

ASSOCIATED METALCAST, LLC

TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE (THESE "TERMS") ARE THE ONLY TERMS WHICH GOVERN THE SALE OF THE GOODS COVERED HEREBY (THE "GOODS") BY ASSOCIATED METALCAST, LLC ("SELLER") TO THE PARTY ENTERING INTO AN ORDER (AS DEFINED BELOW) WITH SELLER ("BUYER"). NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF A WRITTEN CONTRACT SIGNED BY BOTH PARTIES IS IN EXISTENCE COVERING THE SALE OF THE GOODS (AS APPLICABLE, A "SEPARATE AGREEMENT"), THE TERMS AND CONDITIONS OF SAID SEPARATE AGREEMENT SHALL PREVAIL TO THE EXTENT THEY ARE INCONSISTENT WITH THESE TERMS.

THE ACCOMPANYING PURCHASE ORDER AND/OR SALES CONFIRMATION (AN "ORDER" AND THESE TERMS, COLLECTIVELY, THIS "AGREEMENT") COMPRISE THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND, EXCEPT FOR A SEPARATE AGREEMENT (IF ANY), SUPERSEDE ALL PRIOR OR CONTEMPORANEOUS UNDERSTANDINGS, AGREEMENTS, NEGOTIATIONS, REPRESENTATIONS AND WARRANTIES, AND COMMUNICATIONS, BOTH WRITTEN AND ORAL. THESE TERMS PREVAIL OVER ANY OF BUYER'S GENERAL TERMS AND CONDITIONS OF PURCHASE REGARDLESS WHETHER OR WHEN BUYER HAS SUBMITTED ITS PURCHASE ORDER OR SUCH TERMS. FULFILLMENT OF BUYER'S ORDER DOES NOT CONSTITUTE ACCEPTANCE OF ANY OF BUYER'S TERMS AND CONDITIONS AND DOES NOT SERVE TO MODIFY OR AMEND THESE TERMS.

1) **ACCEPTANCE, INSPECTION AND REJECTION:** All Orders are subject to acceptance by Seller. Any acceptance by Seller of an Order is expressly made conditional on Buyer's assent to these Terms. Buyer shall inspect the Goods within 30 days after the date of shipment from Seller ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods (as defined below) during the Inspection Period and furnishes such written evidence or other documentation as reasonably requested by Seller. "Nonconforming Goods" means only the following: (i) the Goods shipped are different than identified in Buyer's Order or (ii) the Goods do not conform, in all material respects, to the description set forth in any specification mutually agreed to by the parties in writing. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, at its option, (i) repair or replace such Nonconforming Goods with conforming Goods, or (ii) credit the price for such Nonconforming Goods, which shall not include transportation, installation or related charges or expenses. Buyer acknowledges and agrees that the remedies set forth in this Section are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as otherwise provided herein, all sales of the Goods to Buyer are made on a one-way basis and Buyer has no right to return the Goods purchased under this Agreement to Seller.

2) **CANCELLATION:** Buyer may cancel an Order accepted by Seller only with Seller's prior written consent. Should cancellation be accepted by Seller, Buyer shall pay the full purchase price for the Goods completed. For Goods that are not completed, a charge will be made for incurred material and labor costs and expenses, together with material handling, manufacturing, sales, engineering and administrative overhead, plus the same percentage of profit Seller carried on the original Order. Unless otherwise agreed to in writing, Buyer shall also pay in full the cost of all fixtures, all of which remain at all times in possession of Seller.

3) **PRICES AND CREDIT TERMS:** The prices shown in an Order are not unconditional offers to sell, and are subject to change without notice. Prices shall be subject to adjustment to those in effect at time of shipment. Prices apply to castings produced and machined to commercial standards; extra charges are applicable to castings of special analysis or made to special tolerances, or to meet special specifications of any kind. Seller's prices are based on normal test requirements as determined and performed by Seller's inspectors and, unless expressly agreed to in writing by Seller, do not include any other inspection of any kind. All Orders, including, without limitation, shipments, deliveries and performance of work thereunder, shall at all times be subject to the approval of Seller's credit department and Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to Seller.

4) **PAYMENT TERMS:** Except as otherwise provided herein, payment terms are cash net 30 days from date of invoice. Amounts past due are subject to a service charge, the greater of 1.5% per month (or fraction thereof) or the maximum contract rate permitted by law. If Seller deems that by reason of the financial condition of Buyer or otherwise, the continuance, production or shipment on the terms specified herein is not justified, Seller may require full or partial payment in advance. On orders \$100,000 or more, the standard method of payment will be progressive deposits. In the event the account of Buyer is turned over for collection by Seller or to any party acting on behalf of Seller, in addition to the unpaid balance of Buyer's account, Buyer agrees to pay all expenses of collecting the account including, without limitation, reasonable attorneys' fees.

5) **TAXES:** All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer or upon any sale, contract, shipment or delivery incident thereto. Buyer shall be responsible for and pay all such amounts or furnish Seller with necessary funds for such payment if payable by Seller in addition to the price or prices provided herein.

6) **DELIVERY:** All Orders accepted by Seller shall be filled and shipped in accordance with Seller's production schedules. All shipments are FOB point of shipment. Shipping/handling charges will be Buyer's responsibility on the basis of Seller's current policy. Delivery is subject to delays due to war, acts of God or of the public enemy, acts of Government, fire, floods, strikes, labor trouble, inability to obtain materials or fuel, sabotage, freight and transportation delays of any cause of the same or any other kind beyond the control of Seller.

7) **TITLE AND RISK OF LOSS:** In line with general practice, all Goods are shipped at Buyer's risk, and title and risk of loss passes to Buyer upon delivery of the Goods at the delivery point. Claims for damage in transit must be filed with the carrier involved. Shipments should be carefully examined on arrival before signing a receipt. A signed bill of lading or delivery ticket with no exceptions noted will indicate that the count, description and condition is satisfactory.

8) **WARRANTY DISCLAIMERS:** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (C) WARRANTY OF TITLE, OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. SELLER SHALL NOT BE LIABLE FOR A BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT UNLESS: (i) BUYER GIVES WRITTEN NOTICE OF THE DEFECT, REASONABLY DESCRIBED, TO SELLER WITHIN THE INSPECTION PERIOD, (ii) SELLER IS GIVEN A REASONABLE OPPORTUNITY AFTER RECEIVING SUCH NOTICE TO EXAMINE SUCH GOODS AND BUYER RETURNS SUCH GOODS TO SELLER'S PLACE OF BUSINESS, AND (iii) SELLER REASONABLY VERIFIES BUYER'S CLAIM THAT THE GOODS ARE DEFECTIVE. SELLER SHALL NOT BE LIABLE FOR A BREACH OF WARRANTY IF BUYER MAKES ANY FURTHER USE OF SUCH GOODS AFTER GIVING SUCH NOTICE, THE DEFECT ARISES BECAUSE BUYER FAILED TO FOLLOW SELLER'S ORAL OR WRITTEN INSTRUCTIONS AS TO THE STORAGE, INSTALLATION, USE OR MAINTENANCE OF THE GOODS, OR BUYER ALTERS OR REPAIRS SUCH GOODS WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER.

9) **SPECIFIC TERMS AND DISCLAIMERS:** Unless otherwise agreed to in writing, goods sold are castings, machined components, machined castings, assemblies or kits of various types, to specifications as provided by Buyer. If Seller provides Buyer with assistance or advice which concerns any parts, products, service supplied hereunder or any system or equipment in which any such part, product, service may be installed and which is not required pursuant this Agreement, the furnishing of such assistance or advice shall not subject Seller to any liability, whether based in contract, warranty, tort (including negligence) or otherwise.

10) **LIMITATION OF LIABILITY:** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR TRANSPORTATION OR INSTALLATION CHARGES, EXPENSES FOR REPAIRS OR REPLACEMENTS, LOSS OF USE, REVENUE OR PROFIT, DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

11) **ACKNOWLEDGEMENT OF DISCLAIMERS AND LIABILITY:** SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHICH MEANS THAT SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO BUYER. IN THESE JURISDICTIONS, SELLER'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW. THE PARTIES ACKNOWLEDGE AND UNDERSTAND THAT THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN THE PARTIES, THAT THE SAME REFLECT AN

ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT ABSENT SUCH DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY, THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE PRICES FOR THE GOODS, WOULD BE SUBSTANTIALLY DIFFERENT.

12) **MATERIAL SUPPLIED BY BUYER:** When material or equipment is supplied by Buyer in connection with performance of labor or services by Seller on such material or equipment or for any other reason, whether or not such material or equipment is listed as a part of an Order, the following additional and supplementary terms and conditions shall apply and shall supersede the foregoing terms and conditions to the extent they conflict with such terms conditions, if any: (a) Seller shall not under any circumstances be liable for any direct, indirect or consequential damages which may result from acts which it performs or for its failure to perform any act with respect to such material or equipment for any loss of or damage to such material or equipment resulting from processing by Seller or from any other cause; (b) defective parts and material will be returned to Buyer at Buyer's expense; (c) if Buyer furnishes any equipment, other than regulation equipment, which increases the cost of production of castings, an extra charge will be made; (d) repairs and changes of patterns utilized in the production of cast components, including the cost of replacing patterns, will be made at the expense of Buyer; and (e) Seller is not responsible for variations between blueprints and pattern equipment utilized in the production of cast components which are supplied by Buyer.

13) **INDEMNIFICATION:** Seller shall not be liable to Buyer for any loss, damage or expense incurred by Buyer as a result of any infringement, misappropriation or alleged infringement or misappropriation of any intellectual property or proprietary right related to the Goods sold hereunder. Buyer shall defend, indemnify and hold harmless Seller, its affiliates, and their respective shareholders, members, officers, managers, employees and agents from loss, damage or expense including court costs and reasonable attorneys' fees incurred by the indemnified party as a result of an infringement, misappropriation or alleged infringement or misappropriation by the Goods sold hereunder. Seller shall have the right to participate in the defense of said claim or suit with counsel of its own choosing and at its own expense. Buyer's obligations hereunder shall not be affected by such participation by Seller.

14) **COMPLIANCE WITH LAWS:** Both parties shall comply with all laws applicable to this Agreement and/or the Goods.

15) **GOVERNING LAW:** This Agreement shall be construed and governed in accordance with the laws of the State of Alabama without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Alabama.

16) **ASSIGNMENT:** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

17) **TERMINATION:** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

18) **WAIVER:** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19) **SEVERABILITY:** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.