

## **OSCAR WINSKI CO., INC. SELLER'S TERMS AND CONDITIONS**

Seller acknowledges and accepts Buyer's order expressly conditional, however, upon Buyer's assent to all of the terms and conditions contained herein and no others. Objection is hereby made to any terms or conditions at variance with, different than or additional to those stated herein. No terms or conditions other than those stated herein, whether contained in Buyer's order or elsewhere that purports to vary or are different than those terms and conditions or include additional terms and conditions shall be binding on Seller unless hereafter set forth in writing signed by Seller. Buyer's assent to these terms and conditions of sale shall be conclusively presumed from its receipt of any material ordered.

**PRICES** - All prices will be adjusted to conform to Seller's prices in effect at the date of shipment.

**TAXES** - Unless otherwise indicated herein, the prices specified do not include sales, excise or other taxes payable on account of the transaction, and all such taxes now or hereafter applicable to this transaction shall be paid by Buyer.

**DELAY** - Seller shall be excused for any failure to perform due to acts of God, war, riots, embargoes, fire, explosion, strike or other differences with workmen, shortages, delay in transportation, breakdown or accident, actions taken to comply with any law or regulation, or any other cause, without limitation, beyond Seller's control in the reasonable operation of its business.

**EXCLUSION OF ALL EXPRESS AND IMPLIED WARRANTIES** - ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY TYPE AND KIND IN CONNECTION WITH THIS SALE, TO INCLUDE BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED IN ALL RESPECTS AND FOR ALL PURPOSES. SELLER IS NOT THE MANUFACTURER OF THE METALS BEING SOLD HEREUNDER; SELLER HAS MADE NO INDEPENDENT CHEMICAL OR PHYSICAL ANALYSIS ON ANY OF THESE METALS OR OTHERWISE TESTED THEM. SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES WHATSOEVER IN CONNECTION WITH THIS SALE TO INCLUDE THE CONTENT, ACCURACY OR MANNER OF THE PREPARATION OF ANY THIRD PARTY CERTIFICATION OR REPORT, IF SUPPLIED, OR ANY OF THE GENERAL TRADE INFORMATION, NONE OF WHICH MAY BE RELIED ON FOR ANY PURPOSE UNDER ANY CIRCUMSTANCES.

**BUYER'S ACKNOWLEDGMENT.** - Buyer acknowledges that it fully understands that the Seller is not liable or responsible for the content, accuracy or manner of preparation of any third party certification or report, if supplied, or any of the general trade information. Buyer further acknowledges that it fully understands that Buyer must conduct its own test to ascertain the specific chemical and physical analysis of the metals being purchased hereunder. Buyer affirmatively states that Seller did not make any representation, warranty or promise as to the content, accuracy or manner of preparation of any third party certification or report, if supplied, or any of the general trade information in connection with this transaction or otherwise and that Buyer did not rely on any such representation, warranty or promise made by the Seller in entering into this transaction.

**SHORTAGES OR DAMAGED MATERIAL** - Any alleged shortage or damaged material received under this agreement must be reported in writing by the Buyer to the Seller within 30 days of receipt of the material. In the event that no such notice is given, it will be conclusively presumed that no shortages or damages exist.

**LEGAL ACTION** - Any lawsuit brought by the Buyer against the Seller whether based on contract, tort, or any other legal theory of recovery arising from any claim or cause whatsoever directly or indirectly relating to or arising out of this transaction must be commenced within one year from when the cause of action occurred.

**BUYER'S EXCLUSIVE REMEDY / SELLER'S LIMIT OF LIABILITY** - THE BUYER'S SOLE EXCLUSIVE REMEDY AND SELLER'S ABSOLUTE LIMIT OF LIABILITY IN CONNECTION WITH ANY LAWSUIT, CLAIM OR CAUSE WHATSOEVER DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF THIS TRANSACTION WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY OF RECOVERY SHALL IN ALL CASES BE STRICTLY LIMITED TO THE SELLER, AT ITS SOLE OPTION, EITHER (i) REIMBURSING THE BUYER UP TO THE AMOUNT OF THE PURCHASE PRICE, OR (ii) REPLACING SUCH NONCONFORMING GOODS AT THE ORIGINAL POINT OF DELIVERY. BUYER WILL ASSIST SELLER IN ALL RESPECTS IN ITS ATTEMPTS TO DETERMINE THE LEGITIMACY AND BASIS OF ANY CLAIMS MADE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN AND EVEN IF THE EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE BUYER OR ANY THIRD PARTY.

**PATENT INFRINGEMENT** - If any material is furnished to Buyer's specifications, Buyer shall indemnify Seller, its affiliated companies and its successors and assigns against all liabilities and expenses to include reasonable attorneys' fees resulting from any claim of infringement of any patent in connection with the processing of such material.

**CREDIT APPROVAL** - Shipment, deliveries and performance of work shall at all times be subject to the approval of Seller's Credit Department. Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to such Credit Department.

**TERMS OF PAYMENT** - Subject to the terms hereof, payment shall be due within 30 days from the date of each invoice. Any cash discount, which is expressly provided herein, will only apply to the price of materials at the shipping point. A cash discount will not be allowed on any charges made for loading, storage, transportation or taxes.

**SET OFF** - Seller is authorized to apply toward any payment of any monies due Seller hereunder any sums now or hereafter owed to Buyer or any affiliate company by Seller or any affiliate company.

**GOVERNMENT REGULATIONS** - Seller certifies that the material was produced or processed by it in compliance with the requirements of the Fair Labor Standards Act, as amended, and of the regulations issued pursuant thereto. Seller does not discriminate against any employee or applicant for employment because of race, color, sex, age, religion or national origin, and does not and will not

maintain any segregated facilities at its establishments on the basis or race, creed, color or national origin. Executive Order 11246 is incorporated herein.

**ATTORNEYS FEES** - In the event that the Seller must institute a lawsuit against the Buyer to collect any monies that are due hereunder or if the Seller successfully defends against a lawsuit instituted by the Buyer against it hereunder, then the Seller shall be entitled to its costs and expenses to include reasonable attorneys fees incurred in connection with such lawsuits.

**ENTIRE CONTRACT** - This agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements, if any. Neither of the parties relied on any promises or representations made by the other or any third party as an inducement to enter into the agreement except as may appear herein.

**NON-WAIVER BY SELLER** - No waiver of any terms, provision or other condition of this agreement by the Seller, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this agreement.

**SEVERABILITY** - If any term, covenant or condition of this agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of the agreement shall be valid and be enforced to the fullest extent permitted by law.

**SUCCESSORS** - This agreement shall be binding upon and inure to the benefit of the heirs, administrators, legal representatives, successors, and assigns of the parties.

**AMENDMENT** - The agreement may not be amended, altered, modified or changed except by written agreement executed by the Seller.