

## ENCORE METALS A DIVISION OF RELIANCE METALS CANADA LIMITED CONDITIONS OF CONTRACT FOR THE SALE OF GOODS

In these conditions, the "Seller" means Encore Metals a division of Reliance Metals Canada Limited. The "Buyer" means the body corporate, firm or person by which the goods are purchased and the "goods" means those described in the Buyer's purchase order.

1. **General:** The terms and conditions set forth herein constitute the entire contract between the Seller and the Buyer, relating to the sale of goods, and this contract prevails over any and all terms contained in the Buyer's purchase order.

Acceptance of the Buyer's order by the Seller is expressly made conditional on the Buyer's assent to these terms and conditions of sale, evidenced either by the Buyer's written acknowledgement or by conduct that recognises the existence of a contract with respect to the goods described in the Seller's acknowledgement or invoice.

Any costs or loss of profits incurred by the Seller out of the cancellation, alteration or suspension of this contract shall be paid by the Buyer. Any returns permitted by the Seller must be shipped to the Seller prepaid and must be in prime resale condition. Materials cut to the Buyer's specifications are not returnable.

All quotations, oral or written, are provided by the Seller without obligation and all goods offered are subject to prior sale unless otherwise specified in writing.

2. **Quantity:** The Seller shall be deemed to have complied with its contractual obligations in full hereunder notwithstanding a delivery of up to 10% less or 10% more than the contracted quantities. The Seller shall be entitled to make partial deliveries and in such case each such delivery shall be invoiced by the Seller and shall be paid for by the Buyer in accordance with clause 7.
3. **Delivery:** Delivery dates are approximate only and the Seller makes no warranty or guarantee of delivery date(s) and shall have no liability for any losses or damages for failure to deliver on such date.  
  
If the Buyer fails to take delivery promptly, the goods when made available will be at the Buyer's risk and expense. The Seller may then (but shall not be bound to) take steps at the Buyer's expense to store, protect and insure the goods.
4. **Increased Cost:** If the Seller's cost of performance is increased after the date of this contract due to events beyond the reasonable control of the Seller, or otherwise unavoidable, the Buyer agrees to compensate the Seller for these increased costs.
5. **Taxes:** The Buyer shall bear the burden of any existing, new, or increased tax, public charge, freight, tariff or duty which may after the date of the quotation or contract be levied on or imposed upon this transaction.
6. **Credit:** The Seller (without liability to the Buyer), may refuse, change or withdraw extensions of credit at any time, and may demand cash payments upon delivery or prior to shipment of the goods. In the event of any such termination the Buyer shall compensate the Seller for any commitments and costs the Seller has incurred in connection with the contract or termination thereof.
7. **Terms:** Payments for all goods is due and shall be paid according to the terms appearing on the face of the invoice from the Seller. The invoice amount cannot be paid in any other manner than in full when due. On any amount not paid within one day of the date it is due, interest will accrue and be payable at a rate of Prime plus 18% per annum.
8. **Security Interest:** No ownership in the goods shall pass to the Buyer, and the Seller shall have a security interest therein, unless and until:

- a. the Buyer makes full payment to the Seller for the goods, or
- b. the goods are incorporated in or utilized in the manufacture of products, or
- c. the goods are sold and delivered by the Buyer, whichever shall be the earliest.

Until the first of such events the Buyer shall in all respects treat and deal with the goods as depositary/bailee of the Seller with permission to use the goods and shall store the goods so that they are readily identifiable as the property to the Seller. During such period (and without prejudice to its other rights) the Seller shall be entitled to enter any premises to inspect the goods and if the Buyer shall fail to make due payments for them, to retake and re-claim the goods. For the purposes of this condition, cutting, chroming, bending or machining of goods shall not constitute the manufacture of a product or products. Until full payment has been made, the Buyer shall not be entitled to dispose of any goods (by sale or otherwise) to the holding body corporate of the Buyer or to any subsidiary of the Buyer or of such holding body corporate. Under no circumstance shall the Seller be liable to the Buyer for any expenses or any damage which the Buyer may incur or suffer while acting as the depositary/bailee of the Seller.

The Buyer hereby appoints the Seller to execute all documents and do all things on its behalf in order to perfect and give full effect to the reservation of ownership rights or security interests of the Seller pursuant to this Section and to maintain such rights or interests enforceable against third parties in all Canadian Provinces where the goods may be situated.

9. **Claims:** The Buyer shall inspect or test all goods upon receipt. The Buyer waives any right to assert a claim against the Seller arising from any non-conformity which would have been observable on reasonable inspection or testing at the time of delivery, unless the Seller is advised of the non-conformity within 72 hours after receipt of such goods by the Buyer. Should any of the goods supplied fail to fully conform to the specifications and description on the face of this document, then the goods claimed by Buyer to be non-conforming shall be set aside, protected and held by the Buyer without further processing until the Seller has an opportunity to inspect and advise of the disposition, if any, to be made of such goods. In no event shall any goods under claim be returned, reworked or scrapped by the Buyer without the express written authorization of the Seller.

In the event of non-conformity as aforesaid, the Buyer's sole and exclusive remedy will be limited to, at the Buyer's option, the repair or replacement of any non-conforming goods or to the repayment of the portion of the purchase price paid by the Buyer attributed to the non-conforming item.

10. **Warranty:** The Seller warrants that the title to the goods sold shall be free of any encumbrances, and will conform to the agreed written specification, subject to standard manufacturing variances. Such warranties are in lieu of and exclude all other warranties, express or implied, by operation of law or otherwise, including any warranty of merchantability or fitness for the Buyer's particular purpose. Under no circumstance shall the Seller be under any other liability and in particular shall not be liable for any consequential or indirect losses including any financial losses.

Although employees of the Seller are available for consultation concerning the selection of goods and required specifications, they are not authorized to warrant the suitability of any goods for any particular use or application.

11. **Force Majeure:** In the event of non-fulfilment or delayed performance of all or any part of this contract due, directly or indirectly, to any Act of God, government orders, rules or restrictions, fire, flood, war, strikes, labour disputes, transportation delays, loss or damage to the goods in transit, or the Seller's inability to obtain or ship the goods, or the failure of any third party to supply the Seller with the goods, or any other casualties, contingencies, occurrences or conditions whatsoever beyond the reasonable control of the Seller or otherwise unavoidable, the Seller shall not be responsible for such non-fulfilment or delayed performance and shall have the option to perform or cancel the contract or any unfulfilled portion thereof.

In particular, and without limitation, Seller shall not be liable for any interruption, disruption or delay in manufacture or delivery of goods due to, or arising out of, the inability of the computer-related systems of Seller's suppliers and/or customers to process, provide or receive data correctly.

12. **Legal:** This contract and all matters relating to the performance herein (including any action against the Buyer to enforce payment of the price of goods or materials purchased hereunder), shall be governed by the law of the applicable Canadian Province.

13. **Language:** This contract has been drawn up in English only at the express request of the parties hereto.
14. All sales are F.O.B. point of origin, unless otherwise stated