

## **General Delivery and Sales Conditions ALANOD Westlake Metal Ind., Inc.**

The terms "we", "us", and "our" shall refer to ALANOD Westlake Metal Ind., Inc. and the terms "you" or "Contract Partner" shall refer to the purchaser listed on the order confirmation.

### **1. Scope.**

These Terms and Conditions (these "Terms and Conditions") shall apply to all our agreements and deliveries for the sale of goods and services made or furnished to our Contract Partners. We hereby expressly exclude any deviating general terms or conditions proffered by the Contract Partner. Such general terms and conditions, especially any conditions or terms of purchase, will not become a part of the contract. Our Contract Partners accept these Terms and Conditions as part of all current and future contract relationships. Our Contract Partners hereby waive any claim or defense that these Terms and Conditions are not part of any current or future contract. Fulfillment of a Contract Partner's order does not constitute acceptance of any of such Contract Partner's terms and conditions and does not serve to modify or amend these Terms and Conditions. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of goods or services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

### **2. Offer and Formation of Contract.**

Our offers and a submission of a purchase order to us are always to be understood as non-binding, and there shall be no contract without our express acceptance indicated by an order confirmation.

### **3. Prices and Payments.**

3.1 The Contract Partner shall pay all amounts due to us as stated upon Purchase Order. Our prices are always to be understood exclusive of freight, postage, customs, duties, sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind, and applicable VAT, unless otherwise agreed upon in writing and confirmed by us. The Contract Partner shall be responsible for all such charges, costs, and taxes. Goods will only be insured by us against damage in transit upon express request by our customer, and for account of the customer. In the event that the time between the conclusion of the contract and our delivery of the goods should exceed 4 months, due to causes not attributable to us, we shall have the right to reasonably increase the prices quoted by any rise in cost of raw or auxiliary materials taxes, customs duties, warehousing and labor costs subsequent to the date of formation of the contract.

3.2 We reserve the right to deliver only as and when payment of the agreed upon prices has been made. Contract Partner shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Contract Partner shall reimburse us for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms and Conditions or at law (which we do not waive by the exercise of any rights hereunder), we shall be entitled to suspend delivery of any goods or services if Contract Partner fails to pay any amounts when due hereunder. We expressly reserve the right to claim any further damages. Our invoices are deemed to have been accepted if the Contract Partner does not oppose them in writing within 30 days from receipt of the invoice.

3.3 There is no right to set off amounts due to us against any claim or counterclaim which has not yet been reduced to a final, non-appealable judgment. There shall be no right to withhold amounts in respect of any claim not arising from the same contractual relationship if this claim has not been acknowledged by us and has not yet legally fully vested.

### **4. Worsening of the Financial Situation of Contract Partner.**

4.1 In any of the following events or any other comparable event existing before formation of the contract but brought to our knowledge only after formation of the contract, or arising after formation of the contract, we may require advance payments up to the amount of the agreed upon prices, including: (a) filing of a bankruptcy petition by our Contract Partner, provided that such petition is not vacated or rejected within 4 weeks of the opening of bankruptcy proceedings, or a filing for bankruptcy is rejected for want of assets; (b) a written credit information of a bank or agency shows that our Contract Partner is not creditworthy; (c) the appointment of a receiver for all or a substantial part of the Contract Partner's assets; (d) a levy or attachment on all or a substantial part of the Contract Partner's assets; (e) an admission by the Contract Partner in writing that it is unable to pay its debts as they become due; (f) or an assignment by the Contract Partner for the benefit of creditors.

4.2 If any of the aforesaid events occur or if our Contract Partner does not pay invoices when due, we shall have the additional right to inspect the warehouse of our Contract Partner in order to secure our rights under Section 13 (retention of ownership).

4.3 If in such cases our Contract Partner fails to meet our request for advance payment or inspection of its warehouse within a reasonable grace period set by us, we are entitled to terminate the contract and/or to claim damages for non-performance.

### **5. Default by our Contract Partner in Accepting our Deliveries.**

If our Contract Partner delays in accepting or otherwise fails or refuses to accept our deliveries, in whole or in part, we are entitled, after expiration of ten (10) days, either to terminate the contract and/or to claim damages for non-performance. This shall not prejudice any other claims we may have at law or in equity due to our Contract Partner's default in accepting our deliveries.

### **6. Damages for Non-Performance.**

In the event we have the right to claim damages for lack of performance, we are entitled to receive 15% of the contract price as liquidated damages without furnishing proof thereof, subject to our Contract Partner's proof that no, or a lesser, damage, was caused. This shall not prejudice our right to claim actually incurred damages. The Contract Partner agrees that our actual damages will be difficult to calculate with precision, and that the liquidated damages set forth above is not a penalty but a reasonable forecast of the actual losses we would incur as a result of the Contract Partner's lack of performance. Any liquidated damages assessed may be withheld from any payment to which the Contract Partner may otherwise be entitled.

### **7. Illustrations; Indications as to Quality, Characteristics and Dimensions.**

Any and all illustrations, indications and descriptions in offers, catalogues, leaflets, price lists, descriptions, illustrations, drawings and similar publications are approximate in nature and given as a general guide only. Provided the contract goods are not changed in a way that materially adversely affects our Contract Partner, we reserve the right to make modifications to models, constructions and equipment, as well as methods of production. Our indications and descriptions regarding dimensions, characteristics and uses of the contract goods are given as mere product descriptions and do not include any representations or warranties as to any particular characteristics. When submitting orders, the Contract Partner has to take into consideration that any technical features are state of the art and comply with any applicable legal and technical rules as well as any individual stipulations.

### **8. Packaging; Shipping and Transfer of Risk.**

8.1 Any packaging we provide on a loaned basis shall remain our property. If the packaging is not returned within 3 months, we are entitled to payment equal to the value of the packaging. The risk of loss shall in any event pass to our Contract Partner when the goods are shipped ex works even if we expressly assume responsibility for freight charges. In case we have no shipping instructions, or deem that a deviation from any shipping instructions is necessary, we may ship in accordance with our reasonable judgment and without any obligation as to selecting the cheapest and quickest shipping method.

8.2 If shipping is delayed due to the request of a Contract Partner or for reasons attributable to our Contract Partner, the goods will be stored at the expense and risk of our Contract Partner. In this case, the risk of loss shall pass to our Contract Partner with our notification that we are prepared to make shipment. If delivery is to be made by truck to the discharge point, such discharge point must be easily accessible by truck. In such case, the Contract Partner will be solely responsible for immediate and professional unloading. Any waiting time will be charged by us. We have the right to make partial deliveries.

### **9. Delivery Times; Delay and Impossibility to Deliver.**

9.1 We will attempt to meet delivery times as stated in the order confirmation. Non-material delays are hereby accepted by our Contract Partners. Delivery times are only of the essence if this has been confirmed by us in writing. The delivery time starts upon the formation of the contract (unless the contract specifies a later date), but in no event until our Contract Partner has met its obligations to provide documentation, permits, releases or any agreed upon advance payments.

9.2 If we are late with the delivery or service, or if we are not able to fulfill our duties for reasons attributable to us, our Contract Partner hereby waives and releases all claims for damages or loss, except as may result from our willful misconduct or gross negligence. This limitation of liability shall not prejudice our Contract Partner's legal right to terminate the contract, provided that, in cases of delay, the grace period to be granted by our Contract Partner shall be at least six weeks. Any right of our Contract Partner or us to terminate the contract shall apply only to that portion of the contract that is not yet performed, provided this will not work as an unreasonable hardship upon the party entitled to the termination.

### **10. Warranty and Indemnifications**

10.1 Our products shall be deemed free of material defects if they display the agreed upon characteristics at the time the risk of loss passes. Our products shall not be deemed defective if they exhibit insignificant or non-material defects or minor variations in quantity. Cylindrical grooves or other grooves, recurring rolling marks, rolling inclusions or imprints as well as variations in color or appearance from different viewing angles, surface dirt, friction points, scuff marks, or bending or folding at the beginning or end of the coil or similar matters shall not be considered defects and shall not give rise to a claim.

10.2 Slight color variations that are typical of the production process and which do not, or only insignificantly, affect our goods, shall be deemed acceptable by the Contract Partner. We do not assume any responsibility for color fading.

10.3 A delivery is considered free of defects under the contract if the defective parts do not exceed 5% of the entire quantity delivered. Delivery overages in excess of 10% or delivery shortages of 10% of either quantity or weight of the original order shall be deemed acceptable by the Contract Partner and confer no claim. The material used for protection of the goods shall be included in the weight calculation.

10.4 In case of aluminizing or coating by a third party, we only assume responsibility for our part of the work. A deficiency in output quantities delivered up to 3% of the total input quantities received is customary for the production process and shall not give rise to any claim. The quantity we received and ascertained at our plant will be the basis for calculation.

10.5 Claims for defective goods must be reported within 2 weeks of delivery unless the defect was not visible by inspection at the time of the delivery.

10.6 Incorrect usage instructions do not constitute a claim for defective goods. There shall be no guarantee for the accuracy of advertisements made by our suppliers.

10.7 Any valid claim for defective goods shall be limited to fulfillment of our contract obligations. At our discretion, we may either undertake remedial measures to cure any defects or deliver replacement goods. Any remedial measures shall only be performed at the site of our Contract Partner.

10.8 In case the remedial measures fail twice, our Contract Partner shall be entitled to either terminate the contract or request a reduction of the purchase price.

**10.9 (a) IN NO EVENT SHALL WE BE LIABLE TO THE CONTRACT PARTNER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**(b) IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED ONE TIMES THE TOTAL OF THE AMOUNTS PAID TO US FOR THE GOODS SOLD HEREUNDER OR \$10,000.00, WHICHEVER IS LESS.**

(c) The limitation of liability set forth in Section 10.9(b) above shall not apply to (i) liability resulting from our gross negligence or willful misconduct and (ii) death or bodily injury resulting from our acts or omissions.

10.10 We shall only be responsible for reasonably foreseeable damages that are proximately caused by our conduct.

10.11 Any claims for damages expire one year after delivery.

10.12 Mandatory product liability laws remain unaffected.

10.13 Subject to the express provisions in these Terms and Conditions, **ALL WARRANTIES, CONDITIONS OR OTHER TERMS, WHETHER EXPRESS OR IMPLIED OR ARISING BY STATUTE OR COMMON LAW, ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. IN PARTICULAR, WE DO NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE PROVISIONS OF THESE TERMS AND CONDITIONS FOR SALE. UNDER NO CIRCUMSTANCES, SHALL WE BE LIABLE TO OUR CONTRACT PARTNER FOR ANY CONSEQUENTIAL, INDIRECT OR SPECIAL LOSSES OR DAMAGES INCLUDING LOST PROFITS AND PUNITIVE DAMAGES, COSTS, EXPENSES OR OTHER CLAIMS FOR CONSEQUENTIAL COMPENSATION, REGARDLESS OF WHETHER THE ALLEGED LOSS OR DAMAGE WAS CAUSED BY OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS, WHICH ARISE OUT OF OR IN CONNECTION WITH THE SUPPLY OF THE GOODS OR THEIR USE OR RESALE BY OUR CONTRACT PARTNER. WE SHALL NOT BE LIABLE TO THE CONTRACT PARTNER OR BE DEEMED TO BE IN BREACH OF CONTRACT BY REASON OF ANY DELAY IN PERFORMING, OR ANY FAILURE TO PERFORM, ANY OF OUR OBLIGATIONS IN RELATION TO THE GOODS, IF THE DELAY OR FAILURE WAS DUE TO ANY CAUSE BEYOND OUR REASONABLE CONTROL. WITHOUT LIMITATION, THE FOLLOWING SHALL BE REGARDED AS CAUSES BEYOND OUR REASONABLE CONTROL:**

- FORCE MAJEURE, EXPLOSION, FLOOD, TEMPEST, FIRE OR ACCIDENT;
- WAR OR THREAT OF WAR, SABOTAGE, INSURRECTION, CIVIL DISTURBANCE OR REQUISITION;
- ACTS, RESTRICTIONS, REGULATIONS, LAWS, PROHIBITIONS OR MEASURES OF ANY KIND ON THE PART OF ANY GOVERNMENTAL OR LOCAL AUTHORITY;
- IMPORT OR EXPORT REGULATIONS OR EMBARGOES;
- STRIKES, LOCK-OUTS OR OTHER INDUSTRIAL ACTIONS OR TRADE DISPUTES (WHETHER INVOLVING OUR EMPLOYEES OR THE EMPLOYEES OF A THIRD PARTY);
- DIFFICULTIES IN OBTAINING RAW MATERIALS, FUEL, PARTS OR MACHINERY;
- POWER FAILURE OR BREAKDOWN IN MACHINERY.

10.14 Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the goods. Third-Party Products are not covered by the warranty in this Section 10. For the avoidance of doubt, **WE MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE**

10.15 THE REMEDIES SET FORTH IN THIS SECTION 10 SHALL BE THE CONTRACT PARTNER'S SOLE AND EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10.9.

#### 11. Manufacturer's Liability.

Our Contract Partners shall hold us harmless from, defend, and indemnify us for, all third-party claims, damages or losses (including costs of suit and attorneys' fees) based on tortious acts or omissions or product liability laws for defective goods manufactured or delivered by our Contract Partner if such claims could also be asserted against our Contract Partner, disregarding any preclusion due to applicable statute of limitation. Our Contract Partner shall also, upon request, defend us using

counsel reasonably satisfactory to us. The aforementioned shall not to the extent any matter arises from our willful misconduct or gross negligence with regard to the defect in question.

#### 12. Proprietary Rights of Third Parties.

If manufacture and delivery are made according to drawings or other information provided by our Contract Partner which infringe on the rights of a third party, our Contract Partner shall indemnify, defend, and hold us harmless from all claims by such third party.

#### 13. Retention of Ownership.

13.1 As collateral security for the payment of the purchase price of the goods, our Contract Partner hereby grants us a lien on and security interest in and to all of the right, title, and interest of the Contract Partner in, to, and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Ohio Uniform Commercial Code. Pending final payment, we shall have the right to enter any premises under our Contract Partner's control where any goods are located.

13.2 Our Contract Partner is obligated to fully insure the goods against the risk of fire and theft.

#### 14. Severability; Place of Performance and Competent Court; Applicable Law; Assignment; Relationship of Parties; No Third-Party Beneficiaries.

14.1 The parties are entitled to exercise all remedies available at law or in equity which are cumulative and may be exercised at any time and in any combination allowed by law.

14.2 If any provision herein shall be held to be invalid, illegal or unenforceable, the affected provision shall be replaced by a provision that is legal and, considering the parties' intentions, comes closest to the meaning of the affected provision. The invalidity, illegality or unenforceability of any of the terms of these Terms and Conditions shall not affect any other provision contained herein.

14.3 Subject to any other provision herein, these Terms and Conditions shall be governed by the laws on the sales of goods and services (i.e., the Uniform Commercial Code) of the State of Ohio without reference to its conflict of laws rules. Any and all claims, disputes and/or contentions arising hereunder, out of or in connection with this contract shall be subjected to good faith negotiations between the parties hereto in an attempt to settle all such claims, disputes and/or contentions before any alternative method of dispute resolution is employed.

Any dispute related to this contract or these Terms and Conditions shall be decided by binding arbitration using the Commercial Arbitration Rules of the American Arbitration Association. Arbitration proceedings shall be conducted in Cleveland, Ohio. The arbitration panel shall not award any special, incidental, consequential or punitive damages or damages for lost profits. Each party shall bear their own costs of suit and attorneys' fees it incurs. The final decision of the arbitration panel may be filed in any court having jurisdiction.

14.4 Contract Partner shall not assign any of its rights or delegate any of its obligations under this contract or these Terms and Conditions without our prior written consent. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Contract Partner of any of its obligations under these Terms and Conditions.

14.5 The relationship between the parties is that of independent contractors. Nothing contained in this contract or these Terms and Conditions shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

14.6 This contract and these Terms and Conditions are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms and Conditions.

15. **Confidential Information.** All non-public, confidential or proprietary information of ours, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by us to the Contract Partner, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with these Terms and Conditions is confidential, solely for the use of performing this contract and these Terms and Conditions and may not be disclosed or copied unless authorized in advance by us in writing. Upon our request, the Contract Partner shall promptly return all documents and other materials received from us. We shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to the Contract Partner at the time of disclosure; or (c) rightfully obtained by the Contract Partner on a non-confidential basis from a third party.

16. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached these Terms and Conditions, for any failure or delay in fulfilling or performing any term of these Terms and Conditions (except for any obligations of the Contract Partner to make payments to us hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, pandemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within five business days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of sixty days following written notice given by it under this Section 16, either party may thereafter terminate the contract upon thirty days' written notice.