

MARSHALL STEEL, INC. TERMS AND CONDITIONS

The following terms and conditions solely shall govern any contracts or orders now or hereafter placed with MARSHALL STEEL, INC. ("Seller") by Buyer notwithstanding any different terms and conditions contained in Buyer's purchase order, unless Seller expressly agrees in writing to conflicting, varying or additional terms and conditions. Unless so consented to in writing, Seller hereby expressly conditions any quote or order, or any acceptance of any purchase order, upon these basic terms and conditions and such additional terms and conditions as are not in conflict herewith and as are expressly agreed to in writing by the parties.

1. **Prices.** All price quotes are current prices and are subject to change without notice. All prices are exclusive of all city, state, and federal excise taxes, including, but without limitation, taxes on manufacture, sales, receipts or gross income and occupation, use and similar taxes.

2. **Terms of Payment.** Unless otherwise agreed between Seller and Buyer, all payments for all goods shall be net cash within Thirty (30) days of the date said goods are shipped to Buyer. Payments shall be made in legal tender of the United State of America. If Buyer fails to timely make any payment due Seller or defaults in the performance of any other obligation owing to Seller, Seller may, at its option, and in addition to the rights granted hereunder and any other right or remedy provided by the Uniform Commercial Code of Kentucky, (the "UCC"), defer shipments under any contract with Buyer or cancel same, or stop any such shipment in transit, except on satisfactory assurance of performance, including, without limitation, security or additional security, or of cash before or on delivery. Should suit, action or other proceeding be instituted by Seller to collect any amount owed to Seller by Buyer, upon prevailing Seller shall be entitled to recover from Buyer its reasonable attorney's fees and costs, including fees incurred in any bankruptcy proceeding of Buyer. Buyer hereby grants Seller a security interest in the goods described in any open purchase order issued by Buyer to Seller regardless of when issued, and Seller shall have all the rights granted to a secured creditor under the UCC. Buyer hereby acknowledges that Seller may, at any time, perfect the security interests granted to it hereunder by any means authorized under the UCC.

3. **Shipping/Title/Risk of Loss.** Unless otherwise agreed between Seller and Buyer (i) all prices are F.O.B Seller's plant in Memphis, Tennessee; (ii) title to all goods pass to Buyer upon delivery of the goods to a common carrier at such shipping point; (iii) risk of loss or damage to goods shall be upon Buyer once Seller has delivered said goods to said common carrier.

4. **Circumstances Beyond Seller's Control.** The obligations of the Seller, including the timely manufacture and delivery of any goods to Buyer, are subject to fires, explosions, floods, other acts of God, strikes, labor disputes from whatever cause arising, accidents, acts of public enemies, lawful rules, regulations or orders of court, any civil or military authority priorities, deliveries ordered or requested by the government, delays of carriers, lack of transportation facilities, mill shortages, any other causes of whatever nature beyond the reasonable control of the Seller, either at its own works or those of its sources of supply, including shortage of labor, consumables, scrap metal, materials, fuel, energy, containers or other goods necessary to Seller's performance. In the event that Seller is prevented by any of the foregoing contingencies from supplying the full quantities of any one or more of the goods that it is at anytime or times required to supply under orders or contracts to its customers, Seller, regardless of time of order or delivery date, shall have the right to allocate as it deems fit the

quantity deliverable under any order or contract and the quantities deliverable under other orders or contracts and the Seller shall not be liable in damages for any deliveries partially or wholly delayed or prevented by any of the foregoing contingencies.

5. **Patent Warranty and Indemnification.** (a) Buyer warrants that compliance by Seller with any specifications prescribed by and originating with Buyer shall, as to any goods manufactured or as to any specific tooling (tools, jigs, dies, fixtures, molds, patterns and rolls) made, manufactured or acquired with respect to compliance with such specifications, not infringe upon any patent or exclusive license and not constitute unfair competition resulting from similarity in design, trademark or appearance of goods. To the extent that any such specifications, goods manufactured in accordance therewith or special tooling are now patented or are patented in the future, Buyer warrants that is or will be at all relevant times the owner of or exclusive licensee thereof and it hereby grants to Seller a non-exclusive perpetual license with respect thereto in accordance with any use contemplated or addressed by these terms and conditions; (b) The Buyer agrees to indemnify, hold and wave Seller and any of its customers harmless of and from loss and/or liability of any nature or kind whatsoever arising out of, in connection with, or existing because of the infringement or alleged infringement of any patent or exclusive license and for any alleged unfair competition resulting from similarity in design, trademark or appearance of any specifications, goods manufactured in accordance therewith or any special tooling furnished, made, manufactured or acquired under or in accordance with any order or contract or any subsequent use thereof contemplated or addressed by these terms and conditions. Seller shall notify Buyer in writing of any suit filed against it or its customers on account of any such infringement, alleged infringement or alleged unfair competition, and at Buyer's request shall give Buyer control of the defense of such suit, insofar as Seller has the authority to do so, and shall provide Buyer with information available to it and reasonable assistance, all at Buyer's expense. Seller and any party against whom suit is brought may be represented by their own counsel in any such suit without releasing Buyer of any obligation hereunder. Buyer's obligations hereunder include all expenses, loss, royalties, profits and damages, including court cost and attorneys' fees, resulting from the bringing of such suit or proceedings, including any settlement or decree or judgment entered thereto.

6. **Specifications.** Except as specified by Buyer and expressly agreed to in writing by Seller, the goods furnished shall be produced in accordance with Seller's standard practice and specifications. All goods, however, including those produced to meet exact specifications, shall be subject to mill tolerances and variations consistent with good mill practice with respect to dimension, weight, straightness, section, composition and mechanical properties, and to normal variations in surface conditions, internal regular mill practice on over and under shipments. Buyer acknowledges and agrees that Seller may utilize ASTM standards in establishing and evaluating its standard practices and specifications and in determining the reasonableness of any tolerance and variations in goods produced by Seller.

7. **Yield Strength (if Applicable).** Buyer acknowledges that conformance to yield strength requirements shall be determined at the time of manufacture by mill sampling and testing. Seller shall not approve steel for shipment that has not been sampled and tested and does not meet the minimum strength requirement requested by Buyer. The Buyer acknowledges, pursuant to ATSM A6, due to inherent inconsistencies present in chemistry, rolling mill processing and physical testing for each heat of steel, a product sample may yield results below the minimum strength requirement. Accordingly, the Buyer acknowledges it may not reject goods solely based on product tests and that the engineers of

Buyer should take the variations contemplated by ATSM A6 into account when designing goods which incorporate the steel sold by the Seller to the Buyer.

8. **Inspection.** (a) The Buyer is authorized to inspect goods being manufactured for Buyer at Seller's mill on reasonable notice during normal business hours. Where mill inspection is made by Buyer, Buyer's inspector shall be deemed the agent of Buyer with authority to waive specified tests and details of test procedure and to accept goods as conforming to any contract with respect to all characteristics of such goods for which such inspection is made. (b) Buyer further agrees to prudently and carefully inspect goods against shipping papers upon delivery at destination. No claims for shortages or damage goods will be considered by Seller unless written notice specifying in detail the nature and extent of such shortage or damage is mailed to Seller with five (5) days from the date of delivery accompanied by the applicable original freight bill or bill of lading, with notation on the face thereof by the authorized agent of the carrier as to the items and quantities short or damaged. Seller will in no way be responsible for or liable for any incidental or consequential damage or commercial loss of any type or nature by reason of such shortage or damaged goods.

9. **Warranty.** Seller warrants that all goods and work will conform to such drawings and specifications as have expressly, and in writing, been made a part of any contract with Buyer (subject to tolerances and variations described in Paragraph 7), that it will convey good title to the finished goods and that such goods will be delivered free from any lawful security interest or other lien or encumbrance. THE FORGOING WARRANTIES ARE EXCLUSIVE, AND ARE EXPRESSLY MADE IN LIEU OF ALL OTHER WARRANTIES (WHETHER STATUTORY, EXPRESS, WRITTEN, ORAL, IMPLIED OR OTHERWISE), INCLUDING WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE. NO EXPRESS OR IMPLIED WARRANTIES EXCEPT AS STATED ABOVE SHALL APPLY TO GOODS SOLD BY SELLER UNLESS EXPRESSLY MADE IN WRITING AND SIGNED BY THE CHIEF EXECUTIVE OFFICER OF SELLER.

10. **Limitation of Liability.** Seller will replace at its Plant any goods furnished under contract that fail to conform to Buyer's specifications, as express in writing in such contract (as modified by the terms hereof) or to any warranty expressed herein, or at Seller's option, Seller will refund to Buyer the price paid for such goods. IT IS UNDERSTOOD AND AGREED THAT SELLER'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER, WHETHER IN CONTRACT, TORT, OR BASED ON ANY WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THAT SPECIFIED IN THIS SECTION. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGE RELATED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED EQUIPMENT, COST OF SUBSTITUTE GOODS, DOWN TIME COSTS OR OTHER DAMAGES TO BUYER OR ITS CUSTOMERS) EVEN IF SELLER HAS BEEN ADVISED OR KNOWS OF THE POSSIBILITY OF SUCH DAMAGES. ANY PRICE QUOTED BY SELLER IS AN ADDITIONAL CONSIDERATION IN LIMITING SELLER'S LIABILITY. NO ACTION, REGARDLESS OF NATURE, ARISING OUT OF, OR RELATED TO, ANY TRANSACTIONS BETWEEN THE PARTIES MAY BE BROUGHT BY BUYER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUED.

11. **Indemnification.** Buyer further agrees to indemnify and save Seller harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogation and expenses, including court costs and reasonable attorneys' fees, related in any way to any contract for services performed or goods delivered under any contract, except as to warranties made by Seller, which are claimed or made by any person, firm, association, corporations or entity, including employees, workmen, servants or agents of the Buyer, and any person claiming through Buyer from any

cause, reason or basis whatsoever. Buyer further agrees, upon receipt of notification, to properly assume full responsibility for the defense of any and all suits, actions or proceedings which may be brought against Seller.

12. **Governing Law.** These basic terms and conditions and any contract or agreement between the Seller and Buyer shall be construed under the laws of the State of Kentucky.

13. **Change Orders/Cancellation of Shipments.** Buyer may not cancel, modify, or otherwise change an order without Seller's written consent and acknowledgment. All requests for cancellation, modification or alteration shall be subject to such conditions as may be mutually agreed to by Buyer and Seller, which shall include, at a minimum, protection of Seller against loss. Cancellation or change in shipment date will be invoiced at our actual cost to date plus normal profit at time of notification by the Buyer of his cancellation or change order, or the last day in the promised period if the Buyer has failed to pick up his order, whichever is sooner.

14. **Choice of Forum.** Seller and Buyer agree that any suit, claim or other dispute arising out of, or related to, the sale of goods by Seller to Buyer shall be brought and adjudicated exclusively in the United States District Court for the County of Shelby, Tennessee.