

# **TEMPEL STEEL COMPANY**

## **TERMS AND CONDITIONS OF SALE**

**1. COUNTER-OFFER/BUYER'S ACCEPTANCE.** The offer by a customer or prospective customer ("Buyer") in any purchase order or other document tendered, either heretofore or hereafter ("Order") is hereby expressly rejected in whole. This document is a counteroffer to the Order. Acceptance of this counteroffer by Buyer is expressly limited to the terms and conditions herein contained. Tempel Steel Company ("Tempel") is proceeding with this transaction based on Buyer's expressed interest in purchasing the goods and/or services ("Products") covered by this document. In the event Buyer elects to reject this counter-offer, Buyer may only reject the same in whole in writing prior to the earlier of delivery of the Products, commencement of service, or ten (10) days after Buyer's receipt of these terms and conditions (or notice that these terms and conditions apply to the Order; otherwise, Buyer shall be deemed to have agreed to the terms and conditions herein contained. The counteroffer may be withdrawn by Tempel at any time prior to acceptance by the Buyer. Upon acceptance by the Buyer, all of the terms and conditions contained herein shall supersede any additional, different or inconsistent provision in any Order. The provisions hereof shall not be supplemented or varied by any usage of trade or any course of prior dealings or acquiescence in any course of performance. Without limiting the generality of the foregoing, these terms and conditions shall also apply to all quotations made by Tempel.

**2. PRICES.** Unless otherwise specified in writing by Tempel: (a) all prices are subject to change without notice at any time, for any reason, including, without limitation, as a result of costs of labor, materials or overhead; (b) all prices, quotations, shipments and deliveries are F.O.B. point of manufacture at Tempel's facility; (c) all prices together with related extras and deductions are billed at Tempel's price in effect at the time of shipment in U.S. Dollars; (d) all transportation, insurance and other charges shall be born by Buyer, including any increase or decrease in such charges prior to shipment; and (e) if Buyer does not purchase the quantity upon which quantity prices are based, Buyer will pay the non-discounted price for the quantity actually purchased and/or a cancellation fee.

**3. PAYMENT.** Payment is due on the date set forth on Tempel's invoice, or, if no date is set forth, within thirty (30) days from the date of invoice; provided, that any customer not receiving an invoice shall be subject to Tempel's standard credit and payment terms and conditions, as provided from time to time. Payments not received within thirty (30) days of such payments due date may be subject to interest charges at the rate of one and one-half percent (1-1/2%) per month from the due date to the date of receipt of payment. In addition, if Buyer fails to make payment when due, Tempel may (a) defer further shipments until such payments are made and satisfactory credit arrangements are established; (b) cancel any unshipped balance of any Tempel approved request for Products; and (c) pursue any legal or equitable remedies, and Buyer shall bear Tempel's costs of collection and reasonable attorneys' fees. Any requests for Products made by Buyer are subject to credit approval by Tempel. Buyer will submit such financial information as Tempel may reasonably require for determination of credit terms. If, at any time, Tempel reasonably believes that Buyer's ability to make payments is impaired, Tempel may cancel any Tempel approved request for Products, or remaining balance thereof, and Buyer will remain liable to pay Tempel for Products already shipped, and expenses incurred by Tempel for specially manufactured Products and Tooling, hereafter defined.

**4. INSPECTION.** Claims respecting the condition of the Products, shortages, or any other matter affecting Products shipped to Buyer must be made promptly and, unless otherwise agreed to in writing by Tempel, in no event later than ten (10) days after arrival of the shipment to the initial destination after leaving Tempel's facility, and failure to make a timely claim shall be deemed Buyer's acceptance of the applicable Products. The foregoing shall not affect any warranty claim in accordance with Paragraph 8 below. In no event shall Products be returned, reworked or scrapped by Buyer without the express written consent of Tempel. Should Buyer request the return, rework or scrap of Products, Buyer shall comply with Tempel's request for testing or inspection, including delivery of any samples or other items, at Buyer's expense.

**5. DELIVERY.** Risk of loss shall transfer to Buyer at the F.O.B. point. Delivery date or shipping schedules are approximate, based upon the most recent information available to Tempel and may be adjusted by Tempel upon receipt of subsequent information. Tempel will not be liable for damages due to delay in delivery. Delivery of a quantity which does not vary by more than ten (10%) percent from the quantity specified therefore will constitute full performance of such delivery. Tempel shall have the right to make partial shipments with respect to Orders, which shipments shall be separately invoiced and paid for when due, without regard to

subsequent shipments. In the event of Product shortages, Tempel shall have the right to allocate the available supply among its customers in such manner as determined by Tempel at its sole discretion. Delay in delivery of one installment will not entitle Buyer to cancel any other installment. Delivery of any Tooling shall not take place until Buyer has paid in full for all existing and future commitments for Products, and all corresponding spare parts. Any changes in Buyer's requirements will require written confirmation or revision of estimated shipping date. All prices for any rescheduled deliveries may be increased.

**6. CANCELLATION.** Acceptance of a request for Products shall be an irrevocable sale and is non-cancelable. Any cancellation, in whole or in part, is subject to written acceptance by Tempel in its discretion, and Tempel shall have the right to retain all amounts paid to it by Buyer as a nonrefundable deposit against payment of the purchase price therefore without further liability of Tempel to Buyer. Buyer will be responsible for all costs, fees and expenses (including, without limitation, for labor, material and reasonable attorneys' fees and expenses) incurred by Tempel in fulfilling the Order subject to cancellation or as a result of the cancellation of an Order. Tempel shall have the absolute right to cancel this agreement upon breach thereof by the Buyer, failure by the Buyer to make any payment required by this agreement, or the insolvency or bankruptcy of the Buyer.

**7. TAXES.** Prices are exclusive of all federal, state, municipal or other government excise, sales, use, occupational, export, import or like taxes now in force or to be enacted in the future; all of such applicable taxes, levies and duties of any nature whatsoever, are the responsibility of the Buyer. If Buyer is exempt from tax, Buyer shall provide Tempel with an exemption certificate acceptable to the relevant taxing authority upon receipt of this invoice. Without a valid signed tax exemption certificate on file at Tempel, all applicable taxes will be charged to Buyer.

**8. LIMITED WARRANTY.** Tempel warrants to Buyer for one (1) year from the date of invoice or delivery, whichever is earlier, that the electrical properties of the Products purchased hereunder will reasonably conform to and perform in accordance with the specifications agreed to in writing between Buyer and Tempel for such Products. Any claim under this warranty must be in writing and received by Tempel within said one (1) period. Buyer's sole and exclusive remedy for breach of this warranty shall be replacement of Product not meeting said warranty. This warranty shall not apply to any Products damaged during shipment (claims must be submitted to the carrier); used in a manner or under conditions for which they were not intended; damaged from causes other than Product defects, including, without limitation, lack of technical skills, competence or experience of a third party assembler or integrator or due to improper care or maintenance of any user; subjected to abnormal operating or electrical conditions; which have been subjected to misuse, neglect or accident, or been altered or tampered with; or on which corrective work has been done without Tempel's express written consent. This warranty is only applicable to Buyer, and not to any subsequent user, and is not assignable. EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, PRODUCTS AND TOOLING ARE PROVIDED "AS IS" WITHOUT OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THOSE CONCERNING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**9. LIMITATION OF LIABILITY.** IN NO EVENT WILL TEMPEL OR ITS OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, DISTRIBUTORS, OR LICENSORS, (COLLECTIVELY, "ITS REPRESENTATIVES") BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR FOR DAMAGES FOR LOSS OF PROFITS, SALES, USE OR GOODWILL, EVEN IF TEMPEL OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM. ALL LIABILITY WITH RESPECT TO THE PRODUCTS WILL BE LIMITED TO REPLACEMENT OF A DEFECTIVE PRODUCT, AND IN NO EVENT WILL THE AGGREGATE LIABILITY OF TEMPEL AND ITS REPRESENTATIVES FOR ANY DAMAGES, LOSSES OR CLAIMS, WHETHER DIRECT OR INDIRECT WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT BUYER HAS PAID TO TEMPEL FOR THE SPECIFIC QUANTITY OF PRODUCTS SUBJECT TO THE CLAIM OF DAMAGES. THE LIMITATIONS ON REMEDIES SPECIFIED IN PARAGRAPHS 8 AND 9 WILL APPLY EVEN IF SUCH ANY LIMITED REMEDIES ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. No action against

Tempel for breach hereof shall be commenced more than one (1) year after the accrual of the action.

**10. TOOLING.** All tools, materials, drawings, dies, chutes, bolster plates, jigs, gauges, fixtures, patterns, molds, testing apparatus, machinery, equipment and similar materials necessary to manufacture Products ("Tooling") shall be owned by Tempel, and held in Tempel's possession, unless Tempel specially manufactures Tooling for use solely by Buyer or Tempel otherwise agrees in writing, in which case Buyer may take possession of said Tooling, however, ownership and possession shall only pass to Buyer once Buyer has paid in full for such Tooling and any existing and future commitments for Products and all corresponding spare parts. Unless otherwise agreed in writing by Tempel, Buyer shall be responsible for all expenses incurred by Tempel for Buyer's specially manufactured Tooling while said Tooling is in Tempel's possession.

**11. STANDARD OFFERING.** Unless otherwise specified by Tempel in writing, all Products manufactured from Tooling owned by Tempel (catalogue/standard Products) are subject to Tempel tolerance and material specifications, and Tempel reserves the right to make changes thereto without Buyer approval.

**12. OWNERSHIP OF INTELLECTUAL PROPERTY.** Unless agreed otherwise in writing by Tempel, Tempel shall retain all right, title and interest in and to, and possession of, all its proprietary technology, including but not limited to, all copyright, patent, trade secret and other intellectual property rights associated with any ideas, concepts, methods, processes, techniques, inventions or works of authorship developed or created by or on behalf of Tempel for its Products, including, without limitation, any Tooling or other item used by Tempel to create products ("Intellectual Property"). Tempel may use this Intellectual Property in or with the Products or Tooling, in whole or in part, sold to or used for the benefit of any of its customers, even if the Products or Tooling were developed expressly for use by Buyer. Buyer shall take such further actions, including the execution and delivery of instruments of conveyance, as may be reasonably requested by Tempel, to give full and proper effect to the provisions of this paragraph.

**13. INDEMNIFICATION.** BUYER HEREBY AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND TEMPEL, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AGAINST ANY AND ALL LOSSES, COSTS, DAMAGES, CLAIMS, LIABILITIES OR EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM ANY INJURY TO ANY PERSON OR DAMAGE TO ANY PROPERTY CAUSED BY (1) THE FAILURE OF BUYER, OR ITS OTHER SUPPLIERS OR VENDORS, TO PROPERLY INSTALL OR USE THE PRODUCTS OR TOOLING, (2) THE INCORPORATION OR USE OF PRODUCTS OR TOOLING, OR ANY PART THEREOF, IN ANY GOODS NOT SUPPLIED BY TEMPEL, (3) INFRINGEMENT IF THE PRODUCTS WERE IN REASONABLE COMPLIANCE WITH BUYER'S SPECIFICATIONS, DESIGNS OR INSTRUCTIONS, AND (4) BUYER'S MANUFACTURING OR OTHER USE, PROCESS OR SALE OF ANY PRODUCTS, OR ANY PART THEREOF, CONSTITUTING EITHER DIRECT OR CONTRIBUTORY INFRINGEMENT.

**14. FORCE MAJEURE.** Tempel shall not be liable for delays or failures in performance, including delay or non-shipment, resulting from acts, events or causes beyond its reasonable control, whether foreseeable or unforeseeable, and whether such act, event or cause directly or indirectly affects Tempel. Such acts, events or causes shall include, but shall not be limited to, acts of God, terrorism, civil or military authority mandates, laws or regulations, civil disturbance, fire, epidemics or pandemics, strikes, lockouts or slowdowns, factory or labor conditions, errors in manufacture, inability to obtain necessary labor, materials or manufacturing facilities, delayed issuance of export control licenses, or other "force majeure" events beyond Tempel's reasonable control. In the event of such delay, the date of shipment shall, at the request of Tempel, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time.

**15. ASSIGNMENT.** Buyer may neither assign nor transfer its rights, as set forth herein, in any Order or otherwise agreed to by Tempel, by operation of law or otherwise, without the prior written consent of Tempel. Tempel's affiliated companies may participate in Tempel's performance hereunder.

**16. GOVERNING LAW/EXCLUSIVE VENUE/ATTORNEY'S FEES.** The laws of the State of Illinois

and applicable laws of the United States, excluding conflict of law rules, shall govern. Buyer and Tempel hereby consent to the exclusive jurisdiction of Federal and State courts sitting in Cook County, Illinois in any action or claim arising out of, under or in connection with any Order or otherwise relating to the sale and purchase of Products. If Buyer fails to perform any of its obligations, Buyer shall pay Tempel all costs and expenses incurred by Tempel, including all attorney's fees, in enforcing Tempel's rights, whether by formal proceedings or otherwise, in addition to any other remedy available to Tempel.

**17. SEVERABILITY AND SURVIVAL OF TERMS.** Any term or condition hereunder which is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction shall, as to such prohibition or unenforceability, be ineffective only to the extent of such prohibition or unenforceability, without invalidating the remaining terms and conditions; it being the intent that such court apply a rule of reasonableness and modify the provision in question so it will remain in effect to the greatest extent permitted by law.

**18. MODIFICATION.** No addition to, or modification of, any of these terms and conditions shall be binding upon Tempel unless made in writing and signed by a duly authorized representative of Tempel.

**19. COMPLETE AGREEMENT.** These terms and conditions constitute the entire agreement of the parties hereto with respect to the sale of the Products hereunder, and supersede all prior discussions, agreements and understandings of any nature whether written or oral, with respect thereto, and no conditions, warranties or representations other than as expressly provided herein shall be binding upon Buyer or Tempel. The entire understanding between Tempel and Buyer is set forth herein and any promises, representations, warranties or guarantees not herein contained shall have no force and effect unless in writing signed by Tempel and Buyer.