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TERMS AND CONDITIONS OF SALE

Exclusive Terms and Conditions of Sale. These Terms and Conditions of Sale (the “Terms”) apply to all sales of any materials, goods or products (the “Goods”) by Seller to any Buyer and are the exclusive terms and conditions of sale. All offers by Seller to sell Goods are expressly conditioned on Buyer’s assent to and acceptance of these Terms. Seller’s acceptance of any order is expressly conditioned on Buyer’s assent to and acceptance of other terms and/or conditions contained in any purchase order, sale confirmation, or other document by or from Buyer or on Buyers web site are hereby objected to and rejected by Seller. If not previously accepted in writing, Buyer accepts the Terms by accepting delivery of the Goods. In the event of any claimed conflict between these Terms and other alleged terms and conditions contained in any other document, these Terms shall control and take precedence over any other alleged terms and conditions, with any conflict to be resolved in favor of these Terms.


Packaging. All goods will be packed and marked (including notice of hazardous substances) in accordance with industry standards and will comply with applicable laws and carrier requirements. Goods will be packed in accordance with applicable standards and customer specific requirements. Each container will be marked with applicable Order number and be accompanied by one copy of the shipping papers.

Shipping; Delivery; Risk of Loss. Except as otherwise expressly agreed upon in writing between the parties: delivery of the goods shall be Seller’s shipping point, and title and risk of loss shall pass to Buyer upon Seller’s delivery of the Goods. Every commercially reasonable effort will be made to deliver the Goods in accordance with the shipping dates appearing on the sales acknowledgment. Delivery is based on the receipt by Seller of a purchase order or other communication containing the purchase order number. Seller will not be liable for damages in any event due to delays in delivery. All transportation and insurance charges relating to shipment shall be paid by Buyer, unless otherwise previously agreed to between the parties. If Buyer refuses to accept delivery of the Goods, then Buyer shall be responsible for all transportation, insurance and storage charges relating to the shipment. If Seller has reason to doubt Buyer’s financial responsibility, Seller may decline to make further deliveries, except for cash or satisfactory security. Seller reserves the right of stoppage in transit.

Inspection. All goods and/or services in this order are subject to Buyer’s inspection within a reasonable time after arrival at the ultimate destination. If, upon inspection, any merchandise is found to be non-conforming, defective, of inferior quality or workmanship, or fails to meet the specifications of any other requirements of this order (hereinafter “Non-Conforming Goods”), then Buyer may reject same and return the Non-Conforming Goods to Seller at Seller’s Expense. Payment for Non-Conforming Goods shall not be an acceptance of such goods and/or services. Upon the return of Non-Conforming Goods Seller shall reimburse Buyer of (a) any amounts paid by Buyer on account of the purchase price of such goods and/or services and (b) any costs incurred by Buyer in connection with the delivery or return of such goods and/or services. Such expenses include, but are not limited to, expenses related to unpacking, examining, handling, repacking and re-shipping. Alternatively, Buyer may require Seller, at Seller’s expense, to remove from the premises of Purchase defective or non-conforming merchandise whose defects or non-conformity are not immediately apparent on examination, Buyer reserves the right to require replacement, as well as payment of any applicable damages, within a reasonable time following discovery of any defect or non-conformity.

Returns. Buyer may, in its sole discretion, at any time return to Seller any part or all goods and receive full credit, or scrap credit on such return.

Warranties. A. Seller warrants that Products manufactured by Seller, when delivered, shall be free from defects in material and workmanship. Seller’s obligations under the aforesaid warranty shall be limited exclusively to repairing or replacing, at Seller’s option, any part of the Products which, if

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properly installed, used and maintained, proved to have been defective in material or workmanship.

B. No Products may be returned unless authorized in advance by Seller, and then only upon such conditions to which Seller may agree. Buyer must obtain a Return Material Authorization (RMA) number from Seller prior to any return shipment, and such RMA number must appear on the shipping label and packing slip. Buyer shall be responsible for the returned Products until such time as Seller receives the same at its facility, and for all charges for packing, inspection, shipping, transportation or insurance associated with returned Products.

General. If there is an express conflict between the terms of this Order and the provision of any current written agreement between Seller and Buyer also intended expressly to apply to the goods and/or services ordered herein, those provisions will control only for those goods and services contemplated both this Order and the agreement. In filing this order, Seller and its subcontractor will comply with all applicable federal, state, and local laws and the rules and regulations and shall furnish evidence of such compliance as required by Buyer.


Cancellation by Buyer. This Agreement may not be canceled in whole or in part without Seller's written consent. Such consent shall not be given unless Buyer pays Seller its costs and expenses (including, without limitation, engineering expense overhead, and all commitments to Seller's suppliers and subcontractors) plus profit, all as determined by Seller.

Entire Agreement. These Terms, together with the quantity, price and delivery schedule for the Goods, Buyer's Credit Application, if any, and the written specifications for the Goods expressly agreed to in writing by Seller's authorized representative, if any, (collectively the "Agreement") constitute the complete and final agreement and understanding between Seller and Buyer relating to the Goods and supersede all prior oral or written communications, agreements, understandings, representations, statements, and assurances between the parties. No oral or written statement, representation, covenant or warranty not contained in this Agreement shall be binding on Seller and no provisions of the Agreement may be modified, amended, changed or waived in any respect except in writing by an authorized representative of Seller. Buyer represents and acknowledges that Buyer is not relying upon any oral or written statement, warranty or representation of Seller, its employees, agents and/or representatives not fully set forth in the Agreement.

Prices. All prices are subject to change without notice in the event of any changes in cost of materials or labor, specifications, quantities, delivery schedules, customs duties, other factors beyond Seller's control, or in the event of delays caused by the instructions of the Buyer, or the failure of the Buyer to give the Seller adequate information. Prices do not include taxes, including but not limited to Value Added Tax (VAT), or governmental charges.

Delay caused by Force Majeure. Even if binding terms or dates are agreed upon, Alexy Metals shall not be liable for damages occasioned by a delay in performance or delivery caused by force majeure or similar circumstances that make delivery or service difficult if not impossible for Alexy Metals. This includes problems caused in whole or in part by an act of God, terror, war, insurrection, civil commotion, strike, flood, fire, earthquake, domestic violence, terrorism, lockout, embargo, lack of water, materials, power, or telephone transmissions specified or reasonably necessary in connection with these Terms, hurricanes, unavoidable casualties, and any other occurrence, event, or condition beyond the reasonable control of Alexy Metals (a "Force Majeure Event"). Alexy Metals shall promptly notify Buyer of such Force Majeure Event. Such circumstances entitle Alexy Metals to postpone delivery by the period of their duration plus a reasonable starting up time or to cancel any Purchase Order or part thereof not yet fulfilled. In the case of a restriction lasting longer than three (3) months, Buyer shall have the right to terminate all or any unshipped part of the Purchase Order not yet filled. Such right of cancellation shall be Buyer's exclusive remedy.

Payment. A. The term of payment shall be net thirty (30) days from date of Seller's invoice, unless otherwise specified. Payments shall be made by Buyer without a deduction or set-off. Unless otherwise agreed, payment shall be made in U.S. dollars. Seller may charge late payment fees at a rate

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of 1.5% per month, or the highest rate permitted by law, whichever is less, accruing daily. **B.** If the financial condition of the Buyer is unsatisfactory to Seller, Seller may require full or partial payment in advance, or satisfactory security, in the form of a letter of credit or otherwise. In the event of bankruptcy or insolvency of Buyer, Seller may immediately cancel any Order then outstanding. **C.** Buyer grants to Seller a purchase money security interest in Products located in the United States, or Services, as well as any proceeds, for the purpose of securing the obligations of Buyer hereunder. Buyer authorizes Seller to execute on Buyer's behalf and file such financing statements as Seller deems appropriate to perfect and notify Buyer's creditors of Seller's security interest.

Delivery. Delivery dates are approximate and are dependent on prompt receipt by Seller of all necessary information. Seller may deliver all or any part of the Products or Services as early as three (3) days in advance of the agreed schedule. The point of delivery shall be "Ex-works" Seller's premises, unless otherwise specified by Seller. Upon delivery, title to Products and all risk of loss or damage thereto shall pass to Buyer. Buyer shall dispose of the packing materials for the Products at its own expense, and shall defend, indemnify and hold harmless the Seller from any legal obligations in connection with such packing waste.

Compliance with Laws. Buyer agrees to comply with all applicable laws, including but not limited to, the provisions of the Export Administration Regulations of the United States Department of Commerce and the International Traffic in Arms Regulations of the United States Department of State, as they currently exist and as they may be amended from time to time.

Retention of Documents. Buyer and Seller agrees to retain all documentation for a minimum of 10 years.

Interest. No products shall be shipped to Buyer if Buyer has an outstanding invoice over ninety (90) days past due. All amounts on invoices that are overdue shall bear interest from the due date until the payment is received by Alexy Metals at a rate of interest equal to the lesser of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law.