

## PURCHASE ORDER TERMS AND CONDITIONS

The Buyer by submitting its Purchase Order to McDonald Steel Corporation (herein the "Seller") for acceptance agrees to purchase and "Seller" agrees to sell the Goods described in the Purchase Order including in any document, drawing or schedule referred to or incorporated by reference in the Purchase Order on the following terms:

1. **Acceptance** . The Purchase Order shall be deemed to be accepted and shall be a binding contract for the sale of the Goods only upon acceptance by the Seller at its home office. The acceptance of the Purchase Order is subject to these Purchase Order Terms and Conditions. This writing constitutes the entire agreement between the parties relating to the sale of the Goods mentioned in Seller's quotation and the Purchase Order, and this writing prevails over any and all terms contained in Buyer's Purchase Order. Any additions, modifications, alterations, exceptions, or changes in the contract proposed by the Buyer are hereby rejected unless approved by Seller's authorized representative in writing. However, prices, quantities, dates and places of deliveries, and means of transportation are to be fixed by Buyer's Purchase Orders and Seller's Acknowledgments. No waiver, discharge, or modification of this writing shall be binding on the Seller unless in writing and signed by an authorized representative of Seller.

All orders resulting from the Purchase Order submitted by the Buyer are not binding on the Seller unless acknowledged and accepted by the Seller at its home office. Any quotations provided by the Seller to the Buyer automatically expire seven (7) days from the date of the quotation and, by notice, is subject to change within said seven (7) day period.

2. **Deliveries**. The risk of loss to all Goods sold under this agreement by Seller will pass to Buyer on Seller's delivery to a carrier at the point of shipment. It is expressly agreed that title to the Goods described in the Purchase Order and this Order Acknowledgment and forming the basis of a subsuming contract shall not pass from Seller until the purchase price for said Goods is paid in full. If Buyer takes possession of the Goods prior to receipt by Seller of payment in full, then Seller may require the Buyer to execute UCC financing statements and shall retain a security interest in the Goods until payment in full is received. All freight and delivery charges are the responsibility of the Buyer, unless otherwise agreed upon in writing.

3. **Delays**. Delivery dates indicated on quotations, purchase orders, or acknowledgements are estimates and are not guaranteed. All orders are accepted on the understanding that Seller is not to be held liable for any loss, or for any delay or failure in fabricating or delivering any of the Goods if such loss, failure or delay is due to a cause beyond the Seller's reasonable control including, but not limited to, an act of God, strike, lockout, boycott, or other similar labor troubles, war, riot, flood, governmental regulation, labor or material shortage, unavailability of Goods, equipment failure, or delays of Seller's suppliers or subcontractors in furnishing Goods or supplies.

4. **Prices/Payment Terms**. Seller reserves the right to revise its quotation if it does not receive the order for all items quoted, since

quantity frequently governs the price of Goods. No prices are guaranteed unless Seller expressly guarantees a price in writing. Any tax, excise fee or other charges or any increase thereof now or hereafter imposed by law upon the fabrication, storage, sale, transportation or delivery of the Goods shall be in addition to the price quoted and shall be paid by the Buyer. Unless otherwise stipulated by the Seller in the quotation or order acknowledgement, payment terms are net thirty (30) days. The Buyer agrees to pay a late charge of 1.5% per month on all payments that are overdue and will be liable for all costs of collection, including reasonable attorneys' fees in the event of a breach on the part of the Buyer.

If the financial condition of the Buyer at any time does not, in the sole judgment of the Seller, justify continuance of the work to be performed by the Seller or the terms of payment as agreed upon, Seller may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and receive reimbursement for its reasonable cancellation charges, and in the event of bankruptcy or insolvency of the Buyer or in the event any proceeding is brought against the Buyer, voluntary or involuntary, under the bankruptcy or any insolvency laws, the Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for such reasonable cancellation charges.

5. **Tooling**. Any equipment, including tools, molds, dies, jigs, fixtures and/or patterns which the Seller constructs or acquires for use exclusively in the production of Goods for the Buyer, shall be and remain Seller's property and shall at all times remain in Seller's possession and control. If for five (5) consecutive years, no orders are received from the Buyer for Goods to be made from such equipment, Seller may dispose of such equipment in Seller's sole discretion without liability on the part of Seller.

6. **Inspection of Goods**. Buyer shall have the right to inspect all shipments of Goods described in its Purchase Order and may reject any Goods which do not conform to its specifications. If Buyer fails to reject any Goods within a period of thirty (30) days after delivery, then Buyer shall be deemed to have accepted such Goods.

7. **Warranty**. The Seller warrants that all Goods delivered to satisfy the Purchase Order will conform to the specifications or the descriptions furnished or specified by Buyer and will consist of new materials, free and clear from all liens, claims or encumbrances, and produced and provided in compliance with all applicable laws related to such Goods. The warranty period is one year after delivery of the Goods unless otherwise provided by applicable law.

**SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS, OR THE USE OF THE GOODS, OR THE PERFORMANCE OF THE GOODS. SELLER SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER NEITHER ASSUMES, NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT, ANY WARRANTY NOT SPECIFICALLY PROVIDED HEREIN. SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THE SALE OF THE GOODS, A BREACH OF THE WARRANTY PROVIDED HEREIN,**

**OR ANY USE OR MISUSE OF THE GOODS. SELLER'S LIABILITY HEREUNDER SHALL, IN ANY AND ALL EVENTS, BE LIMITED TO THE AMOUNT OF THE PURCHASE PRICE OF THE GOODS AS IT APPEARS ON THE SELLER'S INVOICE.**

8. **Claims.** Goods must be examined by the Buyer immediately upon receipt to determine correctness of shipment as to quantity, size, length and condition. Buyer must not cut, fabricate or otherwise use any Goods without such examination. All claims must be in writing and must be submitted by Buyer to Seller within a period of one (1) year after delivery of the Goods. Failure to make a claim within such time period shall constitute a waiver by Buyer of any such claims.

9. **Limitation on Liability.** In no event shall the Seller be liable to the Buyer or anyone else for indirect, special or consequential damages of any kind or nature. The Seller's liability on any claim for loss or liability arising out of or connected with Seller's quotation, or the manufacture, sale, delivery, resale, or use of any Goods ordered as a result of Seller's quotation (including, but not limited to loss or liability arising from negligence or breach of contract) shall in no case exceed the purchase price of the Goods involved in the claim. The Seller shall have no liability for any liquidated damages whatsoever unless specifically agreed to by Seller in writing. Seller's liability hereunder shall be limited to the cost of replacing such defective Goods F.O.B. Seller's facility in McDonald, Ohio.

10. **Cancellation.** No purchase order may be terminated by Buyer and no Goods may be returned except by the mutual consent in writing of Buyer and Seller. Seller reserves the right to charge a cancellation fee in the event of cancellation.

11. **Governing Law; Consent to Jurisdiction; Severability.** This Agreement and all sales made hereunder shall be governed by, and construed in accordance with the laws of the State of Ohio, without reference to conflict of laws principles. Any legal suit, action, or proceeding against the Seller arising out of or relating to this Agreement or any such sales shall be instituted in federal or state court in the County of Trumbull, State of Ohio. Buyer hereby (i) irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the venue of any such suit, action, or proceeding brought in such a court and any claim that any such proceeding has been brought in an inconvenient forum, and (ii) irrevocably submits to the jurisdiction of any such court in any such suit, action, or proceeding. Buyer shall be liable for, and hereby agrees to defend, indemnify and hold Seller, its successors, assigns, employees and agents harmless from and against loss, damage or liability and any and all fees, costs and expenses (including, without limitation, reasonable attorneys' fees) suffered or incurred by Seller in conjunction with (a) Buyer's breach of the terms of this Agreement, (b) any sale or sales made hereunder, (c) the use, operation and/or disposition of any Goods supplied hereunder, or (d) any such suit, action, or proceeding. If any provision of these Terms and Conditions shall be held invalid, illegal, unenforceable, or inoperative, the balance of these Terms and Conditions shall remain in full force and effect as if such terms had not been included.

12. **Clerical Errors.** Seller reserves the right to correct clerical, arithmetical or stenographic errors or omissions in quotations, orders, acknowledgements, invoices or other documents.

13. **Notices.** Except as specifically provided otherwise in this Agreement, all notices, reports and other communications under this Agreement will be given in writing either by personal delivery, by mail, or by electronic transmission, addressed to the respective parties as specified in this Agreement. The date when any such communication is personally delivered or, if the communication is transmitted by mail or by electronic transmission, the date when it is received by the addressee, will be deemed to be the effective date of the communication. Each party will promptly advise the other of any change in its address.

14. **Merger and Integration; Amendments.** This Agreement, construed in conjunction with Seller's quotation, Buyer's Purchase Order, and this Order Acknowledgement and/or Invoice, as applicable, constitutes the entire agreement between the parties hereto. Any and all terms and conditions contained in any other writing previously exchanged between or executed by either or both parties, and any and all discussions between the parties regarding the transaction contemplated hereby, shall be deemed to be merged herein and superseded hereby in all respects. This Agreement may not be modified except in a written instrument executed by Seller and Buyer.

15. **Force Majeure.** Any delay or failure of Seller to perform its obligations shall be excused if Seller is unable to produce, sell or deliver the Goods as a result of an event or occurrence beyond the reasonable control of Seller and without its fault or negligence, including, but not limited to acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, explosions, natural disasters, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor or equipment; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by Seller to Buyer as soon as possible after the event or occurrence (but in no event more than ten (10) days thereafter).

16. **Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in this agreement shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.