



# ELECTRALLOY

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## ORDER ACKNOWLEDGMENT TERMS AND CONDITIONS OF SALE SEPTEMBER 1992

- 1. ACKNOWLEDGMENT** - Seller acknowledges and accepts Buyer's order, expressly conditioned, however, upon Buyer's assent to all of the terms and conditions contained herein. Seller hereby notifies Buyer of its objections to and refusal to be bound by all terms and conditions contained in any purchase order or other communications from Buyer which are additional to, different from, or conflict with, the terms and conditions contained herein. No terms or conditions other than those stated herein, whether contained in Buyer's purchase order or shipping release, or elsewhere, and no written or oral agreement that purports to vary these terms and conditions shall be binding upon Seller unless hereafter set forth in writing by Seller. All negotiations, proposals, and representations, if any, made prior and with reference hereto are merged herein, and this Contract shall constitute a complete and exclusive statement of the terms of the agreement between Buyer and Seller.
- 2. ASSENT** - Buyer's assent to these terms and conditions of sale and to those set forth on the reverse side hereof shall be conclusively presumed either from Buyer's (a) failure to object in writing delivered to Seller within the lesser of the time period specified on the reverse side hereof or within ten days from the date of this Contract or (b) receipt of any material ordered. If not otherwise accepted, all of the terms and conditions contained herein, and no other, shall be deemed accepted if Buyer shall dispatch a purported confirmation or acceptance to Seller which substantially agrees as to the quantity, description, and price of the materials. Such purported confirmation or acceptance shall be deemed an acceptance of all of the terms and conditions contained herein and not a counteroffer regardless of whether it contains terms or conditions which are additional to, different from, or conflicting with, the terms and conditions contained herein.
- 3. PRICES; TAXES** - All prices are subject to adjustment to conform to Seller's prices in effect at the date of shipment. Payment is to be made in U.S. currency for each shipment hereunder on the terms stated on the reverse side hereof. Prices quoted by Seller do not include sales, excise, or other taxes imposed on account of this invoice or the use of the material. All such taxes shall be paid by Buyer.

4. **SHIPPING SCHEDULES; DELAY; INABILITY TO SHIP** - If full manufacturing details have not been received by Seller at the time of its entry of this order, any shipping date promised on the reverse side hereof shall be extended for a period equal to the period between order entry and Seller's receipt for the full manufacturing details. Seller shall not be subject to any liability due to its failure to ship or delay in performance due to any cause beyond the control of Seller, including, but not limited to, delays in transportation, delays in Seller's sources of supply, material shortages, actions taken to comply with any law or regulation, labor difficulties, accidents, transportation delays, acts of God, war, fire, flood, or other force majeure, and, in such event, Seller shall have the right to apportion its production among its customers. Seller is not relieved from making shipment, nor is the Buyer relieved from accepting delivery, at the agreed price, when the causes interfering with delivery shall be removed. In the event of total or partial suspension of any shipment to be made hereunder, for any of the reasons enumerated in this Contract, Seller shall have the right to make up the amount of material which it failed to deliver within a reasonable time after termination of the force majeure. Shipping promises are based on conditions prevailing at the time of quotation and date of receipt by Seller of full manufacturing details. Every effort will be made to ship promptly as promised, but shipments within a reasonable time thereafter shall be construed as compliance with this Contract. Definite shipping instructions shall be furnished to Seller by Buyer in ample time to complete shipment in the time specified.
5. **WARRANTY AND EXCLUSION OF OTHER WARRANTIES** - Seller warrants that the material will meet the specifications shown on the reverse side hereof and that Seller will convey good title thereto. THIS WARRANTY IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY INTENDED USE OR PURPOSE, WHETHER ARISING BY LAW, CUSTOM OR CONDUCT, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXCLUDED.
6. **LIMITATION OF LIABILITY AND REMEDIES** - Provided that a proper claim has been made in the manner and within the period as provided under "Claims," if the material furnished to Buyer shall fail to conform to this Contract through no fault or negligence of Buyer, the Seller shall, at Seller's option, reimburse Buyer up to the amount of the purchase price, or replace such nonconforming material at the original point of delivery and shall furnish instructions for its disposition. In the event of any shortages in Seller's shipment, Seller may make a supplemental shipment or, at Seller's option, an appropriate adjustment in the purchase price. Without limiting the generality of the provisions contained in this paragraph, in no event shall any liability or responsibility of Seller which may arise in any circumstances whatsoever exceed the price to Buyer of the particular material in respect of which any claim is made. THE FOREGOING RIGHTS AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES WHATSOEVER, WHETHER STATUTORY OR OTHERWISE

AND WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY. IN NO EVENT SHALL SELLER BE LIABLE TO ANYONE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

7. **INFRINGEMENT** - If any material is furnished to Buyer's specifications, Buyer will indemnify, defend, and hold Seller harmless from and against all liabilities and expenses, including reasonable attorney's fees, resulting from any claim of infringement of any patent or trademark in connection with the production or sale of such material.
8. **CLAIMS** - All claims for any alleged shortage, damaged material, or defect which would be apparent on Buyer's inspection or for alleged failure of the material to meet any specification or term of this Contract must be made in writing, specifying, in detail, the claim, within 30 days of Buyer's receipt of material. Seller may refuse to accept material returned without Seller's permission. All material returned shall be subject to confirmation as to items and amounts by Seller. Seller's confirmation shall govern.
9. **VARIATIONS AND TOLERANCES** - Except as otherwise expressly agreed to in writing by Seller, all material shall be produced in accordance with Seller's standard practices. All material, including that produced to meet an exact specification, shall be subject to tolerances and variations consistent with usages of the trade and regular mill practices concerning: laboratory analysis of chemical specifications, dimension, weight, straightness, thickness, and mechanical properties; normal variations in surface, internal conditions and quality; deviations from tolerances and variations consistent with practical testing and inspection methods; regular mill practices concerning over and under shipments; and other variations in quality, specifications, size, or weight.
10. **CREDIT APPROVAL; SECURITY** - Commencement and completion of all shipments, deliveries, and performance of work shall at all times be subject to the approval by Seller's Credit Department of Buyer's creditworthiness. Seller may, at any time, decline to make or complete any shipment or delivery or perform any work except upon receipt of payment in advance or security or upon such other terms and conditions as are satisfactory to Seller. If Buyer fails to furnish said advance payment or security upon request, or to conform to any such terms, Seller may, without prejudice to any other legal or equitable remedy, suspend or cancel uncompleted work or shipments and retain all materials which are the subject of this Contract indefinitely, as security, and in such event all unpaid invoices shall immediately become due and payable.
11. **TERMS OF PAYMENT** - Payment of the invoice, covering shipment of all or any part of this order, shall be due as set forth on the reverse side hereof. For payments not received within the period set forth on the reverse side hereof, interest shall

accrue on the unpaid balance hereof at a per annum rate up to the maximum rate permitted by applicable law. Any cash discount will not apply to charges for loading, storage, transportation, or taxes.

12. **BUYER'S DEFAULT** - In the event of a default in any payment due to Seller, Buyer agrees to pay, in addition to any service charge as set forth in "Terms of Payment" above, all costs of collection, including reasonable attorney's fee. If Buyer fails to make payment when due under this order, Seller may in addition to its other rights, suspend or, upon notice to Buyer, cancel all further shipments hereunder.
13. **SET-OFF** - Seller is authorized to apply toward any monies due Seller hereunder any sums now or hereafter owed to Buyer or any affiliated company by Seller.
14. **F.O.B. AND RISK OF LOSS** - Irrespective of whether material is old F.O.B. the place of shipment or F.O.B. the place of destination, all such material is at Buyer's risk upon delivery by Seller to a carrier designated for or by Seller. Title to the material passes to the Buyer upon delivery to such carrier and Buyer agrees to indemnify, defend, and hold Seller harmless for all claims arising out of the transportation of these materials subsequent to their delivery to such carrier. Where material is sold F.O.B. the place of shipment, all transportation and other charges in excess of the base price and applicable extras shall be paid for by the Buyer. If Buyer refuses delivery, Buyer will promptly reimburse Seller for the cost of transporting the goods back to Seller's shipping point or to such other location as Seller reasonably may designate.
15. **INDEMNIFICATION** - Buyer shall indemnify, defend, and hold harmless Seller from and against any and all claims, demands, actions, judgments, costs, expenses, losses, and liabilities of any nature or kind whatsoever (including reasonable attorney's fees), either at law or in equity, arising in or out of any damage, injury, liability, or claims therefor based on the acts, omissions, or negligence of Buyer, including claims for personal injury or death to Buyer's employees or customers or any person on Buyer's property, and damage to Buyer's property of any nature or kind whatsoever.
16. **CANCELLATION** - This order is not subject to cancellation or change in whole or in part except with the written consent of Seller. Prices are based on delivery of the full quantity specified. Where orders are cancelled in part pursuant to this paragraph, Seller may elect to adjust its prices to reflect the reduced order.
17. **INSPECTION TESTING** - Where mill or plant inspection is made by Buyer, Buyer's inspector shall be deemed the agent of Buyer with authority to waive specified tests and details of test procedures and to accept products as conforming to this Contract with

respect to all characteristics of such products for which inspection is made.

18. **QUALITY ASSURANCE** - Unless otherwise specified, the material to be furnished will be subject to Seller's standard inspection at place of manufacture. With respect to any tests ordered by Buyer, Seller certifies the properties or characteristics disclosed by such tests only for the locations in which the material is tested. If inspection by Buyer is required or provided for, such inspection with consequent approval or rejection shall be made before shipment. If, after receipt by Buyer, the material should appear not to be in conformity with the applicable specifications, Buyer shall immediately notify Seller of such condition and afford Seller a reasonable opportunity to inspect the same. If any such material shall be found by Seller not to be in conformity with the applicable specifications, Seller will, at its discretion, replace such material at the original point of delivery, or repair such material. In the case of faulty material, Seller's obligation shall arise only if the defect develops under normal and proper use within 180 days after date of shipment. Failure to make a claim within said period shall constitute satisfactory performance on the part of Seller. No material shall be returned without Seller's consent in writing. Seller will furnish instructions for disposition of rejected material, any transportation charges involved therein to be for Seller's account. To be allowable, claims of error in weight, dimension, thickness, or number of pieces must be made in writing within ten days after receipt of material by Buyer. Anything herein to the contrary notwithstanding, Seller shall not be responsible or liable in any manner whatsoever for the service behavior of any machinery or equipment or parts unless such is designated in its entirety and manufactured by Seller and then only to the extent described in the specifications hereof and in these terms and conditions. Seller shall not be responsible or liable in any manner whatsoever for such service behavior by reason of having participated in design or having accepted Buyer's design and Buyer expressly releases Seller from all such liabilities.
  
19. **NUCLEAR APPLICATION EXCLUSION** - It is expressly understood and agreed that Buyer will not use, cause to be used, or make available for use the product(s) described on the face hereof in any nuclear application including, but not limited to, use in connection with any nuclear reactor, any nuclear power generating system or any nuclear waste (or spent fuel) disposal project, unless written notice of the specific proposed or intended nuclear application has been given to Seller at the time of Buyer's offer for the product(s). Unless such notice has been given, any subsequent nuclear application of the product(s) is wholly unauthorized and shall be deemed to be unknown to, unforeseeable to and unintended by Seller. IT IS SPECIFICALLY AGREED THAT WITH RESPECT TO ANY NUCLEAR APPLICATION OF THE PRODUCT(S) FOR WHICH SUCH NOTICE HAS NOT BEEN GIVEN, BUYER WAIVES ALL REMEDIES AND ANY CLAIM, WHETHER IN CONTRACT OR IN TORT, INCLUDING ANY

STATUTORY OR COMMON LAW CLAIM FOR CONTRIBUTION OR INDEMNIFICATION, AGAINST SELLER, AND WILL INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS THEREFOR.

20. **SHIPMENT TO THIRD PARTY, INSPECTION AND ACCEPTANCE** - Where Seller, at Buyer's request, is to ship the goods sold hereunder to a third party for treatment, processing or any other type of modification, Buyer agrees as follows: (a) as a material condition to this Contract, any right of inspection shall take place exclusively at Seller's plant or at the third party destination; (b) any right to inspect or reject the goods must be exercised prior to treatment, processing, or any other type of modification of the goods by a third party; and (c) failure by Buyer to inspect or reject the goods prior to treatment, processing or other modification or disposition by a third party shall constitute a waiver of Buyer's rights to inspection and rejection of the goods, and shall constitute an unconditional acceptance of the goods with knowledge of any existing nonconformity.
21. **CLERICAL ERRORS** - Typographical and clerical errors are subject to correction.
22. **NONWAIVER** - Waiver of any term or condition or breach of this Contract shall not be effective unless made in writing and signed by the party to be bound thereby. Any such written waiver shall not constitute a waiver of any other term of this Contract.
23. **BINDING AGREEMENT** - This Contract shall be binding upon, inure to the benefit of and be enforceable by, each of the parties hereto and their respective legal representatives, successors and assigns. Nothing in this Contract is intended to confer upon any person, other than the Buyer and Seller and their respective successors and assigns, any rights under this Contract.
24. **ASSIGNMENT** - This Contract may not be assigned by Buyer, except with the written consent of Seller. Any attempted assignment in violation hereof shall be void.
25. **GOVERNING LAW** - THIS CONTRACT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO AGREEMENTS MADE, DELIVERED, AND TO BE PERFORMED ENTIRELY THEREIN.
26. **CONSENT TO JURISDICTION AND SERVICE OF PROCESS** - ANY ACTION ARISING OUT OF THIS CONTRACT SHALL BE INSTITUTED IN ANY STATE OR FEDERAL COURT LOCATED IN EITHER THE COUNTY OF VENANGO, CHESTER, OR PHILADELPHIA IN THE COMMONWEALTH OF PENNSYLVANIA AND EACH PARTY WAIVES ANY OBJECTION WHICH SUCH PARTY MAY HAVE TO THE LAYING OF THE VENUE OF ANY SUCH ACTION AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH ACTION. BUYER HEREBY WAIVES THE RIGHT TO A JURY TRIAL IN ANY ACTION BETWEEN THE PARTIES HERETO.

27. **SEVERABILITY** - If any provision of this Contract is construed to be invalid or unenforceable, such determination shall not affect the remaining provisions of this Contract, all of which shall remain in full force and effect.
28. **HEADINGS** - The headings in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of this Contract.