or becomes insolvent, Vendor may at its option, without prejudice to other lawful remedies, defer deliveries or cancel the remainder of the Order under the Agreement. Goods held for Purchaser shall be at the risk and expense of Purchaser. If Purchaser's financial condition is or becomes unsatisfactory to Vendor, Vendor reserves the right to cancel or delay the Contract or shipment at any time prior to delivery of the Goods without further obligation or liability on Vendor's part.

## 3. Taxes

The Price is subject to all applicable customs duties, import duties, excise taxes, value added taxes, sales taxes and any other taxes, charges or levies levied by any governmental authority ("**Taxes**"). Vendor may add to the Price any applicable Taxes; however, Purchaser is responsible for payment of all taxes, duties and charges and Vendor's failure to charge or collect any Tax shall not relieve Purchaser of its obligation for payment of Taxes.

## 4. Title, Delivery and Inspection

4.1 *Title and Delivery.* Unless otherwise specified in the Order, the Goods shall be delivered free carrier (FCA) Vendor's location. Title, ownership and risk of loss or damage to the Goods shall pass to Purchaser immediately upon Vendor packaging the Goods unless otherwise specified as being on delivery. The date of delivery of Goods is an estimate based upon, among other things, availability and production schedules. Vendor shall use commercially reasonable efforts to deliver the Goods within the time agreed but shall in no circumstance be liable for any loss or damage, consequential or otherwise, caused directly or indirectly by any delay in delivery.

4.2 *Inspection.* Purchaser is obligated to inspect the Goods as promptly as practicable upon receipt thereof. Purchaser shall notify Vendor of any visible defects, quantity shortages or incorrect product shipments within 10 days of receipt. Failure to notify Vendor in writing of any visible defects in the Goods or of quantity shortages or incorrect shipments within such period shall be deemed a waiver of any rights to return Goods or to not pay for the Goods on the basis of visible defects, shortages or incorrect shipments. Without limiting the generality of the foregoing, unless Purchaser notifies Vendor, within 10 days of delivery by Vendor to Purchaser of an invoice relating to Goods, that Goods have not been received or that the Price is incorrect, the invoice shall, as against Purchaser, be deemed to be final as to Goods delivered and the Price.

## 5. Cancellation or Changes

Purchaser expressly acknowledges that all Orders are firm and no Order may be cancelled or altered, in whole or in part, by Purchaser unless Vendor agrees in writing. Vendor's interpretation of a verbal Order shall be final and binding in the absence of a written confirmation. For any Vendor-approved change, Vendor shall receive payment in full from Purchaser of all costs committed or incurred to the time of the change. Any changes to an Order requested by Purchaser may affect or delay the delivery and the Price of the Goods and must be agreed to by the parties in writing and signed by Vendor.

## 6. Acknowledgment and Limited Warranty

6.1 *Acknowledgment.* Purchaser expressly acknowledges that: (i) Vendor is solely a distributor of Goods and that Vendor does not manufacture the Goods nor does Vendor test the properties or integrity of the Goods; and (ii) it may consult with Vendor's employees for assistance, recommendations or instructions in selecting Goods, but that it is solely Purchaser's responsibility to determine the appropriate specifications and materials for its particular purpose.

6.2 *Warranty.* Vendor warrants the Goods solely in accordance with the manufacturer's warranty and only to the extent that the manufacturer honours any applicable warranty. Vendor also warrants that the Goods shall conform to the specifications supplied by Purchaser. Vendor is not responsible for normal wear and tear or damages caused by improper installation, maintenance, handling, transportation, storage or operation or by overloading, accident, neglect or harmful alterations or repairs made by Purchaser or any other person. THE WARRANTIES CONTAINED IN THIS SECTION 6.2, CONSTITUTE THE SOLE AND EXCLUSIVE WARRANTIES IN RESPECT OF THE GOODS AND THE PARTIES EXPRESSLY DISCLAIM ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS, GUARANTEES AND/OR ASSURANCES, WHETHER BASED IN TORT, CONTRACT, LAW EQUITY OR OTHERWISE OR ARISING FROM A COURSE OF CONDUCT, DEALING OR TRADE INCLUDING WITHOUT LIMITATION, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS AND/OR GUARANTEES AS TO MERCHANTABILITY, MERCHANTABLE QUALITY OR FITNESS FOR PURPOSE.

6.3 *Exclusive Remedy.* Purchaser's sole and exclusive remedy for a breach of the warranty set forth above shall be, at Vendor's option, to provide replacement Goods, to repair the Goods or to refund the Price to Purchaser for such Goods. All claims for breach of warranty must be made promptly following discovery by Purchaser or when a reasonably prudent Purchaser ought to have discovered the issue and in any event, within one year from the date the Goods were delivered.

## 7. Limitation of Liability

UNDER NO CIRCUMSTANCE SHALL VENDOR BE LIABLE TO PURCHASER OR ANY OTHER PERSON FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES INCLUDING, BUT NOT LIMITED TO, REWORK, INVESTIGATION AND REPAIR OR REPLACEMENT COST, LOSS OF PROFITS, INCREASED COSTS OF OPERATIONS, DIMINUATION IN VALUE OR LOSS OF GOODWILL ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION OR USE OF THE GOODS. IN THE EVENT VENDOR IS FOUND TO HAVE ANY LIABILITY FOR ANY REASON WHATSOEVER REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN TORT, CONTRACT, LAW, EQUITY OR OTHERWISE, THE MAXIMUM AGGREGATE LIABILITY OF VENDOR TO PURCHASER SHALL BE LIMITED IN ALL CIRCUMSTANCES TO THE PRICE PAID BY PURCHASER TO VENDOR FOR SUCH GOODS IN THE SPECIFIC TRANSACTION GIVING RISE TO THE DAMAGE OR LOSS. THE LIMITATION OF LIABILITY IS A CONDITION TO THE SALE OF THE GOODS BY VENDOR AT THE PRICE. THE PARTIES ACKNOWLEDGE THAT THE PRICE PAYABLE FOR THE GOODS WOULD HAVE BEEN SUBSTANTIALLY GREATER IN THE ABSENCE OF THIS LIMITATION OF LIABILITY WHICH SHALL APPLY IN ALL CIRCUMSTANCES.

## **8. Indemnity**

Purchaser shall be responsible for the installation, maintenance, operation and use of the Goods and for any injury, damage, destruction, loss, damages or expenses, caused by the Goods and Vendor shall have no liability in relation thereto. Purchaser shall defend, indemnify and hold harmless Vendor from and against any loss, damages, expenses, claims, repairs, suits, causes of action or judgments whether direct or indirect arising from or in connection with the installation, maintenance, operation and use of the Goods. Where Purchaser has supplied the design for all or any part of the Goods, Purchaser also agrees to defend, indemnify and hold harmless Vendor from any against and any loss, damages, expenses, claims, repairs, suits, causes of action or judgments whether direct or indirect arising from or in connection with any claim that the Goods or any part thereof infringe any patent, industrial design or any other intellectual property right.

## **9. Security and Set Off**

9.1 Vendor may require Purchaser to provide satisfactory security for the purchase of Goods. Should Purchaser fail to fulfill the terms of payment under the Agreement, Vendor may defer further delivery of Goods until such payments are received or may, at its option, cancel further shipment of Goods. Vendor retains the right to register a lien or encumbrance against the Goods or other property of the Purchaser in which the Goods are incorporated. In the event title to the Goods vests in Purchaser prior to payment of the Price, Vendor shall retain a security interest in the Goods to secure Purchaser's obligation. Purchaser hereby grants Vendor a Purchase Money Security Interest (as defined in applicable statute) in the Goods and all proceeds thereof. The Vendor shall have all remedies available under applicable personal property legislation to enforce as a secured party in the event of non-payment.

9.2 Vendor may withhold any sum due to Purchaser as a set off against Purchaser's indebtedness to Vendor either under the Agreement or under any other agreement between the parties.

## **10. Governing Law**

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

## **11. Force Majeure**

Vendor shall not be liable for any damage or penalty for delay in delivery or for the failure to give notice of delay when such delay is due to: unusually severe weather conditions; an act of god; an act of civil or military authority; war; riot; labour action; fire; explosion; shortage of a utility, facility, material or labor; delay in transportation; breakdown; accident; compliance with any other action taken to carry out the intent or purpose of any law or regulation; or any other causes which are beyond the reasonable control of Vendor. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

## **12. 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"** The person, company, firm, partnership or such other legal entity that places an order for Goods with Vendor and includes Purchaser's divisions, subsidiaries and affiliates, including Russel Metals Williams Bahcall Inc.

**"Vendor"** means Sanborn Tube Sales of Wisconsin, Inc. and its divisions, subsidiaries and affiliates.

## **13. General Provisions**

Vendor and Purchaser are independent contractors. The Agreement constitutes the final written expression of all of the agreements between the parties with respect to the subject matter herein, 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 Vendor of any Purchaser's field tickets, forms, receipts, invoices, terms of services, etc. shall not amend or modify the terms of the Agreement. The Agreement shall not be assignable by either party without the other's prior written consent. 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. Purchaser shall obtain at its own risk and expense any required export license and import permits and Purchaser 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 these Terms. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and the Sale of Goods Act.