

## Terms & Conditions of Sale

**1. General** The terms and conditions contained herein, together with any additional or different terms contained in the final, written proposal issued by the Seller, constitute the entire agreement (the "Agreement") between the parties with respect to the subject sale. Acceptance by Seller of Buyer's purchase order and Buyer's acceptance of Seller's proposal is expressly limited to and conditioned upon Buyer's acceptance of these Terms & Conditions of Sale, which may not be changed or waived except in writing signed by Seller. Any additional, inconsistent or different terms and conditions contained in Buyer's purchase order or other documents supplied by Buyer are hereby expressly rejected. Unless the context otherwise requires, the term "**Equipment**" as used herein shall mean all goods, equipment, parts, accessories, and software sold to Buyer by Seller. Unless the context otherwise indicates, the term "**Services**" as used herein shall mean labor, supervision, repair, refurbishment, reconditioning, and project engineering services provided by Seller. As used herein, the term "**Buyer**" shall mean only the party issuing the purchase order to Seller for Equipment or Services, regardless of whether or not the Buyer is the end user of the Equipment or Services, and the term "**Seller**" shall mean the entity selling or supplying the Equipment or Services as set forth on the order acknowledgement or invoice for Equipment or Services.

**2. Payment Terms and Invoices** Payment terms are net 30 days. Amounts not paid by Buyer when due shall bear interest from the date payment was due to and including the date of payment at the rate of 3.0% per annum, or at the maximum rate permitted by applicable law, whichever is less. Payment of interest shall not excuse delay in, or failure of, payment of principal. Any checks returned for non-sufficient funds and any stopped or reversed payments shall be subject to a fee. If required by Seller, Buyer will cause an irrevocable letter of credit to be established in favor of Seller on a bank approved by Seller. Seller is entitled to charge any costs associated with the letter of credit to Buyer's account. Performance schedules are conditional upon receipt of the letter of credit within 30 days of award. Buyer agrees to furnish Seller with any requested credit information. Buyer's credit limit will be set at Seller's sole discretion and may be modified at any time based upon Buyer's credit risk as determined by Seller. In the event that Buyer's credit risk increases or Buyer fails to pay timely, Seller may suspend performance and/or require alternative payment methods. Buyer shall notify Seller of any items disputed in good faith relating to an invoice within 15 days after the invoice date in writing specifying the nature of the disputed item, but in no event is Buyer entitled to withhold or set off any invoiced amounts without Seller's prior written approval. In the event it becomes necessary for Seller to refer Buyer's account to a third party for collection or for Seller to take other enforcement action of this Agreement against Buyer, Buyer agrees to pay any and all attorney and arbitrator fees, lien filing fees, collection costs and legal expenses associated therewith incurred by Seller.

**3. Taxes** National, local, value added, sales and use, and other applicable taxes measured on the price of Equipment or Services in any legal system by any taxing authority are not included in the price unless otherwise agreed in writing by Seller. Notwithstanding anything to the contrary herein, the price and Delivery schedule of Equipment or Services may be equitably adjusted by Seller for the imposition of new or increases in existing tariffs or limitations on imports of aluminum, steel and other commodities and variations in labor and other costs and delays associated with those causes.

**4. Time Limit** All quotations are valid for a period of 30 calendar days, unless otherwise extended in writing by Seller. If this Agreement is delayed or suspended in whole or in part by Buyer for more than 60 days, pricing shall either be subject to re-negotiation or the Agreement may be deemed cancelled for Buyer's convenience and subject to Section 16, at Seller's sole option.

**5. Acceptance** Acceptance of Equipment occurs at point of Delivery. Acceptance of any Services provided hereunder occurs at completion.

**6. Warranty** Seller warrants to Buyer that all Equipment manufactured by Seller shall be free from defects in material and workmanship for a period of 1 year after initial use (or placement into storage) or 18 months after the date of shipment, whichever expires first, except that parts sold as spares or for replacement are warranted for 90 days after the date of shipment or until the expiration of the warranty offered by their original manufacturer, whichever expires first. All resale products and components only carry the warranty offered by their original manufacturer. Seller warrants Services against defects in workmanship for a period of 90 days from date of their completion. **Limitations.** These warranties do not cover Buyer-furnished designs, goods, equipment, services or materials and do not apply to any Equipment or Services or parts thereof which Seller determines: (1) to have been improperly installed or repaired; (2) to have been altered or modified in any way without Seller's prior written approval; (3) to have been subjected to misuse, abuse, excessive external forces, negligence or accident; (4) to have been installed, stored, used, or operated in a manner contrary to Seller's instructions, specifications and drawings, outside the specified design conditions, or not used in accordance with normal operating and maintenance practices; (5) are purchased as used Equipment, a prototype or a sample; or (6) resulted from normal wear and tear, corrosion or erosion. Each of the foregoing shall act to void any existing warranty. Proper installation of normal maintenance parts does not constitute a modification. Buyer agrees to defend, indemnify and hold Seller harmless from any third party claims arising out of the use, resale, or lease of said furnished Equipment or Services.

**7. Exclusive Remedy** Should any failure to conform to the applicable warranties stated above occur during the warranty periods specified above, then Buyer shall appropriately decontaminate the Equipment and provide Seller with prompt

written notice identifying the problem, but in no event shall such notice be more than 30 days after discovery of such failure. Provided that Buyer has fulfilled all of its obligations under the Agreement and complied with the procedures set forth in this Section 7, Seller shall inspect said Equipment within 10 business days after receipt of Buyer's notice. Seller's sole obligation, and Buyer's sole remedy, is for Seller to correct such nonconformity by, at Seller's option: (1) repair or replacement of the nonconforming Equipment or parts thereof; or (2) refund the purchase price of the nonconforming Equipment or parts thereof; and (3) in the case of nonconforming Services, re-perform the Services or refund the price there for. Repairs or replacements made pursuant to warranty shall be warranted for the time remaining in the original warranty period or 30 days, whichever is longer. Seller will make all arrangements to either transport such Equipment to and from Seller's repair or factory facility or go to Buyer's site, at Seller's sole option; provided, however, that Seller shall not be responsible for providing working access to the defect, including disassembly and reassembly of Equipment or for transportation costs to and from Seller's repair or factory facility, all of which shall be at Buyer's risk and expense. If it is determined by Seller that such failure was not covered by the warranty stated above, then Seller will invoice Buyer, and Buyer agrees to pay, for all such inspection and other expenses.

**8. Disclaimer** *THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER CLAIMS OF RELIEF AND WARRANTIES OF QUALITY, PERFORMANCE AND DESIGN, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED BY SELLER AND ALL EQUIPMENT MANUFACTURERS.*

**9. Termination** No termination by Buyer for default shall be effective unless, within 15 days after receipt by Seller of Buyer's written notice specifying such default, Seller fails to initiate and pursue correction of such specified default.

**10. Excusable Delays** The schedule for Delivery of Equipment and performance of Services will be modified for delays resulting from causes beyond Seller's reasonable control, including acts of God, war, terrorism, strikes, restrictions of the United States Government or other governments having jurisdiction, delays in transportation, earthquakes, floods, named storms, hurricanes, tornados, cyclones, typhoons or other natural disasters, or inability to obtain necessary labor, materials, or manufacturing facilities.

**11. Delivery and Risk of Loss or Damage** Unless otherwise agreed in writing by Seller, all shipments are FCA Seller's plant as defined in INCOTERMS 2010 excluding packing and loading charges, which are for Buyer's account and will be added to Buyer's invoice, and "**Delivery**" as used herein occurs in accordance with INCOTERMS 2010. Notwithstanding anything to the contrary, all lead times quoted and accepted by Seller shall be from the date Seller accepts Buyer's purchase order. If Seller agrees in writing to prepay transportation and transit insurance charges for the account of Buyer, then Seller is entitled to include shipping, handling and any transit insurance charges on its invoice. Buyer shall indemnify, defend and hold Seller harmless from any claims by freight carriers for Buyer's failure to pay freight charges. Claims for shortages in or damage to shipment shall be deemed waived unless made in writing and received by Seller within 10 days after receipt of Equipment by Buyer or its designated consignee. Delivery dates quoted are based on Seller's best estimate of a realistic time when shipment will be made, and are subject to change. Delivery dates will be confirmed on Seller's acceptance of any resulting order, and Seller will use its best efforts to meet such Delivery date. Seller may make early shipment or partial shipments and invoice Buyer accordingly. Despite any agreement with respect to delivery terms or prepayment of transportation or transit insurance charges, the risk of loss or damage shall pass to Buyer upon completion of Delivery or upon moving the Equipment into storage, whichever occurs first.

**12. Laws, Codes and Standards** Price and Delivery schedule are based on the applicable laws, codes, and standards stated in the Equipment specifications in effect as of the date of Seller's acceptance of the purchase order. If such laws, codes, and standards change, or if Buyer changes the laws, codes, and standards stated in the Equipment specifications, and such change increases or decreases the cost of performing the work or impacts the Delivery schedule, then Seller will advise Buyer of the same, and the parties shall promptly negotiate in good faith and mutually agree upon any modification to the order resulting from any such change. Any local laws, statutes, codes or standards, or interpretations thereof that do not match applicable EU design codes are hereby exempt from the Agreement unless written copies are presented by Buyer to Seller as additional specifications and accepted in writing by Seller as part of this Agreement.

### **13. Title**

Seller shall retain legal and beneficial title to the Equipment until all invoices for such Equipment have been paid in full. Until title passes to Buyer, Buyer shall keep the Equipment separate from goods belonging to the Buyer or third parties and mark them as Seller's property, and shall allow Seller access to the premises to ensure that such requirements have been met. In the event of late payment, Seller reserves the right to enter onto Buyer's or its customer's premises to repossess the Equipment upon written notice by Seller. Upon Seller's request, Buyer shall complete and execute all documents required to affect Seller's rights under this clause.

**14. Installation** Installation of Equipment furnished hereunder shall be by Buyer, unless otherwise agreed to in writing signed by Seller's duly authorized representative. Installation services provided by Seller or one of its affiliates shall be pursuant to a separate agreement.

**15. Field Service** Field service will be provided on a per diem basis upon written authorization by Buyer and at Seller's rates in effect when such Services are provided. Buyer will provide free and unrestricted access to Seller personnel, contractors, subcontractors, equipment and any other personnel necessary in order for Seller to complete the contracted work.

**16. Cancellation** Cancellation of any order must be by written notice to Seller and will be subject to Seller's cancellation charges and fees, including all costs incurred through the date of cancellation, the cost for materials ordered that cannot be returned, return and cancellation fees, cost to process such cancellation, plus a reasonable overhead and profit.

**17. Intellectual Property and Confidentiality** All right, title and interest in any inventions, developments, improvements or modifications of the Equipment and Services made by Seller or Buyer as a result of the Agreement shall exclusively remain with Seller. Any design, reports, plans, drawings, standards, specifications or other information submitted to Buyer by Seller ("Seller Documents") shall remain Seller's exclusive property. Buyer shall not copy or disclose Seller Documents to any third party, and shall not use them for any purpose other than to install, own, operate, and maintain the subject Equipment or to use the Services, including use with any other project, or for the completion of the project contemplated by this Agreement by others. Seller Documents are not suitable for use on any other agreement or project and any reuse of Seller Documents without the express written consent of Seller will be at the sole risk of Buyer, and Buyer shall release, indemnify, defend and hold Seller harmless from any and all claims arising from Buyer's reuse of Seller Documents. Upon Seller's request at any time, Buyer shall promptly return all Seller Documents. If Seller's Equipment is held to infringe a United States patent in effect as of the date of this Agreement (other than any infringement resulting from Seller's compliance with Buyer's designs, specifications or instructions or from the use of the Equipment in combination with other materials or the operation of any process), then Seller may at its option procure for Buyer the right to use the Equipment, modify or replace it with non-infringing Equipment; refund the purchase price allocable to the infringing Equipment, or settle or otherwise terminate said actions on behalf of Buyer. The foregoing is Seller's entire liability and Buyer's sole remedy for patent infringements of the Equipment. Buyer shall defend, indemnify and hold Seller harmless from all expenses, losses and other damages resulting from any actual or alleged infringement of intellectual property rights arising from Seller's compliance with Buyer's designs, specifications or instructions, from the use of the Equipment in combination with other materials, or from the operation of any process.

**18. Assignment** This Agreement may not be transferred or assigned by Buyer by operation of law or otherwise without the prior express written consent of Seller. A change in the majority ownership or control of Buyer shall be deemed a transfer or assignment for purposes of this Section 18. Any transfer or assignment by Buyer of any rights, duties or obligations without Seller's consent shall be void.

**19. Limitation of Liability** For orders placed by German Buyers only when Seller is a German entity, the following clause applies: Seller is liable to Buyer only for damages caused by intent or gross negligence. Other than in case of intent, Seller is not liable for indirect damage and consequential damage, in particular, not for loss of profit, interruption in production and/or interruption of operations at Buyer or its customers. Mandatory statutory claims of Buyer are not affected hereby; this applies, above all, to claims due to harm done to a person's life, body or health. Where the damage is due to the culpable breach of a material contractual duty (i.e. a duty which allows the proper performance of the Agreement in the first place and of which, in terms of fulfillment of such duty, Buyer can regularly rely on), Seller will be liable in accordance with the statutory provisions. In the event of simple negligence, however, liability shall be limited to foreseeable and typical damage. For all other orders, the following clause applies: *NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, IN NO EVENT SHALL SELLER, ITS AFFILIATES, SUPPLIERS AND SUBCONTRACTORS BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, LOSS OF USE, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME COSTS, DELAYS NOR FOR ANY PENALTIES, WHETHER ANY SUCH CLAIM FOR THE SAME IS BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SELLER'S CUMULATIVE LIABILITY FOR ANY SUCH CLAIMS WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE OR FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY DESIGN, SALE, INSTALLATION, OPERATION OR USE OF THE EQUIPMENT OR PERFORMANCE OF ANY SERVICES COVERED BY THIS AGREEMENT, SHALL IN NO EVENT EXCEED IN THE AGGREGATE THE PURCHASE PRICE PAID TO SELLER BY BUYER FOR THE SPECIFIC EQUIPMENT OR PART THEREOF OR FOR THE SERVICES GIVING RISE TO THE CLAIM.*

**20. Export Sales; Compliance with Trade Laws** In no event shall Seller be required to export or deliver any technical information, data or Equipment, including where such Equipment is for incorporation into customer's end-item ("End Item"), if such export or Delivery is then prohibited or restricted by any law or regulation of the European Union ("EU") or U.S. Government, including departments, agencies and sub-divisions thereof, or of any other applicable governmental agency of any country having jurisdiction, including the country in which the Equipment, End Item, or Services to be sold will be installed, used, or performed. Should Seller's performance of its obligations hereunder be prohibited by any applicable governmental agency, in whole or in part, or if the exportation or importation of the Equipment which is the subject of this Agreement be precluded because of the inability to obtain an export or import license within a reasonable time, as appropriate, then Seller's obligations hereunder shall be terminated at Seller's option, and Seller shall be entitled to reasonable cancellation charges. Unless otherwise agreed in writing by Seller, Buyer accepts all responsibility for exporting and importing any Equipment sold hereunder and any End Item, will be the exporter of record and importer of record, and will be responsible for filing any documents, obtaining any licenses required by any applicable government agencies, and paying all duties and taxes necessary for exportation and importation. Buyer agrees to export, re-export or import any Equipment, End Item or components thereof, technical information or data of

Seller in full compliance with U.S. and other laws of countries having jurisdiction and shall cause the end user of any Equipment, End Item or components thereof, or Services to comply with such applicable laws. Buyer warrants and represents that it is in full compliance with all such applicable export and import laws, including U.S. Sanctions Regulations, the EU trade laws and regulations, the International Traffic In Arms Regulations, the Export Administration Regulations, and all U.S. anti-boycott and embargo regulations (collectively, "**Trade Regulations**"), and Buyer shall provide Seller with such written assurances of compliance as requested by Seller from time to time. Specifically, Buyer agrees not to export, re-export, sell or lease any Equipment, End Item, or components or technical data thereof to a party identified on a restricted parties list maintained by the US or EU Government related to US or EU export controls and sanctions, including those designated on the Specially Designated Nationals and Blocked Persons List and entities owned 50% or more by such parties, to a country subject to comprehensive US or EU sanctions or a US or EU embargo, or for a prohibited use under either the Trade Regulations or any other applicable trade laws. Buyer agrees to indemnify and hold Seller harmless from and against any and all damages and expenses (including attorneys' fees) resulting from Buyer's violation of applicable export and import regulations, including the Trade Regulations.

**21. Compliance with Anti-bribery Laws** Buyer warrants and represents that it is familiar with the requirements of the U.S. Foreign Corrupt Practices Act and other similar anti-bribery laws, including the OECD Antibribery Convention and the UK Bribery Act, that it has not and will not violate those laws, and that it neither has nor will it offer, make, or agree to make, directly or indirectly, any gift or payment of any kind or any political contribution in violation of such laws. Buyer shall provide Seller with such written assurances of compliance with such laws as requested by Seller from time to time. Any payment, offer of payment, or agreement to make a payment that is contrary to the laws of the United States or the laws of the country in which it is made, or any other payment in conflict with this clause, will constitute a material breach of this Agreement, and any obligation of Seller hereunder shall automatically terminate upon such breach without further liability to Seller. Buyer agrees to indemnify and hold Seller harmless from and against any and all damages and expenses (including attorneys' fees) resulting from Buyer's violation of the requirements referenced in this Section.

**22. Governing Law; Arbitration** This Agreement and any claim, controversy or dispute arising under or related to the Agreement, the relationship of the parties, and the interpretation and enforcement of the rights and duties of the parties will be governed exclusively by the laws of Germany for orders placed by a German Buyer when Seller is a German entity, and the laws of England and Wales for all other orders, in each case without regard to any conflicts of law principles. The parties agree that the UN Convention on Contracts for the International Sale of Goods shall not apply in any case. Buyer agrees all causes of action under this Agreement shall expire unless brought within one year of the date of the occurrence of the event giving rise to any such claim. Except for account collection disputes, any disputes, controversies or claims arising out of or relating to this Agreement, or the breach thereof which cannot be resolved amicably within 60 days, shall be settled by binding arbitration. This agreement to submit to binding arbitration shall be specifically enforceable under the prevailing arbitration law. The award of the arbitrator shall be final, and a judgment may be entered upon it by any court having jurisdiction. A party desiring to invoke this arbitration provision shall serve written notice upon the other of its intention to do so and the name of an impartial individual who is knowledgeable in matters pertaining to Seller's industry to serve as an arbitrator. If the other party objects within 15 days to the arbitrator proposed, and the parties fail to agree on an arbitrator within 30 days thereafter, then the arbitrator shall be appointed by the arbitration tribunal. The arbitration shall be conducted in accordance with the International Arbitration Rules then prevailing of the International Centre for Dispute Resolution. Unless the parties agree otherwise, all arbitrations shall be conducted and all related documents submitted shall be in the English language in Solingen, Germany when German law applies and London, England when English law applies, and the arbitrator shall apply the substantive governing laws as specified above. All awards granted by the arbitrator shall be final and binding on the parties, and shall include interest from the date of any breach or default and from the date of the award until paid in full. Judgment may be entered on any award or decision of the arbitration panel by either party in a court of competent jurisdiction. The arbitrator may grant emergency interim relief according to the applicable arbitration rules, and the prevailing party in the arbitration shall be entitled to recover, in addition to all other amounts and relief, its costs, fees and other expenses of the arbitration, including reasonable attorney's fees, as may be awarded by the arbitrator. If Buyer fails to promptly assume Seller's defense when requested to do so as required under this Agreement, then Seller may defend with counsel of its own choice at the expense of Buyer.

**23. Miscellaneous** With the exception of fraudulent misrepresentations, the Agreement as defined in Section 1 constitutes the complete and exclusive agreement between Seller and Buyer and there are no agreements, understandings, restrictions, warranties, or representations between Seller and Buyer with respect to the subject matter hereof other than those set forth herein. If any provision, or any part thereof, of this Agreement is found by any court or governmental agency of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, then such provision shall be deemed revised and applied to the maximum extent allowed by applicable law, and such invalidity or unenforceability shall not affect the remainder of such provision or any other provision here which shall remain in full force and effect. All obligations herein shall survive termination, expiration or completion of this Agreement. No term or condition is intended for the benefit of any third party, and the parties do not intend any term or condition to be enforceable by a third party (for orders where English law applies only, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise), including any end user of Equipment or Services. Seller's failure on any occasion to insist on strict performance of any term or condition hereof shall not constitute a waiver of compliance with such term or condition on any other occasion or a waiver of any default. References to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory

provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it. The headings used throughout are for convenience only and shall be given no legal effect. Fax, portable document format (.pdf), email or other electronic transmissions or copies shall be given the full force and effect as an original. For purposes of this Agreement: (a) the words "include," "includes," and "including" are deemed to be followed by the words "but not limited to"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

**24. Data Privacy Notice** For information regarding Seller's processing of personal data, see the Chart Privacy Information, which is available at <http://www.chartindustries.com/Terms-Conditions>. Buyer represents and warrants that it will provide such privacy statement to all of Buyer's employees, contractors, agents, or other persons authorized to act on Buyer's behalf at or before the time that any such persons interact with or provide any personal information to Seller.

*Rev 12/2019*