

Dover Tubular Alloys, Inc.  
Terms and Conditions of Sale

## 1. APPLICATION OF CONDITIONS

All sales of products (“the Products”) listed herein are made pursuant to the terms and conditions contained herein and all orders are received with the understanding that they are placed under these terms and conditions.

## 2. MODIFICATION

These terms and conditions may not be amended, changed, or modified except by a writing duly executed by Buyer and “Seller” and it is expressly understood that in the case of Seller any such writing shall be executed by an authorized representative of Seller.

## 3. PRICES

Prices are subject to change without notice. All orders are accepted subject to Seller’s price in effect at time of shipment. Seller reserves the right to revise prices if there is a change in quantity, size, analysis, finish, or method and time of shipment differing from those covered herein.

## 4. PAYMENT

Buyer shall make payment to Seller based on terms stated on Seller’s invoice. If in the judgment of Seller the creditworthiness of Buyer becomes impaired at any time or Seller otherwise becomes insecure, Seller shall have the right to require payment in advance before making any future shipments, and Seller may upon seven days written notice to Buyer, declare the unpaid purchase price of any Products shipped to Buyer to be immediately due and payable. Any payment for Products not made when due shall accrue interest at a rate of 18 percent per annum or at the highest interest rate permitted by applicable law, whichever rate is less. At Seller’s option, upon any breach or default by Buyer, Seller may declare any outstanding debt, obligation, of liability or Buyer to Seller to be immediately due and payable. Time is of the essence with respect to all payments due to Seller from Buyer, and unless in each instance waived by Seller in writing, timely payment shall be a condition precedent to any subsequent deliveries of Products or other performance by Seller of its duties and obligations.

## 5. SECURITY INTEREST

Seller shall have, and Buyer grants to Seller, a security interest in all of the Products, and in any proceeds thereof, to secure payment of the purchase price of the Products, and Seller shall have all of the rights and remedies of a secured party under the Uniform Commercial Code in force in the jurisdiction where Seller seeks to enforce any of such rights and remedies. If requested by Seller, Buyer shall sign and deliver to Seller such documents, in a form acceptable to Seller, as Seller may require in order to confirm or perfect its security interest in the Products and the proceeds thereof.

## **6. RISK OF LOSS**

All risk of loss or damage to any Products shall pass from Seller to Buyer upon Seller's delivery of such Products to the carrier designated in the shipping instructions, or to a carrier reasonably selected by Seller if such shipping instructions do not designate a carrier, for shipment to Buyer. Any charges by carrier at destination for spotting, switching, demurrage or other services shall be paid by Buyer. Any price quotations are price terms only, and risk of loss or damages and shipping terms are as separately provided. Title to any goods priced at shipping point shall pass to Buyer upon delivery at such shipping point; title to any goods priced at destination shall pass to Buyer upon delivery at the destination specified.

## **7. DEFECTIVE, NON-CONFORMING OR REJECTED MERCHANDISE**

Buyer shall inspect each shipment of Products by Seller to Buyer immediately upon arrival at the shipment's destination, and within thirty days of each such arrival shall notify Seller of (a) any defects in any of the Products contained in such shipment and (b) any reason (other than any such defects) by which Buyer claims any of such Products are non-conforming goods or for which Buyer rejects any of such Products, except that with respect to any claims for shortages, such claims must be made within five days after receipt. If Buyer fails to give such notice in the manner provided herein, all Products contained in any such shipment shall be deemed to conform to the contract and Buyer shall be deemed to have accepted such Products. If any model or sample is shown to Buyer, such model or sample shall be used merely to illustrate the general type and quality of the Products and not to represent that the Products would necessarily be of that type of nature.

In the event Buyer so notifies the Seller of any defects in any of the Products, Buyer shall allow Seller the opportunity to inspect the Products in question, and, if requested by Seller, shall return any such Products to Seller. In the event that Seller determines in its sole discretion that any defects in any such Products were not caused by Buyer or others after Seller packaged same for shipment to Buyer, Seller shall, at its option, either exchange or repair or provide Buyer with a refund or credit for the purchase price invoiced by Seller to Buyer with respect to such Products.

**CLAIMS:** If any goods received by Buyer are damaged, or if the quantities received by Buyer do not agree with the quantities indicated on the shipping documents, and if Buyer intends to assert any claim against Seller on this account, Buyer shall mark an exception on Buyer's receipt to the carrier and shall, within (15) days after receipt of such goods, furnish Seller detailed written information as to any damage or shortage.

## **8. BUYERS INSPECTION**

Where source inspection is made by Buyer, Buyer's inspector shall be deemed to be the agent of Buyer to accept material on Buyer's behalf with complete authority to waive specified tests or details of test procedure, and to accept material which may deviate from formal specification.

## 9. PERMISSIBLE VARIATIONS (Size and Quantity)

Seller does not accept responsibility for size ordered to cleanup to finished dimensions unless such size has been recommended in writing by Seller. All Products shall be furnished to mill standard manufacturing variations and practices, and Seller retains the right to modify or change the composition, design and appearance of the Products if in its judgment that is desirable. Quantities supplied shall be subject to customary variations recognized by trade practice.

## 10. SELLER'S RIGHT OF RESALE

If Buyer breaches or repudiates any provision hereof or fails to comply with the terms and conditions, Seller shall have the right to resell any undelivered Products ordered by Buyer, together with any Products reclaimed by Seller or as to which Seller may agree to accept return. Any such resale may be public or private, at wholesale or retail, and may be held on one or more occasions and under such procedures, terms and conditions as Seller may determine in its sole discretion. In the event of any such resale, Buyer shall pay to Seller the amount by which the purchase price set forth herein exceeds the amount received by Seller in any public or private sale, plus all expenses of resale and all incidental expenses or damages incurred by Seller as a result of Buyer's breach or repudiation. The parties agree that five days written notice of any such resale is reasonable notice to Buyer of such resale.

## 11. RELATIONSHIP OF PARTIES

The relationship between Seller and Buyer is solely that of vendor and vendee, and Buyer is not and shall not be construed to be a partner, joint venturer, employee, agent, representative or participant of or with the Seller for any purpose whatsoever. Buyer does not and shall not have any right or authority whatsoever to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of Seller or to bind Seller in any manner.

## 12. TAXES

Any tax imposed by any law on the sale of Products made or sold by Seller shall be in addition to and a part of the sale price hereof.

## 13. FORCE MAJEURE

In the event that Seller is unable to carry out its obligations due to acts of God or of the public enemy, war, insurrection, mob violence, civil commotion or riots, strikes, lockouts, labor disputes, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, shortages of labor or material, unusual delays in transportation, lack of shipping facilities, unavoidable casualty, accidents, abnormal amounts of inclement weather or unusually severe weather, changes in governmental policy, laws or regulations (including but not limited to impositions of quotas or limitations of shipments), or any

other cause or causes beyond the control of the Seller or its suppliers, whether hereinabove specified or not. Seller shall be permitted to extend as may be necessary to enable Seller and its suppliers to complete performance in the exercise of reasonable diligence after the cause of causes of delay have been removed. In the event any such delay continues for a period of more than six months, either party may terminate this agreement by so notifying the other party in writing.

#### **14. CHANGES AND CANCELLATIONS**

Should Buyer desire to cancel, revise or suspend an order for reasons beyond Buyer's control, Seller shall discuss the matter promptly with Buyer and the parties shall do all possible to make a mutually satisfactory agreement. In cases where the material has been manufactured partially or completely for Buyer's requirement and the mill is unable to cancel, Buyer will be informed of charges incurred to Buyer's account and Buyer agrees to pay such charges promptly.

#### **15. LIMITATION OF LIABILITY**

In no event shall the amount of Seller's liability for any breach or default exceed the purchase price or payable by Buyer to Seller for the Products and in no event shall Buyer be entitled to claim compensation for special, incidental or consequential damages for defective goods or services, late delivery or non-delivery, nor shall Seller be liable for Buyer's loss of profits or loss of any other kind or description whatsoever. BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE AND SHALL NOT MAKE OR BE LIABLE UNDER ANY GUARANTEES, WARRANTIES, OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN ANY MANNER OR FORM WHATSOEVER INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE EXCEPT THOSE EXPRESSLY SET FORTH IN A WRITING DELIVERED BY SELLER TO BUYER, AND SELLER SHALL NOT, DIRECTLY OR INDIRECTLY, BE RESPONSIBLE OR LIABLE FOR ANY CLAIM, LOSS, DAMAGE, LIABILITY, COST OR EXPENSE IN CONNECTION WITH, ARISING OUT OF, OR RELATING TO THE PRODUCTS, EXCEPT AS EXPRESSLY SET FORTH HEREIN.

#### **16. RETENTION OF RIGHTS**

The parties acknowledge and agree that Seller and its suppliers have acquired various patents, trademarks, trade names, and trade secrets with respect of Products, and that matters relating to the manufacture, production and distribution of Products constitute confidential information and trade secrets of Seller and its suppliers and are not commonly known or accessible to the trade. No right, title or interest in or to Products generally, or in any patents, trademarks, trade names, confidential information or trade secrets relating to Products shall pass to Buyers, and no right is given to or acquired by Buyer to use or duplicate same, in part or in whole, and Buyer shall receive such

confidential information and trade secrets in confidence and trust, without revealing same to any other person or entity.

## 17. ASSIGNMENT

Buyer's rights, claims, duties and responsibilities may not be assigned, delegated, or otherwise transferred in any manner without the prior express written consent of Seller in each instance.

## 18. TERMINATION

In the event of any breach or default by the other party in any of the terms or conditions of the agreement formed hereunder, or under any other contract or arrangement between the parties, either party may immediately terminate any agreement hereunder by giving written notice to the other party. Such agreement shall immediately terminate without notice by or to, or other action by, either party in the event of any assignment for the benefit of creditors or offer to make an extension to creditors by Buyer; the insolvency (as such term is defined in the Uniform Commercial Code) of Buyer; the commencement of any proceeding under any bankruptcy laws by or against Buyer; the suspension or liquidation of Buyer's usual business; or any transfer (either voluntary or involuntary) of a substantial part of Buyer's property or assets other than in the ordinary course of business; provided, however, that in the event of any such termination, the terms and conditions of such agreement shall continue to be binding upon the parties in connection with all Products shipped by Seller to Buyer.

## 19. NOTICES

Any notice required or permitted to be given hereunder shall be in writing and shall be deemed to have been given upon personal delivery, or forty-eight hours after mailing, addressed in accordance with the addresses set forth in the sales agreement or such other addresses of which notice is so given.

## 20. HEADINGS

The headings contained herein are for convenience only and are not a part of these terms and conditions, and do not in any way interpret, limit or amplify the scope, extent, or intent thereof.