

PENNEX ALUMINUM COMPANY TERMS AND CONDITIONS OF SALE

1. Acceptance of Terms and Conditions. The acceptance of the terms and conditions contained herein (these "Terms and Conditions") is an essential prerequisite to any contract of sale made by Pennex Aluminum Company ("Seller"). (Any quotation or customer acknowledgement made by Seller, together with these Terms and Conditions, is hereinafter referred to as a "Sales Agreement".) Any offer or acceptance by Seller is made subject to these Terms and Conditions and no additional or different terms offered by the entity to which Seller is providing goods under the Sales Agreement ("Buyer"), whether included in Buyer's purchase order, shipping instructions or otherwise, will become a part of the agreement of sale between Seller and Buyer unless such terms have been expressly approved in a writing signed by an authorized agent of Seller. If this document is an offer, acceptance of this offer is expressly limited to the terms hereof, and Seller reserves the right to withdraw this offer at any time before its acceptance by Buyer. If this document has been issued by Seller in response to a written offer made by Buyer, Seller's acceptance of Buyer's offer is expressly conditioned on Buyer's assent to the additional or different terms contained herein. If these Terms and Conditions are not acceptable, Buyer will notify Seller in writing at once. Buyer's action in (a) accepting any goods manufactured and delivered hereunder, or (b) receiving this document without disaffirmance within three business days of receipt, will constitute an unqualified acceptance by Buyer of the Sales Agreement (including these Terms and Conditions).
2. Electronic Communications. The parties agree that all communications or other records with respect to any transactions under the Sales Agreement, including those required to be in writing, will have legal effect, validity and enforceability if provided in a retrievable and reproducible electronic or tangible medium.
3. Severability. The invalidity or unenforceability of any term or provision of the Sales Agreement will not affect the validity or enforceability of any of the other terms or provisions hereunder, and if any term or provision of the Sales Agreement is held to be to any extent invalid or otherwise unenforceable by any court of competent jurisdiction, such term or provision will be construed as if it were written so as to effectuate to the greatest possible extent the expressed intent of the Sales Agreement, and the remainder of the Sales Agreement will not be affected thereby and will remain valid and enforceable.
4. Entire Agreement; Conflicts; Binding Effect. The Sales Agreement (including these Terms and Conditions) constitutes the entire agreement of the parties regarding the subject matter thereof, and all prior written or oral representations, promises, conditions or statements are merged therein and superseded thereby. Unless Seller expressly agrees in writing otherwise, in the event of any conflict between the provisions of these Terms and Conditions and any other provisions included in the Sales Agreement, the provisions of these Terms and Conditions shall control and take precedence. These Terms and Conditions will be binding upon and inure to the benefit of Seller's and Buyer's respective heirs, administrators, executors, successors, legal representatives and assigns.
5. Cancellation. The Sales Agreement may not be canceled without Seller's prior written consent and by prior payment to Seller of a sum equal to the total of out-of-pocket expenses incurred in connection with the purchase order, including but not limited to any charges made to Seller by suppliers for cancellation, plus a reasonable sum for overhead expenses and lost profits, as reasonably determined by Seller.
6. Force Majeure. Prevention of performance by Seller or delay in delivery caused by acts of God, terrorism, war, civil commotion, riot, blockage or embargo, work stoppage, slowdowns or interruption, lockout, fire, flood, the elements, casualty, default by any common carrier, or which are due to any law, order, proclamation, regulation, ordinance, demand, requisition or requirement or any other act of governmental authority, whether foreign, national, state or local, including court orders, judgments, or decrees, or the inability or refusal of Buyer to accept or receive shipment when due, or other cause beyond the Seller's control, will entitle Seller, at its sole option, to extend the time for performance and delivery for a period, or periods, of time that, in Seller's discretion, appears to be reasonable, or to cancel the sale, in either case without liability on the part of Seller.
7. Equipment. Any equipment (including jigs, dies, and tools) which Seller constructs or acquires for use exclusively in the production of goods for Buyer will be and remain Seller's property, and in Seller's possession and control, and any charges by Seller therefore will be for the use of such equipment only. Unless otherwise agreed by the parties, Seller may make such use or disposition thereof as Seller desires without liability to Buyer.
8. Limited Warranty; Buyer's Exclusive Remedies. Seller warrants that the goods delivered pursuant the Sales Agreement will be free from defects in manufacturing and designs provided by Seller. Seller's warranties on goods delivered pursuant a Purchase Order will only be in effect until six months after date of delivery at the delivery point stated in the Sales Agreement.

If goods delivered pursuant a Purchase Order are found to be nonconforming with the warranties set forth in the Sales Agreement, Buyer must (i) with respect to any patent nonconformity, notify Seller of such nonconformity within five business days of the date the goods are delivered to Buyer or (ii) with respect to any latent nonconformity, notify Seller of such nonconformity within five business days of discovery of the nonconformity. Seller will be given the opportunity to confirm, by its inspection, the complaint of Buyer. If, in Seller's opinion, after such inspection, the complaint of Buyer is valid, or if Seller elects not to inspect, Seller will, at its option, cure such nonconformity within a reasonable period of time by repairing or replacing the nonconforming goods or refund or credit to Buyer the price of such goods (in which case, Buyer will return the goods to Seller). Buyer will bear the costs of access (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination, re-installation and transportation of the goods sold hereby to Seller and back to Buyer.

Any warranty repair or replacement of goods provided by Seller pursuant to the above warranties will be warranted by Seller for a period equal to the remainder of the original warranty period set forth above, as applicable (no warranty will extend beyond such period); no "evergreen" or "in-place" warranty is being provided.

THERE ARE NO WARRANTIES, GUARANTEES, REPRESENTATIONS, OR REMEDIES THAT EXTEND BEYOND THE FACE OF THESE TERMS AND CONDITIONS, AND ALL OTHER WARRANTIES, GUARANTEES, REPRESENTATIONS, OR REMEDIES (EXPRESS OR IMPLIED) NOT EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS ARE FULLY DISCLAIMED AND EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. THE WARRANTIES, GUARANTEES, REPRESENTATIONS, AND REMEDIES SET FORTH IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE AND IN PLACE OF ALL OTHER WARRANTIES, GUARANTEES, REPRESENTATIONS, AND REMEDIES (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE). SELLER'S WARRANTIES WITH RESPECT TO GOODS ARE LIMITED TO THE EXTENT THAT ANY BREACH THEREOF RESULTS FROM THE ALTERATION, MISUSE, IMPROPER STORAGE, INSTALLATION, ASSEMBLY, COMMISSIONING, MAINTENANCE, OR APPLICATION THEREOF.

SELLER FURTHER DISCLAIMS ANY RESPONSIBILITY WHATSOEVER TO BUYER OR TO ANY OTHER PERSON FOR INJURY TO PERSON OR DAMAGE TO OR LOSS OF PROPERTY OR VALUE CAUSED BY ANY GOODS TO THE EXTENT SUCH INJURY, DAMAGE OR LOSS RESULTS FROM THE ALTERATION, MISUSE, IMPROPER STORAGE, INSTALLATION, ASSEMBLY, COMMISSIONING, MAINTENANCE, OR APPLICATION OF SUCH GOODS.

9. Waiver. Waiver of any default of Buyer will not constitute a waiver of any subsequent default, whether or not the Sales Agreement provides for delivery of the goods in installments.

10. Seller's Rights and Remedies. If Seller brings suit against Buyer for breach of the Sales Agreement, Seller will be entitled to collect its reasonable attorneys' fees and costs incurred in connection therewith. Seller specifically reserves the right, in its sole discretion, to set off any amounts to be paid by Seller to Buyer under the Sales Agreement against any amounts that Buyer may owe to Seller, whether pursuant to the Sales Agreement or any other agreement between Buyer and Seller. The rights and remedies granted Seller hereunder will be in addition to all rights and remedies granted Seller

under applicable law.

11. Payment Terms. Unless otherwise agreed upon by the parties and stated in the Sales Agreement, terms of payment for shipments are net cash within 30 days from the date of invoice. Failure of Buyer to make any installment or other payment promptly when due will entitle the Seller to treat the entire balance as immediately due and owing and to withhold further deliveries without liability until such default will be cured, or to cancel the unperformed part of the Sales Agreement. Further, Seller will have the right to interest on all balances not paid when due at a rate of interest equal to 1.5% per month (or such lesser amount as may be the maximum permitted by applicable law).

12. Taxes. Unless otherwise agreed upon by the parties and stated in Seller's confirmation, prices specified in the Seller's confirmation do not include sales, use, excise, value added or similar taxes. Buyer will be responsible for payment of the amount of any present or future sales, use, excise, value added or other similar tax applicable to the sale of goods hereunder.

13. Delivery; Title and Risk of Loss. The shipment date(s) for the goods sold hereunder set forth in the Sales Agreement is(are) estimates only and is(are) not guaranteed by Seller; provided that Seller will exercise its commercially reasonable efforts to meet the shipment date(s) specified in Seller's confirmation. Unless otherwise agreed upon by the parties and stated in Seller's confirmation, delivery hereunder will be made F.O.B. Seller's plant, with transportation expenses paid by Buyer. Notwithstanding the foregoing or any provision in the Sales Agreement to the contrary, title to, ownership of, and risk of loss, destruction or damage to the goods sold hereunder will pass to Buyer at the time of Seller's delivery of the goods to the carrier for delivery to Buyer, even though the carrier may be selected by Seller. Seller will not be liable for any loss, destruction or damage to the goods sold hereunder that is suffered or incurred in connection with the transportation or delivery of such goods from Seller's plant to the delivery point set forth in the Sales Agreement and Buyer will make any claims with respect to such loss, destruction or damage solely against the carrier, even though the carrier may be selected by Seller. If shipment is delayed beyond the specified shipment date due to Buyer, Buyer will reimburse Seller for the costs and expenses incurred by Seller in connection with such delay, including, without limitation, Seller's cost and expense to store the goods. Seller may deliver the goods sold hereunder in installments.

14. Security. Seller reserves the right to require payment in advance or satisfactory security or guaranty that an invoice will be promptly paid when due if at any time Buyer's financial responsibility becomes impaired or unsatisfactory to Seller. Buyer hereby grants Seller a continuing first priority purchase money security interest in and to the goods sold hereby and all replacements, substitutions and accessions thereto and all proceeds thereof, including insurance proceeds, to secure payment of all obligations and indebtedness of Buyer to Seller hereunder. Buyer agrees that Seller will have the right to take such actions with respect to the goods as Seller may reasonably determine is necessary in order to create a first lien perfected security interest in the goods, including filing UCC-1 financing statements evidencing the goods as collateral; and Buyer further agrees to take such actions as Seller may reasonably request in order to perfect Seller's first-lien security interest in the goods. Buyer specifically agrees and acknowledges that the security interest herein granted has attached. In the event of any default hereunder, Seller will have all the rights and remedies of a secured party under the Pennsylvania enactment of the Uniform Commercial Code or if the goods are located outside the United States, then the equivalent of thereof. The security interests granted to Seller under the Sales Agreement will automatically terminate upon payment in full of the purchase price for the goods and Buyer will be entitled to file a UCC-3 termination statement evidencing such termination.

15. Intellectual Property. Except as otherwise provided in this paragraph, no intellectual property or proprietary information is being sold, granted, transferred, licensed, or assigned in connection with the Sales Agreement and the goods sold pursuant hereto do not constitute works-made-for-hire. Buyer's access and use of any intellectual property and proprietary information of Seller included in and part of the goods sold hereby will be non-exclusive and limited to the use and maintenance of the goods sold hereby as contemplated by the Sales Agreement.

16. Confidential Information. Each party agrees to hold in confidence and not disclose to any third party or use for its own benefits, other than as may be approved by the disclosing party, any confidential or proprietary information supplied to it by the other party hereto in connection with this agreement. Confidential information will not include information which (i) is within or becomes part of the public domain, (ii) is disclosed by a third party not under an obligation of confidentiality with respect to such information, (iii) was already within the party's possession prior to its disclosure by the disclosing party or (iv) is independently developed without use of the disclosing party's confidential information.

17. LIMITATION OF LIABILITY. IN NO EVENT WILL SELLER'S LIABILITY FOR ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, COSTS AND EXPENSES (COLLECTIVELY, "LOSSES") ARISING OUT OF OR RELATING TO THIS SALES AGREEMENT AND/OR THE SALE OF GOODS HEREUNDER, WHETHER FOR BREACH OF CONTRACT OR BY REASON OF ANY TORT (INCLUDING NEGLIGENCE), STATUTE, WARRANTY OR OTHERWISE, EXCEED THE SALE PRICE OF THE GOODS TO BE PURCHASED HEREUNDER. NOTWITHSTANDING ANY PROVISION IN THIS SALES AGREEMENT OR ELSEWHERE TO THE CONTRARY, IN NO EVENT WILL SELLER BE LIABLE FOR ANY LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, COST OF COVER, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND WHATSOEVER, WHETHER FOR BREACH OF CONTRACT OR BY REASON OF ANY TORT (INCLUDING NEGLIGENCE), STATUTE, WARRANTY OR OTHERWISE.

18. Assignment. Buyer may not assign the Sales Agreement or any of its rights or obligations hereunder without the prior written consent of Seller.

19. Course of Dealing. No course of dealing, course of performance or usage of trade, if any, will constitute a waiver, modification, change or supplement to, or serve to explain or interpret, these Terms and Conditions or the Sales Agreement.

20. Governing Law, Jurisdiction and Venue. The Sales Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of laws principles. Any dispute, claim or controversy arising out of or relating to the Sales Agreement will be determined by U.S. District Court for the Middle District of Pennsylvania or the state courts located in York County, Pennsylvania, and each party hereby submits and consents to the jurisdiction of said courts, agrees that venue for any such dispute, claim or controversy will exclusively lie in such courts and consents that service of process may be made upon it in any legal proceeding relating to the Sales Agreement by any means allowed under federal or Pennsylvania law.