

TERMS AND CONDITIONS OF SALE

1. **Contract.** The terms of this document constitute a contract for sale of products or services between Sierra Alloys Company, "Seller", and Buyer (designated on the face hereof) which shall be made in and governed by the laws of the State of California. Buyer agrees that this document shall constitute the entire contract between Seller and Buyer and that delivery of goods or services referred to herein or other performance indicating an intent to accept shall be conclusively deemed to constitute an acceptance in strict accordance with the terms hereof or other written instruments purporting to evidence the transactions provided for herein.
2. **Delivery, Shipments, Risk of Loss:** Title and risk of loss to products to be furnished under this Agreement shall pass to Buyer at the time and place of delivery specified on the face of this document, or if left blank, at Seller's factory or if the shipment is delayed or deferred by an act or omission of Buyer, then from the time the goods are readied for shipment. Identification of the goods shall occur upon each shipment being placed in the hands of the carrier. In the event that the goods are destroyed, in whole or in part prior to the time the risk of loss passes to Buyer, this agreement shall be voided. If the loss is partial, Buyer shall have no right to accept any portion of conforming goods. Unless otherwise designated on the face of this document, all shipment of goods upon which service is performed shall be F.O.B. Seller's factory. Buyer agrees to assume all risk of loss, or damage to such goods from the time of delivery to a carrier at Seller's factory, or if the shipment is delayed or deferred by an act or omission of Buyer, then from the time such goods are readied for shipment. Seller shall not be liable for either delays in deliveries or total failure to deliver due to any cause or event beyond its control, including, but not limited to, strikes, labor difficulties, delay or defaults of common carriers, changes in government law and regulations, or failure or curtailment in Seller's sources of material and supplies, equipment breakdowns, shortage of power, fuel, labor, or substantial increases in Seller's cost. For purposes of this contract, a substantial increase in Seller's cost shall be deemed to have occurred if Seller's performance hereunder would result in a loss to Seller on this sale. In addition, Seller shall have the right, in the event of the happening of any of the above contingencies, to cancel this agreement or any part thereof without further liability. Shipments made within thirty (30) days after specified date of delivery shall constitute a good and timely delivery. Orders for goods shall be considered complete upon shipment of a commercially reasonable quantity over or under the amount specified when it is impractical to produce the exact quantity ordered. SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PENAL OR OTHER DAMAGES FOR DELAY IN OR FAILURE TO DELIVER OR PERFORM IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY OR OTHERWISE.
3. **Payment; Warranty of Solvency:** All prices, whether herein named or heretofore quoted or proposed, shall, at Seller's option be adjusted to Seller's prices in effect at the time of shipment. Buyer shall pay Seller for the goods in accordance with the terms on the face hereof. If not so paid interest shall be added to the unpaid balance thereof, on a monthly basis at the rate of 18% per annum. Buyer agrees to execute either prior or subsequent to delivery, upon Seller's request, such security agreement, financing statements, and other documents or agreements necessary to grant to Seller a perfected security interest with respect to all goods and proceeds thereof, and to pay the cost of filing the same in any public office. Buyer represents that it is not insolvent as defined in Section 1-201 (23) of the Uniform Commercial Code. In the event that Buyer becomes insolvent before delivery of the goods, Buyer agrees to notify Seller. Failure to notify Seller shall be construed as a reaffirmation of Buyer's solvency at time of delivery.
4. **Taxes:** Any taxes which Seller may be required to pay or collect, upon or with respect to the manufacture, sale, purchase, delivery, storage, use of consumption of the goods or any material relating thereto, shall be for the account of Buyer, which shall promptly pay such to Seller upon demand.
5. **Warranties and Limitation of Warranties:** Seller expressly warrants that the goods shipped shall conform to the description, exceptions, and special conditions stated herein. All services are provided based on product of effort basis and Seller assumes no responsibility for the cost of the material being processed. Any claim for breach of such warranty must be made in writing after receipt of the goods. Any claim not so made shall be barred. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY WITH RESPECT TO THE GOODS SOLD HEREUNDER. FURTHERMORE, SELLER MAKES NO WARRANTY THAT THE GOODS SOLD HEREUNDER ARE FIT FOR ANY PARTICULAR PURPOSE. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF. The Buyer's sole remedy on account or in respect of the furnishings of goods that do not conform to the contract or to the express warranty contained herein shall be replacement by the Seller of the goods purchased. SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR THE COST OF ANY LABOR EXPENDED ON ANY SUCH GOODS OR FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES TO ANYONE BY REASON OF THE FACT THAT SUCH GOODS DO NOT CONFORM TO THIS CONTRACT OR TO THE EXPRESS WARRANTY STATED HEREIN. Buyer waives the benefit of any rule that disclaimer of warranty shall be construed against Seller and agrees that such disclaimer shall be construed liberally in favor of Seller.
6. **Return of Goods:** Buyer agrees not to return goods for any reason, except upon the prior written consent of Seller which consent, if given, shall specify the terms and conditions upon which any such return shall be made.
7. **Defects; Inspection; Notification:** Buyer must notify Seller in writing of any claimed defect, shortage or inaccuracy in the goods within ten (10) days of Buyer's receipt of the goods or it shall be held to have waived its right to seek remedy thereof or recovery thereon from Seller.
8. **Patents:** Buyer shall indemnify and hold Seller harmless from, and release and not make claim or suit against Seller because of any suits, claims, losses, or other liability made against, or suffered by, Buyer arising from any claim of, or infringement of, patent, copyright, trademark, or other proprietary right, at common law, or claim of unfair trade practices or of unfair competition, resulting from or occasioned by Seller's use, possession, sale or delivery of the goods sold to Buyer, or upon which services are performed by Seller.
9. **Seller's Right of Possession:** Seller shall have the right, at any time it deems itself insecure or upon Buyer's default or defaults, to withhold shipments, in whole or in part, and to recall goods in transit, retake same, and repossess all goods which may be stored with Seller for Buyer's account, without the necessity of any other proceedings. Buyer hereby agrees that all goods so recalled, retaken, or repossessed shall become the absolute property of Seller in the event Buyer defaults in due performance of any of the terms or conditions hereof, or in the event of a proceeding in bankruptcy, an assignment for benefit of creditors, insolvency, receivership, or reorganization being instituted by or against Buyer or Buyer's property or business. Seller may, at its option, terminate this agreement upon written notice to Buyer and shall thereafter be relieved of all obligations hereunder. If the Buyer is in breach of the terms hereof, Seller shall have the right to receive as damages the price of the goods or services as stated herein. Upon recovery of the price, the goods shall become the property of Buyer. The foregoing shall not be construed as limiting in any manner any of the rights or remedies available to Seller because of any default of the Buyer under the Uniform Code or other law in force and effect on the date hereof.
10. **Cancellation:** Buyer agrees that an order shall in no event be subject to cancellation except by the prior written consent of Seller. Buyer further agrees that upon cancellation in accordance herewith that Buyer shall fully reimburse Seller for work performed and materials furnished.
11. **Severability:** Any provisions hereof prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions.
12. **Assignment:** Buyer agrees that it will not assign this contract or the purchase hereunder prior to making payment in full therefor without Seller's prior written consent.
13. **Export Restrictions:** The ultimate shipment by Seller of products under this agreement is subject to the right and ability of Seller to make such sales under all decrees, statutes, rules and regulations of the U.S. Government presently in effect or which may be in effect hereafter, which govern exports or otherwise pertain to export controls. Any order which cannot be fulfilled due to the inability of Seller to obtain necessary export approvals shall be considered to have been rejected by Seller upon receipt.
14. **International Sales:** The International Chamber of Commerce Terms (Incoterms) shall be used when there is an obligation for delivery of goods for international contracts of sale.
15. **Shipping Date:** Shipping dates are based on our best estimate of time required to process our order. We will endeavor to meet this shipping date but will not be responsible for loss or damage incurred as a result of a change in shipping date.
16. **Shipping Tolerance:** Seller maintains the right to ship \pm 10% of estimated weight of order unless otherwise specified on order and acknowledgement.
17. **No-Waiver Remedies; Cost and Attorneys Fees:** The remedies herein reserved or created shall be cumulative and additional to any other or further remedies provided at law or in equity, may remedy any breach of the terms or conditions hereof and may waive any breach of the terms or conditions hereof without waiving the breach remedied or without waiving any other prior or subsequent breach. Buyer shall pay all of Seller's costs and expenses, including attorney's fees, incurred in exercising any of its right, collection, or remedies hereunder or enforcing any of the terms or conditions hereof.
18. **Jurisdiction:** Any suit or proceeding relating to this sale shall be brought in the federal or state courts of competent jurisdiction in Los Angeles County, California, which courts shall have the sole and exclusive subject matter and other jurisdiction in connection with each suit or proceeding, and venue shall be appropriate for all purposes in such court. Buyer hereby consents to the jurisdiction of such courts and agrees to appear in any such proceeding upon notice thereof.
19. **Limitation of Action:** Any action by Buyer against Seller for any breach of this contract must be commenced within one (1) year following Seller's delivery of the goods to Buyer or one (1) year of such breach, whichever occurs first.
20. **Applicable Law:** The terms, conditions and covenants contained herein shall be governed by and construed in accordance with the laws of the State of California as they apply to transactions between merchants, and venue in any action herein shall be laid in or transferred to the state or federal courts of the State of California. If any provision or provisions hereof are void or are declared to be void, such provision or provisions shall be deemed and hereby are severed from this document which shall otherwise remain in full force and effect.