

## TERMS OF SALE

**Terms and Conditions.** These Terms of Sale, together with any sales order and/or invoice ("Sales Order" and with the Terms of Sale, "Agreement") provided by Custom Alloys, Inc. ("CAI") to any customer of CAI ("Buyer"), govern all sales of metal alloy, scrap, products, supplies, goods, and/or materials (collectively, "Goods") by CAI. IT IS AGREED THAT THESE TERMS OF SALE SHALL GOVERN ALL SALES BY CAI TO BUYER. Any additional or different terms proposed by Buyer in any form are hereby rejected, and CAI's receipt of documents from Buyer, or CAI's delivery of the Goods, does not constitute acceptance of any terms or conditions different from this Agreement. This Agreement constitutes the entire agreement between CAI and Buyer regarding the sale of the applicable Goods and supersedes all prior oral and written understandings, representations, and correspondence between CAI and Buyer, express or implied. Any modifications or waivers to this Agreement must be agreed to in writing by CAI and Buyer.

**Shipment and Delivery.** All Goods shipped under this Agreement are subject to CAI's usual tolerances with respect to quality and quantity. Unless otherwise agreed to by CAI in writing, all shipments of the Goods in the United States are delivered CAI's location, and Buyer is responsible for all shipping costs and insurance. If a Sales Order specifically states that shipping is delivered Buyer's location in the United States, CAI will be responsible for shipping and insurance. Unless otherwise agreed to by CAI in writing, all shipments outside of the United States are EXW (Ex Works) CAI's location (INCOTERMS 2010), as applicable. The delivery dates specified in this Agreement are estimates only and CAI's failure to meet the same will not be deemed a breach of this Agreement.

**Inspection.** Buyer must inspect all shipments of the Goods purchased by Buyer upon arrival and notify CAI in writing within two (2) days of receipt of any nonconformity in the Goods, materials, shipment or delivery. Time of the essence and any claim of nonconformity is waived unless made in writing by Buyer to CAI specifically stating the details of such nonconformity within such two (2) day period. CAI shall be given the opportunity to inspect the complaint of Buyer and Buyer shall cooperate with same. If CAI determines, in its discretion, that Buyer's claim is valid, it will then, at its option, replace the nonconforming Goods within a reasonable time period, or cancel the sale. CAI shall in either event thereupon have the right to require Buyer to return the nonconforming material at CAI's cost. Buyer must hold all Goods and materials intact until returned to CAI. The foregoing are Buyer's sole and exclusive remedies with respect to any non-conformity in Goods, materials, shipment or delivery.

**Financial Terms.** The price and payment terms for the Goods are set forth in the applicable Sales Order. Any amounts not paid when due will be subject to a late payment fee computed daily at a rate equal to one and one half percent (1.5%) per month or the highest rate permissible under applicable law. If, in CAI's judgment, Buyer's financial condition or any other circumstance causes CAI to be insecure with respect to Buyer's performance of any obligation under this Agreement, CAI may accelerate and demand immediate payment of any amounts owed CAI, suspend performance, require advance payment and/or cancel this Agreement. Unless otherwise agreed to in writing by CAI and Buyer, the price stated on the applicable Sales Order ("Sales Price") does not include sales, use, excise or similar taxes or any shipping or delivery charges. All taxes related to the sale of the Goods are Buyer's responsibility.

**Force Majeure.** CAI will not be liable to Buyer for any delay or failure of delivery of any Goods or other nonperformance caused in whole or part by any contingency or event beyond CAI's reasonable control, including, without limitation, acts of any government, war, riots, acts of God, machinery breakage, or any shortage of or inability to secure labor, labor strikes, transportation facilities, fuel, energy, raw materials, supplies, or machinery at reasonable prices or from regular sources. In the event of the occurrence of any of the foregoing, CAI may distribute its available goods and material among its customers on such a basis as CAI deems fair and equitable, without liability to Buyer.

**DISCLAIMER OF WARRANTIES.** EXCEPT AS SPECIFICALLY SET FORTH HEREIN, ALL GOODS ARE SOLD ON AN AS-IS BASIS, AND WITH ALL FAULTS. CAI MAKES NO REPRESENTATION OR WARRANTY TO ANY PERSON, EXPRESS OR IMPLIED, WITH RESPECT TO ANY GOODS (NOTWITHSTANDING ANY DOCUMENT

OR SPECIFICATIONS), INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, AND WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE.

**ENVIRONMENTAL.** Buyer represents and warrants that it is in compliance, and covenants that it shall be in compliance, with all applicable federal, state and local environmental laws and regulations and any related compliance orders (including any decrees issued pursuant thereto), which are applicable to the handling, processing or reclamation of (or other management activities associated with) recyclable materials. CAI has not and does not make any representation or warranty to Buyer as to whether any of the Goods constitute or contain: (a) any "hazardous waste" (as that term is defined in any applicable federal and state law, and implementing regulations), (b) any "hazardous substance" (as that term is defined in any applicable federal and state law, and implementing regulations), or (c) any substance that would render the material unfit for its intended use. BUYER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS AGAINST CAI, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES FOR ANY ALL LOSS, LIABILITY, COST AND EXPENSE (INCLUDING WITHOUT LIMITATION STATUTORY AND COMMON LAW LIABILITY, INVESTIGATION AND REMEDIATION COSTS, COURT COSTS, ATTORNEYS' AND CONSULTANTS' FEES, PERSONAL INJURY AND PROPERTY DAMAGE) ARISING OUT OF ANY OF THE FOREGOING.

**LIMITATION OF LIABILITIES.** CAI WILL HAVE NO LIABILITY FOR ANY DAMAGES RELATING TO INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF CONTRACT, NEGLIGENCE, TORT, OR OTHERWISE. UNDER NO CIRCUMSTANCES WILL CAI'S LIABILITY FOR ANY CAUSE HEREUNDER EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE APPLICABLE GOODS. BUYER AGREES THAT ALL OF THE LIMITATIONS SET FORTH HEREIN ARE AGREED UPON ALLOCATIONS OF RISK.

**Indemnification.** Buyer shall indemnify, defend and hold CAI harmless from any and all third party claims asserted arising in connection with this Agreement, the disposition of the Goods by Buyer or subsequent holders of the Goods, and the ultimate use of the Goods, except to the extent of CAI's liability expressly stated herein.

**Credit Insurance.** CAI may at its option and expense, purchase credit insurance on Buyer for any or all contracts entered into with CAI, including this Agreement. If credit insurance cannot be obtained in an amount equal to this Agreements entered into or if credit insurance is denied, cancelled or reduced by the insuring company, CAI may at its option cancel any or all agreements with Buyer, or adjust all agreements to coincide with the amount of credit insurance available to CAI.

**Confidentiality.** All specifications, documentation, pricing information and any other confidential or proprietary information (collectively, "Confidential Information") of CAI is the property of CAI. Confidential Information may be provided solely for the purpose of facilitating Sales Orders and on the express condition that Confidential Information of CAI shall not be disclosed to others nor used for any purpose by Buyer other than in connection with transacting business with CAI pursuant to such Sales Orders, and this Agreement, as applicable. Buyer shall promptly return to CAI all such Confidential Information upon CAI's written request. Buyer's obligations under this paragraph shall survive the cancellation, termination or completion of any Sales Order or this Agreement.

**Assignment.** Buyer may not assign any Sales Order or this Agreement or any of its rights or obligations hereunder or thereunder to any third party without CAI's prior written consent. For purposes of this provision, a merger, stock sale or other transfer by operation of law shall be deemed an "assignment" for which consent is required hereunder.

**Governing Law and Forum.** This Agreement will be interpreted according to the laws of the State of Illinois. Buyer hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Illinois and of the United States of America located in Illinois for any proceedings relating to this Agreement (and

agrees not to commence any proceeding relating thereto except in such courts). Buyer hereby irrevocably and unconditionally waives any objection to the laying of venue, and agrees not to claim that any proceeding brought in any such court has been brought in an inconvenient forum.

**Severability.** In the event a provision of this Agreement is determined to be invalid, illegal or unenforceable, it will not affect the validity, legality or enforceability of any other provision of this Agreement and CAI and Buyer agree that the remaining provisions will be deemed to be in full force and effect.