



Terms and Conditions

The following Terms and Conditions ("Agreement") shall govern all purchases of products and/or services from Martensite Technology LLC dba US Castings ("Seller") to the buyer ("Buyer") identified in the Sales Order to which these terms and conditions are attached ("Sales Order"), and the terms and conditions of the Agreement are hereby incorporated into and made a part of, the Sales Order. The Sales Order is expressly conditioned on Buyer's assent to the terms of this Agreement including any additional or different terms. Buyer's acceptance of the Sales Order shall operate automatically as Buyer's unconditional assent and agreement to all terms and conditions contained in this Agreement. Seller does not consent to or accept, and hereby expressly objects to, any attempt by Buyer to change, reject or supplement the terms of the Sales Order or any of the terms set forth in this Agreement.

- Sales Prices.** Prices on the goods specified in the Sales Order do not include any city, state, or federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use, and similar taxes, fees, or other charges imposed by governmental entities. When applicable, taxes will be added to the invoice as a separate charge to be paid by Buyer. If an exemption from a tax is claimed, supporting documents must be furnished by Buyer prior to delivery. Any and all sales quotations provided by Seller to Buyer shall automatically expire thirty (30) calendar days from the date issued, and are subject to termination by Seller by notice to Buyer at any time.
- Terms of Payment.** Except as expressly provided otherwise in the Sales Order, all payments shall be due thirty (30) days after the date of Seller's invoice and all payments made after thirty (30) days from the date of the invoice shall be subject to a service charge of one and one-half percent (1.5%) per month based on the outstanding balance. In addition, Buyer's failure to make any payment when due shall justify suspension of performance by Seller of any other sale orders.
- Cancellations.** Buyer may not cancel or change a Sales Order once accepted by Buyer or once Seller accepts a purchase order issued by Buyer, without the written consent of Seller, which may be granted or denied in the sole discretion of Seller, and without Buyer paying the Cancellation Penalty (defined below). If Buyer desires to cancel or change a Sales Order, Buyer must deliver a written request for cancellation of the Sales Order to Seller. If Seller consents to Buyer's written request for cancellation of the Sales Order, Buyer shall pay to Seller an amount ("Cancellation Penalty") to be determined in the sole discretion of Seller based on the status of the order, Seller's costs and fees incurred and/or committed to, and such other factors as Seller deems appropriate. Buyer shall not be relieved of its obligations under any cancelled or changed Sales Order until it pays the Cancellation Penalty in full.
- Security Interest.** To secure the payment of Seller's invoice, Buyer grants to Seller a security interest in all goods sold to Buyer under the Sales Order, including all proceeds therefrom. Buyer authorizes Seller to perfect its security interest through a filing of a financing statement pursuant to the Uniform Commercial Code and shall reimburse Seller for any fees incurred in filing the financing statement which may be added by Seller to the amount of Seller's invoice to Buyer.
- Delivery and Risk of Loss.** All shipments under the Sales Order are F.O.B. Seller's warehouse and all risk of loss shall pass to Buyer at that time regardless of the method of shipment that may be elected by Buyer.
- Nonconforming, Defective or Damaged Goods.** Buyer shall inspect all goods upon tender and delivery by Seller, and should any of the goods be nonconforming, defective or damaged goods, Buyer must notify Seller, in writing, within ten (10) days of Seller's tender and delivery of the goods describing the nature of any nonconformity. Seller shall have the right and option to repair or replace any nonconforming, defective or damaged goods. The failure of Buyer to notify Seller in writing that the goods are nonconforming, defective or damaged within ten (10) days of Seller's tender and delivery of the goods, shall constitute acceptance of the goods and Buyer shall be liable to Seller for the total Sales Order price.
- LIMITATIONS ON DAMAGES.** SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY LOST PROFITS OR OTHER ECONOMIC LOSS OF BUYER, OR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER SIMILAR DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT BY SELLER OR ANY OBLIGATIONS OF SELLER PURSUANT TO THIS AGREEMENT, THE SALES ORDER OR THE FAILURE OF THE GOODS TO PERFORM IN ANY PARTICULAR MANNER.
- Warranties.** Seller warrants that goods supplied pursuant to the Sales Order shall conform to the description therein stated and shall be free from defects in material or workmanship. This warranty shall be effective for a period of one (1) year from the date of delivery of the goods to Buyer. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- Special Orders.** If any goods are manufactured by or on behalf of Seller to meet Buyer's particular specifications or requirements, Buyer shall indemnify and hold Seller harmless from any and all claims arising from the purchase, use, or sale of the special goods, and from any related costs, attorneys' fees, expenses, or liabilities incurred by Seller therefrom.
- Law and Procedure.** The Sales Order, this Agreement and the transaction described therein shall be subject to, construed under and enforced according to the laws of the State of New York. ANY ACTION IN REGARD HERETO OR ARISING OUT OF THE TERMS AND CONDITIONS HEREOF SHALL BE INSTITUTED AND LITIGATED IN THE COURTS OF THE STATE OF NEW YORK AND NO OTHER. IN ACCORDANCE HERewith, THE BUYER HEREBY SUBMITS TO THE JURISDICTION AND VENUE OF THE COURTS WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK. BUYER AND SELLER HEREBY WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF THE SALES ORDER, THIS AGREEMENT OR THE TRANSACTION DESCRIBED THEREIN.
- Non-Circumvention.** The customer will not use any Confidential Information for any purpose detrimental to Seller's interests, including, but not limited to, circumventing the Seller to enter into any type of business relationship with any entity or individual identified in, by or from the Confidential Information, including, but not limited to, any customer, vendor, distributor,





supplier or manufacturer. The provisions of this paragraph are an integral part of this Agreement, and compliance with the provisions herein is essential to the effectiveness of the relationship between the parties. Accordingly, this paragraph shall remain in full force and effect for the duration of this Agreement, and for a period of three (3) years after the termination of any business relationship between the Buyer and the Seller.

12. Remedies. In the event that Buyer is in default or otherwise breaches the Sales Order or this Agreement, Seller shall be entitled to pursue any and all remedies, legal or equitable including an action to recover the total Sales Order price, as well as its costs of enforcing the Sales Order, including, without limitation, its attorneys' fees and costs. In the event that Seller is in default or otherwise breaches the Sales Order, the liability of Seller to Buyer for such breach or default shall be limited to the replacement value of the goods under the Sales Order which is the sole and exclusive remedy of Buyer for any such breach or default.

13. Returned Goods. All sales are final and there are no refunds except if the goods are nonconforming to those stated on the Sales Order or if they arrive damaged or defective, in which case the provisions of Para. 6 herein shall govern. Buyer shall bear the risk if its end user or customer for any reason rejects or refuses to accept or pay for the goods (except if Para. 6 is applicable and Buyer has complied with Para. 6), and in any such instance, Buyer shall not be relieved to pay to Seller in full all amounts due under the Sales Order.

14. Entire Agreement. This Agreement is intended by the parties as a final expression of the terms and conditions of the Sales Order. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This Agreement can only be modified in a writing signed by both parties. No previous course of dealing between the parties or trade usage may be used to interpret, limit, or otherwise impair the operation of this Agreement.

15. Waiver. Seller shall not be deemed to have waived any rights under this Agreement or the Sales Order unless such waiver is given in writing and signed by Seller. No delay or omission on the part of Seller in exercising any right shall operate as a waiver of such right or any other right. A waiver by Seller of a provision of this Agreement or the Sales Order shall not prejudice or constitute a waiver of Seller's right otherwise to demand strict compliance with that provision or any other provision of this Agreement or the Sales Order. Neither prior waiver by Seller nor any course of dealing between Buyer and Seller, shall constitute a waiver of any of Seller's rights or of any of Buyer's obligations as to any future transactions. Whenever the consent of Seller is required under this Agreement or the Sales Order, the granting of such consent by Seller in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Buyer.

16. Force Majeure. Neither party shall be in default hereunder by reason of any failure or delay in the performance of any obligation under this Agreement where such failure or delay arises out of any cause beyond the reasonable control and without the fault or negligence of such party. Such causes shall include, without limitation, storms, floods, other acts of nature, fires, explosions, riots, war or civil disturbance, strikes or other labor unrest, embargoes and other governmental actions or regulations that would prohibit a party from ordering or furnishing Products or performing any other aspects of the obligations hereunder. This paragraph shall not apply to Buyer's payment obligations hereunder. Notwithstanding the foregoing, the cancellation, rescheduling or any other change with respect to the event for which the goods identified in the Sales Order were intended, if applicable, shall under no circumstances be deemed a force majeure event and Buyer's obligations hereunder shall not be altered, mitigated or released in any manner, by reason of the foregoing. Without limiting anything contained in this Para. 17, unless otherwise agreed to in writing by the parties, any delivery dates noted on the Sales Order are approximate and subject to material availability. Seller shall not be responsible for non-shipment of goods or delays in delivery or performance due to causes beyond its reasonable control, including, but not limited to, those described above.

17. Notices. All notices required to be given under this Agreement shall be given in writing and shall be effective when (i) delivered in person, (ii) deposited in the United States mail, postage prepaid, sent certified mail, return receipt requested, or (iii) delivered via nationally recognized overnight courier, and in each case addressed to the party to whom the notice is to be given at the address shown upon the Sales Order. Such delivery shall be deemed made (i) when delivered in person, (ii) three business days after posting if mailed, and (iii) the next business day after delivery if by overnight courier. Any party may change its address for notices under this Agreement by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address.

18. Interest and Fees. In the event of any dispute arising out of the Sales Order, this Agreement or the transaction described therein, in addition to an award of damages, the Seller shall be entitled to recover: (1) prejudgment interest on any amount awarded at a rate of 1 ½% per month, (2) all expenses of litigation, including without limitation all filing fees and court costs; and (3) all attorneys' fees incurred regardless of whether such fees or expenses are incurred before or after the initiation of litigation.

19. Conflicting Provisions. The terms and conditions of this Agreement shall govern and apply to the Sales Order, notwithstanding any language to the contrary contained in any purchase order submitted by Buyer.

