

Terms and Conditions for Steel America

Steel America, a division of Colonna's Ship Yard, Incorporated

1. GENERAL.

The terms and conditions set forth herein ("Terms and Conditions"), together with any additional terms and conditions set forth in Seller's Purchase Order, shall constitute the entire agreement between Steel America ("Seller") and Buyer for the sale of Seller's fabrication or related services and products (collectively the "Products"). Seller will not be bound by any terms of Buyer's order that are inconsistent with the terms hereof. No contract shall exist except upon Buyer's acceptance of Seller's offer to sell the Products upon these Terms and Conditions. All purchase orders must be approved and accepted in writing by Seller and no term or condition contained in any purchase order form that varies from, or conflicts with, any of these Terms and Conditions shall become part of the contract for the sale of Products unless such term or condition is expressly accepted in writing by Seller's authorized representative. No waiver by Seller of any default or provision hereof shall be deemed a waiver of any other default or provision.

2. PRODUCTS PROVIDED AND PRICE.

- (a) Prices quoted are only for the Products and services (if any) set forth in Seller's Purchase Order and do not include technical data, patent or other proprietary rights of any kind or tests other than Seller's standard tests unless expressly agreed to in writing by Seller. Unless otherwise stated by Seller in writing, all quotations constitute offers and are firm for, and unless noted, expire, fifteen (15) days after the date thereof.
- (b) The price of all Products, unless otherwise specifically stated, is detailed on the invoice. The costs of processing, handling and document preparation fees (if applicable) are disclosed on the invoice. Where Buyer specifies special packaging or handling, a charge will be made to cover any extra expense.
- (c) Prices do not include federal, state or local sales, excise, use or other taxes applicable to the Products or services incident to this transaction (excluding only taxes based on Seller's income). Applicable taxes will be added to the sales price if Seller has the legal obligation to collect the same and will be invoiced to and paid by Buyer, unless Buyer provides Seller with a proper tax exemption certificate. In the event Seller is required to pay any such tax, Buyer shall promptly reimburse Seller therefore.
- (d) Unless otherwise provided on the face hereof, Products furnished hereunder shall be fabricated by Seller, but may contain components that have been previously used in other product units. Any previously used components shall have been disassembled, reprocessed and reassembled, as appropriate, and meet the Seller's specifications for newly manufactured components. Seller will have the right to make substitutions and modifications to the specifications of Products, provided that such substitutions or modifications do not materially affect overall Product performance.
- (e) The obligation of Seller to provide Products, as well as any technical assistance, shall be subject to such United States laws and regulations as shall govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States, including the Export Administration Act of 1979, as amended, any successor legislation, and the Export Administration Regulations issued by the Department of Commerce. Buyer warrants that it will comply fully with the Export Administration Regulations and all other applicable United States laws and regulations governing exports.

3. PAYMENT TERMS AND SECURITY INTEREST.

- (a) Unless otherwise stated, the terms of sale for Product are full invoices to be paid within thirty (30) days. All amounts payable shall be invoiced and paid in United States Dollars and all payments shall be made to Seller at its office in Norfolk, Virginia, or to such other location as Seller may designate. Interest accrues on the unpaid balance of overdue invoices at the lesser of one and one-half percent (1.5%) per month, or the highest rate allowed by law, from the original due date of the invoice. Payment shall not be withheld for delay in installation if at Buyer's request, nor for delay in delivery of required documentation unless a separate price is stated therefore, and then only to the extent of the amount stated.
- (b) All orders, and the obligation of Seller to make delivery, are subject to the right of the Seller to make shipment C.O.D or to require alternative payment terms, including payment of all or any part of the purchase price in advance of delivery. If Buyer: i) fails to make advance payment when requested by Seller, ii) is or becomes delinquent in the payment of any sum due Seller, or iii) refuses to accept C.O.D. shipment, then Seller shall have the right, in addition to any other remedy to which it may be entitled in law or equity, to cancel any order, refuse to make further deliveries and/or declare immediately due and payable all unpaid amounts for Products previously delivered to Buyer. Partial shipments made under any purchase order shall be treated as a separate transaction and payment therefore shall be made accordingly. However, in the event of any default by Buyer, Seller may decline to make further shipments without in any way affecting its rights with respect to such partial shipment.
- (c) Seller reserves a purchase money security interest in the Products sold hereunder and in the proceeds thereof, in the amount of the purchase price. This security interest will be satisfied by payment in full. In the event of default by Buyer on any of its obligations to Seller, Seller will have the right to repossess the Products without liability to Buyer. In such event, Buyer agrees to make the Products available to Seller so as to enable Seller to repossess them without a breach of the peace. Seller may file a copy of the invoice with appropriate authorities at any time as a financing statement and/or chattel mortgage to perfect Seller's security interest. Buyer shall cooperate fully with Seller to execute such other documents and to accomplish such filings and/or recordings thereof as Seller may deem reasonably necessary for the protection of Seller's interests in the Products furnished hereunder.
- (d) If a Letter of Credit is required for payment, Buyer shall, at least ninety (90) days prior to the scheduled shipment date, provide to Seller an irrevocable Confirmed Sight Letter of Credit in favor of Seller in an amount sufficient to cover the purchase price for all Products to be delivered. The Letter of Credit shall be available for drawing at a US bank designated by Seller, providing for payment in full against shipment with the freight waybill being the evidence of shipment. All bank and Letter of Credit charges will be paid by Buyer.

4. SHIPMENT, RISK OF LOSS AND INSURANCE.

Unless otherwise agreed to in writing by Seller, title and risk of loss or damage shall pass to Buyer upon delivery of the Products to the transportation company at Seller's facility, whether or not installation at Buyer's facility is to be provided by, or under the supervision of, Seller. Seller reserves the right to ship Products freight collect and to select the means of transportation and routing. Unless otherwise advised, Seller will insure Products to their full value or declare full value thereof to the transportation company and all shipping and insurance costs shall be for Buyer's account and Buyer agrees to reimburse Seller for the cost of shipping and insurance. Confiscation or destruction of, or damage to, Products shall not release, reduce or in any way affect Buyer's obligation to pay for same.

5. RETURN OF PRODUCTS.

- (a) Products may not be returned to Seller without first obtaining Seller's consent. A request for return must be filed with Seller and shall include P.O. number, approximate date shipped and any other identifying numbers (such as invoice number and date, etc.). Any request for return of Products for credit must state the type and quantity of Products, the part numbers and the reasons for the return. If return authorization is granted, Products shall be returned in Seller's original packaging materials. If original packaging materials are no longer available, Buyer shall contact Seller for packaging instructions. No credit allowance for defective Product will be made, nor will any replacement for any such Product be provided, unless the alleged defects are established to Seller's reasonable satisfaction after suitable testing and inspection. Notwithstanding any defect or nonconformity, or any other matter, all risk of loss shall remain in Buyer until the Products are returned at Buyer's expense to such location as Seller shall designate in writing. Buyer, at its expense, shall fully insure such Products against all loss or damage until Seller has been paid in full therefore, or the Products have been returned to Seller.
- (b) Buyer shall have the right to inspect the Products upon delivery. Buyer's exclusive remedy with respect to any defective or non-conforming Product shall be to have Seller repair or replace such defective or nonconforming Product or credit Buyer's account, whichever Seller may elect in its sole discretion. These remedies are available only if: i) Seller is notified by Buyer promptly upon Buyer's discovery of a Product defect or non-conformity, in writing and within the warranty period; ; ii)

Seller's examination of such Product discloses to Seller's satisfaction that such defect or non-conformity actually exists and the Product has not been repaired or altered by persons not authorized by Seller, subject to misuse, negligence or accident, or connected, installed, used or adjusted otherwise than in accordance with the instructions furnished by Seller. If it is found that any Product has been returned which is not defective or non-conforming, Buyer will be notified and such Product returned at Buyer's expense. In addition, a charge for testing and examination may, in Seller's sole discretion, be made on any Product so returned.

6. CANCELLATIONS.

No order for Products may be cancelled by Buyer except by mutual agreement in writing. Any cancellation of an order for nonstandard Products is subject to the following conditions:

(a) Buyer will pay, at applicable contract prices, for all Products which are completed and allocable to Buyer at the time of Seller's receipt of Buyer's request for cancellation. If Seller agrees to cancellation, Buyer will have no rights in partially completed Products;

(b) Buyer will pay all costs, direct and indirect, which have been incurred by Seller with regard to Products and labor which have not been completely manufactured at the time of Seller's receipt of the notice of cancellation.

Buyer understands and agrees that such charges are reasonable in light of the anticipated or actual harm to Seller, the difficulties of proof of loss and the inconvenience to Seller of otherwise being reasonable compensated for its efforts as a result of the cancellation of any purchase order.

7. LIMITED WARRANTY, LIMITATION OF REMEDIES.

(a) Except as otherwise specified herein, Seller warrants Products to perform in the manner and under the conditions specified in the Purchase Order for six (6) months from date of shipment. Buyer and Seller agree that the price offered to Buyer by Seller for Products is a consideration in limiting Seller's obligations with respect to Products. Accordingly, Buyer agrees that the remedies provided by Seller for any breach of this warranty adequately protect Buyer's interests and expectations in the event it receives defective or non-conforming Products from Seller regardless of circumstances that may arise after Buyer agrees to these Terms and Conditions and when the Goods are used by Buyer or Buyer's customers.

(b) The foregoing warranty: i) is made to Buyer only, and is nontransferable, ii) is the only warranty made by Seller with respect to Products whether written, oral or implied and Seller expressly disclaims any warranty of merchantability or fitness for a particular purpose, ii) may only be modified or amended by a written instrument signed by a duly authorized officer of Seller. Sub-systems manufactured by other firms, but integrated into Products, are covered by the original manufacturer's warranty and Seller makes no warranty, express or implied, regarding such sub-systems. Unless explicitly stated or covered under an extended warranty, products or parts thereof that are replaced or repaired under the original warranty are warranted only for the remaining, un-expired portion of the original warranty period applicable to the specific Product replaced or repaired.

(c) Seller will not be liable for any loss, damages or penalty resulting from delay in delivery of the Products when such delay is due to causes beyond the reasonable control of Seller, including without limitation, supplier delay, force majeure, act of God, labor unrest, fire, explosion or earthquake. In any such event, the delivery date will be deemed extended for a period equal to the delay. Seller will attempt to meet shipment schedules. However, any shipment quotation or forecast on an order acknowledgment is only an estimate of the time required to make shipment, and Seller hereby expressly disclaims all liability, for any losses, consequential or otherwise, because of any delay or failure to deliver all or any part of any order for any reason. Seller reserves the right to allocate inventories and current production in any way it deems desirable.

(d) The Seller's aggregate liability to Buyer under any warranty provided under these Terms and Conditions shall not exceed the lesser of the total amount paid by Buyer to Seller for the Products or \$300,000.00.

8. SELLER'S RIGHT TO SUBCONTRACT.

Seller may subcontract any portion of the work on any Product or component thereof but Seller's obligations and rights hereunder shall not thereby be limited or affected.

9. BANKRUPTCY OR INSOLVENCY OF BUYER.

If the financial conditions of the Buyer at any time is such as to give Seller, in its reasonable judgment, grounds for insecurity concerning Buyer's ability to perform its obligations under this agreement, Seller may in its sole discretion: (a) by notice in writing to Buyer, cancel this agreement, without judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which may have accrued or may accrue thereafter to Seller, (b) require full or partial payment in advance and suspend any further deliveries or continuance of any work to be performed by Seller until such payment has been received; or (c) make all shipments to Buyer C.O.D.

10. EXPORT LIMITATIONS.

Buyer agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Specifically Buyer covenants that it shall not -- directly or indirectly -- sell export re-export transfer divert or otherwise dispose of any products software or technology (including products derived from or based on such technology) received from Seller under this Agreement to any destination entity or person prohibited by the laws or regulations of the United States without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Buyer agrees to indemnify to the fullest extent permitted by law Seller from and against any fines or penalties that may arise as a result of Buyer's breach of this provision. This export control clause shall survive termination or cancellation of this Agreement.

11. PATENT INFRINGEMENT.

(a) Except as set forth herein, Seller will defend Buyer at Seller's expense against any claim that any standard Product furnished hereunder constitutes an infringement of any United States Patent. Buyer shall notify Seller promptly in writing of any such claim and shall give Seller full authority, information and assistance in settling and/or defending such claim. Seller shall have no liability whatsoever with respect to any claims settled by Buyer without Seller's prior written consent. Likewise, Seller shall have no liability to Buyer if any claim of patent infringement is based upon Seller's compliance with Buyer's designs, instructions or specifications or Buyer's use of the Product: i) after modification by any person other than Seller; ii) in combination with equipment or devices not made by Seller; or iii) in a manner for which the Product was not designed.

(b) In case a Product furnished by Seller is held in and of itself to be an infringement and its use is enjoined, Seller, within a reasonable time, shall, at its option, either: (i) secure for Buyer the right to continue using the Product by suspension of the injunction by procuring for Buyer a license or by some other means; (ii) at Seller's expense, replace the enjoined Product with non-infringing goods; or (iii) remove the enjoined Product and refund to Buyer the sums paid therefore. The foregoing states the entire liability of Seller with respect to infringement of patents by the Products or any part thereof or by their operation. Provided however, Seller shall have no obligation with respect to any equipment, device or parts specified by Buyer but not manufactured by Seller.

THE FOREGOING STATES SELLER'S ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE) WITH RESPECT TO ANY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT.

12. SELLER'S PROPRIETARY RIGHTS.

The sale of the Products to Buyer shall in no way be deemed to confer upon Buyer any right, interest or license in any patents or patent applications, trademarks or copyrights of the Seller. Seller retains for itself all proprietary rights in and to all designs, engineering details, and other data and materials pertaining to any Products supplied by Seller and to all discoveries, inventions, patents and other proprietary rights arising out of the work done by Seller in connection with the Products or with any products developed by Seller as a result thereof.

13. APPLICABLE LAW, JURISDICTION AND VENUE, ATTORNEY'S FEES AND COSTS.

This agreement will be governed by the laws of the Commonwealth of Virginia. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement. The State Courts in Norfolk, Virginia (or if there is exclusive federal jurisdiction, the United States District Court for the Eastern District of Virginia, Norfolk Division) will have exclusive jurisdiction over and be the sole venue for the resolution of any dispute arising out of this agreement, and Buyer hereby consents to the jurisdiction of such courts. Reasonable attorney's fees and costs will be awarded to the prevailing party in the event of litigation and/or arbitration involving this agreement.

14. LIMITATION OF LIABILITY.

THE WARRANTIES OF SELLER SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND BUYER HEREBY WAIVES ANY AND ALL OTHER WARRANTIES OF SELLER, EXPRESS, STATUTORY, WRITTEN, ORAL, OR IMPLIED, ARISING OUT OF THIS AGREEMENT OR IN CONNECTION WITH ANY AGREEMENT BETWEEN BUYER AND SELLER TO WHICH THESE TERMS AND CONDITIONS APPLY. BUYER ACKNOWLEDGES AND AGREES THAT THE AMOUNTS WHICH SELLER CHARGES FOR PRODUCTS DO NOT INCLUDE ANY CONSIDERATION FOR THE ASSUMPTION BY SELLER OF THE RISK OF CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH THE USE OF PRODUCTS BY BUYER OR BUYER'S CUSTOMERS. SELLER'S LIABILITY UNDER, FOR BREACH OF, OR OTHERWISE ARISING OUT OF THIS AGREEMENT AND/OR THE SALE OF PRODUCTS WILL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE OR NON-CONFORMING PRODUCT OR A REFUND OF THE PURCHASE PRICE OF THE PRODUCT, AT SELLER'S SOLE OPTION. BUYER AGREES THAT SELLER SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL OR OTHER DAMAGES, INCLUDING WITHOUT LIMITATION PERSONAL INJURY TO ANY PERSON OR ENTITY INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, PLANT, EQUIPMENT, INFORMATION, PROPERTY OR PRODUCTION, ARISING FROM THE MANUFACTURE, SALE, PURCHASE, RESALE, REPAIR OR USE OF PRODUCTS AND FROM ANY PROMISE OR OFFER TO SELL, PURCHASE OR REPAIR PRODUCTS, REGARDLESS OF WHETHER OR NOT SELLER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE. BUYER AGREES THAT THIS LIMITATION OF DAMAGES IS REASONABLE AND WILL NOT CAUSE IT TO LOSE ANY EXPECTED BENEFITS, RIGHTS OR REMEDIES UNDER ANY AGREEMENT FOR THE SALE OF PRODUCTS. IN NO EVENT WILL SELLER BE LIABLE FOR COSTS OF PROCUREMENT OF ANY SUBSTITUTED PRODUCTS BY BUYER, NOR WILL SELLER BE LIABLE FOR ANY, LOSS, HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST BUYER. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF SELLER FOR ANY CLAIM OF ANY KIND ARISING OUT OF THIS AGREEMENT AND/OR THE SALE OF PRODUCTS.

15. ENTRY ON SELLER'S PROPERTY.

- (a) If Buyer's personnel are to work at Seller's facility with unescorted access, Buyer is required to have performed pre-employment background screenings at no charge to Seller. Buyer's employees will not be allowed access to work at Seller's facilities until written confirmation from Buyer has been received by the Seller stating that Buyer's employees are cleared by Buyer to report to work. If the Buyer's personnel in question holds a U.S. Government-granted Security clearance or access that has been validated by Seller through JPAS (Joint Personnel Adjudication System) or via a visit certification, then a pre-employment background screening for that Buyer personnel is not required. Pre-employment background screenings must include the following: (i) Identity and Right to Work Verification (Criteria: A successful I-9 / E-Verify System Check) (ii) Criminal Conviction Check, to the extent permitted by applicable law, or a minimum of previous seven years for each county lived in (Criteria: No record or if misdemeanors, occurrence greater than seven years prior, then the Buyer may choose to provide an explanation of the event to Seller. Seller will review the explanation against security requirements) (iii) Education Verification for degreed positions only; and (iv) Minimum of three years of employment history (Criteria: Employment history is confirmed as presented).
- (b) Buyer shall ensure that personnel assigned to work at Seller's premises comply with any on-premises guidelines. Unless otherwise authorized in writing by Seller, Buyer's personnel assigned to work at Seller's premises shall while at Seller's premises (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind; (iv) remain in authorized areas only; and/or (v) not solicit Seller's employees for employment.
- (c) All Buyer personnel, property, and vehicles entering or leaving Seller's premises are subject to search.
- (d) Buyer shall promptly notify Seller and provide a report of any and all physical altercations, assaults or harassment, and accidents or security incidents involving death, personal injury or loss of or misuse of or damage to Seller's property, while on Seller's premises.
- (e) Seller may, at its sole discretion, remove or require Buyer to remove any specified personnel of Buyer from Seller's premises and request that such personnel not be reassigned to any Seller premises under this Contract or any other contract. Any costs arising from or related to removal of Buyer's employee shall be borne solely by Buyer and not charged to this Contract.
- (f) Buyer shall not assign any persons to work at Seller's facilities who are not a "U.S. Person" per 22 C.F.R. 120.15 {lawful permanent resident as defined by 8 U.S.C. 1101(a)(20)}.
- (g) Seller acknowledges that Buyer and/or Seller's customers have a zero tolerance policy for harassing behavior. Buyer, its employees, and its lower-tier subcontractors (when permitted) shall comply with the conduct requirements in effect at a worksite of Seller. Seller reserve the right to exclude or remove from any worksite, any individual who has been deemed careless, uncooperative, or whose continued employment has been determined by Seller to be contrary to the Seller's or the public's interest. Exclusion from the worksite under the circumstances described in this clause shall not relieve Buyer from full performance of the Contract, nor will it provide the basis for an excusable delay or any claims against Seller. All of Buyer's employees who enter Seller's premises must execute Seller's indemnity and hold harmless agreement as a condition to gaining access.