



ELECTRALLOY / G.O. Carlson Plate

PURCHASE ORDER TERMS AND CONDITIONS



- 1. ACCEPTANCE** – Seller accepts all of the terms and conditions contained herein, and Seller's acceptance is limited to the terms and conditions contained herein. No terms or conditions other than those stated herein, whether contained in Seller's order acknowledgement, quotation form, invoice, shipping release, or elsewhere, and no written or oral agreement that purports to vary these terms and conditions shall be binding upon Buyer unless hereafter set forth in writing signed by the Buyer. All negotiations, proposals and representations, if any, are merged herein. This Contract shall constitute a complete statement of the terms of the agreement between Buyer and Seller. Seller's assent to these terms and conditions of purchase conclusively shall be presumed from Seller's failure to object to Buyer within the lesser of the time period specified on the reverse side hereof or within ten days of receipt of this purchase order citing, in writing, specific objections.
- 2. WARRANTIES** – Seller expressly warrants that the goods or materials delivered or services rendered hereunder will be merchantable, free from defects in material and workmanship, suitable for the use intended and will conform to applicable specifications, drawings, samples and descriptions. This warranty shall survive delivery and/or completion of the services, and shall not be deemed waived by making of payment thereof.
- 3. TERMS TO GOVERN** – (a) This order is an offer made by Buyer and shall not be deemed an expression of acceptance or confirmation of any offer heretofore on hereafter made by Seller. If any acceptance of an offer made by Seller is deemed contained herein, such acceptance is expressly made conditional on Seller's assent to all the additional and different terms contained herein from those contained in any quotation, proposal or other offer received from Seller. Buyer hereby notifies Seller of its objection to any additional or different terms contained in Seller's acknowledgement or confirmation of this order. Neither the acceptance or use of the materials or services ordered hereunder, nor any other act or omission by Buyer, shall be deemed an acceptance by Buyer of any terms or conditions in Seller's acknowledgement or confirmation or otherwise which are additional to or different from those contained in this order.
- 4. RISK OF LOSS** – Seller shall bear the risk of loss of all goods ordered, work in process, materials, transportation, liability and other things, until the physical receipt and acceptance thereof by Buyer at Buyer's plant.
- 5. DELIVERY** – Time is of the essence in Seller's performance of this Contract. If the delivery of goods or the performance of services is not completed within the specified time, Buyer shall have the right, without incurring liability to Seller, (a) to terminate this Contract upon written notice to Seller as to goods not delivered and accepted or services not performed, and (b) to purchase substitute goods or services and charge Seller for any loss or additional cost incurred as a result thereof.
- 6. FORCE MAJEURE** – Neither party shall be liable for failure or delay in performance under this Contract due in whole or in part to any cause beyond such party's control, including, but not limited to, delays in transportation, sources of supply, material shortages, actions to comply with any law or regulation, labor difficulties, accidents, transportation delays, acts of God, or, fire, flood or there force majeure. During any period of Seller's inability to perform, Buyer may acquire from others, without incurring liability to Seller, such goods or services that Buyer may deem necessary and, at Buyer's option, the quantity of such goods or services ordered from Seller may be proportionately reduced.
- 7. DEFAULT** – If Seller breaches any of its obligations or warranties under this Contract, Buyer may terminate this Contract, in whole or in part, upon notice to Seller, without incurring liability to Seller.

- 8. TERMINATION** – Buyer may terminate this Contract, in whole or in part, at any time and for any reason upon written notice to Seller. For goods that are standard stock merchandise or services for which Seller's compensation is on other than a lump sum basis, Buyer's only obligation to Seller shall be to pay for goods shipped or services performed prior to the date of termination. For other goods or services, Seller's exclusive remedy shall be to obtain reimbursement from Buyer only for Seller's direct, reasonable and necessary expenses actually expended up to the date of termination which are directly incident to the terminated portion of this Contract. Seller shall continue performance of any portion of this Contract which is not terminated.
- 9. LIMITATION OF BUYER'S LIABILITY** – Buyer's liability for any loss or damage in any way connected with, arising out of or resulting from this Contract shall not exceed the price allocable to the particular goods or services upon which such liability is based, regardless of whether such liability arises in contract, tort (including, but not limited to, negligence or strict liability) or otherwise. IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR LOSS OF PROFITS OR REVENUE OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES.
- 10a.CHANGES** – Buyer may, at any time, by written notice, make changes, within the general scope of this Contract, in any one or more or all of the following: (a) drawings, designs, specifications, and other data incorporated in this Contract; (b) method of shipment or packing; (c) place of delivery, inspection or acceptance; and (d) time of delivery. Upon receipt of any such written notice, seller shall proceed promptly, and in any event within the lesser of the time period specified on the reverse side hereof or within ten days from the date of Buyer's written order, to deliver a statement to Buyer showing the effect of any such change on delivery date and/or prices and, in the absence of such statement within said ten days, all Seller's claims for equitable adjustment as a result of the change shall be deemed waived. Seller shall not put such changes into effect unless and until an equitable adjustment (not to include delay costs), in writing, shall be made in the terms of this Contract, or (if sooner), until Seller's claims for adjustment have been waived. No course of prior dealings or usage of trade shall be applicable unless expressly referred to in this Contract.
- 10b.**The Seller shall notify the Buyer of any changes to processes; suppliers; manufacturing facility / location; marking tools; management; loss of Quality System Registration; outsourced product or task; and qualification and competence of personnel. Seller shall obtain Buyer's written approval of such changes. The Seller shall plan, implement, and control processes for the prevention of counterfeit or suspect counterfeit parts (materials) use and their inclusion in product(s) delivered to the Buyer.
- 11. AUDITS, INSPECTIONS AND EXPEDITING ACTIVITIES** – Upon reasonable notice, Seller shall permit Buyer and Buyer's designated representatives to visit Seller's offices and manufacturing facilities for the purpose of conducting audit, inspections or expediting activities and shall arrange for such visits with Seller's suppliers and subcontractors as Buyer deems necessary. Seller shall retain its books and records relating to any work done under this Contract and shall make sure books and records available on request for examination by Buyer.
- 12. INSPECTION** – All the materials and parts thereof (including, without limitation, raw materials, components, and intermediate assemblies) may be inspected, tested and otherwise evaluated by Buyer at all times and places, including Seller's plants. Seller shall, without additional charge, provide an inspection system acceptable to Buyer and all reasonable facilities and assistance for the safety and convenience of Buyer's inspectors. Any inspection, tests or other evaluation by Buyer shall in no manner destroy, qualify or affect any of Seller's express or implied warranties hereunder or otherwise. Buyer shall be deemed to have accepted the materials only after a reasonable time for discovery of defects following delivery, even if the materials have been previously inspected by Buyer.

13. **SET-OFF** – Buyer shall be entitled at any time to set off any amount owing by Seller (or its affiliates) to Buyer (or its affiliates), regardless of any assignment or purported assignment by Seller (or its affiliates).
14. **CONFIDENTIALITY** – Seller shall not directly or indirectly disclose or make available to any third party, or use for the benefit of any third party, any knowledge or information with respect to the conduct or detail of Buyer's business, including, without limitation, purchases and purchasing methods, sales, costs, marketing methods, finances, suppliers and manufacturing methods or intentions.
15. **INDEMNIFICATION** – Seller shall indemnify, defend and hold harmless Buyer, Buyer's affiliates and the shareholders, directors, officers, employees, agents and representatives of Buyer and Buyer's affiliates from and against any and all claims, losses, damages, costs, actions, judgments, expenses and liabilities (including, but not limited to, reasonable attorney's fees) which either directly or indirectly, are in any way connected with, arise out of or result from Seller's performance of this Contract or Seller's actual or alleged breach of its obligations or warranties under this Contract. The aforementioned indemnity shall also include, but not be limited to, clean up and disposal costs arising for faulty or hazardous materials (including radioactive materials) furnished or sent by Seller or any agent or subcontractor of Seller to Buyer.
16. **CLERICAL ERRORS** – Typographical and clerical errors are subject to correction.
17. **NONWAIVER** – Waiver of any term, condition or breach of this Contract shall not be effective unless made in writing and signed by the party to be bound thereby. Any such written waiver shall not constitute a waiver of any other term of this Contract.
18. **BINDING AGREEMENT** – This Contract shall be binding upon, inure to the benefit of and be enforceable by, each of the parties hereto and their respective successors and assigns. Nothing in this Contract is intended to confer upon any person, other than the Buyer and Seller and their respective successors and assigns, any rights under this Contract.
19. **ASSIGNMENT** – This Contract may not be assigned by Seller, except with the written consent of Buyer. Any attempted assignment in violation hereof shall be void.
20. **GOVERNING LAW** – This Contract shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania applicable to agreements made, delivered and to be performed entirely therein
21. **CONSENT TO JURISDICTION AND SERVICE OF PROCESS** – Any action arising out of this Contract shall be instituted in any state or federal court located in either the county of Venango, Chester or Philadelphia in the Commonwealth of Pennsylvania and each party waives any objection which such party may have to the laying of the venue of any such action, and irrevocably submits to the jurisdiction of any such court in any such action, Seller hereby waives the right to a jury trial in any action between the parties hereto.
22. **SEVERABILITY** – If any provision of this Contract is construed to be invalid or unenforceable, such determination shall not affect the remaining provisions of this Contract, all of which shall remain in full force and effect.
23. **HEADINGS** – The headings in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of this Contract.
24. **RECORD RETENTION** – The seller shall maintain the Buyer's records for at least ten (10) years, unless otherwise specified on the Purchase Order, except to the extent waived by Buyer in writing. Obsolete records (paper or electronic) shall be destroyed in a manner to preserve the confidentiality of the parties.

- 25. TRACEABILITY AND IDENTIFICATION** – The traceability and identification of the Buyer’s material must be maintained throughout the Seller’s processes. The unique identity is to be maintained unless altered by the Buyer’s SPO.
- 26. SPECIMENS** – Test specimens, where required, shall be supplied to Buyer or as specified on the Purchase Order, for length of time for retaining of specimens.
- 27. NONCONFORMING MATERIAL** – The Seller shall notify the Buyer of any nonconforming material and ensure that the material will not be shipped without Buyer’s prior approval.
- 28. FLOWDOWN REQUIREMENT** – Where required, the Seller shall flow down certain key characteristics to their suppliers. No contracting out of services may occur without authorization by Buyer.
- 29. RIGHT OF ACCESS** shall not be unreasonably denied to Electralloy/G.O.Carlson Plate, their employees, agents and representatives and regulatory authorities to the applicable areas of all facilities, at any level of the supply chain, involved in the order and to all applicable records.
- 30. WELD REPAIR** – Weld Repair is not permitted without prior authorization.
- 31. EMPLOYEE AWARENESS** – Seller shall ensure that its employees are aware of their contribution to product or service conformity; their contribution to product safety; and the importance of ethical behavior.
- 32. QUALITY MANAGEMENT SYSTEM** – Seller shall have implemented a Quality Management System.
- 33. RESOLUTION OF CONFLICTS** – Seller shall interact directly with the Manager Purchasing for issues pertaining to the Purchase Order, terms and conditions and/or quality clauses.
- 34. SELLER’S PERFORMANCE** – Seller shall be capable of meeting the Quality and Delivery requirements as stated on the Purchase Order. Buyer will monitor quality and on-time delivery data for key suppliers and communicate issues requiring formal corrective action in accordance with Buyer’s supplier corrective action process.

Effective Date: 12-18-12

Revised: 01-25-17

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aG.O. CARLSON Inc. Company