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TERMS AND CONDITIONS

1. THE FOLLOWING TERMS AND CONDITIONS OF THE ORDER ACKNOWLEDGMENT SHALL SUPERSEDE, OVERRIDE OR TAKE PRECEDENCE OVER ANY CONTRACT PROVISION CONTAINED IN THE PURCHASE ORDER OF THE COMPANY (THE "BUYER") SHOWN AS "SOLD TO" ON THE FACE OF THIS ORDER ACKNOWLEDGMENT OR ANY OTHER AGREEMENT BETWEEN BUYER AND DALCO METALS, INC. (THE "SELLER") AND SHALL FORM THE BASIS OF THE CONTRACT BETWEEN BUYER AND SELLER.
2. Buyer agrees with Seller to (a) unwrap and inspect all materials upon receipt, (b) take exceptions for wet or damaged material on the delivery receipt for the subject goods, (c) report all shortages within ten days of receipt of the subject goods. Failure of Buyer to comply with any of the foregoing, including institution of a claim within the applicable periods provided, shall constitute a waiver of all rights Buyer has against Seller for any claim. Seller shall not accept goods returned without its permission, rejects will only be accepted in original form. Any transportation charges incurred due to such unauthorized return shall be Buyer's sole responsibility and liability.
3. Unless otherwise specifically stated on the face of this Order Acknowledgment, "quantity" is the weight calculated using industry standard nominal gauges.
4. Buyer's purchase order is accepted conditioned on the Buyer's acceptance of the terms and conditions of this Order Acknowledgment.
5. Seller reserves the privilege of canceling this contract at its discretion should it be unable to ship complete within the time specified by Buyer in its Purchase Order, or if no time is specified, within a reasonable amount of time from the date of this Order Acknowledgment.
6. Shipments and deliveries shall at all times be subject to the approval of Seller's credit department, and, in the event Seller shall have any doubt as to payment from Buyer, Seller may decline to make shipments or deliveries provided under this Order Acknowledgment, or under any contract of which this Order Acknowledgment is a part or under any other contract between Buyer and Seller.
7. If Buyer shall fail to make any payment in accordance with the terms and provisions of this Order Acknowledgment, or of any contract of which the Order Acknowledgment is a part, Seller in addition to its other rights and remedies, but not in limitation thereof, may at its option, cancel this contract of which this Order Acknowledgment is a part, or under any contract between Buyer and Seller until such payment is made.
8. THERE ARE NO WARRANTIES OR REPRESENTATIONS EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS OR OTHERWISE, WITH RESPECT TO THE SUBJECT GOODS BY SELLER TO BUYER WHICH EXTEND BEYOND THE DESCRIPTION OF THE GOODS ON THE FACE OF THIS ORDER ACKNOWLEDGMENT. SELLER MAKES NO REPRESENTATION AND GIVES NO WARRANTY THAT THE MATERIALS PURCHASED BY BUYER WILL BE SUITABLE FOR BUYER'S INTENDED USE. SELLER'S LIABILITY UNDER THIS CONTRACT, OR UNDER ANY CONTRACT OF WHICH THIS ORDER ACKNOWLEDGMENT IS A PART, SHALL, IN NO EVENT, EXCEED THE PURCHASE PRICE OF THE SUBJECT GOODS, AND IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER DAMAGES, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE ARISING OUT OF THE USE OF OR INABILITY TO USE THE GOODS DELIVERED TO BUYER. BUYER SHALL HAVE NO RIGHT FOR, AND AGREES NOT TO MAKE ANY CLAIM FOR CONSEQUENTIAL DAMAGES WITH RESPECT TO THIS CONTRACT AND THE SUBJECT GOODS. Seller shall not be responsible for any damages of any kind sustained by Buyer due to any reason which is beyond Seller's control, including, but not limited to any damages directly or indirectly caused by defective material purchased by Seller from a third party, defective, unsatisfactory or improper coating, painting, embossing or any other change or modification of the subject goods done by a third party, delays by third party in making such changes or modifications to the subject goods, labor disputes, delays in transportation, accidents, act of God or any other force, major event or contingency. No waiver, alteration, addition or modification of the warranty provided herein shall be valid unless made in writing and signed by an authorized representative of Seller and Buyer.
9. Waiver by seller of any breach of this Contract, or of any contract of which this Order Acknowledgment is a part, shall not be construed as a waiver of any other such breach. No waiver shall be valid unless in writing signed by Seller.
10. Any increases as may occur in the tariff freight rates or transportation charges used in determining delivered prices after date of quotation or sale and on or prior to dates of shipments will be paid by Buyer.
11. This Contract shall at all times be subject to all federal, state and local laws, rules and regulations. This contract is also subject to any industry custom or practice which is not contrary to the foregoing terms and conditions.
12. This agreement is entered into in the State of Wisconsin, and the laws of the State of Wisconsin shall control the terms, conditions, and enforcement of this agreement. Buyer hereby acknowledges and agrees that Buyer is doing business in the State of Wisconsin, is subjected to the jurisdiction of the State of Wisconsin, and agrees that any lawsuit brought by Seller of Buyer in connection with this agreement shall be brought in the State of Wisconsin.
13. Interest at the rate of 18% per annum will be charged on all past due accounts. The Buyer agrees to pay reasonable attorney's fees and expenses incurred by Seller in seeking to collect payment of past due amounts from Buyer.
14. Interest at the rate of 18% per annum or the highest legal rate then in existence whichever is lower, will be charged on all past due accounts. The Buyer agrees to pay reasonable attorney's fees and expenses incurred by Seller in seeking to collect payment of past due amounts from Buyer.
15. This Agreement shall be binding upon the parties and their successors and assigns.