

TERMS AND CONDITIONS OF SALE

The terms set forth in our Sales Confirmation and the following terms and conditions are the terms and conditions that control our sale of goods to you.

Definitions

The term “we”, “our” or “us” means METALX, LLC or the affiliate of METALX, LLC designated as the seller in the Sales Confirmation. The terms “you” or “your” mean the buyer designated on the Sales Confirmation. The term “Sales Confirmation” means the “Sales Confirmation” form completed by us to confirm or set out certain terms of the agreement between you and us for the sale of goods. The term “Terms” means the terms and conditions set forth in this document. The term “Agreement” means the terms and conditions set out in the Sales Confirmation as supplemented by the Terms. The term “Goods” means the goods described in the Agreement that are the subject matter of the sale. The term “Affiliate” or “Affiliates” means any corporation, partnership, limited liability company, trust, other entity or other person, controlled by or under common control with you or us, as applicable.

Rejection of Your Terms

No terms proposed by you, whether set forth in a contract, confirmation, order, other document or other communication, will be binding on us and we hereby specifically object to and reject such terms.

Applicable Terms

If you sign the Sales Confirmation or otherwise agree to its terms, the Agreement will constitute the entire agreement between you and us with respect to the sale of the Goods and will supersede any prior agreements, written or oral, between you and us.

If the Sales Confirmation is a confirmation of a verbal agreement between you and us and you do not sign it or otherwise agree to its terms, you must notify us immediately if any provision of the Agreement does not conform to your understanding of the oral agreement. You also agree to provide us with a written objection to any unacceptable terms within ten (10) days of your receipt of the Sales Confirmation. If you have previously agreed to be bound by the Terms, you are not entitled to object to any of the terms and conditions set forth in the Terms and you will be bound by them even though the other terms of the Agreement were agreed upon orally and confirmed by the Sales Confirmation.

Your failure to return a signed copy of the Sales Confirmation or object to its contents will not excuse you from liability under the Agreement. If you have not already agreed to the terms and conditions of our Agreement, your acceptance of the Goods delivered by us to you will constitute your acceptance of the Agreement.

Warranty and Inspection

We warrant that the Goods will conform to the specifications or grade described in the Agreement. We make NO OTHER EXPRESS OR IMPLIED WARRANTIES, AND HEREBY DISCLAIM ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. If the Goods fail to conform to the specifications or grade described in the Agreement, we will, at our option, provide a purchase price adjustment consistent with the course of performance or usages in the trade for any Goods that can be reasonably used by you, provide a replacement shipment, or refund all or an appropriate portion of the purchase price. You agree to load all nonconforming Goods for shipment to us or to another location selected by us and we will arrange for the transportation of all nonconforming Goods that we have authorized you to return to us.

You agree that variations in composition, properties and quality consistent with usages in the trade, course of performance or standard testing and inspection methods will not render the Goods nonconforming. Unless a different weight tolerance is set forth in the Agreement, you agree to accept overshipments and undershipments so long as they do not exceed five percent (5%) of the volume specified in the Agreement.

You must inspect and/or test the Goods for conformance to the specifications within one (1) day after receiving the Goods and immediately notify us of any nonconformity. You agree to allow us to inspect the Goods after any notice by you that the Goods fail to conform to the specifications. If you fail to inspect or immediately notify us of a claim after inspection, you will be deemed to have (i) accepted the Goods and, (ii) unless the defect could not have been detected by a reasonable inspection, waived any remedies available for nonconformance under the Agreement, the Uniform Commercial Code or other applicable law.

Limitation on Purchaser's Remedies.

The remedies described in in the Warranty Section of this Agreement are your sole and exclusive remedies for the failure of the Goods to conform to the specifications or grade described in the Agreement. For any other breach, you are limited to the remedies available under the Uniform Commercial Code. UNDER NO CIRCUMSTANCES WILL WE BE LIABLE TO YOU FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. You may not bring a lawsuit or other action against us unless it is commenced within one (1) year of the delivery of the Goods or the date any alleged claim accrued, whichever is earlier.

Delivery and Risk of Loss

Except as otherwise specified in the Agreement, the costs of delivery is not included in the price for the Goods. We will not be liable to you for any failure or delay in the delivery of the Goods or other performance under this Agreement attributable to any cause beyond our reasonable control. If you arrange for the delivery of the Goods, you will bear the risk of loss after the Goods leave our site.

Weights and Quality

Our weights, grades and analysis shall control final settlement.

Environmental Representations.

You represent that (i) a substantial portion of the Goods will be made available by you or your ultimate customer for use as a feedstock for the manufacturer of a new saleable product, (ii) the Goods are a replacement or substitute for a virgin raw material, or the product to be made from the Goods are a replacement or substitute for a product made, in whole or in part, from a virgin raw material; (iii) any facility, including those of any subsequent transferee, where the Goods will be handled, processed, reclaimed, or otherwise managed will be in compliance with substantive (not procedural or administrative) provisions of any federal, state or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage or other management activities associated with recycled Goods; and (iv) you and your customers will otherwise comply with all federal, state or local environmental laws and/or regulations.

Representation of Solvency.

You hereby represent that you are not insolvent as that term is defined in the Indiana Uniform Commercial Code. If you become insolvent before delivery of the Goods, you must notify us immediately. Your failure to notify us shall constitute a written reaffirmation of your solvency at the time of delivery.

Indemnifications

You agree to indemnify and hold us, our Affiliates, officers, directors, employees and agents harmless for and from all suits, claims, judgments, awards, losses, damages, costs or expenses (including attorney's fees) relating to, arising out of, or caused by (i) a breach of your representations or obligations under the Agreement; or (ii) your intentional, willful or negligent acts.

Taxes

Unless otherwise stated in the Agreement, the sales price is exclusive of all taxes and other governmental fees and charges.

Payments and Interest on Past Due Accounts.

All amounts payable to us under the Agreement shall be paid in cash, via wire transfer or by a negotiable instrument collectible at its face value in United States funds at the location indicated on our invoice. You agree to pay interest on all past due amounts at a rate equal to the higher of (i) the sum of the Prime Rate published in the Wall Street Journal's Money Rates table plus six (6) percentage points; and (ii) the rate of interest specified in Indiana Code §24-4.6-1-102. In no event shall the rate of interest exceed the rate allowed under applicable law. We may recover for

each partial shipment as a separate transaction, without reference to any other shipment contemplated as part of the Agreement.

Cancellation and Other Remedies

We may cancel the Agreement in whole or in part if you fail to make a payment when due, breach any representation or warranty, breach any other terms of the Agreement, you make an assignment for the benefit of creditors, a receiver is appointed for you, you become insolvent, or you file for bankruptcy or are subject to a proceeding for involuntary bankruptcy. All remedies provided in the Agreement for us are in addition to, and not in lieu of, any additional remedies available to us under the Indiana Uniform Commercial Code. We may exercise any of the other rights or remedies available to us. We may recover our reasonable attorney's fees and other litigation expenses if we prevail in any action to collect any amounts due to us or otherwise enforce the Agreement.

Assignment, Delegation and Change in Control

Any assignment of the Agreement or any of your rights under it without our prior written consent shall be null and void and shall constitute a material breach of the Agreement. You may not delegate any of your duties under the Agreement without our prior written consent. We may cancel this Agreement, in whole or in part, upon any change in control of you.

Set-Off

We may set-off any amount owed by you in connection with the Agreement against any amount owed to us or any of our Affiliates by you or any of your Affiliates.

Bribes and Kick-backs

You represent and agree that neither you nor any of your agents or employees have offered or will offer, or have given or will give anything of significant value to our employees or representatives for the purpose of obtaining the Agreement or favorable treatment under the Agreement.

Compliance with Laws

You agree to comply with all applicable local, state and federal laws, rules and regulations in conducting your business and performing your obligations under the Agreement.

Amendments and Waivers

No amendment, modification, waiver or release of any provisions of the Agreement will be binding on us without a writing signed by our authorized representative. Our failure in any one or more instances to require the performance of any term or condition in the Agreement shall not act as a waiver of our right to insist on strict performance in the future.

Severability

If any provision of the Agreement is determined to be invalid, illegal or unenforceable, such determination shall not render the other provisions of the Agreement invalid, illegal or unenforceable.

Applicable Law and Forum.

The Agreement shall be deemed to have been made in Indiana and shall be governed by the laws of Indiana, without regard to its choice of laws provisions. Any lawsuit or other proceeding initiated by you relating in any way to the Agreement or the transactions contemplated thereunder must be brought in the DeKalb County, Indiana Circuit or Superior Court or the United States District Court for the Northern District of Indiana, Fort Wayne Division. If we initiate a lawsuit or other proceeding against you, you consent to the jurisdiction of any of the foregoing courts, waive any venue objections and agree not to seek any transfer of the lawsuit or proceeding to another court. You agree to pay the reasonable attorney's fees incurred by us in moving any action initiated by you to one of the foregoing forums.