



13191 Crossroads Pkwy N. Ste 375
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CUSTOM ALLOY SALES, INC. TERMS AND CONDITIONS OF SALE

The following Terms and Conditions of Sale (the “Terms and Conditions”) are applicable to the sale of all products, metal, alloys, personal property or services (collectively, the “Products”) by Custom Alloy Sales, Inc., a California corporation, or any of its divisions or affiliates (collectively, “Seller”), to any purchaser thereof (“Buyer”). These Terms and Conditions are subject to any additional terms contained in any agreement, statement of work, amendment, addendum or other writing signed by Seller, and each such writing is deemed to incorporate these Terms and Conditions as if fully set forth therein. All orders are subject to approval by Seller. Any amendment, waiver or other alteration of these Terms and Conditions by Seller shall be effective only if made in a writing signed by the Chief Executive Officer of Seller, and any attempt by Buyer to alter such terms and conditions with printed purchase orders, acknowledgments or similar documentation shall be void and of no force or effect. Except as otherwise agreed to in writing by Seller, any conflicting or additional terms and conditions of sale are expressly rejected by Seller.

1. ENTIRE AGREEMENT; ACCEPTANCE OF TERMS AND CONDITIONS

These Terms and Conditions, along with any agreement, statement of work, amendment, addendum or other writing signed by Seller, constitute a complete and exclusive statement of the agreement (“Agreement”) between Seller and Buyer with respect to, and shall exclusively govern, the sale of all Products by Seller to Buyer in connection with or as contemplated by Seller’s written or oral proposals, quotations and sales to Buyer (any such item being a “Seller’s Proposal”) and/or Buyer’s written or oral purchase orders or similar form to Seller (any such item being a “Purchase Order”), and shall continue in effect until terminated in writing by Seller. In the event of a conflict between the terms and conditions contained in Seller’s Proposal or final order acknowledgement and those contained in these Terms and Conditions, the terms contained in Seller’s Proposal or final order acknowledgement shall control. Notwithstanding any different or additional terms or conditions contained in Buyer’s purchase order or other communication to Seller related to the Products, Seller accepts Buyer’s order only on the condition that Buyer expressly accepts and assents to these Terms and Conditions. Buyer’s order shall not be binding upon Seller unless and until such order is accepted by Seller in writing. In the absence of Buyer’s acceptance hereof, Seller’s commencement of performance or Seller’s acknowledgement of Buyer’s Purchase Order shall not be construed as Seller’s acceptance of any of Buyer’s terms. Buyer’s acceptance of any Products shall be deemed to be acceptance of all of these Terms and Conditions. Seller hereby objects to any additional, contradictory or different terms contained in any initial or subsequent Purchase Order from Buyer pertaining to the Products, including, but not limited to, any indemnification or compliance warranty provisions. Any confirmation by Buyer that states different or additional terms shall operate as an acceptance of these Terms and Conditions, but Seller hereby objects to and rejects such different or additional terms and any such different or additional terms shall be deemed to be material alterations and notice of objection to them is hereby given. Any notice by Buyer objecting to these Terms and Conditions must be in writing separate from any Purchase Order. Seller’s failure to object specifically to provisions contained in any Purchase Order shall not be deemed a waiver of the provisions contained in these Terms and Conditions.

Buyer’s acceptance of these Terms and Conditions may be expressed either by (i) written acceptance, (ii) by failure to object in writing to the Terms and Conditions within five (5) days of receipt thereof, or (iii) Buyer’s acceptance of the Products.

2. WARRANTIES

Seller warrants that the Products will conform to Seller’s specifications, as in effect at the time of shipment for a period of ten (10) days from the date of shipment. Seller’s sole obligations under this warranty shall be at its option to repair or replace any Products or part thereof which proves, in Seller’s discretion, to be other



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than as warranted or, at Seller's option, to refund the purchase price of the non-conforming product(s), less any restocking fee, applicable shipping and handling costs and two percent (2%) of the purchase price of the non-conforming Product(s); provided that written notice of the alleged non-conformity shall have been given by Buyer, within five (5) days after discovery thereof, to Seller prior to ten (10) days from the date of shipment to Buyer. After the ten (10) day warranty period, Seller shall have no obligations to Buyer under this warranty. This warranty does not extend to any Products or parts thereof which have been installed, operated, maintained, repaired or altered improperly or which have been the subject of misuse, accident or neglect; nor does the warranty apply to normal wear and tear resulting from use of the Products.

EXCEPT AS SET FORTH IN THIS SECTION, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS. SELLER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY OF THE PRODUCTS OR THE FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE OR USE OF BUYER AS WELL AS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARISING BY ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. SELLER FURTHER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE CONFORMANCE OF THE PRODUCTS WITH ANY REQUIREMENTS OR SPECIFICATIONS PROVIDED BY BUYER, UNLESS THE CONFORMANCE WITH SUCH REQUIREMENTS OR SPECIFICATIONS HAS BEEN SPECIFICALLY AGREED TO BY SELLER IN WRITING.

No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty concerning the Products not expressly included herein. Any cause of action for breach of the foregoing warranty shall be brought within one (1) year from the earlier of: (i) the date the alleged breach was discovered; (ii) the date the alleged breach should have been discovered; or (iii) thirty (30) days from the date of shipment. BUYER'S SOLE REMEDIES IN THE EVENT OF A BREACH OF THE FOREGOING WARRANTIES ARE, AT SELLER'S OPTION, THE REPAIR OR REPLACEMENT OF THE NON-CONFORMING PRODUCT(S) BY SELLER UPON RETURN OF THE PRODUCT(S), TRANSPORTATION CHARGES PREPAID TO SELLER OR A REFUND OF THE PURCHASE PRICE OF THE NON-CONFORMING PRODUCT(S), LESS ANY RESTOCKING FEE, APPLICABLE SHIPPING AND HANDLING COSTS AND TWO PERCENT (2%) OF THE PURCHASE PRICE OF THE NON-CONFORMING PRODUCT(S). SELLER SHALL ASSESS A PRO-RATA CHARGE TO BUYER FOR USE OF THE PRODUCT(S) PRIOR TO ITS RETURN.

3. SHIPMENT; QUANTITIES; SHORTAGES

With respect to each shipment of Products, Buyer shall, unless otherwise agreed, give Seller three (3) business days' advance notice, which notice shall include date of delivery and shipping instructions. Seller shall not be required to deliver in any month more than the monthly quantity specified in the Agreement, or if no monthly quantity is specified, more than the pro-rata amount of the maximum quantity specified, nor shall Seller be bound to tender delivery of any quantities for which Buyer has not given three (3) business days' advance notice. If Buyer fails to accept delivery of the stipulated or minimum pro-rata quantity in any month, or fails to give such notice, Seller may, at its option, in addition to its other rights and remedies, cancel such deliveries or parts thereof. All Products shipped under this Agreement shall be subject to Seller's usual tolerances and variations as to quantity. Unless Seller receives written notification of variances in quantity within twenty (20) days of the invoice date, the invoiced quantity shall be conclusive. Upon due tender of the Products to the carrier at the shipping point all risk of loss or damage and other incident of ownership pass to Buyer. However, Seller shall retain a security interest in the Products until purchase price is paid. All deliveries are subject to weight at shipping point which shall govern.



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4. DELIVERY; RISK OF LOSS

Unless otherwise specified, Products are shipped F.O.B. delivered. Title to and risk of loss shall pass to Buyer upon delivery of Products to carrier. Choice of carrier and shipping method and route shall be at the election of Seller. Seller shall have the right to deliver all Products covered hereby at one time or in partial shipments from time to time, within the agreed time for delivery. Delivery dates are approximate and Seller shall not be liable for damages or costs which arise in connection with the delivery of Products after the date stated on any Seller's Proposal, Purchase Order or other document. Delivery dates are further dependent upon the prompt receipt by Seller of all information required by Seller to proceed with work immediately.

5. ACCEPTANCE OF PRODUCTS

Upon receipt of Products, Buyer shall confirm the accuracy of all shipments, as to the identity, quantity and quality of the Products and shall immediately inspect and/or test the Products. Such inspection or testing shall be completed promptly and in no event later than five (5) days after Buyer receives the Products. The Products shall be deemed accepted by Buyer and Buyer shall waive any and all claims of non-conformity with respect to the Products or their shipment or delivery, unless Buyer provides Seller, within five (5) days after Buyer receives the Products, a written notice specifying all defects or discrepancies in the quality or quantity of Products. Buyer shall permit Seller to inspect any damaged or otherwise nonconforming Products.

6. CANCELLATION

Once an order is accepted by Seller, it may not be cancelled or changed by Buyer, nor shall Buyer be entitled to delay shipment or performance, except with the written consent and upon terms and conditions approved by Seller in writing. If Seller consents to the cancellation or change of an order for Products pursuant to the foregoing sentence, Buyer shall pay to Seller within thirty (30) days of such cancellation, all costs and expenses incurred by Seller in connection with Buyer's order (including without limitation, any restocking fee and reasonable cancellation charges) of an amount not less than five percent (5%) of the cancelled order.

7. PURCHASE PRICE; APPLICABLE TAXES; DRAWBACKS

Unless otherwise specified, the price of Products shall be shipped hereunder F.O.B. delivered and shall be an amount equal to Seller's price on the date of shipment, plus applicable Federal, State and local transactional costs and expenses, including, but not limited to, freight, taxes, duties, tariffs (including, but not limited to, duties or tariffs on primary aluminum products, including any Value Added Products such as primary aluminum billet, primary aluminum foundry, primary aluminum slab, primary aluminum purity and primary aluminum wire rod) or other additional costs imposed by reason of this sale.

The price of Products sold for export does not include import duty, if any, and Seller reserves the right to claim duty drawback. Buyer agrees to assist in Seller's efforts to obtain such drawback and to furnish Seller with all necessary documents and, if Products are transferred for export, to require exporter to furnish proof of such exportation.

8. PAYMENT; LATE CHARGE; OFFSET; COLLECTION COSTS

For purpose of payment, each shipment and invoice therefore shall be a separate sale. Unless otherwise stated, payment is due and payable no later than net thirty (30) days from date of invoice ("Due Date"). All payments shall be made in U.S. dollars, unless otherwise agreed. If any of the purchase price is not paid in full when due, Buyer shall pay a late charge on the amount unpaid for each day from the Due Date until paid in full at the lower of (i) a rate of five percent above WSJ Prime Rate and (ii) the maximum lawful rate allowed under permitted applicable law. The "WSJ Prime Rate" means the rate of interest published in the Wall Street Journal (Eastern Edition) under the designation "Money Rates" and described as the "U.S. Prime Rate," provided that if such rate so published is shown as a range of



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rates, Seller shall use the highest rate in such range as the WSJ Prime Rate, provided, further, that if such rate is no longer published or available, Seller shall choose a comparable substitute rate based upon a national index, selected by Seller in its reasonable discretion. Late charges shall be payable immediately upon demand. Buyer shall also pay Seller's cost of collection (including reasonable attorneys' fees). Payments received may be applied by Seller, in its sole discretion, against any obligation owed by Buyer to Seller. Seller may refuse or delay shipments if Buyer fails to promptly pay any payments due Seller.

9. DEMAND OF ADEQUATE ASSURANCE

If Buyer's failure to make payment or otherwise perform its obligations hereunder is reasonably anticipated, Seller may demand adequate assurance, satisfactory to Seller, of the due performance of this Agreement by Buyer and withhold shipment or delivery of the undelivered Products. Unless Buyer gives Seller such assurance within forty-eight (48) hours of Seller's demand, Seller may, without prejudice to any other remedies it may have, require full or partial payment in advance of delivery, or cancel the portion of this Agreement which relates to the undelivered Products, and all accounts payable by Buyer to Seller for the Products delivered under this Agreement shall, upon Seller's declaration, become immediately due and payable in cash in full.

10. BUYER'S SOLVENCY; PURCHASE MONEY SECURITY INTEREST

Buyer represents and warrants to Seller that it is not insolvent, as that term is defined in the Uniform Commercial Code. To secure the payment of the purchase price of the Products sold hereunder, Seller hereby reserves, and Buyer grants Seller a purchase money security interest in all Products sold hereunder whether constituting equipment, inventory, fixtures and/or general intangibles, including all accessions to and replacements thereof, and all proceeds thereof to perfect or continue the security interest created by this Agreement. A copy of the invoice covering the Products may be filed with appropriate authorities at any time as a financing statement to perfect Seller's security interest. Buyer hereby authorizes Seller to prepare, file and execute such UCC-1 financing statements and any instruments that Seller may reasonably require to perfect Seller's security interest in the Products sold or delivered by Seller to Buyer and any proceeds thereof. In addition to the foregoing, Seller shall have all of the rights and remedies of a secured party under the Uniform Commercial Code, which remedies shall be cumulative and not exclusive.

11. LIMITATION OF LIABILITY

Seller's sole liabilities and Buyer's exclusive remedies in connection with the transaction(s) described under this Agreement will be the repair or replacement of any non-conforming Product(s) or, at Seller's option, refund of all or a portion of the purchase price of the non-conforming Product(s) less any restocking fee, applicable shipping and handling costs and two percent (2%) of the purchase price of the non-conforming Product(s). IN NO EVENT WILL SELLER BE LIABLE FOR, AND BUYER HEREBY WAIVES ANY RIGHT TO, ANY LOST PROFITS, LOSS OF USE, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT LIABILITY, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Seller's liability shall in no event be greater in amount than the purchase price of the Products in respect of which damages are claimed.

12. INDEMNIFICATION

Buyer shall indemnify Seller, Seller's directors, officers, employees, agents, suppliers, parents, affiliates, subsidiaries, successors and assigns (collectively, "**Seller Parties**") against all liability, cost or expense that may be sustained by Seller on account of, or arising from, the Agreement or the sale or transfer of the Products. Buyer shall further indemnify, defend and hold Seller Parties harmless from and against any and all fines, penalties, suits, actions, claims, liabilities, judgments, losses, damages, costs and



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expenses (including attorneys' fees) resulting or arising from (i) Buyer's negligence or willful misconduct, (ii) Buyer's use, sale, handling, storage, or disposal of the Products, or any product or waste derived therefrom, (iii) Buyer's discharge or release of the Products, or any product or waste derived therefrom into water, onto land or into the air, (iv) Buyer's exposing any person (including Buyer's employees) to the Products, or any product or waste derived therefrom, including failure to warn of such exposure, (v) the transportation of the Products to Buyer after tender of the Products by Seller to the carrier at the shipping point, or (vi) any liability or cost arising out of any claim for the infringement of any patent or other rights which are or may be asserted against Seller because of the design, nature, structure or use of any goods manufactured by Buyer or modified at the request of Buyer. The foregoing shall apply, without limitation, to injury to person (including death) or damage or harm to property or the environment. This indemnity shall apply where there is concurrent negligence or willful misconduct on the part of Seller and Buyer in proportion to Buyer's negligence or willful misconduct.

13. TERMINITATION

Time is of the essence and, in addition to any other rights, Seller shall further have the right, at its option, to terminate this Agreement without notice to Buyer if Buyer: (i) fails to make a payment to Seller on or before the date it is due, (ii) makes an assignment for the benefit of creditors, (iii) becomes insolvent or is otherwise unable to pay its debts in the ordinary course of business, or (iv) is the subject of any voluntary or involuntary proceedings in bankruptcy, or under any other insolvency or similar law, or for corporate reorganization or for receivership..

14. GOVERNING LAW; DISPUTES

This Agreement shall be governed by and construed in accordance with the law of the State of California, without regards to its choice-of-law provisions. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to any purchases made hereunder. Transactions contemplated by this Agreement are "forward contracts" and Buyer and Seller are "forward contract merchants," as those terms are used in the United States Bankruptcy Code, as amended. The exclusive venue for the resolution of any dispute arising out of or relating to this Agreement is Los Angeles County, California, and each party hereby submits to personal jurisdiction in that forum and waives any objection to that forum, including any objection based on forum non conveniens. No action, regardless of form, arising out of, or in any way connected with, Products may be brought by Buyer more than one (1) year after the earlier of: (i) the date the alleged breach was discovered; (ii) the date the alleged breach should have been discovered; or (iii) thirty (30) days from the date of shipment.

15. FORCE MAJEURE

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for delays in delivery or for failure to perform, and performance shall be excused, if such failure is due to causes beyond the reasonable control of Seller or its subcontractors, including, but not be limited to, acts of God, acts or omissions of Buyer, acts of government, including but not limited to civil or military authorities, fire, strikes, power surges or outages, embargos/sanctions, epidemics, quarantine restrictions, flood, natural disasters, riot, war, breakdowns or mechanical failure of machinery or equipment, however caused, delays in transaction or inability to obtain necessary labor, materials or supplies or any cause which renders Seller's performance commercially impractical under Section 2-615(a) of the Uniform Commercial Code, as amended.



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16. GENERAL

Buyer may not assign its right under or interest in the Agreement without the prior written consent of Seller. The Agreement shall be binding upon and inure to the benefit of Buyer and Seller, their successors and permitted assigns. Seller shall have the right, at its sole option, to assign or subcontract any of its rights or duties hereunder. No waiver by either party of any breach of these Terms and Conditions shall constitute a waiver of any other breach. If any provision hereof is held to be invalid or otherwise unenforceable for any reason, all other terms and remaining conditions will continue to be in force. Buyer shall reimburse Seller for reasonable attorney's fees necessarily incurred in order to enforce this Agreement or any provision hereof or to secure cost and/or damages pursuant to any other remedy, legal or equitable, arising from Buyer's breach hereof.