



TERMS AND CONDITIONS OF SALE

MODERN ALUMINUM CASTINGS CO INC.'S ("MACC") ACCEPTANCE OF BUYER'S REQUEST FOR QUOTE, PURCHASE ORDER AND/OR OTHER METHOD OF REQUESTING TO PURCHASE OF ANY MACC PRODUCT, GOOD OR SERVICE (COLLECTIVELY "GOODS") (COLLECTIVELY REFERRED TO HEREIN AS "ORDER") IS EXPRESSLY CONDITIONED ON THE BUYER'S ASSENT TO AND ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS. ANY TERMS OR CONDITIONS OTHER THAN THOSE STATED HEREIN ARE REJECTED UNLESS EXPRESSLY ACCEPTED IN WRITING IN A DOCUMENT CONSPICUOUSLY REFERENCING THE INTENT TO AMEND THESE TERMS AND CONDITIONS OF SALE BY A DULY AUTHORIZED REPRESENTATIVE OF MACC.

1. **ACCEPTANCE.** These Terms and Conditions of Sale form the basis of the agreement between MACC and Buyer. Any terms or conditions stated by Buyer in an Order are rejected unless expressly accepted in writing in a document expressly referencing the amended of these Terms and Conditions of Sale by a duly authorized representative of MACC. If Buyer's Order or offer to purchase is expressly conditional upon MACC's adherence to Buyer's terms and conditions, then these Terms and Conditions of Sale shall operate as a counteroffer, expressly conditioned upon the Buyer's acceptance of these Terms and Conditions of Sale. Whether these Terms and Conditions of Sale operate as an acceptance or a counteroffer, the acceptance by Buyer of any goods provided hereunder constitutes acceptance by Buyer of these Terms and Conditions of Sale and relinquishment and waiver of any right to limit acceptance or object to these Terms and Conditions of Sale under the Uniform Commercial Code.
2. **PRICE.** Unless otherwise stated, prices for MACC's goods are in U.S. dollars. Payment terms shall be net thirty (30) days from the date of invoice. Amounts unpaid after the payment term shall accrue interest compounded monthly at the annual rate of 18% or the maximum legal rate, if less. All prices as set out in any price list are subject to change without notice and are not guaranteed against change. Printing and clerical errors made by MACC on a quotation, an acknowledgement or an invoice shall be subject to correction. In the event of a price change, orders on hand will be invoiced at prices effective at date of Order receipt. All prices quoted for specific goods, in writing, by MACC are only valid for acceptance and placement of order within a fixed period as stated on the quotation. Upon request, MACC will re-quote when the acceptance period has lapsed. MACC's price are exclusive of all applicable taxes (e.g. the price does not include applicable sales, use, excise, GST, VAT or similar taxes). The amount of any such tax or applicable charge that MACC may be required to pay or collect will be added to each invoice unless the Buyer has furnished MACC with an appropriate exemption certification which is acceptable to the taxing authorities.
3. **SHIPMENT AND RISK OF LOSS.** Unless otherwise agreed to in writing by MACC, all quotations are EXW (INCOTERMS 2020) MACC's warehouse, and do not include transportation cost to Buyer's location. Shipment dates provided by MACC are approximate and are based on prompt receipt of all necessary information regarding the Order, provided however, MACC is not liable for any expense, loss or damage whatsoever suffered by Buyer as a result of MACC's failure to deliver goods by the specified date.
4. **SETOFF.** Neither Buyer, nor any assignee of Buyer shall have a right to claim compensation or to set off against any amounts which become payable to MACC under this agreement or otherwise.
5. **CHANGES OR CANCELLATION OF ORDERS.** Any Order placed with and accepted by MACC may only be modified or canceled by Buyer upon written approval of MACC and upon terms that indemnify and/or make MACC whole against loss. If MACC does authorize cancellation or modification, a 10% restocking fee shall apply. MACC may cancel all or any part of an Order and discontinue its performance thereunder without liability to Buyer in the event: (1) Buyer materially breaches these Terms and Conditions of Sale, (2) Buyer becomes insolvent, (3) Buyer files or is the subject of a bankruptcy, is the subject of a receivership, liquidation, dissolution or similar proceeding or (4) if MACC has a reasonable basis for believing Buyer will not pay for or otherwise honor these Terms and Conditions of Sale.

6. **INSPECTION AND ACCEPTANCE.** Buyer shall have 10 business days after delivery (the "Rejection Period"), to inspect the goods and either accept or reject them. Failure to inspect the goods within the Rejection Period shall constitute a waiver of Buyer's right of inspection. Failure to inspect and/or reject the goods within the Rejection Period shall constitute an unqualified and irrevocable acceptance of the goods by Buyer and a waiver of any and all claims by Buyer for nonconforming goods or delivery and Buyer shall be bound to pay for the goods in accordance with these Terms and Conditions of Sale. To reject any nonconforming goods, Buyer must immediately (and in any event, within the Rejection Period) notify MACC in writing that Buyer considers the goods nonconforming. Such notification shall identify each and every alleged nonconformity and describe that portion of the shipment being rejected. Buyer shall give the MACC a full and reasonable opportunity to investigate all claims and shall return any allegedly defective goods upon request. All claims or requests for return must conform to MACC's Return Goods Authorization (RGA) Procedure. MACC will not be liable for any consequential, incidental, exemplary or other damages sustained by Buyer or an end user, including but not limited to, loss of productivity, loss of profits or revenues, damages to machinery or mechanical devices, cost of capital or the cost of replacement of goods from a third party caused by nonconforming goods. Notwithstanding anything to the contrary contained herein, any and all warranties set forth herein shall immediately cease and terminate in the event that goods or any parts or appurtenances thereto are altered or modified by Buyer or an end user without the prior written consent of MACC.
7. **LIMITED WARRANTY AND DISCLAIMER.** All goods are warranted to be free from defects in material and workmanship for a period of one (1) year from the date of shipment to Buyer and to meet MACC's specifications for such goods at the time of delivery. In the event MACC is manufacturing the product pursuant to designs, drawings, plans or specifications provided by Buyer or a third party (collectively "Buyer's Specifications"), MACC warrants that the goods will conform to Buyer's Specifications but **DOES NOT WARRANT, AND EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR, BUYER'S SPECIFICATIONS AND THEIR APPROPRIATENESS/FITNESS FOR ANY PARTICULAR GOOD OR PURPOSE. THE ABOVE STATED WARRANTIES ARE THE SOLE WARRANTIES AND ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED OR IMPOSED BY OPERATION OF LAW, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.** This Limited Warranty does not apply to any nonconforming good that has been damaged, repaired, altered or improperly handled, used, installed and/or maintained after it leaves MACC's possession.
8. **BUYER'S LIMITED REMEDIES.** MACC's exclusive and sole obligation for warranty claims shall be limited to the repair or replacement of the nonconforming goods at the original delivery point or, at MACC's option, a credit to Buyer for the purchase price of the nonconforming goods. This is Buyer's sole and exclusive remedy for any and all warranties, including liability based in contract, tort or strict liability. Buyer's exclusive and sole remedy against MACC on account of or in respect of goods that do not conform to these Terms and Conditions of Sale shall be to secure replacement or repair of the goods, at MACC's option, thereof. In no event shall MACC's liability exceed the selling price for the goods claimed to be nonconforming.
9. **LIMITATION OF LIABILITY. MACC SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY UNDER ANY THEORY OF LIABILITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF INCOME, PROFITS OR PRODUCTION; ANY REPROCUREMENT COSTS; INCREASES IN THE COST OF OPERATIONS; OR DAMAGES TO MATERIAL.**
10. **BUYER'S SPECIFICATIONS.** Buyer shall indemnify and save harmless MACC against any claims or liability for violation of any intellectual property rights, including patent, trade secret or trademark rights, owned or controlled by third parties in the United States or in any other country on account of preparation, manufacture or sale of goods pursuant to Buyer's Specifications. The sale of goods covered by these Terms and Conditions of Sale shall not expressly or impliedly grant to Buyer any right or license of any kind under any patent, patent application, or other industrial property right owned or controlled by MACC or its affiliates, but the foregoing shall not be understood to limit in any way the right of Buyer to use and sell such goods, in the events such goods, as sold hereunder, are covered by any such patent. MACC makes no warranty that the use of any goods may not infringe patent rights of others. Any intellectual property, whether or not such intellectual property is protectable, developed by MACC in performance of its obligations under these Terms and Conditions of Sale will remain the sole and exclusive property of MACC and Buyer shall have no rights in such intellectual property.
11. **DEFENSE, INDEMNIFICATION AND HOLD HARMLESS.** Buyer SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS MACC and MACC's parent(s), subsidiaries, divisions, affiliated companies and their respective directors, officers, agents, insurers, employees and representatives (collectively referred to as the "MACC Group"), from and against any and all claims, suits, causes of action, liabilities, losses (including death, personal injury and property damage), judgments, obligations, fines, damages, penalties, expenses, attorneys fees, settlement funds, and consequential and

incidental damages, of any kind or character regardless of theory (including, but not limited to, breach of contract, breach of warranty, tort (including negligence), strict liability, environmental laws, intellectual property rights or otherwise), arising out of or in any manner relating to or attributable to or allegedly arising out of or in any manner relating to Buyer's Specifications or attributable to any Goods manufactured pursuant to Buyer's Specifications. This agreement to indemnify, hold harmless and defend applies if the act(s) or omission(s) complained of were caused or allegedly caused only in part by the negligence of the MACC Group, but this agreement to indemnify, hold harmless and defend does not apply where the act(s) or omission(s) complained of were caused or allegedly caused solely by the negligence of the MACC Group. BUYER MAY NOT BRING ANY ACTION ARISING OUT OF ANY CLAIMED BREACH BY MACC OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.

12. **CREDITWORTHINESS OF BUYER; TERMINATION.** By placing an Order with MACC or by accepting goods delivered by MACC, Buyer represents that it is not insolvent. For the purposes of these Terms and Conditions of Sale, Buyer is insolvent if (i) Buyer fails to pay its obligations in accordance with these Terms and Conditions of Sale and in the ordinary course of business or (ii) the amount of Buyer's liabilities exceed the value of its assets in accordance with generally accepted accounting principles. Buyer shall provide verified certificates on a quarterly basis, ensuring that it is not insolvent on the basis of both definitions of insolvency described herein. In the event that Buyer becomes insolvent before delivery of the goods, Buyer shall immediately notify MACC. A failure to so notify MACC shall be construed as a reaffirmation by Buyer of Buyer's solvency at the time of delivery. MACC shall have the right to stop delivery of the goods, whether delivery is by carrier or any other means, if the Buyer becomes insolvent and to stop delivery or terminate wholly or partly every supply agreement between MACC and Buyer if Buyer: (i) repudiates these Terms and Conditions of Sale or any other supply agreement between MACC and Buyer, (ii) fails to make a payment due before delivery arising from these Terms and Conditions of Sale or any other supply agreement between MACC and Buyer, (iii) fails to provide any letter of credit, bill of exchange or any other security required, (iv) rejects, returns or fails to take delivery of any goods tendered by MACC other than in accordance with the provisions herein, (v) or if for any other reason MACC has a right to withhold or reclaim the goods regardless of whether they are to be shipped directly to Buyer or to some third party as may be designated by Buyer. Upon termination, MACC shall have no further obligation under these Terms and Conditions of Sale, but in no event shall termination discharge Buyer of its obligation to pay in a timely fashion or of any other obligation owing under these Terms and Conditions of Sale or any other supply agreement between MACC and Buyer. Notwithstanding any other provision to the contrary, MACC reserves the right to ship goods to Buyer under reservation.
13. **FORCE MAJEURE.** Notwithstanding any provision hereof to the contrary, MACC shall not be in default or liable for any delay or prevention in performance arising by reason of circumstances that are in whole or in part beyond the reasonable control of MACC, including but not limited to fire, flood, acts of God, labor disputes, civil unrest, terrorist acts, shortage of and/or inability to reasonably secure necessary raw materials, resources or sufficient workforce, pandemic, epidemic, disease (or reasonable fear thereof) state of war or conflict or acts of governments. Upon such force majeure, MACC may either delay performance until the force majeure ceases and performance is feasible or may cancel performance altogether, in either case without incurring liability for breach of any agreement. Risk of expense caused by this clause will be borne by the Buyer.
14. **ATTORNEY'S FEES.** In the event MACC prevails in any action arising out of or related to these Terms and Conditions of Sale and/or related to any Goods, Buyer agrees that MACC shall be entitled to award of its reasonable attorney's fees and court costs incurred and/or associated with such proceedings.
15. **GOVERNING LAW; CHOICE OF FORUM.** In the event of any dispute hereunder, the laws of the State of Indiana shall govern the validity, performance, enforcement and any other aspect of these Terms and Conditions of Sale notwithstanding any other jurisdiction's choice of law rules to the contrary. The parties agree that the exclusive jurisdiction and venue for any action of any type related to these Terms and Conditions of Sale or the Goods shall be the Indiana Commercial Court located in Vigo County, Indiana or, if the Commercial Court does not exist, in a state or Federal court located in Vigo County, Indiana.
16. **RELATIONSHIP OF PARTIES.** MACC and Buyer are independent contracting parties and nothing in these Terms and conditions of Sale will make either party the agent, partner, joint venturer or legal representative of the other for any purpose, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.
17. **SEVERABILITY, TERMINATION, EFFECT ON PRICE.** Should any paragraph, sentence, term or other provision of these Terms and Conditions of Sale be invalid or unenforceable under the law of the place where it is to be performed or be declared invalid or unenforceable by a court or other competent authority having jurisdiction over the matter, MACC may elect to either: (i) terminate this agreement if not fully performed by it, or (ii) consider this agreement severable as to such provision, and such provision shall thereafter be deemed severed and inoperative. In such latter event, the remainder of this

agreement shall be in full force and effect as if such severed provision were never a part of the same. In addition, if such severance shall have an adverse financial impact on MACC, MACC shall have further right to an appropriate upward adjustment in the price of goods sold or to be sold hereunder.

18. **WAIVER OF BREACH.** Failure of MACC to enforce any of the terms, conditions and limitations of these Terms and Conditions of Sale shall not be construed as a waiver thereof or a waiver of any other terms, conditions or limitations herein or on the face hereof, and the failure of MACC to exercise any rights arising from default of Buyer or otherwise shall not be deemed to be a waiver of such right or any other right. The terms, conditions and limitations herein and on the face hereof may be enforced and the rights of MACC may be enforced at any time in whole or in part.
19. **LIMITATIONS ON ACTIONS.** Any action by or on behalf of Buyer or its successors or assigns for breach of these Terms and Conditions of Sale and/or related to the Goods must be commenced within one year after the cause of action has accrued.
20. **ASSIGNMENT:** The Terms and Conditions of Sale is not assignable by Buyer without MACC's prior written approval.
21. **NO IMPLIED WAIVER:** The failure of MACC at any time to require performance by Buyer of any provision of this Agreement shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or any other provision.
22. **NO AGENCY:** Buyer shall not be deemed to be an agent or legal representative of MACC, nor is any joint venture or partnership relationship hereby created and Buyer is not authorized to create any obligation on behalf of MACC.
23. **ENTIRE AGREEMENT; AMENDMENTS.** These Terms and Conditions of Sale, together with the terms of any quotations or Order acknowledgments issued by MACC, constitute the entire agreement between MACC and Buyer with respect to the matter contained herein and supersedes all prior oral and written representations and agreements. These Terms and Conditions of Sale may only be amended by an agreement in writing signed by MACC and Buyer.