

1. **GENERAL.** SCHMOLZ+BICKENBACH CANADA, INC. ("The Company") and the Buyer ("Buyer") named on the face of the Order Acknowledgment ("Acknowledgment"), Invoice or Credit Application agree that unless otherwise expressly agreed to in writing, the following terms and conditions ("Terms and Conditions") apply to the materials, goods, services and/or products (collectively, the "Goods") listed in any accepted Purchase Order from the Buyer or subsequently ordered pursuant to any contract between The Company and the Buyer subject to these Terms and Conditions.
2. **ACCEPTANCE/SOLE TERMS.** The provisions set forth herein constitute all of the Terms and Conditions of our contract. Our acceptance and shipment of your order is expressly made conditional on your assent to the Terms and Conditions set forth herein. Any and all terms, conditions or provisions specified by Buyer in Buyer's purchase order or otherwise (whether oral, typed, written or printed) that in any way change, modify, amplify, differ from, or add to these Terms and Conditions or those in the Acknowledgment are null and void and of no effect, even if (i) The Company does not expressly object to such terms, conditions or provisions; or (ii) such terms, conditions or provisions are specified subsequent to these Terms and Conditions or the Acknowledgment or Invoice. Buyer is hereby put on notice that no terms additional to or deviating from the foregoing terms shall become part of the contract, unless and until letter acceptance of such additional or deviating terms, signed by an officer of The Company has been issued to Buyer. Buyer's acceptance of any Goods supplied by or on behalf of, The Company shall, without limitation constitute acceptance of The Company's foregoing terms.
3. **PRICE.** ALL PRICES ARE FREE CARRIER (FCA) THE COMPANY'S WAREHOUSE, INCOTERMS 2000, UNLESS OTHERWISE NOTED ON THE FACE OF THE ACKNOWLEDGMENT OR INVOICE. Payment is due in the currency as shown on the invoice within thirty (30) days from the invoice date, unless otherwise indicated on the face of the Acknowledgment or Invoice. Prices stated are subject to change without notice in the event of (i) alterations in specifications, quantities, designs, or delivery schedules; (ii) increases in the cost of labor, raw and auxiliary materials, including fuel, power, alloy and scrap surcharges, any other material supplied, (iii) foreign or domestic legislation enacted by any level of government, including tax legislation which increases the cost of producing, warehousing or selling the Goods purchased hereunder; and/or (iv) changes in currency exchange rates. Any such change shall be charged to Buyer's account. No discount will be allowed unless specifically set forth on the face side of any Acknowledgment or Invoice. Written quotations automatically expire thirty (30) days after the date the quotation is issued and are subject to termination by notice within that thirty (30) day period. Buyer agrees to pay a delinquency charge of one and one half percent (1.50 %) per month on the invoiced amounts not paid within thirty (30) days of the invoice date or, if such rate shall exceed the maximum rate permitted by applicable law, then a delinquency charge calculated at such maximum rate permitted by applicable law. Interest shall be payable monthly in arrears on the first day of each month. If, in The Company's opinion, the financial condition of the Buyer at any time does not justify continuance of production or shipment on the terms of payment specified, The Company may require full or partial payment in advance. Terms of payment include those appearing on the Acknowledgment or Invoice. In the event of cancellation of orders, The Company reserves the right to charge Buyer and Buyer shall pay all of The Company's costs to date of cancellation, including costs of currency commitments or restocking fees. All outstanding payments shall immediately become due and owing should Buyer fail to make any payment when due or should a receiver be appointed for all or any substantial part of Buyer's property and assets, or should a petition in bankruptcy, arrangement or reorganization be filed by or against Buyer pursuant to the provision of any bankruptcy act or any amendments thereto or any insolvency or receivership statute. The Company reserves the right to increase the sale price and/or amend these Terms and Conditions at any time prior to the expected or requested shipment date, provided that written notice of such change or price increase is sent to Buyer at least ten (10) days prior to shipment. Buyer shall be deemed to have accepted such change or increase unless Buyer cancels the order, subject to reasonable charges for expenses incurred (including restocking fees) and work executed by The Company or its suppliers, at least five (5) working days prior to the expected or requested shipment date.
4. **WARRANTY/REMEDY.** THE COMPANY WARRANTS THAT ALL MATERIALS AND GOODS MANUFACTURED BY IT, AND ALL HEAT TREATMENT, INCIDENTAL WORK AND OTHER SERVICES PERFORMED BY IT, IF ANY, WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKSMANSHIP FOR NINETY (90) FOLLOWING THE DATE OF SHIPMENT AND WILL BE IN CONFORMITY WITH ANY SPECIFICATIONS AGREED UPON IN WRITING BY THE COMPANY. NOTWITHSTANDING THE FOREGOING, FOR PRODUCTS REFURBISHED OR SERVICED BY THE COMPANY AT BUYER'S REQUEST, THE COMPANY SHALL NOT BE LIABLE FOR
 - (i) ANY WEAR AND TEAR WITH RESPECT TO WHICH THE COMPANY HAD SPECIFICALLY EXPLAINED-TEST BUYER THAT A CORRECTION WOULD NOT BE MADE, OR
 - (ii) ANY LATENT DEFECTS NOT DETECTED BY THE COMPANY'S STANDARD NON-DESTRUCTIVE-TEST INSPECTION PROCEDURES, OR
 - (iii) SHRINKAGE, EXPANSION, DISTORTION OR CRACKING OF MATERIALS RESULTING FROM WORK DONE OR SERVICES PERFORMED BY IT INCLUDING HEAT TREATMENT, STRAIGHTENING OR OTHERWISE, OR FOR CRACKING CAUSED BY OR OCCURRING DURING SUBSEQUENT GRINDING, EDM, TREATMENT OR USE BY OTHERS.

THE COMPANY MAKES NO GUARANTEE OF THE RESULTS TO BE OBTAINED FROM THE USE OF OUR PRODUCTS. THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION OR QUALITY OF THE GOODS NOT EXPRESSLY SET FORTH HEREIN, ARE HEREBY EXCLUDED. NO AFFIRMATION OF THE COMPANY, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THIS WARRANTY CLAUSE SHALL CONSTITUTE A WARRANTY. GOODS WHICH MAY BE SOLD BY THE COMPANY BUT WHICH ARE NOT MANUFACTURED BY THE COMPANY ARE NOT WARRANTED BY THE COMPANY, BUT ARE SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURERS THEREOF. THE COMPANY'S WARRANTY DOES NOT APPLY TO ANY GOODS WHICH HAVE BEEN SUBJECTED TO IMPROPER INSTALLATION OR USE, OR ANY UNAUTHORIZED REPAIR, MODIFICATION OR ALTERATION (INCLUDING BUT NOT LIMITED TO USE OF UNAUTHORIZED PARTS OR ATTACHMENTS), MISHANDLING, MISAPPLICATION, NEGLIGENCE, AND/OR ACCIDENT.
5. **FURTHER WARRANTY PROVISIONS AND REMEDIES.**
 - a. Any warranty claim by Buyer with reference to the Goods sold hereunder shall be deemed waived by the Buyer unless submitted in writing to The Company within ninety (90) days following the date of shipment.
 - b. If Buyer fails to correctly indicate the material being processed (i.e. the proper alloy designation) and due to this failure, The Company incurs additional expenses in processing that material, the Buyer shall be charged for those additional expenses, and the material will be processed without benefit of any warranty.
 - c. The Company shall in no event be liable for loss if the Buyer provides detailed and written instructions or specifications as to the heat treatment of material, which are agreed upon in writing by The Company, and those instructions are reasonably followed by The Company.
 - d. Buyer agrees to inspect treated material immediately upon its receipt. All claims against The Company for a breach of the limited warranty as herein provided must be submitted to The Company prior to any further processing, assembling or any other work that is undertaken with the treated material. The Company's liability hereunder shall cease and be at an end at such time as any other person undertakes further processing, such as welding and subsequent thermal treatments, assembly, or any other work on the material. The Company makes no warranty; either expressed or implied that parts or material to be treated will meet customer's expectations as to die life.
 - e. No alteration or amendment to the above conditions listed herein shall be binding on The Company except if made in writing duly executed by an officer of The Company.
 - f. The Company shall have no liability for any loss arising out of Goods which conform to written specifications provided or accepted by Buyer which are agreed upon in writing by The Company; and no liability for any loss, whether the Goods conform or not, to specifications not agreed upon in the above manner.
 - g. The Company's remedies relating hereto shall be cumulative and in addition to any other remedies provided herein or by law or in equity.
6. **LIMITATION OF LIABILITY.** THE COMPANY'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR STRICT LIABILITY) FOR ITS GOODS SHALL BE LIMITED TO REPAIRING OR REPLACING GOODS FOUND BY THE COMPANY TO BE DEFECTIVE, OR AT THE COMPANY'S OPTION, TO REFUNDING THE PURCHASE PRICE OF SUCH GOODS OR PARTS THEREOF, PROVIDED, HOWEVER, THAT THE COST OF SUCH REPAIRED OR REPLACED GOODS SHALL NOT EXCEED THE TOTAL VALUE OF THE CONTRACT. THE PARTIES HERETO EXPRESSLY AGREE THAT BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST THE COMPANY SHALL BE FOR THE REPAIR OR REPLACEMENT OF THE DEFECTIVE GOODS OR, WITH THE COMPANY'S CONSENT, THE REFUND OF THE PURCHASE PRICE OR ALLOWANCE THEREOF. BUYER HEREBY AGREES THAT THIS EXCLUSIVE REMEDY SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS THE COMPANY IS WILLING AND ABLE TO REPAIR OR REPLACE DEFECTIVE GOODS IN THE PRESCRIBED MANNER OR REFUND THE PURCHASE PRICE OF GIVE BUYER AN ALLOWANCE THEREOF. AT THE COMPANY'S REQUEST, BUYER WILL SEND, AT BUYER'S SOLE EXPENSE, ANY ALLEGEDLY DEFECTIVE GOODS TO THE COMPANY'S PLANT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE COMPANY SHALL BEAR NO LIABILITY FOR THE REPAIR OR REPLACEMENT OF GOODS DAMAGED (SUCH DAMAGE INCLUDING BUT NOT LIMITED TO CRACKING) DUE TO HEAT TREATMENT PROCESS, CRACKING OR OTHER DAMAGE TO MATERIALS (INCLUDING STEEL) IS AN UNAVOIDABLE PERIODIC SIDE EFFECT OF THE HEAT TREATMENT PROCESS WHICH MAY RESULT IN DAMAGES IN EXCESS OF THE COST OF SERVICES RENDERED BY THE COMPANY. BUYER UNDERSTANDS AND AGREES THAT ANY COSTS INCURRED AS A RESULT OF DAMAGE CAUSED DURING THE HEAT TREATMENT PROCESS SHALL BE BORNE BY BUYER, AND ACCORDINGLY, BUYER MAY SEEK, AT BUYER'S SOLE DISCRETION AND EXPENSE, TO PROCURE AN INDEPENDENT INSURANCE POLICY, WHICH WOULD EXCLUDE LIABILITY BY THE COMPANY, TO PROTECT AGAINST SUCH LOSS. BUYER UNDERSTANDS AND AGREES THAT IN THE EVENT THAT IT CHOOSES NOT TO PROCURE INSURANCE COVERING DAMAGES CAUSED BY THE HEAT TREATMENT PROCESS, IT SHALL HAVE NO RECOURSE AGAINST THE COMPANY WHATSOEVER FOR REPAIR OR REPLACEMENT OF GOODS DAMAGED THEREBY.
7. **DISCLAIMER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES.** IN NO CASE WILL THE COMPANY BE LIABLE FOR REMOVAL OR INSTALLATION COSTS, DOWNTIME, DAMAGE TO OTHER PROPERTY, LOSS OF BUSINESS OR PROFITS, LOSS OF PRODUCTION, LOSS OF USE OR ANY OTHER SIMILAR OR DISSIMILAR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES WHICH ANY PERSON, CORPORATION OR OTHER ENTITY MAY SUFFER OR CLAIM TO SUFFER OR INCUR OR CLAIM TO INCUR AS A RESULT OF ANY DEFECT IN THE GOODS OR IN ANY CORRECTION OR ALTERATION THEREOF MADE OR FURNISHED BY THE COMPANY OR OTHERS. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED BY THE USE OF THE GOODS). BUYER SHALL INDEMNIFY THE COMPANY AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY THE COMPANY ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.
8. **ACCEPTANCE OF GOODS, DELIVERY AND TRANSPORTATION.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides The Company with written notice of any claim or shortages of or defects in the Goods, including without limitation any claim relating to quantity, weight, condition, loss or damage thereto, within forty-eight (48) hours after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer. In the absence of shipping and packing instructions, The Company shall use its own discretion in choice of carrier and method of packing. The Company shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's sole expense. The Company expressly reserves the right to ownership or under ownership Goods by up to ten (10%) percent. Any delivery date quoted to the Buyer is only an estimate based on present scheduling requirements. The Company shall have the right to make partial deliveries and to be paid, pro rata, for the goods so delivered notwithstanding the existence of a specific delivery schedule which is stated to be of the essence, nor of the fact that any partial delivery is made in advance of such schedule. The Company reserves the right, with respect to each delivery, to make deliveries in installments. All such installments may be separately invoiced and paid for when due, without regard to subsequent deliveries.
9. **TITLE AND RISK OF LOSS.** Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by The Company to carrier, and any claims for losses or damage shall be made by Buyer directly to carrier.
10. **CREDIT TERMS.** All orders and shipments shall at all times be subject to the approval of The Company's Credit Department. If, subsequent to the confirmation of order, circumstances arise with respect to the financial condition of Buyer which in the opinion of The Company threaten Buyer's ability to make payments when due hereunder, or should Buyer fail to make payments when due or otherwise fail to perform its outstanding obligations then The Company may refuse to perform further hereunder unless Buyer makes payment in full or provides sufficient security in a form acceptable to The Company within a period of ten (10) business days from receipt of notice thereof by The Company. Should Buyer fail to comply with The Company's request contained in such notice within the aforementioned period, then The Company may terminate the contract, defer or cancel the order and/or recover damages based on Buyer's breach and, in such event, The Company shall not be liable for breach or nonperformance of this contract in whole or in part. The Company's failure to exercise any right accruing from any default of Buyer shall not constitute a waiver of our rights and shall not impair our rights with respect to a particular default or in case of any subsequent default of Buyer.
11. **SECURITY INTEREST.** To secure prompt payment of the purchase price for the Goods, Buyer hereby grants to The Company a purchase money security interest in the Goods and all proceeds thereof (together, the "Collateral"). The Company is hereby given a power of attorney to sign and file all necessary financing statements on behalf of Buyer with respect to the Collateral. The Company may authorize any third party to do such acts on behalf of The Company as The Company is authorized to do under this provision.
12. **COSTS OF COLLECTION.** If, at any time, The Company incurs any legal expenses or other costs or expenses in connection with: (i) any litigation, contest, suit, dispute, proceeding or action in any way relating to the Collateral; (ii) any attempt by The Company to enforce any rights of The Company against Buyer or any other person which may be obligated to The Company hereunder; or (iii) any attempt to inspect, verify, protect, preserve, restore, collect, sell, liquidate or dispose of the Collateral; then, in any such event, the expenses and costs (including attorney's fees) relating to any of the foregoing events or actions shall be payable by Buyer on demand to The Company and shall be considered additional obligations hereunder secured by the Collateral. The Company reserves the right to revoke any credit extended to Buyer at any time, because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient by The Company.
13. **TAXES.** Any sales, use or similar taxes, export charges, fees or other levies, taxes, duties, governmental charges or surcharges now or hereafter imposed under any present or future law in connection with the production, sale, delivery, use or proceeds of the Goods, including without limitation any equipment, accessories, and attachments (including replacements thereof or spare or replacement parts thereof), any installation, repair, maintenance, and instructional services, and any processes or know-how (whether patentable or otherwise) and software, shall be payable by Buyer, and if such taxes or fees are paid or are required to be paid by The Company, the amount thereof shall be added to and become part of the price payable by Buyer hereunder, unless Buyer provides The Company with a valid tax exemption certificate.
14. **EXPORT COMPLIANCE.** Buyer agrees and covenants to comply with all export control laws of the United States of America. If, at any time, Buyer knows or has reason to believe that the covenant set forth in the preceding sentence has not been, may not be, or may not be, complied with by any party (a "Non-Compliance Event"), Buyer shall have an affirmative obligation to give actual notice thereof to The Company immediately and without delay. Buyer agrees and covenants further that The Company may, in its sole discretion, terminate any and all of its obligations under the contract or hereunder because of any Non-Compliance Event (regardless of whether Buyer has given notice as required by this section), and that The Company shall not be subject to any liability as a result of, or in connection with, any such termination.
15. **PACKAGING.** Prices stated are based on The Company's standard packaging. The Company reserves the right of packaging the Goods in pallets, bulk or individual cartons. Packaging will be standard commercial package and acceptable to commercial carrier. Special customer packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Buyer.
16. **DELAYS.** Unless expressly specified to the contrary, Goods in stock will be shipped immediately, and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. The Company will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of these Terms and Conditions caused by or imposed by: (a) strikes, fires, disasters, riots, acts of God, (b) acts of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor or supplier delay including, but not limited to failure by subcontractor or supplier to make timely delivery, or (f) any other cause of condition beyond The Company's reasonable control. In the event of any such delay or nonperformance, The Company may, at its option, and without liability, cancel all or any portion of the contract and/or extend any date upon which any performance hereunder is due.
17. **TERMINATION, CANCELLATION AND CHANGES.** Orders cannot be terminated, cancelled or modified, or shipment deferred after acceptance of Buyer's order by The Company, except with The Company's written consent and subject to reasonable charges for expenses incurred and work executed by The Company or its suppliers. Buyer shall be obligated to accept any portion of the Goods shipped or delivered by The Company pending The Company's written approval of cancellation. Orders for custom made material may not be canceled after The Company has been in production, unless The Company agrees in writing.
18. **RETURNED PRODUCTS.** Delivered Goods returned to The Company require prior written approval from The Company before such goods will be accepted. Handling, inspection, restocking and invoicing charges will be assessed, if applicable, plus any outgoing packing and freight expenditures paid by The Company. All returns allowed must be shipped to The Company prepaid and must be in excellent resale condition. Goods processed to Buyer's specifications are not returnable.
19. **NO WAIVER.** Forbearance or failure of The Company to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Buyer, shall not affect or impair The Company's rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of The Company's rights in case of any subsequent default of Buyer.
20. **SEVERABILITY.** If any provision of these Terms and Conditions is unenforceable or invalid, these Terms and Conditions shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.
21. **ASSIGNMENT.** These Terms and Conditions shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and The Company provided, however, that Buyer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of The Company.
22. **GOVERNING LAW.** These Terms and Conditions shall be construed in accordance with and governed by the substantive and procedural laws of the Province of Ontario without regard to its conflict of law provisions. All actions or proceedings arising directly or indirectly herefrom shall be litigated only in the courts of Ontario and the parties hereby consent to the jurisdiction and venue of such courts.
23. **ARBITRATION**
 - a. Any dispute or claim arising from or relating to the contract or performance under it shall be resolved amicably through discussions between Buyer and The Company attempting in good faith to negotiate a resolution thereof; provided, however, that either Buyer or The Company may seek injunctive relief from a court of proper jurisdiction where appropriate, in order to maintain the status quo while this procedure is being followed. If the parties fail to resolve any dispute arising under the contract either party may seek arbitration as follows: (a) By written notice to the other party, submitting the dispute to binding arbitration, in accordance with the then-current expedited commercial arbitration rules under the Arbitration Act (Ontario) (the "AAO") each party to bear equally the costs of the arbitration provided, however, that the other party may agree or refuse to participate in such arbitration. (b) If the parties are not successful in resolving the dispute through self-help or one of the parties refuses to participate in arbitration, the dispute shall be resolved by litigation.
 - b. Any claim submitted to arbitration must be governed by the expedited commercial rules of the AAO; except that (1) Provision 22 must govern applicable law and construction, (ii) the locale of any arbitration will be in the Province of Ontario or agreed to by the parties in writing, (iii) the arbitration panel will consist of a single arbitrator, selected pursuant to the rules of the AAO, (iv) the language of the arbitration must be English, (v) any arbitration award must state the arbitrator's material findings of fact and conclusions of law, (vi) a party may seek preliminary injunctive or other equitable relief from any court of competent jurisdiction to preserve the status quo pending establishment of an arbitration panel, (vii) a prevailing party in litigation to require arbitration or to obtain preliminary relief pending establishment of an arbitration panel, in arbitration, or in litigation to confirm or enforce an arbitration award will be entitled to recover its reasonable attorneys' fees and costs. Any suit to require arbitration under this agreement, or to enforce judgment upon an arbitration award, may be brought in the courts of the Province of Ontario.
24. **ENTIRE CONTRACT.** BUYER AND THE COMPANY HEREBY AGREE THAT THESE TERMS AND CONDITIONS ALONG WITH THE APPLICABLE TERMS OF THE PURCHASE ORDER AND ACKNOWLEDGMENT OR INVOICE SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN BUYER AND THE COMPANY AND NO PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN STATEMENT, CORRESPONDENCE, SAMPLE OR OTHER TERMS, QUOTATIONS OR UNDERSTANDINGS SHALL MODIFY, ALTER OR IN ANY WAY AFFECT THE TERMS THEREOF.