



GENERAL TERMS AND CONDITIONS AICHER STEEL AMERICAS, INC.

All proposals, quotations and orders for the sale of Aicher Steel Americas, Inc. ("SELLER") products, or for the rendering of services by SELLER, are subject to the following terms and conditions.

1. DEFINITIONS. For the purposes hereof: (i) The term "BUYER" means the person or company purchasing as indicated on the front hereof or otherwise on the quotation, order or Agreement; (ii) The term "Products" means materials being purchased by BUYER from SELLER as specified on the front hereof or otherwise; (iii) The term "Agreement" means these terms and conditions and those expressly referenced herein and (a) any SELLER quotation, proposal, bid or similar document setting forth the prices of any Products and (b) any SELLER order confirmation, acknowledgment or other document provided by SELLER and relating to the Products.

2. ACCEPTANCE OF AGREEMENT. ACCEPTANCE BY SELLER OF BUYER'S ORDER OR BUYER'S ACCEPTANCE OF SELLER'S PROPOSAL OR AGREEMENT, IS EXPRESSLY LIMITED TO AND CONDITIONED UPON BUYER'S ACCEPTANCE OF AND ASSENT TO, THESE TERMS AND CONDITIONS AND THOSE REFERRED TO HEREIN. ANY ADDITIONAL, INCONSISTENT OR DIFFERENT TERMS AND CONDITIONS CONTAINED IN BUYER'S PURCHASE ORDER OR OTHER DOCUMENTS SUBMITTED BY BUYER TO SELLER AT ANY TIME, WHETHER BEFORE OR AFTER THE DATE HEREOF, ARE HEREBY EXPRESSLY OBJECTED TO AND REJECTED BY SELLER. BUYER ACKNOWLEDGES THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ITS PURCHASE ORDER OR OTHER DOCUMENTS, RECEIPT AND ACCEPTANCE BY BUYER OF THE PRODUCTS SHALL CONSTITUTE ACCEPTANCE BY BUYER OF THESE TERMS AND CONDITIONS. ALL ORDERS ARE SUBJECT TO ACCEPTANCE BY SELLER AT ITS OFFICE AT 47375 FREMONT BLVD., FREMONT, CA. SELLER SALES PERSONNEL AND DISTRIBUTORS ARE NOT AUTHORIZED TO ACCEPT ORDERS ON BEHALF OF SELLER.

3. PRICES; TAXES; DELIVERY. Prices are binding for Products to be delivered within thirty (30) days of the Order date. Otherwise, prices are subject to change by SELLER due to increases in costs, the imposition of tariffs by any government or otherwise without notice to BUYER. Prices do not include taxes, which are separately itemized. BUYER shall pay all excise, sales, occupation, use or similar taxes, levies, governmental charges or surcharges applicable to the Products, or the sale or use thereof, whether now in effect or hereafter imposed. Unless otherwise mutually agreed upon in writing, all Products shall be shipped F.O.B. point of origin, except that Products shipped from outside the continental United States shall be shipped F.O.B. Port of Entry. "Port of entry" shall mean any port at the borders of the continental United States at which a customs-house or revenue office is established for the execution of U.S. laws imposing duties on vessels and imported goods. Where the scheduled delivery of Products is delayed by BUYER or by reason of any contingency referred to in Section 18 hereof, SELLER may deliver such Products by moving them to storage, and BUYER shall be liable for any storage charges or price increases in effect at the date of shipment to BUYER. Should the carrier designated by BUYER fail to pick up the Products within two (2) days after being given notice, SELLER reserves the right to select and make shipment by an alternate carrier and charge BUYER for such shipment.

4. RISK OF LOSS; TITLE; SECURITY INTEREST. Notwithstanding Section 3 hereof, all risk of loss or damage shall pass to BUYER, and delivery shall be deemed to be completed, upon delivery of the Products to the carrier, its agent or designee, or upon moving the Products into storage, whichever shall occur first, at the point of shipment. SELLER reserves, and BUYER hereby expressly grants to SELLER, a purchase money security interest in the Products until the purchase price has been fully paid. BUYER agrees to execute, and hereby appoints SELLER as its attorney-in-fact to execute on BUYER's behalf, any documents requested by SELLER which are necessary for attachment and perfection of its security interest. If BUYER defaults, SELLER will have all the rights of a secured creditor under the Uniform





Commercial Code as enacted in the State of New Jersey. Aicher Steel Americas, Inc. • 440 Eagle Rock Avenue • Roseland, NJ 07068

5. TERMS OF PAYMENT. Payment for 100 % of the price of the Products delivered to the job site during the month will be due and payable by the 20th day of the immediately following month, but in no case later than thirty (30) days from the date of invoice. Each shipment to BUYER shall be considered a separate and independent transaction and payment shall be made accordingly, and BUYER expressly waives any right of deduction by BUYER for set-off or counterclaim arising out of this or any other transaction with SELLER. If the financial condition of BUYER shall at any time, in the judgment of SELLER, not warrant shipment of goods ordered, including without limitation BUYER'S failure to timely pay any invoice, SELLER may, at its option, require full payment prior to shipment or refuse to ship and terminate without liability. A Finance Charge of 1 ½ % per month (18 % per annum) will be charged on all past due accounts.

6. SHIPMENT AND PRODUCTION ESTIMATES. The shipping date is estimated upon the basis of immediate receipt by SELLER of BUYER's acceptance of the Agreement or of SELLER's acceptance of BUYER's purchase order and all information required to be furnished by BUYER. SELLER shall, in good faith, endeavor to ship by the estimated shipping date but reserves the right to vary such date free of any liability to BUYER, notwithstanding any commitment or representation to the contrary.

7. SUBSTITUTION OF MATERIALS. In the event that SELLER is unable to obtain any specified materials or parts in time to meet the scheduled delivery date, SELLER may substitute other materials which will not in SELLER's judgment impair the essential functions, strength or life of the Products.

8. PHOTOGRAPHS. Photographs, illustrations, brochures, manuals or advertising materials represent in general the Products offered, but are not binding in detail.

9. CANCELLATION BY SELLER; REMEDIES FOR BREACH. SELLER may, by written notice to BUYER and without any liability, cancel BUYER'S order if BUYER (i) fails to perform any of the terms and conditions hereof and does not cure such failure within a period of ten (10) days after receipt of written notice from SELLER specifying such failure, provided, that, no such cure period shall apply to BUYER's failure to pay in a timely manner; (ii) in SELLER's opinion, has not established or maintained credit to meet promptly the payment terms hereof or has defaulted on the payment terms of any other transaction with SELLER; (iii) becomes insolvent, makes an assignment in favor of creditors, or becomes subject to any bankruptcy, dissolution or similar proceedings; or (iv) is merged into, or all or a substantial part of its assets are sold to, another company. Upon any such cancellation, BUYER shall be liable to SELLER for a cancellation charge in accordance with Section 10 below. As a nonexclusive alternative to cancellation, SELLER may, for any reason referenced in subsections (i)-(iv) of this Section 9, without any liability, (a) suspend any of its obligations hereunder and/or (b) exercise any and all of its rights as a secured creditor under the Uniform Commercial Code.

10. CANCELLATION BY BUYER. (a) BUYER shall not cancel any order with SELLER without SELLER's prior written consent. If SELLER authorizes the cancellation of any such order, then BUYER shall be liable to SELLER as follows: (i) for cancellation of an order for such Products for which SELLER's production is within thirty (30) days of the scheduled completion date, SELLER shall complete such production and hold such Products for BUYER's disposition, with BUYER liable to SELLER for full payment within thirty (30) days after completion, or (ii) for cancellation of an order for such Products for which SELLER's production is not within thirty (30) days of the scheduled completion date, BUYER shall pay SELLER (A) the actual costs and overhead expenses, determined in accordance with generally accepted accounting principles, for work in progress, order entry expenses, engineering process expenses and costs of materials and





supplies procured or for which definite commitments have been made by SELLER in connection with BUYER's order and (B) fifteen percent (15 %) of the contract price of the order. Unless otherwise agreed by SELLER in writing, under no circumstances shall BUYER have the right to delay shipment, delivery or acceptance of Products hereunder. Aicher Steel Americas, Inc. • 440 Eagle Rock Avenue • Roseland, NJ 07068

11. INSPECTION. BUYER shall inspect the Product promptly upon delivery. Any claim of shortage, adjustment or correction of Product delivered shall be made by BUYER in writing within five (5) days of delivery thereof or be forever waived.

12. EQUIPMENT. In the event that SELLER supplies equipment hereunder for use by BUYER, BUYER represents and warrants to SELLER that all persons who will operate, maintain and handle such equipment for BUYER will be highly competent and skilled with respect to the operation, maintenance and handling of such equipment so as to do so efficiently, safely and without injury to persons or property. BUYER will provide adequate electrical service for such equipment, being 110volt/30 amp with a maximum drop cord length of one hundred (100) feet. Should BUYER need or desire any instruction or other assistance from SELLER with respect to operation, maintenance or handling of such equipment, BUYER shall promptly notify SELLER. If SELLER provides any such technical assistance, SELLER shall be compensated for such as provided by SELLER. Such equipment shall only be used in connection with SELLER supplied product. BUYER shall at all times be solely responsible for the security, care and maintenance of the equipment and will maintain the equipment in good working order for the full duration of the subject project. When not in use, BUYER shall protect the equipment from weather, theft, vandalism or other casualty. BUYER shall reimburse SELLER for the cost of all parts and labor necessary to repair any damage to the equipment during BUYER's use, or the replacement thereof if required. BUYER will return such equipment to SELLER by prepaid freight immediately upon completion of its use.

13. WARRANTY. SELLER warrants that any Product shall be free from defects in material or workmanship at the time of delivery. SELLER's obligation under this warranty is limited to the replacement of any Product which is (i) determined by SELLER to be defective and (ii) is returned to SELLER within a reasonable time, with all transportation charges prepaid by BUYER. This warranty shall not apply to any Product that has been subjected to misuse, abuse, neglect, or improper storage or handling. **EXCEPT AS EXPRESSLY STATED IN THIS SECTION 11, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR OTHERWISE, WITH RESPECT TO ANY PRODUCT.**

14. LIMIT OF SELLER'S LIABILITY; CUSTOMER'S REMEDY. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES FOR INJURY TO PERSON OR PROPERTY, LOST PROFITS OR REVENUE, LOST SALES OR LOSS OF USE OF ANY PRODUCT. BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER SHALL BE THE REPLACEMENT OF DEFECTIVE PARTS AS PROVIDED HEREIN. SELLER'S LIABILITY ON ANY CLAIM, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH BUYER'S ORDER, SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF THE ORDER. The sole purpose of the stipulated exclusive remedy provided for herein shall be to provide BUYER with replacement of defective Products in the manner provided for herein. Such remedy shall not be deemed to have failed of its essential purpose so long as SELLER is willing and able to replace defective Products in the prescribed manner. Any claim or action by BUYER arising out of or in connection this Agreement or the Product, whether in contract, tort or otherwise, must be commenced within one (1) year after the cause of action has accrued or be barred.





15. NO RIGHT OF SET OFF. Under no circumstances shall BUYER have the right to deduct or set off from the purchase price of the Product any damages, costs or expenses incurred by BUYER as a result of any action on the part of SELLER or otherwise.

16. PROPRIETARY INFORMATION. This Agreement and all notes, brochures, technical information concerning processes, techniques, catalogs, listings, sales forecasts, agreements, know-how, designs, drawings, specifications, data sheets, memoranda, correspondence or samples ("Proprietary Information") supplied to BUYER by SELLER are, and shall remain, the property of SELLER and may be covered by one or more SELLER patents, patent applications or copyrights. BUYER shall not at any time disclose or make available to Aicher Steel Americas, Inc. • 440 Eagle Rock Avenue • Roseland, NJ 07068 any person, firm or corporation, other than SELLER, Proprietary Information or use such information for any purpose other than the purposes for which supplied hereunder, and shall provide effective security measures to prevent unauthorized persons from obtaining Proprietary Information. All technical, industrial and commercial information and material that BUYER discloses heretofore and hereafter to SELLER is on a nonconfidential basis. SELLER grants no rights to BUYER under any SELLER patent, design patent, copyright, trademark or know-how, except as may be necessary to fulfill SELLER's obligations under BUYER's order.

17. INDEMNIFICATION. BUYER agrees to indemnify, defend and hold SELLER harmless from and against all judgments, decrees and costs (including attorneys' fees) resulting from BUYER's use and/or resale of the goods delivered hereunder, as well as for any fines, penalties, damages, attorney's fees or other expenses incurred by SELLER as a result of BUYER'S failure to comply with any federal or state workplace safety law, rule or regulations or industry safety standard or requirement.

18. FORCE MAJEURE. Except with respect to the payment of monies due hereunder and BUYER's obligations under Sections 16 and 17 hereof, neither party hereto shall be responsible for failure to perform hereunder or for any loss or damage due to causes beyond its reasonable control, including but not limited to acts of God, global pandemics, fires, civil disobedience, war (declared or undeclared), acts of terrorism, riots, strikes, work stoppages, floods, water and the elements, changes in governmental requirements or inability to secure equipment, raw materials or transport, of the imposition of tariffs by any government affecting the cost of materials related to the Products. Notice to this effect ("Notice of Force Majeure") shall be given at once to the other party. Performance shall be resumed as soon as practicable after the cessation of the cause of delay, provided, however, that if such period of delay shall exceed sixty (60) days from the receipt of Notice of Force Majeure, either party may terminate this Agreement upon written notification to the other.

19. ENTIRE AGREEMENT. The entire agreement between SELLER and BUYER with respect to BUYER's order is embodied solely within the Agreement, which supersedes all prior agreements, understandings, representations or warranties, whether oral or written, between SELLER and BUYER relating to such order. No statement, recommendation or assistance made or offered by SELLER through its representatives in connection with suitability, capacity, performance or compliance with customer's specification of the Products sold shall be or constitute a waiver by SELLER of any provision hereof. No statements subsequent to the acceptance of the Agreement and these terms and conditions shall be binding upon SELLER, nor shall the Agreement or such terms or conditions be amended or modified, unless consented to in writing by a duly authorized officer of SELLER in a document referencing these terms and conditions. These terms and conditions of sale shall remain effective as between SELLER and BUYER, regardless of any arrangement or agreement for financing of BUYER's purchase of the Product, whether such financing is provided by SELLER, any subsidiary of SELLER or any entity related to SELLER.





20. ATTORNEY'S FEES. In the event of any litigation, arbitration or collection action arising out of BUYER's purchase of Products, SELLER shall be entitled to reimbursement from BUYER for its actual reasonable attorney's fees and costs.

21. NON-WAIVER. Failure by SELLER to enforce any rights under or to insist upon strict performance of any provision in the Agreement shall not constitute a waiver of any breach or a waiver of such provision, irrespective of the length of time for which such failure continues.

22. SURVIVAL; SEVERABILITY. Notwithstanding any expiration or cancellation of BUYER's order, BUYER shall remain obligated under all those provisions of the Agreement which expressly or by their nature extend beyond and survive such expiration or cancellation. If any provision or any portion of any provision in the Agreement shall be held to be void or unenforceable, the remaining provisions hereof and the remaining portions of any provisions of the Agreement held void or unenforceable in part shall continue in full force and effect. Aicher Steel Americas, Inc. • 440 Eagle Rock Avenue • Roseland, NJ 07068

23. ASSIGNMENT. The Agreement shall not be assigned, subcontracted, or delegated, in whole or in part, without SELLER's prior written consent.

24. GOVERNING LAW; FORUM; SELLER'S ARBITRATION OPTION. The Agreement, and BUYER's purchase of Products, shall be governed by and interpreted in accordance with the laws of the State of New Jersey, U.S.A. In no event do the parties intend that the United Nations convention for the international sale of goods apply to any dispute arising out of, or related to, this agreement or the relationship governing the parties hereto. **ANY LEGAL ACTION OR PROCEEDING ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW JERSEY OR IN THE U.S. DISTRICT COURTS IN NEW JERSEY.** BUYER hereby irrevocably consents to service of process out of said State of New Jersey or U.S. Court in any such action or proceeding by mailing copies thereof by U.S. mail to BUYER or any other method of service permitted by such courts. **AT THE SOLE OPTION OF SELLER, ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCT MAY BE REFERRED TO BINDING ARBITRATION, WHICH SHALL BE ADMINISTERED BY, AND CONDUCTED IN ACCORDANCE WITH THE COMMERCIAL RULES OF, THE AMERICAN ARBITRATION ASSOCIATION, WITH THE HEARING THEREIN TO BE HELD IN THE STATE OF NEW JERSEY.**

