

Terms and Conditions

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by MONARCH METALS, INC. ("**Seller**") to the buyer named on the reverse side of these Terms ("**Buyer**").

(b) The accompanying invoice (the "**Sales Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and 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 of 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.

2. Delivery of Goods.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. All deliveries are advised as an Estimated Time of Arrival ("ETA") on the current market condition. Seller shall not be liable for any addition cost(s), delays, loss, or damage in transit.

(b) Seller shall deliver the Goods to an address identified by Buyer in the purchase order (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: Seller, at its option, may store the Goods until Buyer picks them up or makes arrangements with Seller regarding re-shipment, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Non-Delivery.

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 120 days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for any non-delivery of Goods.

4. Quantity. If Seller delivers to Buyer a quantity of Goods of up to 50% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. Shipping Terms. Delivery of Goods shall be made FOB Seller's facility. Shipping cost can be paid in either of the following methods:

(a) Prepaid: Seller pays for all freight charges to Buyer's facility

(b) Collect: Buyer pays for all freight charges to Buyer's facility

6. Shipping Allowances. Shipping allowances, unless otherwise agreed to in writing by Seller, are to be calculated as indicated below. Seller will advise Buyer if order is complete.

Weight of Goods (pounds)	Percentage
0 – 1,000 lbs.	+/- 30%
1001 lbs. and above	+/- 10%

7. Title and Risk of Loss. Title and risk of loss passes to Buyer upon shipment of the Goods from Seller's facility. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Missouri Uniform Commercial Code.

8. Buyer's Acts or Omissions. If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

9. Inspection and Rejection of Nonconforming Goods/Buyer Complaints.

(a) Buyer shall inspect the Goods within 10 days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only the

following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's St. Louis, Missouri facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 9(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods.

(d) Any and all Buyer complaints must be submitted with wire as well as parts and samples. All samples must be supplied with Buyer's purchase order, the date of shipment, the total quantity shipped, total quantity rejected, heat number, tag number, and Seller sales order number. Once Seller receives the above listed documentation and samples, Seller will review the claim and Buyer will be notified within sixty (60) days. If the claim is accepted, Seller will issue an RMA number for the Goods to be returned. After the Goods are received by Seller's facility and inspected, a full credit will be issued or the Buyer will be instructed to scrap at their facility, in which case the Buyer will be issued a credit for invoice less scrap value. Seller will not under any circumstances accept claims in which the Goods are over one (1) year old. Except as provided under Section 9(b) and 9(d), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

10. Price.

(a) Buyer shall purchase the Goods from Seller at the price set forth in the purchase order unless a long-term agreement is otherwise signed by Seller and Buyer stating the quantity, length of time and pricing of the Goods.

(b) If the Price should be increased by Seller before delivery of the material to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased price was originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased price.

(c) 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. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets.

(d) Absolutely no financial information or information pertaining to other customers and/or suppliers will be provided to Buyer for any reason pertaining to any cost or pricing of the Goods.

11. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days of Seller's invoice. Invoices will be generated on the date of shipment and will be calculated on the

total pounds shipped. Buyer shall make all payments hereunder in immediately available funds and in US dollars. Credit may be approved in Seller's sole discretion with Buyer's submission of three (3) industry related credit references and banking information.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods and stop Goods in transit if Buyer fails to pay any amounts when due hereunder and such failure continues for 30 days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

12. Stocking Program(s). Any Goods that are brought in for an open purchase order must be shipped within ninety (90) days of the Goods receipt date by Seller.

13. Disclaimer of Warranty. **SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

14. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, PROFIT OR 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.**

(b) **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.**

15. Compliance with Law. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

16. 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 and such failure continues for 30 days after Buyer's

receipt of written notice of nonpayment; (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. Buyer may terminate this Agreement only if the Goods have not yet been produced at the mill and if one the following conditions have been met: (a) Production has not yet begun on the Goods; (b) Seller has not bought HRAP Rod to insure delivery to Buyer and/or firm pricing.

17. 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.

18. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; (i) pandemics or other national medical emergencies; and (j) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) days following written notice given by it under this Section 20, either party/the other party may thereafter terminate this Agreement upon ten (10) days' written notice.

19. 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.

20. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Missouri without giving effect to any choice or conflict of law provision or rule (whether of the State of Missouri or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Missouri.

22. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts sitting in the Eastern District of Missouri and any state court located in St. Louis County, Missouri. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

23. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

24. 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.

25. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.