



Williams Metals
AND WELDING ALLOYS

a Division of Three D Metals, Inc.



THREE D METALS, INC. TERMS AND CONDITIONS OF SALE

All sales of goods or services by Three D Metals, Inc., are made subject to the following terms and conditions, unless expressly stated otherwise in a separate document signed by both Three D Metals, Inc. and Buyer. Three D Metals, Inc. expressly objects to and rejects any different or additional terms, additions, revisions or modifications contained in Buyer's purchase order or any other document or communication submitted by Buyer. Buyer's acceptance of this offer is expressly limited to Buyer's assent to the following terms and conditions:

1. Offer and Acceptance. This Quotation or Acknowledgment is an offer by Three D Metals, Inc. ("Three D") to sell the goods or services referenced in this document (the "Products") to Buyer. Buyer may accept this offer orally, in writing, or by performance, as long as Buyer's acceptance does not alter these terms and conditions ("Terms"). Three D shall not be bound to any different, additional, or modified term, condition, or provision, unless such term, condition, or provision is specifically accepted by Three D, in a separate writing, signed by both Three D and Buyer. Buyer's objection to any of these Terms must be set forth in a separate writing signed and dated by Buyer and delivered to Three D prior to or contemporaneous with Buyer's purchase order or other form of acceptance. Unless Three D agrees to Buyer's objection in writing, the objection is rejected and shall not become a part of the agreement. Three D's failure to object to any term or condition contained in any communication from Buyer shall not be deemed a waiver of these Terms, nor shall it be deemed an endorsement or acceptance of any term or condition set forth by Buyer. No course of dealing or custom and usage contrary to these Terms shall apply. Notwithstanding the foregoing, Three D may correct any typographical or clerical errors, including, but not limited to, errors in price, specifications, quotations, or acknowledgments.

2. Entire Agreement. These Terms, and any additional or different terms expressly agreed upon in writing by both Three D and Buyer, constitute the entire agreement between Three D and Buyer with regard to this sale and expressly supersede and replace any prior or contemporaneous agreements, whether written or oral, relating to this Quotation or Acknowledgment, including any terms and conditions on any of Buyer's documents or purchase orders. This agreement shall be binding upon the parties and their successors and assigns. If any provision of this agreement is held to be invalid or unenforceable, that provision shall be severed from the agreement and the remainder of the agreement shall remain in full effect.

4. Prices. All prices indicated in the Quotation or Acknowledgment are subject to change without notice. Unless otherwise agreed, prices are quoted in U.S. dollars and do not include freight or delivery charges, taxes (sales, excise, use, ad valorem, etc.), or any export or import duties. Such charges may be prepaid by Three D and added to Buyer's invoice.

5. Shipment, Delivery, Inspection. All shipments are F.O.B. Three D's plant, with transportation expenses and insurance paid by Buyer. The risk of loss or damage to the Products in transit shall fall upon the Buyer, whose responsibility it shall be to file claims with the carrier and/or the insurance company. If Three D pays for freight charges, Three D shall select the

method and carrier for delivery of all Products. If Buyer pays for freight charges, Buyer may, at its option, select the method and carrier for the delivery of all Products, but only upon written notification to Three D. All scheduled or quoted delivery dates are approximate and based upon prompt receipt of all necessary information from Buyer. Buyer shall examine all Products promptly upon receipt. Buyer shall notify Three D in writing, within 5 days of delivery, of any shortage or nonconformance. If rejection is intended, Buyer shall specify all grounds for rejection. Failure to provide Three D with such notice shall be deemed an unqualified acceptance of the delivered Products by Buyer. Three D also reserves the right to ship the product on multiple skids and/or shipments.

7. Delays. Three D shall not be liable for loss, damage, or non-performance resulting from delays in receipt of final specifications or instructions from Buyer, events of force majeure, or other causes beyond Three D's reasonable control. Quantities are subject to availability. In the event of production difficulties or Product shortages, Three D may allocate sales and deliveries at its sole discretion. In the event of such a delay, Three D's performance shall be excused and the delivery date shall be extended for a period equal to the time lost by reason of the delay. Three D may still bill Buyer and collect payment even though the Products have not yet been shipped.

8. Payment. The payment terms stated in the Quotation or Acknowledgment are conditioned upon approval of the Buyer's credit and may be withdrawn or amended by Three D at any time. Upon request, Buyer shall furnish sufficient information to enable Three D to assess Buyer's creditworthiness. All payments shall be made in the currency in which the prices have been quoted. All invoices shall be due and payable 30 days from the date thereof. All payments shall be without deductions for back-charges, other accounts between Three D and Buyer, or other similar circumstances, which shall be settled independently of the payment of the invoice. Payment shall not prejudice claims on account of omissions or shortages in shipment, but no such claim will be allowed unless Three D is notified in writing within 5 days of receipt of the shipment of such omission or shortage. All amounts past due shall accrue interest at a rate of 1.5 %, or the highest rate allowed by law, whichever is greater, per month from the due date, until paid in full. In such event, Three D may require that all subsequent deliveries be paid for in advance or upon delivery. Three D shall also have the right to suspend deliveries or discontinue any of the work to be performed by Three D until amounts past due are paid in full. Further, Buyer agrees to pay all attorney's fees, litigation expenses and other costs allowable by law, incurred by Three D to collect upon amounts owed by Buyer to Three D.

9. Title and Security Interest. Title shall not pass, and Three D shall have a security interest in all Products and the proceeds thereof, until Three D receives payment in full. Buyer authorizes Three D to file any and all financing statements and other documents required to perfect Three D's security interest, and Buyer agrees to cooperate in filing all such documents and statements. Buyer's failure to pay the purchase price, when due, shall give Three D the right to repossess the Product without liability. Furthermore, Three D retains all other rights and remedies of a secured party under applicable law.

10. Cancellation. Buyer may cancel its order at any time upon written notice to Three D, together with payment to Three D for the purchase price less any costs saved by Three D as a result of the cancellation.

11. Warranty, Disclaimers, and Remedies. Subject to standard manufacturing variations, Three D warrants that the Product furnished under this Quotation or Acknowledgment, will comply with Three D's specifications. **Three D MAKES NO OTHER WARRANTIES, EXPRESS OR**

IMPLIED, AND EXPRESSLY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND ALL OTHER WARRANTIES.

Further, Buyer disclaims any reliance on any sales descriptions or representations made by any employee or agent of Three D, or any brochure, catalog, pamphlet, advertisement, or other product or sales literature. Buyer agrees that Three D's employees and agents have no authority to issue or make any warranty other than the warranty to comply with Three D's specifications. No statements or recommendations made in any such advertisements or literature shall be construed as representations regarding any particular application or use of the Product.

Buyer's sole and exclusive remedy for breach of warranty or contract shall be the repair or replacement of a defective Product or, at Three D's option, a refund of the purchase price, provided that: (1) Buyer provides prompt written notice to Three D of any alleged defect, and returns the Product to Three D, freight prepaid; (2) the Product has not be altered or modified by anyone other than Three D; and (3) the Product has been properly stored, installed, maintained, and used by Buyer. Three D is not responsible for return Products lost in transit.

Defective Products replaced by Three D shall become the property of Three D. Repaired or replaced Products will be shipped to the Buyer F.O.B. Three D's plant. If the Product sold is not manufactured or created by Three D, Three D will extend the warranty to Buyer that Three D received from the original manufacturer or creator, to the extent assignable. Three D is not responsible for any charges relating to warranty work that has not been authorized by Three D in writing. Should Three D provide Buyer with advice or assistance concerning any Product, free of charge, Three D shall not be subject to any liability, whether in contract, tort (including strict liability and negligence), or otherwise.

12. Limitation of Liability. UNDER NO EVENT OR CIRCUMSTANCE SHALL Three D BE LIABLE TO CUSTOMER FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR PERSONAL INJURY, PROPERTY LOSS, OR ECONOMIC LOSS, ARISING DIRECTLY OR INDIRECTLY FROM ANY BREACH OF WARRANTY, BREACH OF CONTRACT, MATERIAL OR OTHERWISE, OR FROM ANY ACT OR OMISSION OF Three D'S EMPLOYEES OR AGENTS, TORTIOUS OR OTHERWISE. UNDER NO CIRCUMSTANCE OR THEORY OF LAW SHALL Three D'S LIABILITY FOR ANY CLAIM BROUGHT BY BUYER EXCEED THE PURCHASE PRICE OF THE PRODUCT.

13. Patents and Intellectual Property. The sale of a Product by Three D does not convey any license, by implication, estoppel, or otherwise, to use or practice any patent or other intellectual property of Three D covering the Product or its parts. Three D makes no warranty that the Products will be delivered free of the rightful claim of any third person by way of infringement or the like. Buyer shall indemnify, defend, and hold Three D harmless against any damages, liabilities, costs and expenses (including reasonable attorney fees and court costs) arising out of any claim that the Product purchased infringes a valid United States patent, copyright, trademark, trade name, proprietary right, or claim of unfair trade or unfair competition, as a result of or arising from Three D's compliance with Buyer's designs, specifications, or instructions, or relating to a system or combination in which the Product is only one component.

14. Assignment. Any assignment by the Buyer of this agreement or any of Buyer's rights or obligations under this agreement, without prior written consent of Three D, shall be null and void, and shall entitle Three D to cancel such agreement without liability.

15. Disclosure of Information. Any information, suggestions, or ideas given by the Buyer to Three D in connection with Three D's performance are not secret or confidential, except as may be otherwise agreed to, in a separate writing, signed by both Three D and Buyer.

16. Notice. Any notice required or contemplated by this agreement shall be in writing and shall be delivered personally, sent by facsimile, or sent by prepaid registered mail. Notice by facsimile shall be deemed received when transmitted. Notice sent by registered mail shall be deemed received on the second day following the date mailed.

17. Waiver. No failure by Three D to exercise any right accruing to it by virtue of the parties' relationship or under contract between Three D and Buyer shall operate as a waiver thereof or preclude the exercise of any other right or privilege of Three D.

18. Governing Law, Venue, and Limitation of Actions. These Terms and the parties' relationship shall be governed by and construed in accordance with the Uniform Commercial Code as adopted by the State of Ohio, as if the relationship arose in or was to be performed entirely in Ohio. Whenever a term defined by the Uniform Commercial Code is used in these provisions, the definition contained in the Uniform Commercial Code shall control. The exclusive venue and jurisdiction for the resolution of all disputes between the parties arising out of or in connection with this agreement shall be the state or federal courts located in Cuyahoga County, Ohio. Any action for breach of contract or any other claim arising out of the parties' business relationship must be commenced within one year after the cause of action has accrued.