

**TOLEDO STEEL SUPPLY, INC.**  
**TERMS AND CONDITIONS OF SALE**

**1. Definitions**

In these terms and conditions ("Conditions") the following words have the following meanings.

- (a) "Buyer" means the person, entity or company to whom Seller's Quote is addressed, including its successors and approved assignees.
- (b) "Goods" means goods of any description but not limited to any and all items sold or manufactured by Seller and delivered to Buyer.
- (c) "Quote" means a sales quotation directed by Seller to Buyer for the supply of specified Goods on the basis only of these Conditions.
- (d) "Seller" means Toledo Steel Supply, Inc., 222 LaVoy, Erie, Michigan 48133.

**2. Application**

(a) All Quotes and sales by Seller are subject to these Conditions and the terms on the face of the Quote, which constitute the sole terms and conditions under which Seller will sell Goods to Buyer. Written acceptance of a Quote, or any other conduct consistent with acceptance of a Quote, such as placing an order or issuing a purchase order to buy the Goods or the payment of Seller's invoice, shall constitute acceptance by Buyer of these Conditions. These Conditions shall apply to the exclusion of any terms and conditions of contract imposed or sought to be imposed by Buyer at any time, whether attached by Buyer to any purchase order or otherwise. The signing by Seller of Buyer's documentation shall not imply any modification of these Conditions. Unless otherwise specified, all Quotes expire 30 calendar days from the date issued and are subject to termination by notice within that period. All Quotes are subject to credit approval and acceptance by Seller.

(b) These Conditions shall remain in force until such time as Seller advises Buyer in writing that it has adopted revised Terms and Conditions of Sale in substitution for these Conditions.

**3. Delivery and Acceptance**

- (a) All deliveries are F.O.B. Destination.
- (b) Buyer shall immediately inspect all Goods once they are delivered to insure that they conform to the order and, from Buyer's perspective, are free from any defects including but not limited to claims for shortage. If no claim is made by Buyer within ten (10) days of delivery, it shall be conclusively presumed that the Goods have been fully accepted.
- (c) Unless otherwise agreed upon in writing, Buyer shall provide all alterations to its facilities necessary to accommodate the Goods.
- (d) Seller shall not be responsible for any failure to perform caused by unforeseen difficulties, its inability to obtain materials, parts, supplies or labor through its usual and regular sources, interruption of transportation, delays in delivery, government regulations, labor disputes, strikes, acts of God, pandemics, war, terrorism, civil unrest or other causes (whether or not similar to the listed causes) beyond its reasonable control. If Buyer causes a delay, any increased costs required to meet the original or agreed rescheduled supply time are Buyer's responsibility.

**4. Price and Payment**

- (a) Buyer agrees to pay all city, state, federal or foreign transactional or other sales or use taxes, including without limitation, taxes on manufacture, sales, use and similar taxes, and all other taxes, levies and duties applicable to the Goods (other than United States federal, state or local taxes based on the net income of Seller), however designated or levied and whether or not specified in any invoice. All prices shown on the Quote are exclusive of such taxes unless otherwise indicated.
- (b) Unless otherwise agreed to in writing, payment terms are one-half (1/2) percent discount if paid in ten (10) days of invoice or delivery of goods, whichever is earlier, but otherwise payment is due net 30 from day of invoice or delivery of goods, whichever is earlier.
- (c) Any delivery not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered Goods.
- (d) Any change by Buyer in the scope of the work must be requested in writing and if accepted by Seller, may result in adjustment of the time for delivery and price of the Goods.

**5. Title and Risk**

The Goods shall be identified to the contract, and risk of loss and title in Goods shall pass to Buyer when the Goods are delivered to Buyer.

**6. Returns and Refunds**

(a) All Goods are custom orders. Therefore, Buyer may not return any goods. In the event that Goods are properly rejected, i.e., do not conform to the purchase order and specifications, Buyer must give Seller the opportunity to replace the goods with conforming product. Furthermore, at Seller's election, all non-conforming goods shall be returned to Seller.

**7. Warranties, Disclaimer and Limitation of Warranties, and Buyer Remedies**

- (a) THE GOODS ARE OFFERED "AS IS" AND "WITH ALL FAULTS" WHEN THE GOODS ARE ACCEPTED BY BUYER. In accordance with this Section 7, Buyer understands and agrees that all warranties implied by the provisions of the Uniform Commercial Code, as in force and effect in the State of Michigan, are excluded from the sale of goods by Seller.
- (b) BUYER'S EXCLUSIVE REMEDY FOR A BREACH OF WARRANTY OR NONCONFORMING GOODS IS FOR THE GOODS TO BE REPLACED BY SELLER. AT SELLER'S ELECTION, ALL NON-CONFORMING GOODS SHALL BE RETURNED TO SELLER.
- (c) SELLER HAS MADE NO AFFIRMATION OF FACT AND HAS MADE NO PROMISE RELATING TO THE GOODS BEING SOLD THAT HAS BECOME ANY BASIS OF THE BARGAIN MADE OR THAT HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE GOODS WOULD CONFORM TO ANY AFFIRMATION OR PROMISE.
- (d) NO DESCRIPTION OF THE GOODS BEING SOLD HAS BEEN MADE PART OF THE BASIS OF THE BARGAIN OR HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE GOODS WOULD CONFORM TO ANY DESCRIPTION.

(e) NO SAMPLE OR MODEL HAS BEEN MADE PART OF THE BASIS OF THE BARGAIN OR HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE WHOLE OF THE GOODS WOULD CONFORM TO ANY SAMPLE OR MODEL.

(f) SELLER MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER AGREES THAT, EXCEPT AS OTHERWISE PROVIDED IN A SELLER'S DESCRIBED WARRANTY, THE GOODS ARE SOLD "AS IS" AND "WITH ALL FAULTS."

(g) Buyer acknowledges and agrees that the size and weight of the truck Seller and its driver uses to deliver the Goods may cause damage to the premises and/or adjacent property if the load is placed where Seller desires it. In no event shall Seller or any of its drivers be liable to Buyer or third parties for any damage that may occur to the premises and/or adjacent property, buildings, sidewalks, driveways, curbs, etc. by delivery of the Goods. Buyer shall indemnify and hold harmless Seller and its driver for any and all damage to the premises and/or adjacent property which may be claimed by anyone to have arisen out of delivery of the Goods. Buyer agrees to help Seller and/or the driver remove mud from the wheels of the vehicle used to deliver the Goods so as to avoid littering the public street.

(h) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR THIRD PARTIES FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES, LOSSES OR EXPENSES (INCLUDING WITHOUT LIMITATION LOST PROFIT, SALES, REVENUE, BUSINESS OPPORTUNITY OR BUSINESS ADVANTAGE, OR EXPENSES ASSOCIATED WITH THE INABILITY TO USE THE GOODS OR GOODS MANUFACTURED WITH THE GOODS), OR INJURY TO PERSON OR PROPERTY, UNDER ANY LEGAL THEORY OR CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**8. Seller Remedies**

Seller shall have the right, in addition to all others it may possess, at any time for credit reasons or because of Buyer's default or defaults, to withhold shipments in whole or in part and to recall goods in transit, retake same and repossess all Goods which may be stored with Seller for Buyer's account, without legal process, and Buyer agrees that Goods so recalled, retaken or repossessed shall become Seller's absolute property. Any order once placed and accepted by Seller is not subject to cancellation unless otherwise agreed by Seller in writing. Seller shall be entitled to set off against the price any sums owed by Seller to Buyer. In the event of Buyer's default, Buyer shall be liable for all costs and expenses, including reasonable attorneys' fees, incurred by Seller in enforcing its right to payment. Nothing in this Section 8 shall be construed as limiting in any manner any of the rights or remedies available to Seller because of any default by Buyer under the Uniform Commercial Code as in force and effect in the State of Michigan.

**9. General Operation**

- (a) No contract to purchase Goods may be assigned by Buyer without Seller's prior written consent.
- (b) No variation of these Conditions shall be binding unless agreed in writing between the authorized representatives of Seller and Buyer.
- (c) No waiver, forbearance or indulgence by Seller of any breach of these Conditions by Buyer shall prejudice Seller's rights or be considered a waiver of that breach or of any subsequent breach.
- (d) These Conditions supersede any prior or contemporaneous oral or written agreements and representations between Buyer and Seller with respect to the Goods.
- (e) ANY ACTION AGAINST SELLER MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED AND MUST BE BROUGHT IN EITHER A STATE COURT OF COMPETENT JURISDICTION LOCATED IN MONROE COUNTY, MICHIGAN, OR IN THE FEDERAL DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, TO THE EXCLUSION OF ALL OTHER FORUMS. BUYER CONSENTS TO THE EXCLUSIVE JURISDICTION OF THESE COURTS. BUYER ACKNOWLEDGES AND AGREES THAT THIS A MATERIAL TERM OF ANY DEALINGS WITH SELLER AND SELLER WOULD NOT HAVE CONDUCTED BUSINESS WITH BUYER IN THE ABSENCE OF BUYERS AGREEMENT TO THIS PROVISION.
- (f) Seller and Buyer's conduct, these Conditions, as well as any and all claims or defenses of either party shall be governed by and construed in accordance with the laws of the State of Michigan without application of conflict or choice of law principles.
- (g) Should any one or more of the provisions hereof be determined to be illegal or unenforceable, all other provisions hereof shall be given effect separately therefrom and shall not be effected thereby.