

## **TERMS AND CONDITIONS OF SALE**

### **APPLICABILITY:**

All products, materials, components, goods, commodities, and any other items (the "Products") and services offered for sale by Silver Star Metal Fabricating Inc. ("Seller") are sold subject to these terms and conditions of sale (these "Terms and Conditions"). Seller's performance of any contract is expressly made conditional on Buyer's agreement to these Terms and Conditions, unless otherwise specifically agreed to in writing by Seller. No other terms and conditions, including any terms and conditions attached to, or contained within, Buyer's request for quotation, acknowledgment, purchase order or other contract documentation shall apply, and all such terms are hereby rejected by Seller. Buyer's acceptance of the Products or services delivered by Seller constitutes Buyer's agreement that these Terms and Conditions govern the purchase and sale of such Products or services. **THESE TERMS AND CONDITIONS SHALL SUPERSEDE ANY ADDITIONAL, DIFFERENT OR CONFLICTING TERMS PROPOSED BY BUYER OR CONTAINED ON BUYER'S PURCHASE ORDER OR ANY DOCUMENT OR INSTRUMENT SUBMITTED BY BUYER.**

### **QUOTATIONS:**

All quotations are based on information given at the time of the quote, should any of this information change, the quote may be subject to change at the discretion of Seller. Seller offers a quotation based on the information interpreted at the time of the request for quotation. Seller always recommends a thorough review of all details in the quotation to ensure Buyer's requirements are met.

### **INTENDED PURPOSE:**

Products will be quoted and supplied according to information provided by the Buyer. It is the sole responsibility of the Buyer to correctly identify the application or process and conditions in which the Products are intended to operate and to verify that the Products are fit and suitable for the intended purpose.

### **RESTRICTIONS:**

It is the sole responsibility of the Buyer to identify any restrictions that may prevent the entry or usage of the Products at the specified destination.

### **PRICES:**

Prices quoted are valid for 30 days and are subject to change thereafter. All prices are based on quantities indicated on the quotation. Any changes in quantity and/or partial releases may affect quoted prices. All prices are for supply only. Site measure, crating, delivery, and/or installation is not included unless explicitly indicated as a separate line item on the quotation. Possession of a price list or quotation is not accepted by us as an obligation to sell, or offer Products listed therein to anyone.

### **SHOP DRAWINGS:**

The Seller shall in its sole discretion provide drawings, product data, samples and similar submittals (collectively, "Shop Drawings") to Buyer as required to fabricate Products. Buyer shall review and approve all Shop Drawings with reasonable promptness. Such review shall be for the sole purpose of verifying that the

Shop Drawings comply with the order and are otherwise satisfactory to Buyer. THESE APPROVED SHOP DRAWINGS SHALL SUPERSEDE ANY ADDITIONAL, DIFFERENT OR CONFLICTING DOCUMENTS, DRAWINGS, SKETCHES, OR INSTRUMENTS PROVIDED BY EITHER PARTY.

**TERMS OF SALE:**

All sales within Canada are F.O.B. our plant in Mississauga, Ontario. Title to the Products does not pass to purchaser until Products are paid for in full, and risk of loss or damage to the Products shall be assumed by Buyer upon shipment of the Products from Seller's plant in Mississauga, Ontario.

**PAYMENT TERMS:**

All quotations are based on pre-payment unless otherwise stated. Buyer shall pay a non-refundable pre-payment ("Deposit") to Seller in the amount specified on the quotation on acceptance of the quotation. The non-refundable Deposit shall be applicable towards the final purchase price. If this transaction fails to close for any reason other than default by Seller, the non-refundable deposit shall remain the property of Seller. Payment on Seller's invoice, including any balance due, must be made before or at the time of pick-up or delivery.

**OPEN ACCOUNTS:**

Open accounts are subject to credit approval by the Seller's credit department and will require completion and submission of a credit application by the Buyer. Unless agreed to in writing by the Seller's credit department, all open accounts are net 30 days from invoice date. Invoices which are overdue in excess of 60 days from invoice date will result in suspension of the Buyer's account. Buyer will reimburse any costs or expenses (including attorneys' fees) incurred by Seller to collect any amount that is not paid when due. Seller reserves the right to require pre-payment from, or to refuse to sell to, any Buyer whose account is overdue or who has an unsatisfactory credit or payment record.

**SECURITY INTEREST:**

Buyer hereby grants to Seller and acknowledges that Seller reserves a purchase money security interest in the Products and all proceeds thereof until such time as they are paid for in full by Buyer and that, in order to perfect such interest, Seller may register such security pursuant to applicable personal property security legislation. Buyer acknowledges and agrees that no Products will become fixtures by reason of becoming attached to real property.

**TAXES:**

Prices are exclusive of any federal, provincial, local sales, value added or other taxes applicable to the sale, manufacture, or delivery of Products ("Taxes"). If any Taxes are applicable, they will be calculated at the rate in effect at the time of shipment and payment thereof will be the responsibility of the Buyer unless the Buyer provides Seller with an exemption certificate acceptable to the applicable taxing authority.

**DELIVERY:**

Seller will make a good faith effort to complete delivery of the Products as indicated by the Seller in writing; however, Seller assumes no responsibility or liability and will accept no back charge for loss or damage due to reasonable delay or inability to deliver, whether or not such loss or damage was made known to Seller.

**CLAIMS:**

All claims for incomplete, defective, or damaged Products must be made within 5 business days. Buyer shall furnish Seller with detailed written information pertaining to any claim being made. Buyer shall afford us a reasonable opportunity to inspect Products. Seller reserves the right to reject claims after Products have been installed, and/or modified by the Buyer.

**SUSPENSION OF PERFORMANCE:**

If in our judgement reasonable doubt exists as to your financial responsibility or if you are past due in payment of any amount owing to us, we reserve the right, without liability and without prejudice to any other remedies,

to suspend performance, decline to ship, to stop production of Products, until we receive payment of all amounts owing to us, or adequate assurance of such payment whether or not due.

**TOLERANCES AND VARIATIONS:**

All Products shall be subject to tolerances and variations consistent with usual trade practices regarding dimensions, straightness, section, composition and mechanical properties and normal variations in surface and internal conditions and quality and shall also be subject to deviations from tolerances and variations consistent with practical testing and inspection methods.

**DOCUMENTATION:**

Seller will provide, free of charge, one (1) copy of the relevant mill test report (unless otherwise agreed to in writing) and one (1) copy of the relevant generic dimensional drawing(s). Requests for additional copies of such documentation may be subject to additional charge.

**SELLER RECOMMENDATIONS:**

Buyer should compare Products with all plans and specifications, as they are not guaranteed to agree. Buyer acknowledges that Seller specifically negates, renounces and disclaims any representations, warranties and/or guarantees of any kind or character, express or implied, with respect to

- (i) the Products and their use, design, application or operation, their merchantability, physical condition or fitness for a particular purpose;
- (ii) the maintenance or other expenses to be incurred in connection with the Products;
- (iii) the accuracy or reliability of any information, designs or documents furnished to Buyer. Seller neither assumes, nor authorizes any person to assume for it, any other obligation in connection with the sale of the Products. Any recommendations made by Seller concerning the use, design, application or operation of the Products should not be construed as representations or warranties and any failure by Seller to make any recommendations or give advice to Buyer will not impose any liability upon Seller.

**GOVERNING LAW:**

This agreement is governed by the laws of Ontario and the federal laws of Canada applicable therein. The parties specifically exclude the application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

**SEVERABILITY & WAIVER:**

If any provision of these Terms is found to be invalid or unenforceable by a court of competent jurisdiction, such provision will be given effect in such reduced form or structure, as may be determined, and the balance of these Terms will remain valid and enforceable as if the severed provision had not formed part of these Terms. The Seller's failure to insist upon strict compliance with any provision of these Terms will not be deemed to be a waiver of any of its rights or remedies or of its right to insist upon strict performance of such term or any other term in the future. No waiver of any of these Terms will be valid unless made in writing signed by the Seller's authorized representative, and such waiver will not constitute a waiver of any other provision.

**ASSIGNMENT:**

Neither party shall assign its rights or obligations under any order without the written consent of the other unless to a parent, subsidiary or affiliate with similar creditworthiness characteristics.

**ENTIRE AGREEMENT:**

The terms set forth herein constitute the sole terms and conditions upon which we offer Products for sale. No other term, condition or understanding, whether oral or written shall be binding upon us, unless hereafter made in writing and signed by our authorized representative. Any purchase order you issue to us shall constitute your unconditional agreement to be bound exclusively by the foregoing Terms and Conditions. We hereby specifically object to any different or additional terms that might be contained in your purchase order.