

# Terms and Conditions of Sale

**EXCLUSIVE TERMS:** THE TERMS AND CONDITIONS OF SALE SET FORTH HEREIN (THE "TERMS") CONSTITUTE THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN SELLER AND BUYER PERTAINING TO THE PRODUCTS IDENTIFIED IN ANY ORDER BETWEEN SELLER AND BUYER. BUYER'S ORDER IS ACCEPTED ONLY ON THE FOLLOWING TERMS AND CONDITIONS, AND SELLER'S ACCEPTANCE OF ANY ORDER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THE TERMS CONTAINED HEREIN. SELLER HEREBY OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN ANY PURCHASE ORDER, ACKNOWLEDGEMENT, CONFIRMATION OR OTHER DOCUMENT PERTAINING TO THE SALE OF THE PRODUCTS HEREUNDER. No action by Seller shall be construed as acceptance of any additional or different terms in any purchase order, acknowledgement, confirmation or other document. Buyer shall be deemed to have accepted the Terms hereof by signing and returning a copy hereof or by other written indication of acceptance, by accepting any whole or partial shipment of goods from Seller or by making any whole or partial payment to Seller, or by any other means commonly signaling lawful agreement to be bound; *provided that*, the only effect thereof shall be to agree to the Terms hereof. Seller reserves the right to accept or reject all orders including but not limited to orders entered pursuant to an expired quotation.

SELLER PRESUMES THAT BUYER POSSESSES SUFFICIENT KNOWLEDGE REGARDING CONSTRUCTION CASTINGS OR BUYER HAS RETAINED PERSONNEL WITH SUFFICIENT KNOWLEDGE REGARDING CONSTRUCTION CASTINGS IN ORDER TO ORDER THE APPROPRIATE PRODUCTS TO MEET BUYER'S NEEDS AND SUBSEQUENTLY INSTALL SUCH PRODUCTS. SELLER PRESUMES THAT BUYER AND/OR BUYER'S PERSONNEL HAVE READ AND UNDERSTOOD SELLER'S APPLICABLE PRODUCT CATALOG.

**TAXES AND FEES:** Unless otherwise specified, prices do not include any manufacturer's, sales, use, excise or similar taxes, charges or duties ("taxes"), and the amount on any such taxes Seller is required to pay or collect will be invoiced to Buyer unless Buyer provides Seller with the appropriate evidence that Buyer is exempt from the payment of such taxes. Buyer shall also pay any collection fees and reasonable attorneys' fees incurred by Seller in enforcing these Terms or any order hereunder or defending against any claim for breach thereof.

**PRICES, QUOTATIONS:** All orders, whether or not submitted pursuant to a quotation, are subject to acceptance by Seller. Unless held open for a specific length of time on Seller's quotation, all prices are subject to change without notice and any unshipped balances on purchase orders will be invoiced to and paid by Buyer at prices in effect at the time of delivery. Unless otherwise specified, all quotations expire automatically 30 calendar days after the date issued, but any quotation may be amended or terminated by written notice from Seller to Buyer within that period.

**PAYMENT:** Payment terms are net cash 30 days from the date of invoice, or as specified on the Seller's current quotation. A service charge at the maximum rate allowed by law may be charged on overdue balances. If the financial condition of Buyer is or becomes unsatisfactory in the exclusive judgment of Seller, Seller may, by written notice, require full or partial cash payment in advance of performance or continuance of performance of Seller's obligations hereunder or cancel this order in whole or part. Seller may set off any amount due from Buyer, whether or not under any order pursuant to these Terms, against any amount that may become due to Buyer hereunder.

**RISK OF LOSS; SHIPMENT; TITLE:** Unless otherwise agreed to in writing, all shipments are F.O.B. Neenah Foundry Company, Neenah, Wisconsin. Risk of loss shall pass to Buyer at the moment of Seller's delivery of products to the carrier. Any delivery schedule quoted by Seller is its best estimate of lead-time as of the date of quotation and is subject to change by Seller. Delivery schedules are also contingent upon Buyer's prompt provision of all necessary, complete and correct specifications, information and data. Seller shall not be responsible for failure to meet any estimated delivery date. If Buyer requires special production service for unusual shipments, an additional charge shall be imposed, as agreed upon by the parties. Seller shall retain, and Buyer hereby grants to Seller, a security interest in any product sold by Seller hereunder until payment in full is received. Title to the products shall remain with Seller until Buyer remits the entire invoiced cash price for such products to Seller.

**INTELLECTUAL PROPERTY OWNERSHIP:** Seller shall retain all rights, title and interest in and to any and all patents, copyrights, trademarks and other intellectual property and proprietary rights and the goodwill associated thereby pertaining to the products sold per the Terms, as well as any associated developments Seller creates, realizes or reduces to practice during Seller's fulfillment of the Terms or any order hereunder. Except as otherwise particularly provided, no license, transfer or assignment of proprietary rights shall occur as a result of the Terms or any order.

**WARRANTY:** Seller warrants the products to be free from defects in materials and workmanship for a period of one year from the date of invoice. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. This warranty is valid only if the products have been subjected to normal use of the purpose for which the goods were designed; have not been subject to misuse, negligence or accident; and have not been modified, altered or repaired by persons other than the Seller or Seller's designees in any respect which in the judgment of Seller affects the condition or operation of the Products. Seller neither assumes nor authorizes any employee, distributor, representative, agent or other person to assume for Seller any other liability in connection with the sale or use of the products sold and there are no oral agreements or warranties collateral to or affecting these Terms or any order hereunder.

**EXCLUSIVE REMEDY:** Should Buyer wish to make a claim that any product does not conform to the foregoing warranty, Buyer must give prompt written notice to Seller. Such notice shall include a specific description of such non-conformity as well as the original job or invoice number for the affected product. Any such product or part shall be, if requested by Seller, returned freight prepaid to Seller's facility for inspection. If, upon evaluation of Buyer's claim, Seller deems the non-conformity to be in violation of the above warranty and Seller confirms that such claim was made within the warranty period, Seller will, at its option, repair or replace the non-conforming product or product part. Seller shall not be responsible for providing labor or the cost of labor for the removal of the defective part or parts and the installation of any replacement part or parts. Replacement parts shall be warranted for the balance of the original warranty.

**LIMITATION OF LIABILITY:** SELLER'S LIABILITY FOR ANY CLAIMS, DAMAGES, LOSSES OR LIABILITIES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OF AN ORDER MADE HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS SOLD PER SUCH ORDER. SELLER SHALL HAVE NO LIABILITY TO BUYER OR TO BUYER'S AFFILIATES, EMPLOYEES, REPRESENTATIVES, CUSTOMERS OR AGENTS OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, MACHINING OR LABOR COSTS, DAMAGE TO OTHER EQUIPMENT OR LIABILITY OR INJURY TO A THIRD PARTY, ARISING FROM THE SALE, USE OR INSTALLATION OF THE PRODUCTS, FROM THE PRODUCTS BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER PRODUCT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESS OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF ANY ADVICE OR REPRESENTATION THAT MAY HAVE BEEN RENDERED BY SELLER REGARDING THE GOODS OR SELLER'S PERFORMANCE HEREUNDER.

**INDEMNIFICATION:** Buyer agrees to indemnify and hold Seller and its successors, assigns and customers harmless against any claim, demand, action, proceeding, liability, loss, cost or expense, including reasonable attorneys' fees, arising in connection with any claim or cause of action alleging that: Seller's incorporation or use of a specification, design, modification or drawing provided to Seller by Buyer or Buyer's use of the products in combination with other products: (a) infringes or proximately infringes a proprietary or intellectual property right of a third party; or (b) causes or proximately causes personal injury (including death) or property damage.

**FORCE MAJEURE:** Seller shall not be liable for delays or failure in performance of an order or default in delivery arising out of, or resulting from, any accident, fire, quarantine restriction, act of terrorism or suspected terrorism, breakdown, strike, sabotage, riot, insurrection, war, delay, severe weather, interruption in or failure of sources or subcontractors to supply materials and equipment, labor or transportation problems, act of God, order, contract, priority, directive, requisition or request of any governmental entity, whether or not voluntarily assumed, or other cause and condition, whether of like or different nature, that is similarly beyond Seller's control.

**CLAIMS, CANCELLATION, CHANGES, SUSPENSION:** All claims for error in weight or quantity of castings or freight damage must be made by Buyer in writing within 10 days of receipt of the product with respect to which the claim is being made. Seller reserves the right to accept or reject any such claim in whole or in part. Cancellation, modification, suspension, or delay in shipment of Buyer's order will not be accepted on terms that will not fully indemnify and reimburse Seller against loss. Such indemnity shall include recovery of all direct costs incurred, including normal indirect and overhead charges and a normal profit. No change proposed by Buyer in any terms and conditions shall be valid or binding upon Seller unless approved in writing by Seller's duly authorized personnel. Seller will not approve any change proposed by Buyer once the work is in process, and in no event may Buyer cancel, modify, suspend or delay shipment if notice of such proposed change is not received before the time work goes in process. If the work is in process, Buyer shall be charged for any castings made as well as the costs of cores, molds, or equipment discarded because of such changes. Seller may cancel any order without penalty: (a) if Buyer fails to comply with the terms or conditions of these Terms or such order; (b) if Buyer files a voluntary petition under any federal or state bankruptcy or insolvency act, an involuntary bankruptcy petition is filed against Buyer, or Buyer is declared insolvent or has a receiver or trustee appointed for it or its assets, or if Buyer makes an assignment for the benefit of creditors or commences proceedings under any state insolvency or similar law; or (c) as otherwise provided herein.

**GOVERNING LAW; VENUE; JURISDICTION:** The validity, construction and enforcement of these Terms and any order hereunder shall be governed by the internal laws of the State of Wisconsin, without regard to its conflicts of laws principles. The 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply. Buyer hereby consents to the jurisdiction and venue of the courts located in the State of Wisconsin.

**CONFIDENTIALITY:** All information furnished by Seller or any other person acting on behalf of Seller and all information learned about Seller or its operations through performance of an order or the Terms is confidential, and Buyer shall not disclose any such information to any other person, or use such information for any purpose other than performing any order or the Terms without Seller's express written consent.

**MISCELLANEOUS:** If any provision of these Terms is held to be invalid or unenforceable, the remainder of these Terms shall not be affected thereby. No waiver or modification of any of the provisions hereof shall be binding upon Seller unless in writing and signed by an authorized representative of Seller. Buyer may not assign the Terms, any order or any interest therein without the written consent of Seller. Any such actual or attempted assignment without Seller's prior written consent shall be void and shall entitle Seller to cancel any applicable order upon written notice to the Buyer.