

TSB Metal Recycling LLC Terms and Conditions of Sale

1. DEFINITIONS.

1.1 The following defined terms are used in these Terms and Conditions of Sale: (a) The collective terms and conditions described in (a) and (b) of Section 2.1 are referred to as the “**Agreement.**” (b) The goods or materials that are the subject of a sale from Seller to Buyer are referred to as the “**Goods.**” (c) TSB Metal Recycling LLC is referred to as “**Seller.**” (d) The purchaser of the Goods is referred to as “**Buyer.**”

2. AGREEMENT.

2.1 The terms and conditions that apply to and govern the sale of Goods by Seller to Buyer include and are limited exclusively to those contained in or expressly incorporated by (a) as applicable, Seller’s quotation, acknowledgement or invoice, or a separate written sales, pricing, or similar agreement signed by an authorized representative of Seller, and (b) these Terms and Conditions of Sale, whether or not they are specifically referenced in or incorporated by Seller’s quotation, acknowledgement or invoice or the separate written and signed sales, pricing, or similar agreement. Any conflict between these Terms and Conditions of Sale and the documents specified in (a) will be resolved in favor of the documents specified in (a).

2.2 Seller objects to terms and conditions that are additional to or different from those that are a part of the Agreement, and no additional or different term will be part of the Agreement unless expressly made so in a writing signed by an authorized representative of Seller. The preceding sentence excludes from the Agreement, among other things, Buyer’s standard terms and conditions of purchase, Buyer’s quality policy and other supplier policies, and any terms appearing on Buyer’s web site or supplier e-commerce site.

2.3 No modification of the Agreement or waiver of any of its terms will be binding on Seller unless it is clearly expressed in writing and signed by an authorized representative of Seller. Any purported modification or waiver by oral agreement, course of performance, or usage of trade is invalid and ineffective.

2.4 Buyer will be deemed to have accepted the Agreement by (a) assenting to the Agreement in writing, (b) placing an order for Goods, (c) accepting delivery of all or any portion of the Goods, (d) paying for all or any portion of the Goods, or (e) taking any other action evidencing Buyer’s acceptance of the benefits of the Agreement.

2.5 Seller will not be obligated to fulfill an order or request for Goods unless it affirmatively acknowledges the order.

2.6 If Buyer is purchasing the Goods for a government contract or sub-contract, Buyer shall promptly notify Seller of that fact and of any contractual terms from the government procurement laws and regulations that Buyer is obligated to include in its contracts for acquiring the Goods. No government procurement provisions will be included in the Agreement unless agreed to in a writing signed by an authorized representative of Seller.

3. PRICES AND TAXES.

3.1 No price quotation will remain effective for more than 30 days, unless the quotation expressly provides otherwise.

3.2 Unless otherwise provided in a writing that is a part of the Agreement, the price for Goods will be Seller’s price in effect on the Shipment Date. (The “**Shipment Date**” is the date upon which Seller has completed the applicable order or part thereof and made the Goods available for shipment, regardless of the applicable Incoterms 2010 delivery term.)

3.3 The price does not include taxes, duties, fees, assessments or other charges imposed by any governmental authority on the manufacture, sale, purchase, transportation, export or import of the Goods, all of which will be the responsibility of and paid by Buyer or, if required to be paid by Seller, then reimbursed to Seller by Buyer.

3.4 Seller may at any time adjust prices based on changes to energy costs, material costs, labor costs and exchange rates, or if in Seller’s reasonable opinion market indices on which prices are based do not fully reflect market conditions.

4. PAYMENT.

4.1 Payments are due the tenth day of the month immediately following the Shipment Date and must be made in the quoted currency. Except for adjustments for weight variances under Section 4.2 which have been verified and confirmed by Seller, Buyer shall pay Seller’s invoices without discount, setoff or reduction for any reason, including asserted warranty claims or other claims of non-performance by Seller.

4.2 Shipped and delivered weights may vary from order weights, as are reasonable and customary in the industry. Upon request by Seller, Buyer shall provide Seller with access to Goods delivered to enable Seller to verify delivered weights of Goods.

4.3 Seller may modify the payment terms in response to Seller’s reasonable doubts as to Buyer’s creditworthiness, evidence of which might include, among other things, a default under any of Buyer’s major financing agreements, Buyer’s inability to obtain financing, and a reduction in Buyer’s credit rating by a major rating agency. The changes Seller may make include shortening the payment period or requiring advance payment. Seller shall notify Buyer in writing of any changes, which may be made retroactive to include amounts then accrued but unpaid.

4.4 If Buyer fails to make a payment when due or if Seller reasonably deems itself to be insecure in respect of Buyer’s ability to satisfy its payment obligations under the Agreement, Seller may, in addition to the actions described in Section 4.3, take one or more of the following actions: (a) cancel any outstanding orders, (b) withhold further deliveries of Goods, and (c) declare all unpaid amounts for Goods previously delivered immediately due and payable. Buyer shall reimburse Seller for all costs of collection, including reasonable attorneys’ fees, incurred as a result of Buyer’s failure to make payments when due. The foregoing remedies are in addition to Seller’s other rights and remedies under the Agreement and under applicable law, including Section 2-609 of the Uniform Commercial Code.

5. SHIPMENT AND DELIVERY.

5.1 Indicated Shipment Dates and Delivery Dates are estimates. Seller’s failure to meet an indicated Delivery Date will not constitute a breach of the Agreement. (The “**Delivery Date**” is the date upon which Seller has satisfied the applicable Incoterms 2010 delivery obligation.) Concerning any order for which Seller has committed to a firm Shipment Date or Delivery Date, Seller will be excused to the extent Seller’s performance is prevented or delayed by a cause or event beyond its reasonable control, including an act of God, action of governmental authorities (valid or invalid), fire, flood, windstorm, explosion, riot, natural disaster, war, sabotage, labor problems (including lockouts, strikes, slowdowns), failure of or inability to obtain power, material, labor, equipment or transportation, and a court or administrative injunction or order. If Seller’s production or delivery is delayed, Seller may allocate production and delivery among its customers in a manner it deems reasonable.

5.2 Unless otherwise specified by Seller, the delivery term for the Goods is Ex Works (EXW) the place of shipment designated by Seller, using Incoterms 2010, and title and risk of loss and damage to Goods will transfer to Buyer on the Delivery Date. Transfer of title and risk of loss and damage does not in any way relieve Buyer of its obligation to pay for the Goods. Title and risk of loss and damage to Goods returned by Buyer will pass no earlier than Seller’s receipt and will not pass at all if Seller did not expressly authorize the return.

5.3 Unless otherwise provided in the Agreement, Seller may select the shipping method and carrier. Seller will not be liable for, and Buyer shall not assert against Seller or deduct from amounts owing to Seller, claims for delay, loss or damage occurring after Seller has satisfied its delivery obligations. Buyer shall instead make all claims for any such loss or damage directly to the transportation carrier or insurer, as appropriate. Buyer is responsible for any demurrage charges incurred, as well as any additional charges relating to failure to promptly unload from the mode of shipment.

5.4 Buyer is not entitled to reject or refuse to accept the Goods unless they do not conform to the limited warranty described in Section 6.1. Buyer shall, within 96 hours following receipt or constructive placement (whichever is earlier) of the Goods, inspect the Goods and notify Seller in writing of any nonconformity with the limited warranty. If Buyer fails to do so, or if the Goods are commingled with other goods, Buyer will be deemed to have waived any nonconformity and to have immediately and irrevocably accepted the Goods. Buyer shall allow Seller a reasonable opportunity to inspect any alleged nonconforming Goods.

6. LIMITED WARRANTY.

6.1 Seller warrants that, on the Shipment Date, the Goods will conform to the commercial grade of material explicitly identified on the face of Seller's quotation or acknowledgement or set forth explicitly in another document that is a part of the Agreement. THE FOREGOING LIMITED WARRANTY IS IN LIEU OF, AND SELLER DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ABSENCE OF HAZARDOUS MATERIALS.

7. EXCLUSIVE REMEDY; LIMITATION OF LIABILITY.

7.1 If the Goods do not meet the limited warranty described in Section 6.1, Buyer's sole and exclusive remedy will be, at Seller's choice, (a) replacement of the nonconforming Goods (EXW the Seller-designated facility), (b) a credit of a fair amount not to exceed the price paid for the nonconforming Goods, or (c) a credit of a fair amount equivalent to the amount by which the purchase price for the nonconforming Goods, as specified in the Agreement, exceeds the market price, as reasonably determined by Seller, of the nonconforming Goods delivered. To be entitled to the exclusive remedy, Buyer must (x) submit the warranty claim to Seller within 96 hours following receipt or constructive placement (whichever is earlier) of the Goods, (y) provide reasonable evidence in support of the warranty claim, and (z) if the chosen remedy is (a) or (b), return to Seller at Buyer's risk and expense all of the Goods claimed to be defective. The warranty claims limitation period described in (x) of the preceding sentence is in lieu of and supersedes all other claims limitation periods, including all applicable statutes of limitation. The warranty claims limitation period for replaced Goods will not recommence but will terminate at the same time as the original warranty claims limitation period.

7.2 The remedy described in Section 7.1 is Buyer's sole and exclusive remedy for a breach of the limited warranty and for any other claim relating to the Goods, regardless of the basis of Buyer's claim, whether it is in contract, tort, express or implied warranty, negligence, strict liability or otherwise, and regardless whether any damages were caused by Seller's negligence or by any defect in the Goods. Without limiting the generality of the preceding sentence, Seller will not be liable for, and Buyer shall not assert, any of the following, whether or not due to Seller's negligence or due to a defect in the Goods, and regardless whether the basis is product warranty, delivery, negligence or any other cause: (a) consequential, incidental, indirect, special and punitive damages; (b) damage to or the cost of making adjustments or repairs to any product or item in which the Goods were incorporated; (c) loss of profits or revenue, loss of use, line shut-down, cost of capital, and cost of substituted product or facilities; (d) personal injury, death or property damage in connection with the presence of hazardous materials in the Goods, and (e) claims of Buyer's customers or other third parties for damages or penalties, whether or not Buyer is legally obligated to pay them. This disclaimer and exclusion will apply even if the exclusive remedy described in Section 7.1 fails its essential purpose.

8. DELAYS, CHANGES AND CANCELLATIONS.

8.1 "Delay/Cancellation Costs" include all labor, materials, overhead, general and administrative costs, restocking charges, excess inventory charges, value of storage space, inventory tax charges, banking and finance charges, disposal fees, and other harm, costs and

charges incurred directly or indirectly by Seller in connection with a requested delay or cancellation of an order for Goods. The "Firm Order Period" is determined according to, as applicable, the quotation, acknowledgement or written agreement of the parties. If there is no quotation, acknowledgement or written agreement, or if none of those items specifies the Firm Order period, the Firm Order Period will be determined according to Seller's then current cancellation and order book management policy. If a Firm Order Period cannot be determined in any of the preceding methods, the entire order will be considered to be within the Firm Order Period.

8.2 Buyer is not entitled, without Seller's prior written consent, which may be withheld or conditioned in Seller's sole discretion, to delay a delivery of Goods for all or any part of an order within the Firm Order Period. Seller may treat as a cancellation subject to Section 8.3 any proposed delay greater than 60 days. If Seller consents to the delay, Buyer shall pay a delay charge in an amount determined in Seller's sole discretion to reflect all applicable Delay/Cancellation Costs, including, at a minimum, a storage charge, inventory carrying costs, and costs of inactive labor, from the original request date until the time of delivery.

8.3 Buyer is not entitled, without Seller's prior written consent, which may be withheld or conditioned in Seller's sole discretion, to cancel all or any part of an order for Goods within the Firm Order Period. If Seller consents to the cancellation, Buyer shall pay a cancellation charge in an amount determined in Seller's sole discretion to reflect all applicable Delay/Cancellation Costs plus a reasonable and equitable profit for Seller.

8.4 Buyer is not entitled, without Seller's prior written consent, which may be granted or withheld in Seller's sole discretion, to make any changes to the commercial grade or any other aspect of the Goods. Seller may condition its consent, if any, on Buyer's agreement to price adjustments and other compensating payments satisfactory to Seller.

9. **CONFIDENTIAL INFORMATION.** With respect to confidential information concerning the Goods and the transactions subject to the Agreement that Buyer comes to know either through disclosure from Seller or otherwise, Buyer (a) shall not disclose the information to any third party, (b) shall not use the information for any purpose other than evaluation and use of the Goods, and (c) acquires no ownership, license or other interest in the information.

10. MISCELLANEOUS.

10.1 The words "include" and "including" are to be construed as if they were followed by "without limitation," unless the accompanying text or the context clearly requires otherwise.

10.2 No party may assign its rights or obligations under the Agreement without the other party's prior written consent, and any attempted assignment will be void, except that Seller may, without Buyer's consent, assign and delegate its rights and obligations under the Agreement to one or more affiliates or to a third party in connection with a divestiture of the business with which the Agreement is associated. A corporate reorganization that does not result in a change of control or beneficial ownership with respect to the party's ultimate parent entity is not to be deemed an assignment.

10.3 The laws of the State of Ohio, U.S.A., govern all matters arising out of the Agreement, excluding choice of laws principles. Both parties consent to the jurisdiction of the state and federal courts having authority over the territory of Stark County, Ohio, for the resolution of any dispute arising under the Agreement or the purchase or use of Goods; and that consent is to the exclusive jurisdiction of those courts unless Buyer is from a jurisdiction that does not recognize for enforcement judgments issued by those courts. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.

10.4 Seller's rights and remedies set forth in the Agreement are in addition to all legal and equitable rights and remedies available to Seller.