

ATACO STEEL PRODUCTS CORPORATION

Terms and Conditions of Sale

1. **Controlling Provisions.** This document, together with the letter of quotation referencing this document or with respect to which this document is attached (collectively, this "Agreement") constitutes an offer by ATACO STEEL PRODUCTS CORPORATION ("ATACO") to provide the goods described in such letter of quotation (collectively, the "Products") to the party to whom the letter of quotation is addressed ("Buyer"). If this Agreement is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained herein. Buyer's acceptance of this Agreement is limited to the terms, covenants and conditions contained in this Agreement, and ATACO hereby objects to and rejects any additional, different or varying terms proposed by Buyer, unless ATACO expressly agrees to such terms in writing. Such proposal of additional, different or varying terms by Buyer will not operate as a rejection of ATACO's offer, and ATACO's offer will be deemed accepted without such additional, different or varying terms. This Agreement constitutes the final expression of the terms between ATACO and Buyer regarding the Products and is the complete statement of those terms. Any terms, conditions, negotiations or understandings not contained in this Agreement will have no force or effect unless made in writing and signed by ATACO and Buyer.

2. **Acceptance.** Buyer will be deemed to have accepted this Agreement upon the earliest of the following to occur: (a) ATACO's receipt of a copy of this Agreement signed by Buyer; (b) Buyer's payment of any amounts due under this Agreement; (c) ATACO's delivery of the Products; or (d) any other event constituting acceptance under applicable law.

3. **Orders.** Buyer's order of any Products from ATACO shall be subject to the provisions of this Agreement. Buyer's order must be made in a form acceptable to ATACO. ATACO reserves the right to reject any orders for any reason in its sole discretion. ATACO reserves the right to correct clerical or similar errors relating to price or any other term shown on any invoice.

4. **Changes, Cancellations and Returns.** Buyer may not change or cancel an order that has been accepted by ATACO, unless ATACO agrees in writing. ATACO reserves the right to change the price, terms of payment and shipment dates for any Products affected by any changes to any order which are requested by Buyer and approved by ATACO in writing. When ATACO consents to the cancellation of any order, Buyer shall be responsible for all expenses incurred by ATACO related to such cancelled order. Buyer may not return any Products to ATACO unless ATACO agrees in writing.

5. **Delivery.** Unless otherwise stated in this Agreement, ATACO shall deliver the Products F.O.B. (as defined in the Uniform Commercial Code as adopted in Wisconsin) ATACO's facility in Cedarburg, WI (the "Delivery Point"). All risk of loss, damage or delay, and title to the Products shall pass from ATACO to Buyer upon delivery to Buyer or its carrier at the Delivery Point. All quoted shipment and/or delivery dates and/or periods are approximate. Time for delivery shall not be of the essence. Delivery dates given by ATACO are based on prompt

receipt of all necessary information regarding the order. ATACO's failure to meet any shipment or delivery date does not constitute a cause for cancellation and/or for damages of any kind. Claims for shortages or other errors must be made in writing to ATACO within thirty (30) days after ATACO's delivery of the shipment, and failure to give such notice will constitute unqualified acceptance of such shipment and a waiver of all such claims by Buyer. Deliveries of Products which are within 10% (plus or minus) of the quantities ordered shall be deemed deliveries in full, and Buyer agrees to accept such quantities.

6. **Delivery Delays.** Any delay in delivery due to causes beyond ATACO's reasonable control including those events listed in Section 13 below, due to any priorities or allocations necessitated by governmental orders or regulations, or due to any causes specified in the following sentence, shall extend the term of delivery by a period equal to the length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's (a) failure to supply adequate instructions; (b) failure to arrange for pickup; (c) failure to supply or approve necessary data in a timely manner; (d) requested and approved changes; or (e) failure to provide documents required for ATACO to effect delivery, ATACO will store all Products at Buyer's risk and expense, and Buyer shall pay all storage costs and expenses upon ATACO's demand.

7. **Prices; Taxes.** Prices for the Products shall be as stated in ATACO's letter of quotation. Notwithstanding the foregoing, ATACO may increase such prices at any time prior to commencing production by notice in writing to Buyer and such increased price(s) shall be deemed accepted by Buyer unless ATACO receives written notice from Buyer of Buyer's rejection of such increased price(s) within ten (10) business days after ATACO provides its notice of the price increase. If such a rejection is made by Buyer on a timely basis, ATACO may, at its option, either (a) treat the order as cancelled or (b) sell the Products to Buyer at the price originally quoted in the letter of quotation. All prices are stated, and shall be payable, in U.S. Dollars. All quotations from ATACO for the Products will automatically expire thirty (30) days from the date of the letter of quotation, unless the letter of quotation states otherwise or is withdrawn by ATACO. Buyer shall pay or reimburse ATACO, on demand, for all taxes, fees and costs including any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value added tax, duty, broker fees, inspection or testing fee, freight costs, insurance, consular fees or any other tax, fee or charge of any nature whatsoever, including interest, imposed on, in connection with or measured by any transaction between ATACO and Buyer, in addition to the prices quoted or invoiced.

8. **Terms of Payment.** Terms of payment are as follows: net thirty (30) days from the invoice date. If Buyer does not pay ATACO any amount due under this Agreement or any other agreement when such amount is due or if Buyer defaults in the performance of this Agreement, ATACO may, without liability to Buyer and without prejudice to ATACO's other lawful remedies (a) terminate ATACO's obligations under this Agreement; (b) declare immediately due and payable all of Buyer's obligations to ATACO; (c) change credit terms with respect to any other orders of Products; and/or (d) suspend or discontinue

any further orders. Buyer agrees to reimburse ATACO for all costs and fees, including, without limitation, reasonable attorneys' fees, incurred by ATACO in collecting any sums owed by Buyer to ATACO. If imposed by ATACO, Buyer agrees to pay a late payment charge equal to the lesser of 1.5% per month, or the maximum amount allowable by law, on all amounts not paid in full when due, payable on ATACO's demand. Buyer shall not set off amounts due to ATACO against Buyer's claims against ATACO.

9. **Limited Warranty; Damages Limitations.** Unless otherwise agreed in writing by the parties, ATACO warrants to Buyer that the Products sold to the Buyer will comply with the written specifications for such Products agreed to in writing between the parties. The warranty period for this warranty shall be thirty (30) days from the date such Products are delivered to the Delivery Point. There is NO WARRANTY in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, damage due to environmental and natural elements, failure to follow ATACO's instructions or improper installation, storage or maintenance. ATACO's SOLE AND EXCLUSIVE obligation under this limited warranty (and Buyer's sole and exclusive remedy) will be, upon prompt written notice by Buyer during the Warranty Period of any breach, to either, at ATACO's option: (i) repair or replace without charge any defective Product; or (ii) credit to Buyer or refund the purchase price for such defective Product paid by Buyer. This limited warranty covers only the replacement or repair of defective Products at ATACO's facility and does not include the cost of transportation of the Products to ATACO's facility. ATACO MAKES NO WARRANTIES ON PRODUCTS AND/OR PARTS THEREOF THAT ARE NOT MANUFACTURED BY ATACO. To the extent permissible, ATACO will assign to Buyer any warranty that the manufacturer may offer for such third-party Products or parts, but ATACO does not guarantee that the manufacturer will comply with any of the terms of its warranty. Prior to using or permitting use of the Products, Buyer shall determine the suitability of the Products for the intended use and cause the Products to be installed correctly, if not installed by ATACO. Buyer assumes all risk and liability whatsoever in connection therewith. THE EXPRESS WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER EXPRESS AND IMPLIED WARRANTIES ARE HEREBY DISCLAIMED. Any oral or written description of the Products is for the sole purpose of identifying the Products and will not be construed as an express warranty. ATACO SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, WHETHER FOR BREACH OF WARRANTY, FOR BREACH OR REPUDIATION OF ANY OTHER TERM OF THIS AGREEMENT, OR FOR LIABILITY BASED ON NEGLIGENCE OR ANY OTHER THEORY. ATACO'S AGGREGATE LIABILITY WITH RESPECT TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF MONEY PAID TO ATACO BY BUYER FOR THE PRODUCTS. Any assistance ATACO provides to or procures for Buyer

outside the limitations of this Section will not constitute a waiver of the limitations of this Section.

10. **Indemnification.** Buyer shall indemnify, defend and hold ATACO harmless from and against any and all liabilities, losses, fines, penalties, damages and expenses, including, without limitation, attorneys' fees ("**Damages**") incurred by or against ATACO which arise out of or result from any of the following: (a) any claim that any specifications furnished by Buyer infringe or constitute a misappropriation of any third party intellectual property rights; (b) any claim for bodily injury, including death or disease, or for loss of damage to property which results from or is caused by the use of any device or other good which is manufactured or sold by Buyer and which incorporates or otherwise utilizes any Product sold hereunder, except to the extent such claim results from a failure of any Product supplied hereunder to conform to the warranty set forth in Section 9 above; and (c) any claim for bodily injury, including death or disease, or for loss of damage to property which results from or is caused by any defect in any tool, die and/or other materials furnished by Buyer to ATACO for use in connection with the manufacture, storage and/or handling of Products.

11. **Intellectual Property.** Nothing in this Agreement will be construed to do any of the following: (a) give ATACO any rights in any Product specifications originated by Buyer (other than the right to use such specifications to manufacture Products supplied hereunder); and (b) give Buyer any rights in any trademarks or other intellectual property of ATACO, including, without limitation, proprietary manufacturing processes of ATACO, rights of ATACO in its tooling, dies and other equipment, and related designs and configurations, and all improvements to the foregoing.

12. **Tools and Dies.** If any tool(s) and/or die(s) will be supplied by Buyer to ATACO (as confirmed by mutual written agreement of the parties), then the following provisions shall apply: (a) such tool(s) and/or die(s) (the "**Buyer Tooling**") shall remain the property of Buyer; (b) ATACO has no obligation to maintain insurance on the Buyer Tooling (or on any other materials supplied by Buyer to ATACO) and shall have no responsibility for loss, destruction, or malfunction of or damages to the Buyer Tooling (or any other materials supplied by Buyer to ATACO), or other expenses and costs related to any of such items, the cost of all of which shall be borne by Buyer, except to the extent caused by ATACO's recklessness; and (c) any and all costs of any required adaptation to or modification of Buyer Tooling and/or any cost of maintenance of Buyer Tooling after the ordinary life of such tooling shall be charged to Buyer and paid to ATACO on the payment terms set forth herein; and (d) if Buyer does not pick-up Buyer Tooling within thirty (30) days after ATACO provides Buyer with a written request for such pick-up, then ATACO shall have the right to dispose of such Buyer Tooling and the proceeds of any such disposition shall be retained by ATACO as reimbursement for storage costs and other expenses. ATACO retains ownership of all ATACO-owned tools, dies and other equipment, whether or not used to manufacture Products ("**ATACO Equipment**"). Any and all costs of any adaptation to or modification of ATACO Equipment which is needed to produce Products supplied hereunder, and/or any cost of maintenance of any such ATACO Equipment after the

ordinary life thereof, shall be charged to Buyer and paid to ATACO on the payment terms set forth herein. Notwithstanding the foregoing provisions of this Section 12, if the parties agree in writing that any new tool(s) and/or die(s) will be created to produce the Products ("New Tooling") and then owned by Buyer (and constitute Buyer Tooling), such New Tooling shall be paid for by Buyer on the following terms: (i) 30% upon placement of Buyer's order; (ii) 30% at the halfway build point of the New Tooling (as confirmed by ATACO); (iii) 30% upon shipment of the New Tooling to ATACO, and (iv) the remaining 10% upon shipment of the first Product approved by Buyer for manufacture with the New Tooling. Title to New Tooling shall pass from ATACO to Buyer (and become Buyer Tooling) only after Buyer has paid for such New Tooling in full.

13. **Force Majeure.** Except with respect to payment obligations under this Agreement, neither party will be responsible for any nonperformance of this Agreement or delay in the performance of this Agreement where such nonperformance or delay has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding available supply or any other cause beyond the party's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, ATACO may, at its option and without liability, prorate its deliveries, cancel all or any portion of this Agreement to the extent affected by the event of force majeure and/or extend any date upon which performance is due hereunder.

14. **Security Interest.** Buyer hereby grants to ATACO a security interest in Buyer's right, title and interest in and to the Buyer Tooling, and all accounts, documents, general intangibles, contract rights, chattel paper, instruments, letter of credit rights and investment property arising from the sale, lease, rental or other disposition of the Buyer Tooling, and all additions and accessions thereto, all spare and repair parts, special tools, equipment and replacements therefor, software used therein, and all proceeds, supporting obligations and products of the foregoing (collectively, the "Collateral"), to secure the prompt payment and performance of Buyer's payment obligations to ATACO hereunder. Buyer hereby authorizes ATACO to file such financing statements or continuation statements and amendments thereto, as may be necessary to perfect or continue the perfection of the security interest described in this Section. If any amount to be paid by Buyer to ATACO hereunder is not paid on a timely basis, ATACO may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the Uniform Commercial Code, if applicable, as in effect in any relevant jurisdiction.

15. **Governing Law.** This Agreement will be governed by and construed according to the laws of the State of Wisconsin, USA. Neither this Agreement nor sales hereunder will be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

16. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties with respect to Buyer's purchase of the Products and supersedes all other agreements or communications, written or oral, which may be deemed to be inconsistent with it. This Agreement may not be amended or altered except by a writing signed by ATACO. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the parties acknowledge and agree that (a) such invalidity or unenforceability will not affect any other provision of this Agreement, (b) the remaining terms, covenants and conditions hereof will remain in full force and effect, and (c) any court of competent jurisdiction may so modify the objectionable provision as to make it valid and enforceable. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Agreement will not be construed as a waiver or relinquishment of any right granted hereunder or the future performance of such term, covenant or condition. All of ATACO's remedies hereunder are cumulative and not exclusive of any other remedies available to ATACO at law, by contract or in equity.