

GENERAL TERMS AND CONDITIONS OF PURCHASE BSTC

1. Formation of Contract

1.1 These Terms and Conditions confirm the offer of BENTELER Steel & Tube Corporation ("the Buyer") to purchase and constitute a complete statement of the agreement between the Buyer and the Seller, which supercedes all prior agreements and understandings, whether written or oral, express or implied, which shall not be supplemented or amended except as set forth on the face of this Purchase Order or by separate written agreement signed by both Parties. Provisions set forth on the face hereof shall govern where inconsistent with these Terms and Conditions.

1.2 Terms and Conditions of the Seller in addition to or varying from the provisions of this Purchase Order shall not be binding on the Buyer unless specifically agreed to in writing by the Buyer. The Buyer's acceptance or acknowledgement of the Seller's sale or shipping confirmation shall not constitute such written agreement. If this Purchase Order shall be deemed an acceptance of a prior offer by the Seller, such acceptance is expressly conditioned on the Seller's assent to any additional or different terms contained herein.

2. Acceptance

2.1 No offers, arrangements or proposals shall be binding on the Buyer unless and until confirmed by the Buyer in writing.

2.2 Commencement of performance by the Seller shall be an acknowledgement and acceptance by the Seller of these Terms and Conditions, whether or not the Seller shall have first received this Purchase Order.

3. Price and Payment

3.1 Unless otherwise specified on the face hereof, the selling price shall be CIF Port of Destination as such term is defined in the latest edition of INCOTERMS.

3.2 Payment of the selling price and additional costs, if any, will be made in accordance with the terms set forth in this Purchase Order. The Buyer may withhold payment with regard to any portion of the goods as to which Buyer has a claim until any adjustments which may be required as a result of Buyer's claims have been mutually agreed upon between the Buyer and the Seller.

4. Quality and Inspection

4.1 Evidence of length, weight and other specifications of the product delivered to the Buyer shall be determined by mill test certificate, which shall govern settlements.

4.2 Where the quantity agreed to be purchased by the Buyer is indicated to be "approximate", the Buyer shall, at its option, have the right to require the Seller to deliver between ten (10%) percent more and ten (10 %) less than the agreed to quantity. If more than one shipment is to be made, the Buyer shall, at its option, have the right to require the Seller to deduct from future shipment between fifteen (15%) percent more and fifteen (15 %) less than its periodic commitment. The Buyer may at any time require the Seller to deduct from future shipments to correct for excess prior shipments or to make up deficiencies in prior shipments, but shall not be required to do so.

4.3 Seller warrants that the products delivered conforms in all respects with the specifications provided in the Purchase Order and are of marketable quality.

4.4 Seller warrants that the products delivered have not been manufactured using or containing ozone-depleting substances. Seller agrees to indemnify and hold harmless Buyer from all costs or liability which Buyer incurs if such warranty proves untrue.

4.5 The Buyer, or an independent party selected by the Buyer, shall have the right to inspect the product at the Seller's mill or other source of supply prior to shipment. In the event such an inspection is conducted, the Buyer shall notify the Seller of its rejection of the product with ten (10) calendar days, it being expressly agreed that 10 calendar days shall be a reasonable time for the giving of such notice; provided however, Buyer's acceptance or rejection of the product as set out in this Section 4.3 in no way limits, restricts or modifies Buyer's remedies as set out in Article 6 hereof.

4.6 Seller warrants that Buyer's and third parties sale and use of the products sold hereunder do not and will not infringe any patents, trademarks or copyrights. Seller shall indemnify and hold harmless Buyer and its customers from and against all infringement and related claims, and all expenses related thereto including attorneys' fees and costs. Seller's obligations hereunder shall survive this agreement.

5. Identification and Delivery

5.1 The product purchased hereunder shall be deemed to be identified to the contract no later than the time that the Buyer executes this Purchase Order and deposits the same in the mail.

5.2 In the event the product, subsequent to its identification to the contract, suffers damage prior to delivery to the Buyer, then the Buyer may require the Seller, at Seller's cost, promptly to replace the portion damaged even though replacement delivery might occur subsequent to the delivery date.

5.3 If the Seller is or becomes insolvent subsequent to the identification of the product to the contract and fails to make timely delivery, the Buyer shall nevertheless have the right to cause the product to be delivered upon tender of the purchase price.

5.4 Time is of the essence with respect to the delivery dates set forth on the face hereof or otherwise agreed to by the Parties.

5.5 Notwithstanding anything herein to the contrary, title and risk of loss shall pass to Buyer on Buyer's receipt of delivery, unless otherwise expressly agreed.

6. Buyer's Remedies

6.1 The Buyer agrees to give notice of rejection of or complaints about the product within thirty (30) calendar days after receipt of the product by the Buyer at its ultimate destination, it being expressly agreed that 30 calendar days shall be a reasonable time for the giving of such notice. In the event of such unsatisfactory tender, the Buyer may (i) reject the whole or any part of the delivery, (ii) accept a money allowance, or (iii) allow a combination of (i) and (ii). Should any part of such delivery be rejected, the Buyer may require the Seller to make such conforming delivery of the quantity rejected, even though such delivery may occur after the delivery date. In the event the Buyer does not exercise its option to require the Seller to make such conforming delivery, then the Seller shall have no right to effect a conforming delivery after the delivery date.

6.2 The Buyer agrees that notice of any revocation of acceptance of the product delivered hereunder shall be given to the Seller within thirty (30) calendar days of the Buyer's actual discovery of deficiencies, it being expressly agreed that 30 calendar days shall be a reasonable time for the giving of such notice.

6.3 In the event the Seller breaches its contract with the Buyer, the Buyer shall have all rights and remedies accorded by all applicable laws, including, without limitation, the rights to recover money damages, obtain specific performance, recover attorney's fees, incidental and consequential damages and loss of profit.

6.4 Whenever in the sole judgment of the Buyer, it appears that the Seller may be unable to perform the contract embodied in this Purchase Order, the Buyer may require the Seller to give the Buyer, within ten (10) days after demand therefor, written assurance that the Seller will be able to perform, and if so requested, the reason for any prior failure to perform. The Seller's failure to provide such assurance and/or explanation satisfactory to the Buyer shall be deemed a material breach by the Seller.

6.5 If Seller is unable to perform for any reason, and Buyer consequently incurs expense in obtaining substitute performance, Seller shall be liable to Buyer for all additional expenses incurred by Buyer in obtaining substitute performance and shall pay such sum to Buyer upon presentment of Buyer's request accompanied by evidence of such additional expense.

6.6 Failure to make delivery by specified delivery date shall be a breach of contract. In the event of late delivery, Buyer at its sole discretion, may cancel the order without thereby incurring any liability, or may accept late delivery and receive a credit against the purchase price equal to 1% of the original price for each week or part of a week that delivery is delayed.

7. Modes Shipment

7.1 Means and routes of transport shall be at the Buyer's option. Whenever transportation is supplied by the Buyer or procured for the benefit of the Buyer, the Seller shall have such transportation loaded within the legal or customary lay days. The Seller shall be responsible for all costs and damages arising from delays in loading and all demurrage charges or other charges for delay.

8. Force Majeure

8.1 If because of force majeure either party is unable to carry out any of its obligations under this agreement, and if such Party promptly notifies the other Party in writing expressly claiming such force majeure, then the provisions of paragraph 82, -8.6 shall apply. The term "force majeure" as used herein shall mean any causes reasonable beyond the control and without fault or negligence of the Party affected thereby which wholly or in substantial part prevent the manufacture, loading, unloading, delivery or storing of the product sold hereunder.

8.2 If a force majeure notice (including acts of God, war, strikes, fire, explosion, national disaster, government rules, regulation, laws and orders) is given as provided in paragraph 8.1 above, the obligations of the Party giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuance, provided the effect of such force majeure is eliminated insofar as possible with all reasonable dispatch.

8.3 If a force majeure condition continues so that obligations remain suspended for a period amounting to forty-five (45) consecutive days measured from the date of performance and at any time thereafter either party reasonable concludes that there is no likelihood of ending such conditions in the immediate future, then either Party may terminate this agreement without liability to the other Party by giving fifteen (15) days notice to the other Party, and at the expiration of said fifteen (15) days, unless such condition shall have been ended or unless a notice shall have been given pursuant to paragraph 8.6 below, the Party giving such notice may terminate this agreement forthwith.

8.4 A Party who has sent a notice claiming force majeure pursuant to paragraph 8.1 above shall, upon the termination of the condition of force majeure, notify the other Party in writing.

8.5 If, due to an event of force majeure, the Seller is unable to deliver the full quantity of the product purchased hereunder, the buyer may, by notice given to the Seller at any time, cancel this Purchase Order or require the Seller to deliver such percentage of the lesser output as the quantity called for by this Purchase Order bears to the normal output of the Seller or its producer.

8.6 Deficiencies in shipment, failures to ship when agreed, inability to receive due to suspension. Or reduction of obligations for reasons of force majeure shall, at the Buyer's option, be made up in whole or in part even though subsequent deliveries occur after the delivery date. The Buyer shall exercise such option by written notice to Seller given no later than the later of (i) ten (10) days following receipt of the notice referred to in paragraph 8.3 above, or (ii) (unless this Purchase Order has previously been terminated) ten (10) days following the last date fixed for delivery.

9. Severability of Terms; Waiver

9.1 Waiver by the Buyer of any default of the Seller hereunder shall not be deemed a waiver of any other default of the Seller. The express provisions herein for certain rights and remedies of the Buyer shall not be construed to deprive the Buyer of any other rights and remedies under applicable law.

9.2 The invalidity of any provision of these Terms and Conditions shall not affect the remaining provisions hereof.

10. Governing Law; Disputes; Notice

10.1 ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS PURCHASE ORDER, THESE TERMS AND CONDITIONS, OR THE BREACH THEREOF SHALL BE SETTLED FINALLY AND EXCLUSIVELY BY BINDING ARBITRATION CONDUCTED IN HOUSTON, TEXAS IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND JUDGEMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PARTIES AGREE THAT ARBITRATION PROCEEDINGS MUST BE INSTITUTED WITHIN ONE YEAR AFTER THE CONTROVERSY OR CLAIM OCCURRED, AND THE FAILURE TO INSTITUTE ARBITRATION PROCEEDINGS WITHIN SUCH PERIOD WILL CONSTITUTE AN ABSOLUTE BAR TO THE INSTITUTION OF ANY PROCEEDINGS AND A WAIVER OF ANY AND ALL CONTROVERSIES OR CLAIMS. SUCH ARBITRATION SHALL BE HEARD AND DETERMINED BY ONE (1) ARBITRATOR, UNLESS EITHER PARTY REQUESTS THAT THE ARBITRATION BE HEARD BY THREE (3) ARBITRATORS.

10.2 This Purchase Order shall be interpreted in accordance with the laws of the State of Texas, U.S.A. excluding its conflicts of law rules.

10.3 The application of the U.N. Convention on Contracts for the International Sale of Goods is expressly excluded.

10.4 This Purchase Order and all the terms and conditions hereof shall be binding upon the Parties and their respective successors and assigns; however the Seller shall not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Buyer. Sellers attempt to assign without obtaining Buyer's prior written consent shall be void.

10.5 The Parties hereto irrevocably submit to the exclusive jurisdiction and venue of the court of the State of Texas, U.S.A., and the Federal courts of the United States located in Houston, Texas for injunctive relief in aid of arbitration, entry of judgement on the arbitral award, and for adjudication of any matter determined to be not subject to arbitration. To the extent that the Buyer or any of its property has or may hereafter acquire any right of sovereign immunity from suit, the Buyer hereby irrevocably waives any such right of sovereign immunity in respect of its obligations, rights and duties under this agreement.

10.6 All notices hereunder shall be given in writing by telex, telefax or telegram, receipted hand delivery, or by registered mail, return receipt requested at the address stated on the face hereof until appropriate notice otherwise. Hand delivered notice shall be effective upon receipt. Telex, telefax or telegram notice shall be deemed received on the first business day after transmission. Mail notice shall be deemed received on the fifth day after mailing.