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## **THOMAS STEEL STRIP CORP. SALES TERMS AND CONDITIONS**

REV 4/21/2020

**PLEASE NOTE: THE TERMS AND CONDITIONS HAVE CHANGED RECENTLY.**

### **ACKNOWLEDGMENT / EFFECT OF ADDITIONAL TERMS**

Except to the extent specifically set forth in a purchase order from the party identified as buyer or similar term ("Buyer") (each, a "Purchase Order," and collectively the "Purchase Orders") accepted by Thomas Steel Strip Corporation ("Seller") or in an order confirmation issued by Seller (each, an "Order Confirmation," and collectively the "Order Confirmations"), the Order Confirmation incorporates, and is made expressly subject to, the terms and conditions contained herein, and any of Buyer's terms in addition to or different from those contained herein, whether contained in the Purchase Order or other business form of Buyer, are hereby objected to and shall be of no effect. These terms and conditions may only be waived, altered or modified by a written agreement signed by an officer of Seller.

### **PRICES, TAXES, TRANSPORTATION AND OTHER CHARGES**

All prices, whether herein specified or heretofore quoted or proposed, may be adjusted to Seller's prices in effect at time of shipment. Prices are exclusive of transportation and related charges and are exclusive of all taxes under existing or future law with respect to sale, purchase, storage, manufacture, use, consumption, transportation, occupation or otherwise. All of the foregoing are for the account of Buyer which shall promptly pay the same. Buyer warrants that the prices are not subject to renegotiation under the Federal Renegotiation Act, unless informed by Buyer to the contrary in writing with appropriate government contract numbers and information.

### **PAYMENT TERMS**

Payment terms are as shown on the Order Confirmation or the face side hereof, effective from the date of invoice. Discounts do not apply to transportation or

related charges. Overdue accounts shall bear interest from due date at the prime commercial lending rate quoted in the Wall Street Journal plus one percentage point, or at eight percent per annum, whichever is higher. If in Seller's opinion the financial condition of Buyer at any time may make payment on these terms uncertain, Seller can require full or partial payment in advance and may discontinue production or shipment, or both, and exercise the remedies set forth below. If not otherwise specified in the Order Confirmation, payment terms are net thirty (30) days.

In the event of the terms of payment not being met, or circumstances becoming known at a later date that lessen Buyer's creditworthiness, all our claims shall be payable immediately – irrespective of their maturity.

Buyer may only use undisputed or judicially determined claims for offsetting purposes. Buyer shall only be entitled to a right of set off insofar as such rights are based on the same contract.

#### **TARIFFS AND QUOTAS**

If the United States government or any other governmental body (a) imposes an additional tariff or duty requirement on products or inputs used to produce the products (a "**Tariff**") or (b) revokes or refuses an extension of a currently existing exemption from an applicable Tariff, Seller shall have the option to increase the prices with respect to the actual Tariff amount (including any amount necessary to satisfy applicable value-add pricing requirements), provided that Seller provides 5 days' prior written notice to Buyer of the increased price as a result of the Tariff and the value add surcharge.

If any action of the United States government or any other government results in prohibitions or restrictions on the importation of the products or any inputs used in the manufacturing of the products into the customs territory of the United States, including quotas, tariff rate quotas, voluntary export restraints, or any other government measures ("**Quotas**"), whether or not administered by a governmental entity, Seller shall excused in its performance to the extent that Quotas prevent or inhibit performance of its obligations.

#### **MANUFACTURE, PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES, PACKAGING**

Products shipped shall be within Seller's normal limits and sizes, shall be produced in accordance with the ASTM specification as applicable, and shall be subject to Seller's standard tolerances and variations in respect to weight, dimensions, straightness, section, workability, composition, mechanical properties, and surface and internal conditions and quality. Information regarding such standard tolerances and variations is available upon request. Product variations and tolerances shall be determined by Seller's standard inspection and testing methods and subject to regular mill practices on over and under shipments.

The material shall be delivered in an unpacked condition and without protection against rust unless other measures are with Seller's standard practice or unless measures have been agreed to the contrary.

## WARRANTY/LIABILITY

Seller guarantees to replace or, at its option, repair any products which are found not to conform to terms and specifications agreed to in writing by Seller due to defective material or workmanship. In order for this warranty to be effective, Buyer shall inspect and test the products promptly upon receipt and shall give Seller notice of nonconformity promptly, and in any event within not less than 90 days of shipment.

In any case legal action must be filed against Seller within a preclusive period of one year from the date of the transfer of risk of loss, unless the law stipulates a shorter statute of limitations.

Buyer shall not return any products unless previously authorized by Seller in writing. If requested by Seller, Buyer shall return the product to Seller at Seller's expense. Seller shall be given the opportunity to inspect and test the products at Buyer's location or elsewhere.

If defective material has been sold intentionally, for example so called Secondary Material, Seller does not provide a warranty regarding the stated defects and those which Buyer can expect under normal circumstance.

**THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER OF WARRANTIES ALSO APPLIES SPECIFICALLY TO ADVICE OR STATEMENTS OF SELLER'S TECHNICAL STAFF, WHICH ARE NOT IN ANY WAY WARRANTED.**

## MODIFICATION OR CANCELLATION

Orders once placed cannot be modified, cancelled or delayed in shipment except with Seller's written consent and subject to Seller's conditions, which shall include protection of Seller against expenses and lost profits.

## DELIVERY DATE AND DISPATCH, FORCE MAJEURE, AVAILABILITY OF RAW MATERIALS

Agreed delivery deadlines and dates shall only be valid as approximations and shall be subject to clarification of all details pertaining to the order in due time and the fulfillment by Buyer of all obligations in due time.

Delivery deadlines and dates shall be extended as a result of a direct or indirect delay caused by Buyer.

In the event of goods ready for dispatch not being called for delivery within four days, Seller shall be entitled to store these at its discretion and at the cost and risk of Buyer and to charge such goods as delivered ex works, regardless of a different delivery term in the Purchase Order or the Order Confirmation.

Deliveries shall be subject to, and contingent upon, strikes, labor difficulties, riot, civil unrest, war, acts of God, fire, delay or defaults of common carriers, failure or curtailment in Seller's usual sources of supply, governmental decrees or orders, or, without limiting the foregoing, any other delays beyond Seller's reasonable control, and Seller shall not be liable for any loss or damage arising therefrom. Seller shall have the additional right, in the event of the happening

of any of these contingencies, at its option, to cancel this contract or any part thereof without any resulting liability. Seller shall also have the right to apportion shipments among customers as it may deem to be equitable.

In any case, shipments made within 30 days after specified date of delivery shall constitute a good delivery. Any delivery not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise.

All orders or contracts are accepted with the understanding that they are subject to Seller's ability to obtain the necessary raw materials, and all orders or contracts as well as shipments applicable thereto are subject to Seller's current manufacturing schedules, and government regulations, orders and directives, and restrictions that may be in effect from time to time.

**TITLE, RISK OF LOSS, DIVERSION IN TRANSIT, REPOSSESSION, MODE AND ROUTE OR TRANSPORTATION**

Risk of loss to all products shall pass to Buyer upon delivery to carrier at point of shipment. Title to products shall pass upon the later to occur of: (a) the precuts are totally paid for and (b) the products are delivered to carrier for shipment. Neither Buyer nor any consignee shall have the right to divert or re-consign without Seller's written permission. Unless otherwise agreed, Seller has the right to select the mode and route of transportation.

**SPECIAL ORDERS, PATENTS**

If any product is manufactured to Buyer's specifications or requirements which are not part of Seller's standard product line offered, Buyer shall defend, protect, and save harmless Seller against all suits at law or in equity and from all damages, expenses (including attorneys fees), costs, claims and demands related to or arising out of such product.

If any product is manufactured to Buyer's specifications or requirements which are not part of Seller's standard product line offered, Buyer shall defend, protect, and save harmless Seller against all suits at law or in equity and from all damages, expenses (including attorneys fees), costs, claims and demands for actual or alleged infringement of any United States or foreign patent and shall defend any suit or actions which may be brought against Seller for any alleged infringement because of the manufacture and/or sale of the material covered thereby.

Buyer shall hold Seller harmless from all damages, expenses (including attorneys fees) and costs, and release and not make claim or suit against Seller because of, any suits, claims, losses, or other claim of liability made against, or suffered by, Buyer arising from any claim of, or infringement of, patent, copyright, trademark, or other proprietary right, or claim of unfair trade or of unfair competition, resulting from, or occasioned by, Buyer's use, possession, sale or delivery of the products sold to Buyer by Seller.

## **FAILURE TO ENFORCE RIGHTS**

Failure by Seller to enforce any rights against Buyer shall not affect or waive Seller's rights to enforce its rights with respect to that or other defaults by Buyer.

## **GOVERNING LAW**

The agreement shall be governed by the Uniform Commercial Code in effect in Ohio on the date hereof ("Code"). In the event of a breach of any of the Terms and Conditions of the agreement by Buyer, Seller shall be entitled to all remedies available under the Code, in addition to any other remedies available at law or in equity. The courts located in Trumbull County, Ohio shall have non-exclusive jurisdiction and venue over all controversies in connection herewith, and Buyer hereby consents to such jurisdiction and venue.

## **CONFIDENTIALITY**

Buyer may not disclose to any third party, or use to the detriment of Seller, the existence or details of any Purchase Order or Order Acknowledgment, these terms and conditions or any agreement or arrangement with Seller, or any information Buyer receives or learns about Seller in connection with or as a result of a Purchase Order or Order Acknowledgment, except as is necessary to perform in accordance therewith.

## **LIMITATION OF LIABILITY**

**IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR LOST PROFITS, TRANSPORTATION, ADJUSTMENT, STORAGE CHARGES, DELAYS, ATTORNEY FEES OR OTHER COST OR EXPENSES WHICH MAY ARISE IN CONNECTION WITH PRODUCTS.**

## **NO OTHER CONTRACT PROVISIONS**

These terms and conditions with the provisions on the face side hereof (or on the applicable Order Confirmation) form the entire agreement between Buyer and Seller and cannot be changed except in writing, signed by both parties.

## **INTERNATIONAL SALES**

Notwithstanding anything to the contrary set forth herein, all shipments made to locations outside the United States of America shall be made EXW (Incoterms) Seller's factory, Warren, Ohio. The Incoterms as amended at the time of acceptance of a Purchase Order by Seller shall apply except to the extent the Incoterms conflict with these Sales Terms and Conditions.

SOLICITORS, 030052, 000011, 103305094.4, TSS Sales Terms and Conditions