



US Terms and Conditions of Sale

The following terms and conditions shall control the terms of any contracts relating to the sales of goods by Scarlet Alloys LLC (Scarlet), and shall supersede and replace any preprinted terms and conditions on a purchaser's purchase order or other documents, oral or written communications, course of dealings or usages of trade. No additions to or variations from such terms and conditions, whether contained in a purchase order, confirmation, shipping release, or elsewhere shall be binding upon Scarlet unless expressly agreed to in writing by Scarlet and Scarlet hereby objects to all such additional or different terms.

1. Price:

All prices and amounts are expressed in United States Dollars (USD) and are net of any sales, use, excise or other tax or charge measured by the amount of the purchase price. Unless otherwise agreed, prices are expressed at the place of delivery without allowance for freight or insurance, customs duties or bonds, consular fees, or other charges, all of which shall be the sole responsibility of the purchaser.

2. Payment:

Payment is due within 30 days from the date of invoice. All payments not made within the time period allowed shall bear interest at the rate of 1% per month from the date due until paid. In the event of failure to make payment as specified, Scarlet may take any action allowed by applicable law to recover the purchase price, including without limitation, holding the goods available for acceptance at the purchaser's sole cost and risk, filing suit for collection of the purchase price or lost profit, retaining possession of the goods, and selling the goods in a public or private sale and retaining all of the proceeds from such sale.

3. Delivery; Returns:

The purchaser shall accept delivery at the time and place specified and be responsible for all costs and risks incurred or arising from the purchaser's failure to take delivery at such time or place or actions or inactions that prevent or delay the presentation of goods for delivery at such time and place, including without limitation, costs of storage, preservation, demurrage, return freight and insurance. Scarlet shall have no obligation to undertake any actions or to incur any costs relating to goods after the presentation for delivery and acceptance at the time and place specified. Purchaser shall not return to Scarlet any goods delivered to purchaser without the express prior written consent of Scarlet, and agreement by Scarlet to all terms of such delivery. Purchaser shall pay all costs, fees, expenses and other charges relating to any return of goods to Scarlet.

4. Goods Warranty:

Scarlet will repair or replace with goods of equal value and utility, at its option, any goods manufactured or assembled by it that are determined to have been defective at the time of delivery where such defect is reported to Scarlet within one (1) year after the delivery date. Such repair or replacement shall be at the place of the original delivery or other location acceptable to Scarlet that is no further distant or no more difficult to reach. Any costs incurred in gaining access to the goods as a result of the manner or place of installation shall be the responsibility of the purchaser. The foregoing obligation is the purchaser's sole and exclusive remedy for defective goods and is in lieu of all warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose. Scarlet shall not have any liability for loss of use, loss of revenue, loss of production, replacement equipment, or other incidental or consequential damages resulting from defective goods. To the extent possible under applicable law, the purchaser waives and releases Scarlet from any claims arising under statutes or judicial interpretation that would provide a remedy different from or in addition to the remedies set forth above for any defective goods.

5. Assignment of Other Warranties:

Scarlet makes no separate or independent warranty and accepts no liability for any defects in goods that were manufactured by others and delivered to the purchaser without material alteration by Scarlet, including components incorporated into goods assembled by Scarlet. Scarlet assigns to purchaser the manufacturer's warranty applicable to any goods manufactured by others (including component parts of goods assembled by Scarlet).

6. **Applicable Law:** All terms and conditions hereof shall be enforced and construed in accordance with the laws of the State of Texas, excluding any provision that would direct the application of the laws of another jurisdiction. Any dispute or controversy relating to this document or the obligations of the parties which cannot be resolved by agreement shall be referred to the State or Federal (if it can obtain jurisdiction) courts sitting in Harris County, Texas. The parties agree that such venue is convenient and proper.

7. **Force Majeure:** Scarlet shall not be liable for any failure or delay in delivery due to acts of God, orders bearing priority rating establishment pursuant to law, differences with workmen, local labor shortages, fire, flood, war, embargo, riot, the acts of public enemies, natural disaster or other casualty, government regulations or requirements, shortages or failure of raw material, supplies, fuel, power or transportation, breakdown of equipment, or any other causes beyond Scarlet's control, whether of similar or dissimilar nature than those enumerated. Scarlet shall have such additional time within which to perform as may be reasonably necessary under the circumstances. In no event shall Scarlet be liable for any consequential damages or claims for labor resulting from failure or delay in delivery.

8. **Assignment:** These terms and provisions shall be binding upon and inure to the benefit of each party and their successors and assigns; provided, however, that no purchaser may assign any of its rights or remedies against Scarlet to any third party without the prior written consent of Scarlet.

9. **Notices:** Any notice required or permitted in connection herewith shall be in writing and shall be deemed given when actually received by the addressee or on the first business day following the date same is delivered to a private delivery service for overnight delivery addressed to the addressee at the address for such addressee on the books of the sender.

10. **Entire Agreement:** These terms and provisions constitute the entire agreement between Scarlet and purchaser with respect to the subject matter hereof and supersede any prior agreements. Any modification must be in writing and signed by both Scarlet and purchaser.

11. **Waiver:** Any waiver of any rights by Scarlet or purchaser, in addition to any waiver set forth herein, must be in writing and signed by the party against whom it is enforced. No such waiver shall be a continuing waiver unless it specifically so states. The failure or delay in exercising any right or remedy shall not be a waiver of such right or remedy.

12. **Invalid Provisions:** If any provision is declared invalid or unenforceable for any reason, such decision shall not affect the validity of any other provision and the remaining provisions shall remain in effect as if such invalid provision had never been part hereof.

13. **Headings and Captions:** The headings and captions contained herein are for convenience only and shall not affect the interpretation of the text.

14. **Attorneys' Fees and Costs:** Scarlet shall be entitled to recover reasonable attorneys' fees, costs of litigation, and necessary disbursements incurred in connection with the enforcement of any rights hereunder.

15. **Additional Assurance:** Purchaser shall execute such additional documents and take such additional actions as may be necessary or appropriate to carry out the purposes and intent of these provisions.

16. **Arbitration:** Except for the equitable relief specifically provided for herein, any controversy or claim arising out of or relating to the parties or the goods which are the subject hereof, shall be settled by binding arbitration in Houston, Texas according to the Commercial Arbitration Rules of the American Arbitration Association (**AAA**). Written notice of a demand for arbitration must be mailed to the other party and to the AAA within ninety (90) days after the occurrence of the claimed breach or other event giving rise to the controversy or claim, identifying the provision or event that is the basis of the controversy or claim and the remedy sought, or such claim shall be deemed waived. The party filing such demand shall pay the administrative fee to initiate arbitration but such fee shall be subject to final apportionment by the arbitrator. The arbitrator's fee shall be shared equally by the parties. No suit or other proceeding at law based on such claim or controversy shall be filed by either party other than a suit to confirm, enforce, vacate, modify or correct the award of the arbitrator; provided, however, that Scarlet may seek any equitable remedy specifically provided for herein.

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