

TERMS AND CONDITIONS OF SALE

- All prices quoted are subject to adjustment after thirty (30) days.
- Any increase in any tax or governmental charge (or newly enacted tax or governmental charge) which becomes effective after the date quotation and which increases the cost to Seller of producing, selling, or delivering the material or of procuring materials used therein, may, at Seller's option, be added to the price herein specified.
- Orders are subject to acceptance and approval by Five Star Metals, Inc. (hereinafter "FSM"). An order, when acknowledged by FSM whether by electronic means or otherwise, cannot be canceled, terminated or modified by the Buyer in whole or in part except with the Seller's written consent, and then only upon terms and conditions then to be agreed upon which shall include protection of the seller against all loss.
- Orders are accepted subject to the conditions that, unless specified by Buyer and accepted by Seller: Buyer's application of the material sold is not nuclear safety related; Seller is not bound by any nuclear quality assurance code; the material is also not intended for use in aircraft.
- Seller warrants as follows: (a) all material supplied hereunder will conform to the description stated in your Purchase Order once you receive acceptance from FSM; (b) upon payment of the purchase price, Buyer will receive good title to all such material free from any lien, encumbrance or lawful security interest; and (c) the material sold hereunder shall be of merchantable quality. Except for the foregoing warranties, Seller makes no other warranties express or implied. Seller expressly disclaims any implied warranty of fitness for a particular purpose. Seller, upon request, may furnish to Buyer such technical advice as it may be able to supply with reference to the use by Buyer of any material delivered hereunder. Seller, however, assumes no obligation or liability for the advice given or results obtained. Seller does not offer any engineering services and Buyer specifically disclaims any reliance on any technical advice referenced by Seller. Buyer expressly agrees that it will implement any advice thus given at its own risk and agrees to indemnify and hold harmless Seller against any liability, costs or expenses resulting therefrom.
- Promptly upon receipt of all material delivered hereunder, Buyer shall inspect such material for any damage, defect or shortage. All claims for shortage or non-delivery and any claim for damage or defect which would reasonably be discoverable in the course of such investigation shall be waived unless Buyer shall notify Seller of the same within thirty (30) days after receipt of the material to which the claim relates. In any event, Buyer's exclusive remedy for shortage or damaged or defective material (whether or not occurring as a result of Seller's alleged negligence or gross negligence) or any other cause whatsoever shall be return of the purchase price of the material or services in respect of which the claim is made, or, at Seller's option, the repair or replacement of such material or services. Seller shall not be liable for, and Buyer assumes responsibility for, all personal injury and property damage resulting from the handling, possession, use

or resale of the material, whether the same is used alone or in combination with other materials. In no event shall Seller be liable for incidental or consequential damages, whether Buyer's claim is in contract, negligence or otherwise. Transportation charges for the return of the material shall not be paid unless authorized in advance by Seller.

- Payment terms shall be specified on FSM's invoice. Upon failure by the Buyer to make any payment according to credit terms, the Seller shall have the right to declare all open accounts immediately due and payable and may defer further shipment until all accounts are paid. If the financial responsibility of Buyer becomes impaired or unsatisfactory to the Seller, cash payment or security satisfactory to the Seller may be required before shipment.
- All delivery dates are approximate; deliveries will be made on those dates or as close thereto as practicable. In no event shall Seller be liable for any damages as a result of any delivery delays or any failure by Seller to deliver material as promised.
- This contract constitutes the full understanding of the parties and a complete and exclusive statement of the terms of the agreement. No modification of this contract or waiver of any of its terms or conditions shall be of any force or effect unless made in writing and signed by the party claimed to be bound thereby. No modification of this contract shall be effected by the acknowledgment or acceptance of purchase order or shipping instruction forms or any other document containing terms or conditions at variance with or in addition to those set forth herein, all such varying or additional terms being hereby objected to. By ordering for shipment any material under this contract, Buyer agrees to all the terms and conditions contained herein.
- This agreement shall be governed by the laws of the State of Texas without regard to the conflicts of law provisions thereof. Should any provision of these Terms of Sale be declared invalid or otherwise reformed by a court of competent jurisdiction, the remaining conditions not found to be invalid by the Court or reformed shall remain in full force and effect. Exclusive jurisdiction and venue of any dispute between Buyer and Seller shall be in the state district courts of Harris County, Texas.