

## TMI - TERMS AND CONDITIONS OF SALE

### 1. PRICE AND TAXES

Unless otherwise specified hereon, all prices for the products, equipment, articles, reports, services, and/or parts thereof (herein individually and collectively called "goods") described on the attached (sometimes called "hereon") are quoted, all orders accepted and billings rendered exclusive of all present and future federal, state and local excise, sales, use and similar taxes. Such taxes, when applicable, will be paid by the Buyer and will appear as separate additional items on Seller invoices unless the Buyer provides Seller with a tax exemption certificate acceptable to the applicable tax authorities. Seller reserves the right to adjust the prices of patterns and castings in the event of increased metal prices.

### 2. TERMS OF PAYMENT

Payment in full by the Buyer is due thirty (30) days from the date of Seller's invoice, unless otherwise specified on the invoice. If, in Seller's sole judgment, the financial condition of the Buyer does not justify continuation of production or shipment on the terms specified herein, Seller may cancel any unfulfilled orders from the buyer or parts thereof and/or may require immediate payment for all goods delivered and/or full or partial payment in advance for all goods not delivered, at Seller's sole option. In the event Buyer fails to pay any invoice of Seller when due, Seller shall have the right to retain all Buyer's patterns in Seller's possession and to use or sell the same to liquidate the debt. A charge of the lower of 1½% per month or the highest legal rate will apply to all invoices exceeding our 30 day net terms.

### 3. SHIPMENT AND INSURANCE

Unless specific shipping instructions are received from the Buyer substantially before the shipment date, Seller reserves the right to use its best judgment in selecting the appropriate means of shipment. No insurance will be provided or taken out for the Buyer and all shipments will be with transportation charges collect, unless otherwise specifically requested by the Buyer on its purchase order or unless Seller chooses otherwise. Should Seller pay insurance and/or transportation charges, such charges may at Seller's option be added to Seller's invoice. In any event, all responsibility of Seller shall cease and the risk of loss shall pass to the Buyer when the goods are delivered to a carrier for shipment to the Buyer. Seller reserves the right to make partial shipments and then invoice the Buyer therefor. Such shipments and invoices shall be governed by and payable in accordance with the terms and conditions contained herein and hereon. All freight, drayage, boxing and crating of Buyer's patterns to and from the Seller shall be assumed by the Buyer. Buyer's patterns are not insured by Seller, and Seller is not responsible for loss or damage to patterns.

### 4. DELIVERY

There shall be added to the time within which Seller shall perform any obligation in connection herewith the period of time that delay in such performance is directly or indirectly caused by or in any manner arises from acts of God or of the public enemy, acts or omission of the Buyer, fire, flood, strike, epidemic, accident, riot, war, severe weather, lack of or inadequate transportation facilities, delays in transportation, delays in delivery of material or services by supplier, delays or failure in procuring any export or import licenses or other documents or authorizations deemed necessary or desirable by the Seller, by or from shortages of labor, fuel, material or supplies, by or from regulations, priorities, orders or embargoes imposed by any civil or military government authority in either its sovereign or contractual capacity, or by or from any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) beyond the reasonable control of Seller. If a "premium" charge for a delivery date is specifically quoted hereon and referred to as such, the Buyer may, subject to the foregoing sentence, and, as its sole and exclusive remedy, hold Seller liable for direct damages to its resulting from failure to meet the specified delivery dates, but such direct damages shall in no event exceed the amount of the premium charge quoted hereon. In all other cases, delivery dates quoted are approximate only, are not guaranteed, and may be extended by Seller for a reasonable time if conditions at Seller's plant warrant. Whether or not a premium charge for delivery date is quoted hereon, Seller shall in no event be liable for special, incidental or consequential damage resulting from failure to meet delivery schedule.

### 5. TERMINATION OR AMENDMENT

No order received by Seller is subject to termination, cancellation, modification or amendment in any respect by the Buyer except upon written request to Seller, accepted in writing by Seller, and then only upon payment by the Buyer of all reasonable termination, cancellation, modification or amendment charges determined by Seller. In the event of any modification or amendment, Seller may, at its option, revise its price and delivery schedule hereunder to provide for such modification or amendment. If shipment of any goods ordered is delayed by the Buyer, all goods held by Seller shall be at risk and expense of the Buyer. Notwithstanding the foregoing, if any order resulting herefrom is pursuant to a U.S. Government contract which is terminated for convenience of the Government pursuant U.S. Armed Services Procurement Regulations Section VII, the Sub-contract Termination Clause set forth in paragraph 8-706 of those Regulations shall apply in lieu of this paragraph to the extent the Buyer is required to terminate the order.

### 6. NONCONFORMITY AND RETURN

Delivery of ten (10%) percent more or less than the quoted quantity shall constitute fulfillment of the order, the difference to be paid for or allowed. All quoted weights are estimates only and any discrepancy therefrom will not constitute a breach. No goods will be accepted for credit by Seller if shipment has been made in accordance with the Buyer's purchase order. If Buyer is otherwise entitled to recover damages, or to revoke its acceptance of any of the goods based upon any nonconformity in the goods or in the tender of delivery, Buyer shall be barred from all such remedies unless Seller has received written notice of Buyer's intention to enforce such remedy within the shorter of the following time periods: (a) 30 days after shipment in the event of a latent nonconformity, (b) 10 days after shipment in the event of a patent nonconformity, (c) such shorter time period as is prescribed by the Uniform Commercial Code. Seller shall be given a reasonable opportunity to correct any nonconformity in the goods for which the Seller is legally responsible prior to Buyer's rejecting, or revoking its acceptance of any of the goods. NO GOODS MAY BE RETURNED TO SELLER FOR ANY REASON WITHOUT SECURING A RETURN AUTHORIZATION FROM SELLER PRIOR TO SHIPMENT. Any return shipment, when authorized, will only be allowed in conformity with the return authorization.

### 7. PRICE

Should Buyer require special analysis, machining, etc., Buyer's inquiry shall set forth such requirements in detail, and any special treatment in excess of processes covered by Seller's quotation shall be at Buyer's expense.

### 8. EQUIPMENT, PATTERNS, AND DESIGNS

All equipment, dies, gauges, jigs, fixtures and other tools, and all designs, drawings, specifications, technical documents and other such material which are acquired, produced, or furnished by Seller pursuant to any order resulting herefrom, shall, unless otherwise stated hereon, remain the sole property of Seller regardless of whether any charges are made for them. All patterns, core boxes, and loose pieces thereof, shall be property marked for, and follow boards, core driers, and similar devices when required by Seller are to be furnished by Buyer. Buyer shall furnish pattern and core box equipment in proper condition to produce the quantity and quality of castings agreed upon, and all repairs and changes required to place this equipment in proper condition shall be at Buyer's expense. Seller is not responsible for variation in goods resulting from blueprints, patterns and core box equipment supplied by Buyer.

Seller shall not be required to store Buyer's patterns on which no production orders have been received for three (3) years, and upon thirty (30) days written notice to Buyer, Seller may return said patterns to Buyer transportation collect.

### 9. PATENTS

Seller warrants that all products regularly manufactured and sold by Seller (except special or developmental devices and the like) will be delivered to the Buyer free of the rightful claim of any third person by way of infringement of a U.S. patent. This warranty shall extend to the Buyer only. Seller makes no warranty as to foreign patents or that any other goods or parts thereof sold by Seller will be delivered to the Buyer free of the rightful claim of any third person by way of patent infringement or the like. Seller assumes no responsibility for any patent violations resulting from an unusual or not contemplated application and/or use of the goods or parts thereof by the Buyer or others. By ordering goods made to individual specifications, the Buyer undertakes to indemnify and hold Seller harmless from all liability, loss, damage, expense and/or claims of infringement (including all attorney's fees, and costs of investigating and litigating claims) occasioned by or resulting directly or indirectly, from the manufacture, use, and/or sale of such goods, and to promptly assume the defense and preparation for the defense of any suit or threatened suit to be brought against Seller. The sale of goods by Seller shall not be deemed to convey any license or right

(whether expressly, by implication, estoppel or otherwise) under any patent claim of Seller or of any other person, firm, or corporation or government.

### 10. INSOLVENCY

If the Buyer shall make an assignment for the benefit of creditors, or a voluntary or involuntary petition or other action in bankruptcy or for reorganization or under any other insolvency law shall be filed by or against the Buyer, or the Buyer shall admit its inability to pay its debts, of a Trustee, receiver or liquidator is appointed for any part of the assets of the Buyer (whether such acts be voluntary or involuntary), then Seller may immediately terminate further work on any orders from the Buyer or parts thereof and charge the Buyer on the basis of the percentage of completion at the time and on the price stated in each such order and/or may cancel any unfiled orders from the Buyer or parts thereof and/or may require immediate payment for all goods delivered and/or may require full or partial payment in advance for all goods not delivered, at Seller's sole option.

### 11. WARRANTY

Seller warrants that each new product manufactured and sold by Seller will, on the date of shipment, be free from defects in material and workmanship under normal use and service. All warranties, whether express of implied hereinafter (collectively called "Warranties"), shall extend only to the Buyer and no others.

Warranties are valid only when and if (a) Seller receives prompt written notice of the defective goods no later than thirty (30) days after the date of shipment, (b) the defective goods are properly packed and returned to the Seller (transportation and insurance prepaid) (c) the goods are returned to the Seller within sixty (60) days from the date of shipment, and (d) Seller determines, in its sole judgment, that the goods are not defective and not subject to misuse, neglect, improper installation, negligence, accident or (unless authorized in writing by Seller) repair or alteration. Seller's exclusive liability for any personal and/or property damage (including direct, consequential or incidental) due to any defect in the goods, shall be limited to the following: (a) repairing or replacing (in Seller's discretion) any defective goods free of charge (f.o.b. Seller's plant) and/or (b) crediting (in Seller's sole discretion) all or a part of the purchase price.

Seller is not responsible for machine work, welding, inserts or chills furnished by Buyer, labor charges or any other losses caused by defective goods.

SELLER DOES NOT WARRANT MERCHANTABILITY OF GOODS OR PARTS THEREOF NOT MANUFACTURED BY SELLER. THERE ARE NO WARRANTIES OF FITNESS OR WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF OR BEYOND THE TERMS AND CONDITIONS CONTAINED HEREIN.

### 12. LOSS OR DAMAGE

Seller shall in no event be liable for special, incidental or consequential loss or damage to the Buyer, or for loss or damage (whether personal, property or otherwise) in excess of the price quoted hereon, resulting from, or arising out of, the breach of any term or condition (whether express or implied) of the order resulting herefrom or otherwise resulting from, or arising out of, the manufacture, sale, delivery, or the performance or nonperformance of any order resulting herefrom.

### 13. GOVERNMENT CONTRACTS

In the event that any order resulting herefrom is pursuant to a U.S. Government contract and the Buyer's purchase order so states, Seller agrees to comply with all governmental laws and regulations which are both expressly required by law or regulation to apply to Buyer's subcontractors and, in addition, set forth in the Buyer's purchase order. Governmental law and regulations that are not both expressly required by law or regulation to apply to Buyer's subcontractors and, in addition, set forth in the Buyer's purchase order, shall not be deemed included in any order resulting herefrom, unless specifically agreed to in writing by Seller.

### 14. GENERAL CONDITION

(a) This quotation is enforceable only if executed by the Seller. No modification or amendment of the quotation appearing hereon or of any contract resulting herefrom shall be binding upon Seller unless set forth in writing and signed by the Seller. No modification, amendment, rescission, discharge, abandonment or waiver of these Terms and Conditions of Sale shall be binding upon Seller unless set forth in writing and signed by the Seller's Division Manager. (b) Seller's obligations hereunder shall be deemed severable and divisible unless otherwise stated hereon. (c) No delay or failure on the part of the Seller in exercising any right or remedy under any contract resulting herefrom, and no partial or single exercise thereof, shall constitute a waiver of such right or remedy or any other right or remedy. (d) If any term or any contract resulting herefrom or the application thereof shall be illegal, such illegality shall not affect any other term or condition thereof and such other terms and conditions shall continue in full force and effect. (e) Notwithstanding anything to the contrary contained herein and hereon, Seller shall have no liability whatsoever for nonperformance of any contract resulting herefrom or the breach of any term or condition herein or hereon where Seller's and/or Buyer's specifications may, or at any time are found to, require a breakthrough in the state of the art. (f) Paragraph headings are inserted for convenience only and do not form a part of this quotation or of any contract resulting herefrom. (g) In the event this quotation of any contract resulting herefrom involves the sale or research services and/or special or developmental devices and the like, Seller's exclusive obligation as to such research services shall be limited to using its best efforts to achieve the agreed objectives, and Seller's exclusive obligation as to such special or developmental devices and the like shall be limited to using its best efforts to make such services and the like conform at the time of shipments to Seller's specifications therefor. (h) Seller shall not be obligated to perform any term or condition of any contract resulting herefrom if such performance might, in the opinion of Seller's legal counsel, violate any governmental law, regulation or ordinance (foreign or domestic), and Seller shall not be liable for damages or otherwise as a result of such nonperformance. (i) This quotation and any contract resulting herefrom, and the performance of the parties thereunder shall be construed in accordance with and governed by the laws of the State of New York USA, and any contract resulting herefrom shall be deemed to be made in that State. (j) Buyer agrees that it will not commence any action, in law or equity, against Seller because of matters relating to this quotation or any contract resulting herefrom in any courts other than those of the State of New York the U.S. District Court for the State of New York. (k) Unless otherwise mutually agreed in writing, all castings are sold unmachined with heads, gates, fins and similar extraneous metal removed to approximately the contour of the castings.

### 15. ARBITRATION

Any controversy or claim arising out of, or relating to, any contract resulting herefrom, or the breach thereof, shall be settled by arbitration in the City of Buffalo, New York, USA in accordance with the then rules of the American Arbitration Association, and the decision or award of such arbitration shall be final, binding and conclusive upon the parties thereto, and judgment upon the decision or award may be rendered by the arbitrator(s) and may be entered in any court of record of any country.

### 16. ACCEPTANCE OF QUOTATION

(a) Acceptance is limited to the terms and conditions of the offer contained herein and hereon. Seller hereby notifies the Buyer of its objections to all terms and conditions in any purchase order or any other communications from the Buyer that are additional to, different from or conflicting with the terms and conditions contained herein and hereon. Neither the failure by Seller to object to a purchase order or any other communication from the Buyer, nor any research, or development, manufacture, shipment or otherwise of, the goods described hereon shall be deemed an acceptance of any terms or conditions which are additional to, different from, or conflicting with the terms and conditions contained herein and hereon.

(b) If not otherwise accepted, all the terms and conditions of this quotation and no other shall be deemed accepted if the Buyer shall dispatch a purported confirmation or acceptance to Seller that substantially agrees with this quotation as to the quantity, description and price of the goods. Such purported confirmation acceptance shall be deemed an acceptance of all the terms and conditions herein and hereon and not a counteroffer, regardless of whether it contains terms or conditions which are additional to, different from, or conflicting with the terms and conditions contained herein and hereon, unless the same shall contain the following typewritten statement: "Acceptance is expressly made conditional upon assent to the additional or different Terms contained herein." In any event, the Buyer shall be deemed to have accepted all the terms and conditions described hereon. In the event this quotation is accepted, or deemed accepted, by the buyer and forms legally binding contract on the terms and conditions contained herein and hereon, the terms and conditions set forth on the reverse side of any Seller acknowledgment sent to the Buyer shall be of no force and effort.