



# ELECTRALLOY (“Seller”) STANDARD TERMS AND CONDITIONS OF SALE



## 1. OFFER OR ACKNOWLEDGEMENT

**(a) OFFER** - If this document accompanies, or is incorporated by reference in, a sales quotation, whether this document is received by you (“Buyer”) via fax, mail, reference to Seller’s website, or otherwise, this document is an offer to sell the product(s) on the terms and conditions stated herein (collectively, “Terms”) and is not an acceptance of any offer or the confirmation of an existing agreement with Buyer. No terms or conditions other than those stated herein, whether contained in Buyer’s purchase order or shipping release, or elsewhere, and no written or oral agreement that purports to vary the Terms shall be binding upon Seller unless specifically hereafter set forth in writing by Seller. These Terms together with Seller’s sales quotation, order acknowledgement and/or invoice (collectively, this “Contract”) constitute the entire agreement between Buyer and Seller and supersede all previous understandings, written or oral, which may have existed relating to the subject matter hereof.

**(b) ACKNOWLEDGEMENT OF ORDER OR RESPONSE TO OFFER** - If this document accompanies, or is incorporated by reference in, an order acknowledgement (whether this document is received by Buyer via fax, mail, reference to Seller’s website, or otherwise), or has been issued by Seller in response to an offer by Buyer, Seller acknowledges and accepts Buyer’s offer or order, expressly conditioned, however, upon Buyer’s assent to all of the Terms contained in this contract (“Contract”). Seller hereby notifies Buyer of its objections to, and refusal to be bound by, all terms and conditions contained in any purchase order or other communications from Buyer which are additional to, different from, or conflict with, the Terms. Further, if any of the Terms are in addition to or vary from or conflict with any terms of an offer by Buyer, then the issuance of this document by Seller shall constitute an acceptance of such offer, subject to the Terms. Buyer shall be deemed to have so assented and acknowledged unless Buyer notifies Seller to the contrary in accordance with the notice requirements under “Assent.” The Contract constitutes the entire agreement between Buyer and Seller and supersede all previous understandings, written or oral, which may have existed relating to the subject matter hereof.

Buyer hereby expressly agrees that this Contract is intended by Seller and Buyer to be a complete and exclusive statement of all terms relevant to any transaction contemplated by the Contract or related documents or agreements.

2. **PRESUMPTION OF ASSENT** – Without limiting the effect of the foregoing provisions, Buyer’s assent to the Terms of sale and to those set forth on the sales quotation or order acknowledgment (as the case may be) shall be conclusively presumed either from Buyer’s (a) failure to object in writing, delivered to Seller within the lesser of the time period specified if any on the sales quotation or order acknowledgment (as the case may be) or ten days from the date of this Contract, or (b) receipt of any material ordered. If not otherwise accepted, all of the Terms, and no other, shall be deemed accepted if Buyer shall dispatch a purported confirmation or acceptance to Seller which substantially agrees as to the quantity, description, and price of the materials. Such purported confirmation or acceptance shall be deemed an acceptance of all of the Terms and not a counteroffer regardless of whether it contains terms or conditions which are additional to, different from, or conflicting with, the Terms.
3. **PRICES; TERMS OF PAYMENT** - All prices are subject to adjustment to conform to Seller’s prices in effect at the date of shipment. Payment of the invoice, covering shipment of all or any part of this Contract, shall be due as set forth on the sales quotation or order acknowledgment. Payment is to be made in U.S. currency for each shipment hereunder on the terms stated on the sales quotation or order acknowledgment (as the case may be). For payments not received within the period set forth on the sales quotation or order acknowledgment (as the case may be),

interest shall accrue on the unpaid balance hereof at a per annum rate up to the maximum rate permitted by applicable law, and Seller shall have the other remedies set forth in this Contract and under the law. Any cash discount will not apply to charges for loading, storage, transportation, or taxes. Prices quoted by Seller do not include sales, excise, or other taxes (Federal, state, county, municipal or otherwise) as a result of or in connection with the sale, purchase, transportation, delivery or use of the material. All such taxes shall be paid by Buyer. Checks received from or for the account of Buyer, regardless of writings, legends or notations on such checks or other writings, statements or documents, may be applied against amounts owing by Buyer, without accord and satisfaction of Buyer's liability.

4. **DELAY; INABILITY TO SHIP; FAILURE TO PERFORM; CANCELLATION** - If full manufacturing details have not been received by Seller at the time of its entry of this order, any shipping date promised on the sales quotation or order acknowledgment (as the case may be) shall be extended for a period equal to the period between order entry and Seller's receipt of the full manufacturing details. Seller reserves the right to cancel the Contract, in whole or in part, to suspend or delay delivery of any or all material hereunder or to otherwise fail to perform hereunder, without liability on its part, if (a) Buyer fails to fulfill the terms of any payment of any invoice or if Buyer's financial responsibility becomes or will become impaired or unsatisfactory to Seller; or (b) Seller's ability or that of its supplier to manufacture or deliver the material or Seller's ability to otherwise perform is prevented, impaired or delayed by any cause beyond its control or without its fault or negligence, including but not limited to, acts of God or the public enemy, acts of the government in its sovereign or contractual capacity, work stoppages or interruptions, fire, explosions, bombings, flood, epidemics, quarantines, military or police actions, war, terrorist attacks, riots, delays in transportation, delays in Seller's sources of supply, material shortages, actions taken to comply with any law, regulation or treaty, labor difficulties, accidents, default by a common carrier, blockades, freight embargo, sabotage, unusually severe weather or is otherwise commercially impractical. If Seller cancels the Contract as a result of the reasons set forth in subsection (a) above, Buyer will also compensate Seller for any commitments, obligations, expenditures and expenses and other costs Seller may have incurred in connection with the Contract. In the event of a shortage of any of the material due to any of the causes or conditions covered by subsection (b) above, Seller reserves the right to allocate available material among its customers, including Buyer, as it deems equitable. Seller is not relieved from making shipment, nor is the Buyer relieved from accepting delivery, at the agreed price, if and when the causes interfering with delivery shall be removed. In the event of total or partial suspension of any shipment to be made hereunder, for any of the reasons enumerated in this Contract, Seller shall have the right to make up the amount of material which it failed to deliver within a reasonable time after termination of the applicable event. Shipping promises are based on conditions prevailing at the time of quotation and date of receipt by Seller of full manufacturing details. Every effort will be made to ship promptly as promised, but shipments within a reasonable time thereafter shall be construed as compliance with this Contract. Definite shipping instructions shall be furnished to Seller by Buyer in ample time to complete shipment in the time specified. This order is not subject to cancellation or change in whole or in part by Buyer, except with the written consent of Seller. Prices are based on delivery of the full quantity specified. Where orders are cancelled in part pursuant to this Section, Seller may elect to adjust its prices to reflect the reduced order.
5. **WARRANTY AND EXCLUSION OF OTHER WARRANTIES** - Seller warrants that the material will meet the specifications shown on the sales quotation or order acknowledgment (as the case may be), and that Seller will convey good title thereto. **THIS WARRANTY IS IN LIEU OF, AND SELLER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO CONDITION, DESIGN, MERCHANTABILITY OR FITNESS FOR ANY INTENDED USE OR PURPOSE, WHETHER ARISING BY LAW, CUSTOM, USAGE OF TRADE, CONDUCT OR OTHERWISE.**
6. **LIMITATION OF LIABILITY** - Provided that a proper claim has been made in the manner and within the period as provided under "Shortage" in Section 9 or "Quality Assurance; Claims" in

Section 17 (as applicable), if the material furnished to Buyer shall fail to conform to this Contract (other than for shortages which are covered by the next sentence) through no fault or negligence of Buyer, the Seller shall, at Seller's option, reimburse Buyer up to the amount of the purchase price, or repair or replace such nonconforming material at the original point of delivery and shall furnish instructions for its disposition, subject to the provisions and procedures of Section 10 "Variations and Tolerances" and Section 17 "Quality Assurance; Claims" hereof. In the event of any shortages in Seller's shipment, Seller may make a supplemental shipment or, at Seller's option, an appropriate adjustment in the purchase price. Without limiting the generality of the provisions contained in this paragraph, in no event shall any liability or responsibility of Seller which may arise in any circumstances whatsoever exceed the price to Buyer of the particular material in respect of which any claim is made. **THE FOREGOING RIGHTS AND REMEDIES OF BUYER ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES WHATSOEVER, WHETHER STATUTORY OR OTHERWISE AND WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY.**

7. **NOTWITHSTANDING ANYTHING IN THIS CONTRACT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANYONE ELSE FOR LOSS OF PROFITS OR REVENUES OR FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.** Section 6 and this Section 7 are meant to be independent of each other and a failure of essential purpose of one shall not affect the enforceability of the others.
8. **INFRINGEMENT** - If any material is furnished to Buyer's specifications, Buyer will, indemnify, defend, and hold Seller harmless from and against all claims, losses, liabilities, costs, damages, and expenses, including reasonable attorney's fees and costs, resulting from, based on, arising out of, or relating to, directly or indirectly, any claim of infringement or violation of any patent (domestic or foreign), copyright, trademark or other intellectual property right in connection with the production, sale, or use of such material.
9. **SHORTAGE** - All claims for any alleged shortage must be made in writing, specifying, in detail, the claim, within 30 days of Buyer's receipt of material.
10. **VARIATIONS AND TOLERANCES** - Except as otherwise expressly agreed to in writing by Seller, all material shall be produced in accordance with Seller's standard practices. All material, including that produced to meet an exact specification, shall be subject to tolerances and variations consistent with usages of the trade and regular mill practices concerning: laboratory analysis of chemical specifications, dimension, weight, straightness, thickness, and mechanical properties; normal variations in surface, internal conditions and quality; deviations from tolerances and variations consistent with practical testing and inspection methods; regular mill practices concerning over and under shipments; and other variations in quality, specifications, size, or weight.
11. **CREDIT APPROVAL; SECURITY** – Commencement and completion of all shipments, deliveries, and performance of work shall at all times be subject to the approval by Seller's Credit Department of Buyer's creditworthiness. Seller may, at any time, decline to make or complete any shipment or delivery or perform any work except upon receipt of payment in advance or security or upon such other terms and conditions as are satisfactory to Seller. If Buyer fails to furnish said advance payment or security upon request, or to conform to any such terms, Seller may, without prejudice to any other legal or equitable remedy, suspend or cancel uncompleted work or shipments and retain all materials which are the subject of this Contract indefinitely, as security, and in such event all unpaid invoices shall immediately become due and payable. Without limiting the foregoing, or any other provision of this Contract, any of the following, at Seller's option, shall constitute a default by Buyer (a "Default"): (i) Buyer fails to pay an invoice or make any payment to Seller when due; (ii) any proceeding in liquidation, bankruptcy, reorganization, arrangement, debtor rehabilitation, creditor adjustment, or insolvency, state or

Federal, is commenced by or against Buyer; (iii) Buyer makes an assignment for the benefit of creditors or enters into a composition agreement with all or a part of Buyer's creditors; (iv) Buyer ceases operations (other than such which are cessations in the ordinary course of business); or (v) a trustee, receiver, conservator, liquidator, administrator, or other judicial representative, similar or dissimilar, is appointed for Buyer or any of Buyer's assets. Upon a Default, Seller, in addition to all other remedies it may have hereunder and by law (including, without limitation, all remedies under the Uniform Commercial Code), may (a) without liability for any loss, expense, damage, or claim, special, incidental or consequential, refuse shipment of the material and/or cancel the unfulfilled portion of all contracts and orders and cancel Seller's other obligations under all or any part hereof; and/or (b) (whether or not Seller cancels) may require buyer to indemnify Seller and hold Seller harmless from all liability, loss, damage, expense and claim, special, incidental and consequential, including, without limitation, all Seller's attorneys' fees, Seller's reasonable profits and costs of investigating and litigating claims arising out, relating to or resulting from, directly or indirectly, Buyer's default. Upon a Default, all subsequent invoices shall be immediately due and payable. Seller's acceptance of partial payment will not otherwise be considered a waiver of any right of Seller.

12. **SECURITY INTEREST.** Buyer hereby grants to Seller, as security for all debts, liabilities and obligations owing by Buyer to Seller, including without limitation, the purchase price with respect to the material subject hereto, a lien and security interest in and to, all of Buyer's right, title and interest in and to the material (wherever located) and all replacements and modification thereof as well as all cash and noncash proceeds (including insurance proceeds). Buyer hereby authorizes Seller to file financing statements and amendments to financing statements without Buyer's signature, in accordance with the Uniform Commercial Code. Buyer hereby authorizes Seller to file all such financing statements and amendments to financing statements describing the material in any filing office as Seller, in its sole discretion, may determine, including financing statements listing the material in the collateral description therein. The security interest granted herein constitutes a purchase money security interest under the applicable provisions of the Pennsylvania Uniform Commercial Code. Buyer agrees to comply with the requests of Seller in order for Seller to have and maintain a valid and perfected first security interest in the material.
13. **SET-OFF** - Seller is authorized to apply toward any monies due Seller hereunder any sums now or hereafter owed to Buyer or any affiliated company by Seller.
14. **F.O.B. AND RISK OF LOSS** - Irrespective of whether material is sold F.O.B. the place of shipment or F.O.B. the place of destination, all such material is at Buyer's risk upon delivery by seller to a carrier designated for or by Seller. Title to the material passes to the Buyer upon delivery to such carrier and Seller's responsibility for loss or damage will cease. Buyer agrees to indemnify, defend, and hold Seller harmless for all claims, demands, losses, costs, damages and expenses arising out of or relating to the transportation of these materials subsequent to their delivery to such carrier. Where material is sold F.O.B. the place of shipment, all transportation and other charges in excess of the base price and applicable extras shall be paid for by the Buyer. If Buyer refuses delivery, Buyer will promptly reimburse Seller for the cost of transporting the goods back to Seller's shipping point or to such other location, as Seller reasonably may designate.
15. **INDEMNIFICATION** - Buyer shall indemnify, defend, and hold harmless Seller from and against any and all claims, demands, actions, judgments, costs, expenses, losses, and liabilities of any nature or kind whatsoever (including reasonable attorney's fees and costs), either at law or in equity, resulting from, based on, arising out of or related to the acts, omissions, or negligence of Buyer, including claims for personal injury or death to Buyer's employees or customers or any person on Buyer's property, and damage to Buyer's property of any, nature or kind whatsoever.

16. **INSPECTION TESTING** – Where mill or plant inspection is made by Buyer, Buyer’s inspector shall be deemed the agent of Buyer with authority to waive specified tests and details of test procedures and to accept products as conforming to this Contract with respect to all characteristics of such products for which inspection is made.
17. **QUALITY ASSURANCE; CLAIMS** - Unless otherwise specified, the material to be furnished will be subject to Seller’s standard inspection at place of manufacture. With respect to any tests ordered by Buyer, Seller certifies the properties or characteristics disclosed by such tests only for the locations in which the material is tested. If inspection by Buyer is required or provided for, such inspection with consequent approval or rejection shall be made before shipment. If, after receipt by Buyer, the material should appear not to be in conformity with the applicable specifications or Buyer otherwise believes that Seller has failed to meet a Term of this Contract, Buyer shall immediately (and in no event later than 30 days’ from Buyer’s receipt of the material) notify Seller of such condition, along with evidence or other documentation as reasonably requested by Seller, and afford Seller a reasonable opportunity to investigate and/or inspect the same. If any such material shall be found by Seller not to be in conformity with the applicable specifications, Seller will, at its discretion, replace such material at the original point of delivery, or repair such material. In the case of faulty material, Seller’s obligation shall arise only if the defect develops under normal and proper use within a reasonable period of time after date of shipment. Failure to make a claim within said period shall constitute satisfactory performance on the part of Seller. No material shall be returned without Seller’s consent in writing. All material returned shall be subject to confirmation as to items and amounts by Seller. Seller’s confirmation shall govern. Seller will furnish instructions for disposition of rejected material, any transportation charges involved therein to be for Seller’s account. To be allowable, claims of error in weight, dimension, thickness, or number of pieces must be made in writing within ten days after receipt of material by Buyer. Anything herein to the contrary notwithstanding, Seller shall not be responsible or liable in any manner whatsoever for the service behavior of any machinery or equipment or parts unless such is designated in its entirety and manufactured by Seller and then only to the extent described in the specifications hereof and in these Terms. Seller shall not be responsible or liable in any manner whatsoever for such service behavior by reason of having participated in design or having accepted Buyer’s design and Buyer expressly releases Seller from any and all of such liabilities.
18. **NUCLEAR APPLICATION EXCLUSION** - It is expressly understood and agreed that Buyer will not use, cause to be used, or make available for use the product(s) described on the face hereof in any nuclear application including, but not limited to, use in connection with any nuclear reactor, any nuclear power generating system or any nuclear waste (or spent fuel) disposal project, unless written notice of the specific proposed or intended nuclear application has been given to Seller at the time of Buyer’s offer for the product(s). Unless such notice has been given, any subsequent nuclear application of the product(s) is wholly unauthorized and shall be deemed to be unknown to, unforeseeable to and unintended by Seller. **IT IS SPECIFICALLY AGREED THAT WITH RESPECT TO ANY NUCLEAR APPLICATION OF THE PRODUCT(S) FOR WHICH SUCH NOTICE HAS NOT BEEN GIVEN, BUYER WAIVES ALL REMEDIES AND ANY CLAIM, WHETHER IN CONTRACT OR IN TORT, INCLUDING ANY STATUTORY OR COMMON LAW CLAIMS FOR CONTRIBUTION OR INDEMNIFICATION, AGAINST SELLER, AND WILL INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS THEREFOR.**
19. **SHIPMENT TO THIRD PARTY, INSPECTION AND ACCEPTANCE** - Where Seller, at Buyer’s request, is to ship the goods sold hereunder to a third party for treatment, processing or any other type of modification, Buyer agrees as follows: (a) as a material condition to this Contract, any right of inspection shall take place exclusively at Seller’s plant or at the third party destination; (b) any right to inspect or reject the goods must be exercised, prior to treatment, processing, or any other type of modification of the goods by a third party; and (c) failure by Buyer to inspect or reject the goods prior to treatment, processing or other modification or disposition by a third party shall constitute a waiver of Buyer’s rights to inspection and rejection of the goods, and shall constitute an unconditional acceptance of the goods with knowledge of any existing nonconformity.

20. **CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party. The provisions of this Section 20 are subject to modification pursuant to the terms of any confidentiality agreement which is executed by Buyer and Seller (and the terms of any such written signed agreement shall control over any conflicting provisions of this Section).
21. **CLERICAL ERRORS** - Typographical and clerical errors are subject to correction.
22. **NONWAIVER AND REMEDIES OF SELLER** – Waiver of (a) any of the Terms or (b) a breach of this Contract, shall not be effective unless made in writing and signed by the party to be bound thereby. Seller's waiver of any breach or any failure to enforce any of the Terms and specifications of this Contract will not in any way affect, limit or waive Seller's right thereafter to enforce and compel strict compliance with every Term and specification hereof. All rights and remedies of Seller under the Contract are in addition to Seller's other rights and remedies that exist at law (including, without limitation, those provided by the Uniform Commercial Code) and are cumulative and not exclusive.
23. **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 legal representatives 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.
24. **ASSIGNMENT AND DELEGATION** – The rights and duties created by this Contract may not be assigned or delegated by Buyer, except with the written consent of Seller. Any such attempted assignment or delegation in violation hereof shall be void and of no effect.
25. **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 (WITHOUT REFERENCE TO CONFLICTS OF LAWS PRINCIPLES).
26. **SETTLEMENT OF DISPUTES** – ANY CLAIMS, CONTROVERSIES, DEMANDS, DISPUTES OR DIFFERENCES BETWEEN OR AMONG THE PARTIES HERETO OR ANY PERSONS BOUND HEREBY ARISING OUT OF, OR BY VIRTUE OF, OR IN CONNECTION WITH, OR RELATING TO THIS CONTRACT SHALL BE SUBMITTED TO AND SETTLED BY ARBITRATION IN THE COUNTIES OF VENANGO, CHESTER OR PHILADELPHIA IN THE COMMONWEALTH OF PENNSYLVANIA SUCH ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE THEN PREVAILING RULES OF THE AMERICAN ARBITRATION ASSOCIATION BY ONE INDEPENDENT AND IMPARTIAL ARBITRATOR APPOINTED BY THE AMERICAN ARBITRATION ASSOCIATION, WHO SHALL BE A FORMER JUDGE. ALL PRE-ARBITRATION DISCOVERY SHALL BE COMPLETED WITHIN 90 DAYS OF THE REQUEST FOR ARBITRATION. THE ARBITRATOR SHALL RENDER HIS AWARD WITHIN 6 MONTHS OF THE REQUEST FOR ARBITRATION. ANY AWARD RENDERED BY THE ARBITRATOR SHALL BE FINAL AND BINDING, AND NOT SUBJECT TO APPEAL OR OTHER JUDICIAL REVIEW, AND JUDGMENT THEREON MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. NOTHING CONTAINED HEREIN SHALL RESTRICT THE PARTIES FROM SEEKING EQUITABLE REMEDIES FOR ANY ALLEGED VIOLATIONS OF THE PROVISIONS

OF THE CONTRACT 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 IT 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. BUYER AND SELLER HEREBY WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION BETWEEN THE PARTIES HERETO.

27. **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.
28. **RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained herein 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.
29. **MISCELLANEOUS** – Unless otherwise indicated, any reference to “days” in these Terms means calendar days. The headings for each section of these Terms are for information only and are not part of the Terms.