

## TERMS AND CONDITIONS OF SALE

### 1. *Entire Agreement and Acceptance of Terms and Conditions.*

This *Terms and Conditions of Sale* agreement ("Agreement") is entered into by and between RHW Metals, Inc. and Buyer. Seller and Buyer are collectively referred to herein as "parties" in this Agreement. RHW Metals, Inc. ("Seller") only sells Products and Services pursuant to the terms and conditions provided below which shall be deemed to be incorporated in the Contract (if any) or purchase order(s), to the exclusion of any conditions stipulated by the Buyer.

Any written confirmation of this Agreement by either one of the parties thereto containing additional or different terms from this Agreement shall be of no effect, unless the parties expressly agree, in writing, to such additional or different terms.

### 2. *Definitions.*

**"Buyer" means the person, firm or company, whether acting on its own behalf or an agent for one of its affiliated companies, to whom the Seller agrees to sell or supply the Product(s) or Service(s). Buyer shall include Buyer, its parent of affiliated companies, and client and their respective officers, directors, employees, contractors, subcontractors, vendors (except for Seller), invitees, licensees, and agents, and/or any entities with an interest or any or all of such entities.**

"Seller" means the company executing this Agreement with Buyer or providing Products to Buyer. Seller shall include Seller, its parent or affiliated companies, and their respective officers, directors, employees, clients, subcontractors, vendors, invitees, licensees and agents.

**"Product" or "Products" shall mean all or any of the goods which the Seller is to sell in accordance with the Contract.**

"Contract" shall mean the contract made or to be made between the Seller and the Buyer subject to these terms and conditions.

**"Service" or "Services" shall mean all or any of the services which Seller is to sell in accordance with the Contract.**

### 3. *Price.*

Prices invoiced will be those in effect at time of shipment of Products or performance of Services. All prices are exclusive of any taxes, now or hereafter enacted, applicable to the Products or Services.

### 4. *Payment.*

Payments are to be made in U.S. funds. Unless otherwise specified, all payments are due within thirty 30 days from the invoice date. Past due accounts may bear interest at the rate of 1.50% per month, prorated for any part of a month.

### 5. *Taxes.*

Buyer shall pay all federal, state, county and/or municipal sales, use, compensating, intangibles, gross income or like tax applicable to this transaction which is now in effect or may hereafter become effective, but not including taxes payable upon Seller's net income.

### 6. *Warranty.*

A. Seller warrants that the Products will be free from defects in materials and workmanship for a period of twelve (12) months from delivery. Seller represents that the Products will meet the specifications set forth in the applicable Purchase Order. Seller shall make the final determination as to whether its Products are defective in material or workmanship or fail to meet specifications. Should Seller determine that its Products are defective or fail to meet specifications, Seller will, at its option, repair or replace any such Products.

B. The warranty shall not apply to any Product, or part thereof, which: (i) is not properly stored, installed, maintained, or has been subject to detrimental exposure, (ii) has been subject to misuse, neglect, or accident, or (iii) has been tampered with or altered without Seller's written consent. Seller does not recommend and will not assume any responsibility for rebuilding, repairing, special plating, coating, or welding, or heat treating done outside of Seller's plant by or at the request of Buyer. Products not of Seller's manufacture and included in Seller's proposal, and special plating, coatings, and/or heat treatment applied to Seller's products are not warranted by Seller.

C. THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR ANY PURPOSE NOT EXPRESSLY SET FORTH HEREIN.

7. *Exclusion and Limitation of Liability.*

A. SELLER SHALL NOT BE LIABLE FOR DAMAGES FOR LOSS OF ANTICIPATED PROFITS OR REVENUE, NOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF GOODS, COST OF CAPITAL, COST INCURRED IN CONNECTION WITH LABOR, OVERHEAD, GENERAL, ADMINISTRATION, TRANSPIRATION, SUBSTITUTE FACILITIES, SUPPLY SOURCES OR OTHER SIMILAR DAMAGES.

B. Seller's liability, including that for breach of contract, breach of warranty, negligence, strict liability in tort, or otherwise, for Products and Buyer's exclusive remedy is limited to (a) the repair or replacement (but not installation) of defective Products by Seller or (b) the refund of any amounts paid on the purchase price, cancellation of the order and acceptance of the product if, in Seller's sole discretion, repair or replacement will not remedy a product deficiency, or if a product of Seller's manufacture does not comply with the specification set forth on Seller's Order Acknowledgement. However, if the product has been in use for a period in excess of 30 days, Seller reserves the right to make a reasonable depreciation charge for such use.

C. Seller's liability, including that for breach of contract, breach of warranty, negligence, strict liability in tort, or otherwise, for Services and Buyer's exclusive remedy is limited to re-performance of the Services.

D. In no event shall Seller or its affiliates be responsible for retrieving damaged or defective Products from the Buyer, transporting Product to Seller's factory, delay or curtailment of operations, pollution and/or cost of dismantling and removal of Products to be repaired or replaced, resulting from defective material, faulty workmanship or otherwise.

E. In no event shall Seller or its affiliates be responsible for (i) pollution, contamination or radiation damage (including the cost of containment, cleanup and disposal), and/or (ii) subsurface loss or damage, including loss of or damage to any reservoir formation, strata, well, or borehole or inhole equipment, or impairment of any property right to water, oil, gas or other mineral substances, and/or (iii) damage, loss or destruction, or personal injury or death arising on the surface as a result of subsurface occurrence (including damage to or loss or destruction of any equipment, drilling rig, platform or other fixed or floating structure at or around the well site), and/or (iv) killing or regaining control of a wild well, or re-drilling, reworking or fishing (including the cost thereof), even if the damage, loss, costs or expenses result from the sole or concurrent negligence of Seller and/or its affiliates (including subcontractors).

F. Seller's maximum aggregate liability in connection with the sale of Products or Services to Buyer shall not exceed the total value of the applicable purchase order.

G. Buyer agrees to accept the limits of liability as expressed herein to the exclusion of any and all **provisions as to liability on the Buyer's own invoices, purchase orders or other documents. Any different or additional terms contained in any of the Buyer's forms will be of no effect and are expressly rejected. If Buyer desires their own provisions as to liability to remain in force and effect, this must be agreed to in writing and signed by an officer of the Seller. In such an event, a different charge for the Products and/or Service, reflecting the higher risk to Seller, shall be determined by Seller and Buyer.**

**8. Contingencies and Force Majeure.**

Seller shall not be liable to Buyer for any loss or damage suffered by Buyer, directly or indirectly, as a **result of Seller's failure to perform, or delay in performing, any term or condition hereof, where caused by fire, flood, natural disaster, labor issues (including without limitation strike, slowdown, or lockout), war, riot, civil disaster, hurricanes, embargo, government regulations or restrictions, expropriation of plant by federal or state authority, interruption of or delay in transportation, power failure, inability to obtain materials and supplies, accident, explosion, act of God, or any other causes beyond Seller's or Seller's supplier's control and the time for delivery specified herein shall be extended during the continuance of such conditions and for a reasonable time thereafter.**

**9. Risk of Loss.**

Risk of loss of all Products shall pass to the Buyer upon delivery of the Product to Buyer.

**10. Title.**

Title shall pass to Buyer upon delivery of the Product to Buyer. Seller shall retain a security interest in the **Products supplied hereunder until Buyer's complete payment of the purchase price, plus accrued interest and applicable taxes, if any. The security interest shall be enforceable both in the United States as well as in the country where the Product may be located.**

**11. Delivery.**

A. Any time or dates quoted by the Seller for delivery of the Products or Services are estimates only. Time of delivery shall not be of the essence of the Contract and Seller shall not be liable for any failure to **meet any such estimate, nor for any loss, whether financial or otherwise, resulting directly or indirectly therefrom.**

B. Delivery shall be made by Seller's delivering Products to the place specified in the Buyer's order **unless the parties agree in writing otherwise.**

C. Where delivery is agreed to be made by installments, each installment shall be deemed to be a **separate and distinct contract, and no default by the Seller in respect of any one or more installments shall entitle the Buyer to reject or withhold payment in respect of any other installment(s).**

D. Notwithstanding the foregoing, the Seller shall be under no liability to the Buyer in connection with any damage or loss in transit where delivery to the Buyer or its carrier takes place at the Seller's **premises.**

12. *Returns.*

**No material will be accepted for credit when returned without advanced written permission from an officer of Seller.** All material accepted for credit is subject to Seller's normal restocking charge. No material will be accepted for credit after one (1) year from date of shipment to Buyer.

13. *Patented process.*

**Seller retains its intellectual property. All rights, title and interest in any inventions, models, processes, patents, copyrights and trade secrets or other proprietary rights, whether developed, made, reduced to practice or completed, arising from or relating to the furnishing of Products to, or performance of the Services for Buyer by Seller or processes or products that Seller conceives or acquires during the performance of the Services for the Buyer, or that Seller may conceive or acquire based upon knowledge acquired during the performance of Services for Buyer (the "Inventions") shall be the sole property of Seller.** The purchase of Products does not entitle Buyer to employ any patented process owned by Seller or others except where Buyer is authorized in writing by an officer of Seller to use the process.

14. *Compliance with Laws.*

Buyer shall comply with any applicable laws, rules and regulations to which Seller is subject that relate to **this Agreement, including legislation or regulation governing export of the Products out of the country** where sold to Buyer by Seller and into the country of destination. Buyer agrees to hold harmless Seller for Buyer's failure to comply fully with any such laws, legislation or regulations. Buyer shall ensure that all **necessary licenses, permits and consents have been obtained by the Buyer.**

15. *Indemnification.*

A. Should the Products be subjected to transformation including mechanical and technical procedures other than by Seller or any of its Affiliates, Buyer shall indemnify, defend and hold harmless **Seller and its Affiliates from, against, for and in respect of any loss, liability, claim, damage (including consequential or incidental), asserted or incurred by, Buyer or a third party by reason of any defects in the Products attributable to any act or omission of Buyer.**

B. SELLER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER FROM, AGAINST, FROM AND IN RESPECT OF ANY CLAIM, LOSS, LIABILITY OR DAMAGE ASSERTED AGAINST BUYER BY ANY THIRD PARTY ARISING OUT OF OR INCIDENTAL TO THE GOODS OR PERFORMANCE OF SERVICES UNDER THIS AGREEMENT AND RESULTING IN WHOLE OR IN PART FROM NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SELLER, ITS EMPLOYEES, OFFICERS AND AGENTS, UNLESS THE CLAIM, LOSS, LIABILITY OR DAMAGE RESULTED FROM CONCURRENT NEGLIGENCE OR INTENTIONAL MISCONDUCT OF BUYER.

C. BUYER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER AND ITS AFFILIATES FROM, AGAINST, FROM AND IN RESPECT OF ANY CLAIM, LOSS, LIABILITY OR DAMAGE ASSERTED AGAINST SELLER BY ANY THIRD PARTY ARISING OUT OF OR INCIDENTAL TO THE GOODS OR PERFORMANCE OF SERVICES UNDER THIS AGREEMENT AND RESULTING IN WHOLE OR IN PART FROM ANY OMISSION, NEGLIGENCE OR INTENTIONAL MISCONDUCT OF BUYER, ITS EMPLOYEES, OFFICERS AND AGENTS, UNLESS THE CLAIM, LOSS, LIABILITY OR DAMAGE RESULTED FROM CONCURRENT NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SELLER.

16. *Assignment.*

**Buyer may not assign, transfer or part with this Agreement without Seller's prior written consent.** Any purported assignment or transfer shall be void and ineffective.

17. *Additional purchases.*

**If substitute or additional equipment, or repair parts, are purchased by Buyer from Seller, the terms and conditions of the Agreement shall be applicable thereto, the same as if such substitute or additional equipment or repairs parts had been originally purchased hereunder.**

18. *Termination by Seller.*

**Seller reserves the right to terminate this Agreement immediately if (i) Buyer is resident in, or connected with, a territory that is covered by any embargo, sanction or similar restriction to which Seller is subject; (ii) Buyer has violated any law or regulation to which Seller is subject that relates to this Agreement; if (iii) Buyer or any of its employees becomes a person or entity with whom Seller is prohibited from transacting business; or (iv) if Buyer is in material breach of this Agreement, the Contract or purchase order(s).**

19. *Repudiation by Buyer.*

**Buyer may not terminate this Agreement without Seller's prior written consent.**

20. *Modification.*

No modification hereof shall be binding upon Seller unless such modification is in writing signed by an officer of Seller.

21. *Entire Agreement.*

This document and associated supply agreement(s) and related attachments constitute the entire agreement between the parties. All prior representations, negotiations or arrangements on this subject matter are superseded by these terms and shall not form a basis for interpretation of these terms.

22. *Severability.*

**If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall not be affected, and every provision of the Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.**

23. *Applicable Law; Claims and Dispute Resolution.*

This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Texas, without reference to its conflict of law principles. Buyer submits exclusively to the jurisdiction of the state district courts of Gregg County, Texas and the United States District Courts for the Eastern District of Texas – Tyler Division in the event of any dispute arising from these terms and conditions. This Agreement may not be changed or terminated orally.

Agreed:

Company: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Typed name: \_\_\_\_\_