

# GENERAL TERMS AND CONDITIONS OF SALE

## 1. Formation of Contract

These Terms and Conditions confirm the offer of BENTELER Steel & Tube Corporation (the "Seller") to sell, and constitute a binding agreement between the Buyer and Seller, which supercedes all prior agreements and understandings whether written or oral, express or implied, which shall not be supplemented or amended except as set forth in the Sales Confirmation or by separate written agreement. Provisions set forth in the Sales Confirmation shall govern, where inconsistent with these Terms and Conditions.

1.2 Terms and conditions of the Buyer additional to or varying from those herein shall not be binding on the Seller unless specifically agreed to in writing by the Seller. The Seller's acceptance or acknowledgment of the Buyer's purchase orders or shipping instructions shall not constitute written agreement to Buyer's terms and conditions. If this Sales Confirmation shall be deemed an acceptance of a prior offer by the Buyer, such acceptance is expressly conditional on the Buyer's assent to any additional or different terms contained herein.

1.3 No offers, arrangements or orders shall be binding on the Seller unless and until confirmed by the Seller in writing.

1.4 Acceptance by the Buyer of all or any part of the product sold hereunder shall be an acceptance by the Buyer of these Terms and Conditions, whether or not the Buyer shall have first received this Sales Confirmation.

1.5 Seller and buyer each represent that it is a "merchant" as defined in Article 2 of the Uniform Commercial Code, dealing in goods of the kind sold by Seller hereunder.

## 2. Price and Payment

2.1 The price specified herein is subject to escalation based on i increase in costs attributable to: (i) the imposition subsequent to the date hereof of new or revised sales or value added taxes; Imposts, and the like, (ii) increases in Seller's contemplated customs duty expense, or (iii) other government levies, or (iv) government quotas, or (v) Voluntary Restraint Agreements, or (vi) increases in Seller's contemplated shipping and handling.

2.2 Payment of the selling price and additional costs are due in accordance with the terms set forth in this Sales Confirmation. Lots separately delivered may be billed separately to the Buyer. Complaints or claims by the Buyer shall not impair the Seller's right to payment as provided hereunder. Any adjustments by Seller as a result of such complaints shall be made subsequent to such payment.

2.3 Past due payments shall bear interest computed monthly at a rate of 3% above the prime rate of interest then in force on new 90-day loans to commercial borrowers of highest credit standing quoted by Citibank N.A. New York, or if such rate is in excess of the maximum rate permitted by Texas law, at the maximum lawful rate.

## 3. Default and Seller's Remedies

3.1 The Buyer shall be in default hereunder of any one or more of the following events occur: (a) time is of the essence to Buyer's performance of all obligations hereunder and failure to perform in a timely manner shall render Buyer in default; (b) the Buyer shall default in fulfilling any of its obligations to the Seller; (c) a receiver, liquidator or trustee of the Buyer, or of any of its property, is appointed by court order; (d) the Buyer is adjudicated bankrupt or insolvent; (e) any property of the Buyer is sequestered by court order; (f) a petition is filed by or against the Buyer under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; (g) the Buyer becomes insolvent, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of the Buyer or of all or any substantial part of its property; (h) in the event that delivery is dependent on the Buyer's cooperation and the Buyer fails to cooperate in effecting delivery at the time agreed upon, or absent such agreement, at the time fixed by the Seller. In the event of such default, Seller's remedies include: (a) acceleration of all amounts due to Seller; (b) cancellation of the contract, non delivery of product (or, if delivered, reclamation) and recovery of damages including but not limited to costs of stopping delivery, transportation back to Seller of Seller's supplies, storage, sales commissions, resale costs, lost profit (c) all rights and remedies at law and equity. For purposes of this paragraph "Buyer" shall include any corporation controlling, controlled by, or under common control with, Buyer.

3.2 All costs incurred by the Seller as a result of default by the Buyer, including without limitation collection costs and reasonable attorneys' fees, shall be paid by Buyer.

3.3 If the credit of the Buyer shall at any time, in the sole judgment of the Seller, becomes impaired, the Seller may, at its option, and without incurring any liability therefor, divert or prevent the discharge of shipments en route to the Buyer and cancel the unfulfilled portion of the contract, or require the Buyer to give such security as the Seller may specify to ensure payment, or require payment in advance before making any further shipment. The Seller shall not be required to discharge shipments or make delivery until any security or advance payment required by it has been given or paid, and may divert shipments and/or cancel the unfulfilled portion of the contract if such security or payment shall not have been given or made by the Buyer within the time specified by the Seller. All costs and expenses incurred by the Seller as a result of its exercise of any right or option under this paragraph shall be for the account of the Buyer.

## 4. LIMITATIONS ON WARRANTIES AND WAIVER OF TEXAS DECEPTIVE TRADEPRACTICES ACT

4.1 THE SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OF OTHERWISE, EXCEPT THAT THE PRODUCT CONFORMS TO THE SPECIFICATIONS SET FORTH ON THE FACE HEREOF.

4.2 On the written request of the Buyer, the Seller may, but is not obligated to, permit the Buyer to inspect the product at the Seller's source of supply prior to shipment. If such inspection shall occur at a producer's facility, the inspection shall be conducted so as not to interfere with the producer's operation. In the event an inspection is concluded, the Buyer shall notify the Seller in writing of its acceptance or rejection of the product within seven (7) days following such inspection, but in no event later than the date scheduled for shipment, failing which the Buyer shall be conclusively deemed to have accepted the product. Absent pre-shipment inspection, Buyer shall be deemed to have irrevocably accepted the product, absent written notice of rejection and specific reasons therefor, by the earlier of seven (7) days after inspection or ninety (90) days after delivery.

4.3 WAIVER OF CONSUMER RIGHTS: BUYER HEREBY WAIVES ITS RIGHTS, IF ANY, AGAINST SELLER UNDER THE TEXAS DECEPTIVE TRADE PRACTICES, CONSUMER PROTECTION ACT, SECTION 17.41 et seq, BUSINESS COMMERCE CODE, 2 LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTION AFTER CONSULTATION WITH AN ATTORNEY OF ITS CHOICE, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER.

4.4 Seller makes no warranty, express or implied that product sold hereunder shall resist erosive or corrosive action from air, liquid or mechanical sources, and seller shall have no liability for erosion or corrosion to a product due to air, liquid or mechanical sources.

## 5. Quantity and Measurement

5.1 Evidence of length, weight and other specifications of the product delivered to the Buyer shall be determined BY the mill test certificate, which shall be conclusive.

5.2 Where the quantity to be sold is stated as "approximate", the Seller shall at its option have the right to deliver, with respect to any shipment or to the total contract quantity, between ten (10%) percent more and ten (10%) less than the agreed to quantity. The Seller may at any time deduct from future shipments to correct for excess prior shipments, or make up deficiencies in prior shipments, but shall not be required to do so.

## 6. Intellectual Property

6.1 Buyer acknowledges that Seller and/or its supplier own valuable trade secrets, patents, trademarks and copyrights in the products sold hereunder, and that misuse or unauthorized use or disclosure of such patents, trademarks, copyrights and trade secrets may constitute infringement, misappropriation and unfair competition, and shall constitute breach of this Agreement.

6.2 Buyer shall give Seller prompt written notice of any claim which Seller or its supplier may have against third parties for patent, trademark or copyright infringement, misappropriation of trade secrets or unfair competition. Buyer shall fully cooperate with Seller and/or its supplier in the prosecution of such claims against third parties by providing evidence, witnesses and other reasonable assistance.

## 7. Limitations on Remedies of Buyer and Limitations of Liability of Seller

7.1 Seller shall not be liable for any claim arising in connection with the product sold to the Buyer hereunder unless written notices is given by the Buyer to the Seller as provided in paragraph 7.2 below.

7.2 Written notice of any objection, complaint or claim concerning the product must be given: (a) with respect to claims of shortage or damage to the product in transit; (i) Where the sale is made ex ship, within thirty (30) days following the completion of unloading of the product at the port of importation; (ii) in all other cases by the earlier of thirty (30) days after the date on which risk of loss with respect to the product passes to the Buyer and the date before such product is consumed, negotiated or commingled by the Buyer, (b) with respect to claims of non-conformity to specifications, within ninety (90) days following receipt of the product by the Buyer, provided, however, that the Buyer shall at its expense furnish the Seller with a representative sample of the product as to which the complaint is made together with such verification as the Seller may reasonably require of the identity of the alleged defective product sold hereunder; and further provided that no claim of non-conformity will be honored if the Buyer has previously notified the Seller of its acceptance of the product or is deemed to have accepted the product following inspection thereof in accordance with paragraph 4.2 above.

7.3 Failure to give such notice in the manner and within the time provided herein shall be deemed a waiver by the Buyer of all claims with respect to such product.

7.4 In the event that the Seller shall fail, for any reason than force majeure as defined below, to make delivery of the product sold hereunder for any installment, the Buyer shall be entitled to give written notice to Seller granting a reasonable extension of time and the Buyer may terminate this agreement if delivery is not made within such time. The Buyer's right of termination granted in this paragraph shall be in lieu of any and all claims of the Buyer against the Seller for damages arising from or in connection with the failure of the Seller to make delivery. Where the parties have agreed upon delivery in installments, exercise by the Buyer of the right of termination granted in this paragraph shall not affect the liability of the Buyer to make payment to the Seller for any installments delivered prior to the date of termination of the agreement.

7.5 In the event the product shall differ materially from the specifications on the face hereof or in any other material respect shall not comply with the terms of sale, the Seller may, at its option, replace such product or credit the Buyer with the difference in value. Such option shall be the Buyer's sole and exclusive remedy in the event of breach by the Seller. In no event shall the Seller's liability exceed Seller's invoice value to the Buyer of such part of the product sold as does not comply materially with the terms of the Sales Confirmation.

7.6 The Seller shall not be liable for incidental or consequential damages or lost profits of the Buyer, or for any loss incurred by third parties, as a result of the Seller's breach of contract.

7.7 THE SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY THE PRODUCT DELIVERED OR TO BE DELIVERED TO THE BUYER OR BY THE BUYER'S OR ANY THIRD PARTY'S USE OF SUCH PRODUCT. AFTER THE PRODUCT HAS BEEN IDENTIFIED TO THE CONTRACT.

7.8 THE SELLER'S OBLIGATIONS HEREUNDER ARE SUBJECT TO EVENTS OF FORCE MAJEURE, AND NO LIABILITY SHALL BE INCURRED BY SELLER FOR DAMAGES OF ANY NATURE RESULTING FROM SUSPENSION, REDUCTION OR TERMINATION OF DELIVERIES FOR REASONS OF FORCE MAJEURE.

7.9 THE BUYER SHALL HOLD THE SELLER HARMLESS FROM ALL CLAIMS OR ACTIONS BROUGHT BY THIRD PARTIES WITH RESPECT TO ANY DAMAGES DESCRIBED UNDER THIS ARTICLE.

## 8. Delivery and Shipment

8.1 For sales made "ex works" or "ex warehouse" title and risk of loss shall pass to the Buyer at Seller's warehouse or Seller's supplier's plant, when the product has been placed at Buyer's disposal at the named place of delivery within the time stipulated, or as otherwise provided in accordance with INCOTERMS latest edition definition of "ex works". In all other cases, title and risk of loss shall pass according to the Union Commercial Code.

8.2 Means and routes of transport shall remain within the sole discretion of the Seller, absent specific timely written instructions from Buyer.

8.3 Whenever transportation is supplied by the Buyer or procured on behalf of the Buyer, the Seller shall make reasonable effort to load cargo within the legal or customary lay days after consultation with the Buyer. The Seller shall not, however, be responsible for any costs or damages arising from delays in loading, and all storage, demurrage, wharfage, handling or the charges or penalties for delay, if any, shall be for the account of the Buyer.

8.4 Whenever the Buyer shall be obligated to supply storage and such storage is insufficient or not supplied in time to receive the product, the Seller shall have the right to discharge and store the product sold, and the costs and expenses arising therefrom shall be for the account of the Buyer.

8.5 In the case of all shipments hereunder, the Buyer shall bear any demurrage charges or other additional expense due to loss of time by carriers carrying goods hereunder including, without limitation, such costs caused by: (a) Any action by State, Federal or foreign governmental authority. (b) Ice conditions or other weather conditions at the designated shipping or discharging point or approaches, whether before docking or after loading or discharge of cargo. (c) Delay in unloading by the Buyer. (d) Labor problems. (e) Carrier's delay due to any other cause.

## 9. Force Majeure

9.1 If because of force majeure the Seller is unable to carry out any of its obligations under this agreement and if the Seller promptly notifies the Buyer in writing, expressly claiming such force majeure, then the provisions of paragraph 9.2 - 9.4 shall apply. The term "force majeure" as used herein shall mean any causes reasonably beyond the control and without fault or negligence of the Seller which wholly or insubstantial part prevent the manufacture, transportation, loading, unloading, delivery or storing of the product sold hereunder, including without limitation, acts of God, acts of public enemy, acts of war, riot or civil commotion, labor disputes, labor or material shortages, accidents, fires, explosions, extreme weather, floods, breakdowns of or damage of plants, equipment or facilities, partial or complete embargoes imposed by originating or connecting railroads, interruptions to or contingencies of transportation, orders, rules, regulations or acts of any governmental authority, expressed policies of any government.

9.2 If force majeure notice is given under paragraph 9.1 above, the obligations of the Seller shall be suspended to the extent made necessary by such force majeure.

9.3 If a force majeure condition continues so that obligations of the Seller remain suspended under paragraph 9.2 for a period of forty-five (45) consecutive days measured from the date of performance, and at any time thereafter either Buyer or Seller reasonably concludes that there is no likelihood of ending such conditions in the immediate future, then either party may terminate this agreement without liability upon fifteen (15) days' notice to the other party, unless such conditions shall cease within such time.

9.4 Deficiencies in shipment or failures to ship due to suspension of obligations for reasons of force majeure shall not be made up except by agreement by the parties.

## 10. Waiver Severability of Terms

10.1 Waiver by the Seller of any default of the Buyer hereunder shall not be deemed a waiver of any other default of the Buyer. All rights and remedies of the Seller herein are cumulative and in addition to any other rights and remedies to which it would otherwise be entitled under applicable law.

10.2 The invalidity of any provision of these Terms and Conditions shall not affect the remaining provisions hereof.

## 11. Governing Law; Disputes; Notice

11.1 ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS SALES CONFIRMATION, THESE TERMS AND CONDITIONS, OR THE BREACH THEREOF SHALL BE SETTLED FINALLY AND EXCLUSIVELY BY BINDING ARBITRATION CONDUCTED IN HOUSTON, TEXAS IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND JUDGEMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PARTIES AGREE THAT ARBITRATION PROCEEDINGS MUST BE INSTITUTED WITHIN ONE YEAR AFTER THE CONTROVERSIES OR CLAIMS. SUCH ARBITRATION SHALL BE HEARD AND DETERMINED BY ONE (1) ARBITRATOR, UNLESS EITHER PARTY REQUESTS THAT THE ARBITRATION BE HEARD BY THREE (3) ARBITRATORS.

11.2 THIS SALES CONFIRMATION SHALL BE INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, U.S.A. EXCLUDING ITS CONFLICTS OF LAW RULES.

11.3 The application of the U.N. Convention on Contracts for the International Sale of Goods is expressly excluded.

11.4 This Sales Confirmation and all the terms and conditions hereof shall be binding upon the Parties and their respective successors and assigns, however, the Buyer shall not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Seller.

11.5 The parties hereto irrevocably submit to the exclusive jurisdiction and venue of the courts of the State of Texas, U.S.A. and the Federal courts of the United States located in Houston, Texas for injunctive relief in and of arbitration, entry of judgement in the arbitral award, and for adjudication of any matter determined to be not subject to arbitration hereunder if any. To the extent that the Buyer or any of its property has or may hereafter acquire any right of sovereign immunity from suit, the Buyer hereby irrevocably waives any such right of sovereign immunity in respect of its obligations, rights and duties under this agreement.

11.6 All notices hereunder shall be in writing and given by telefax or telegram receipted hand delivery or by certified or registered mail, return receipt requested at the address stated on the face hereof until appropriate notice otherwise. Receipted hand delivery shall be deemed received upon receipt. Telefax or telegram notice shall be deemed received on the first business day following date of transmission. Mail notice shall be deemed received on the fifth day after mailing.