

MAGIC STEEL

EST. 1974

TERMS & CONDITIONS

These Terms and Conditions shall govern any sales transactions between Magic Steel Sales LLC, (Magic Steel) and any buyer of goods from Magic Steel (a “Purchaser”). These Terms and Conditions shall be deemed an essential part of any Quotation issued by Magic Steel and every Acknowledgment issued by Magic Steel. These Terms and Conditions supersede for all purposes all prior correspondence, Purchaser’s order to Magic Steel, any past or future order by Purchaser, and any other agreement by any agent of either party respecting the goods sold by Magic Steel to Purchaser. Purchaser accepts these terms and conditions by the placement of an order or by accepting delivery of the goods.

Purchaser’s acceptance of these terms and conditions will form the contract between the Parties (the “Contract”). No addition to, or other modification of, these terms and conditions (including any attempted modification by Purchaser through Purchaser’s order or other document) shall be binding on Magic Steel unless it is in writing and executed by a duly authorized officer of Magic Steel. Magic Steel hereby expressly objects to, rejects and will not be bound by any terms and conditions in Purchaser’s order or any other document, which are in conflict with or in addition to the terms and conditions herein. Shipment by Magic Steel of the goods whether after the receipt of Purchaser’s order or otherwise, shall not constitute an acceptance of the terms and conditions of Purchaser.

1. Price Quotations. All prices indicated on any Quotation by Magic Steel are subject to change without advance notice prior to Magic Steel’s receipt of a firm order from Purchaser and written Acknowledgment by Magic Steel. Unless otherwise stated in the Quotation, all purchase prices are exclusive of any applicable excise, sales, use or other taxes or import, export or customs fees or duties, or surcharges which may be imposed on the sale or delivery of the goods. All such taxes, and charges, when applicable will be charged to, and are payable by, Purchaser. Magic Steel may charge interest on late payments at a monthly rate of 1.5% or the highest rate allowed by law (whichever is less).

2. Purchase Orders. Purchaser’s order must specify the quantities requested, otherwise, quantities specified by Magic Steel in its Quotation, or if none, in its Acknowledgment form, shall govern. All sales on an open Purchase order must be completed within 90 days from the date of the Purchase order unless otherwise specified on Magic Steel’s Acknowledgment. All open Purchase orders must provide Magic Steel with forecasts of estimated quantities of the goods and an estimated date of delivery. Magic Steel shall have no responsibility for supply of goods in amounts which materially vary from Purchaser’s forecast. Once received by Magic Steel, a Purchaser’s order and/or release may not be modified, cancelled or otherwise altered without Magic Steel’s written consent. Any such modification, cancellation or alteration may be subject to cancellation charges or otherwise to conditions as negotiated at such time, which shall protect Magic Steel against any damages or losses resulting therefrom.

3. Acknowledgment. Magic Steel's obligation to sell goods to Purchaser shall become binding only upon written Acknowledgment of Purchaser's order, subject to these Terms and Conditions and such additional conditions as may be contained in Magic Steel's Acknowledgment, Magic Steel's Acknowledgment may be withheld or modified by reason of product availability, mill lead times, available transportation or other constraints. Purchaser's failure to object in writing within twenty four hours to the terms of Magic Steel's Acknowledgment renders those terms final. In the event Purchaser does object, Magic Steel reserves the right to reject Purchaser's order completely.

4. Title and Risk of Loss. Unless otherwise indicated on the Acknowledgment, all deliveries are F.O.B. Magic Steel's shipping facility. Neither freight charges nor tax is subject to any discount. Risk of loss shall pass upon delivery to Purchaser's carrier and any loss or damage in transit shall be borne by Purchaser, and claims shall be made directly with carrier. Notwithstanding the foregoing however, until the purchase price and all other applicable costs and expenses are paid in full, Magic Steel reserves a purchase money security interest in the goods and the proceeds therefrom, and Magic Steel thereby possesses the rights of a secured party under the Uniform Commercial Code. Upon Magic Steel's request, Purchaser agrees to execute all necessary financing statements and other documents evidencing this security interest with the appropriate state and local authorities. Magic Steel is entitled to reasonable access to Purchaser's place of business as necessary to exercise its remedies as a secured party.

5. Delivery. All delivery times are calculated from the date of Magic Steel's receipt of a firm order or release from Purchaser. Purchaser is expected to take delivery of the goods at Magic Steel's shipping facility within 5 business days after the date Purchaser is notified of the availability of goods. Failure to take delivery on time will subject Purchaser to (a) reasonable storage fees, or (b) Magic Steel's right to sell the goods to other customers, unless there is a mutually agreed upon written extension. Notwithstanding the foregoing, Magic Steel reserves the right to ship without further notification at any time after the 5 day period. If the purchase is made pursuant to an open Purchase order, Purchaser must specify the quantity released.

6. Delivery Schedules. Magic Steel shall endeavor to meet the delivery schedule requested by Purchaser provided however, that Purchaser shall give Magic Steel sufficient notice. Magic Steel will not be obligated to ship the goods if sufficient notice of quantities and instructions are not given; if the quantity of the goods is disproportionate to the scheduled quantities; if the quantity exceeds estimates provided by Purchaser to which Magic Steel has agreed in writing; or in Magic Steel's sole judgment, the quantity is disproportionate to the total quantity stated in the Contract or is more than ten percent / 5,000 pounds (whichever is greater) of the estimated or forecasted quantities provided in Purchaser's order. The reasonableness of notice shall be determined by Magic Steel based on availability of the goods and delivery capability and Magic Steel's other commitments. All shipping dates (including firm shipping dates) may change as a result of circumstances over which Magic Steel has no control, for example, extended mill lead times, or transportation constraints.

7. Transportation Cost. Unless specifically referenced in the Quotation, this contract is based on present freight rates and is subject to all present and future surcharges. If applicable, freight rates are also subject to future tariffs, fuel surcharge, import and export duties, border taxes and similar imposts, and taxes which shall be solely at the cost and risk of Purchaser. If any such rates or charges are included in the Quotation price (whether shown as a separate charge or not) and shall be increased pending delivery, Purchaser shall pay such increased rates or charges in addition to the Quotation price of the contract.

8. Inspection/Returns. All claims for rejected goods will be handled in accordance with Magic Steel's Customer Claim Policy, a copy of which is available on Magic Steel's website ("Customer Claim Policy").

9. Credit. Purchaser's order is subject to the limit of Purchaser's credit determinable at any time and from time to time by Magic Steel, affecting the whole or any unfulfilled portion of this contract. Magic Steel, in its sole opinion, may at any time, modify or cancel the credit of Purchaser both as to time and amount, and may demand payment in cash before shipment or delivery of the whole or any part of the goods without affecting the obligation of Purchaser to complete the contract. Failure of the Purchaser to make any such payment after demand, may, at option of Magic Steel, be deemed a default of the entire contract.

10. Default and Purchaser's Impairment. Magic Steel may delay shipment, reduce quantities shipped, or terminate the Contract if (i) Purchaser fails to make any payment promptly when due or otherwise fails to comply with the Contract or Magic Steel's standard credit terms, (ii) Purchaser ceases to conduct its operations in a normal course of business, (iii) Purchaser is or becomes unable to pay its obligations as they mature, (iv) any proceeding under the Bankruptcy Code or any other insolvency laws is brought by or against Purchaser, (v) a receiver for Purchaser is appointed or an application for a receiver is filed, (vi) Purchaser makes an assignment for the benefit of creditors, or (vii) Purchaser fails to provide adequate assurance of future performance within thirty (30) days after demand by Magic Steel (which will be a repudiation by Purchaser of the unperformed portion of the Contract). In the event of such termination or reduction in the quantities shipped, Purchaser shall be liable to Magic Steel for any and all damages sustained by Magic Steel as a result of the defaults which gave rise to the termination or reduction in the quantities of shipment.

11. Waiver of Setoff. Purchaser shall have no right to setoff money owed by Magic Steel to Purchaser against sums owed by Purchaser to Magic Steel without first obtaining Magic Steel's written consent to setoff.

12. Warranty/Claims. Subject to standard manufacturing variations, Magic Steel warrants that the goods will conform in all material respects to the description and specification of the goods set forth on the face of the Quotation (the “Warranty”). Purchaser acknowledges and agrees that as a steel service business, Magic Steel does not have full control of all steel manufacturing processes and that all goods shall be subject to tolerances and variations consistent with usages of the trade and published industry standards concerning dimension, weight, straightness, section, composition and mechanical properties, normal variations in surface, internal conditions and quality, deviations from tolerances and variations consistent with practical testing and inspection methods, and regular mill practices concerning over and under shipments. It is Purchaser’s responsibility to determine whether the Purchase order specification is adequate for its intended use. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THESE WARRANTIES AND MAGIC STEEL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

13. Warranty Remedies. No claim for damages on account of the breach of the Warranty shall be allowed unless Magic Steel is first given notice after delivery of the goods and allowed an opportunity to inspect the goods. In the event any goods fail to comply with the Warranty, Purchaser may return the defective goods to Magic Steel, freight prepaid at Magic Steel’s discretion. Provided however, goods for which damages are claimed, for non-conformance or otherwise, shall not be returned, repaired or replaced without Magic Steel’s written consent. Purchaser’s sole and exclusive remedy for the non-conformance of any good with the Warranty shall be, at Magic Steel’s election, (i) Magic Steel repairs or corrects the non-conformance or defect consistent with Magic Steel’s Quality Assurance Claims Policy, (ii) Magic Steel furnishes Purchaser, without charge and FOB the Purchaser’s facility, with a replacement for the non-conforming or defective good, or (iii) Magic Steel reimburses Purchaser for the purchase price of the non-conforming good. Magic Steel shall not be liable for defects caused by abuse or misuse of its goods. Failure to submit a claim for a breach of Warranty within 90 days of the delivery of the goods shall be conclusive proof that the goods are as warranted and shall release Magic Steel from any further liability with respect thereto. All claims for nonconformance or defect will be handled in accordance with the Quality Policy. In the event of a conflict between the terms of this Section 13 and the Quality Policy, the terms of the Quality Policy shall govern.

14. Limitation of Liability. Purchaser acknowledges that the price of the goods is predicated on the enforceability of the following limitation of liability, that the price would be substantially higher if Magic Steel could not limit its liability as herein provided and that Purchaser accepts this limitation of liability in exchange for a lower price: EXCEPT FOR MAGIC STEEL’S DIRECT COSTS IN REPAIRING, CORRECTING OR REPLACING ANY NON-CONFORMING GOODS, MAGIC STEEL SHALL NOT BE LIABLE FOR ANY OTHER EXPENSE CONNECTED WITH THE REPAIR, CORRECTION OR REPLACEMENT OF ANY GOODS. WITH RESPECT TO ANY CLAIM UNDER THE CONTRACT, IN NO EVENT SHALL MAGIC STEEL BE LIABLE TO PURCHASER FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE ACTUAL PRICE PAID TO MAGIC STEEL. MAGIC STEEL SHALL HAVE NO LIABILITY TO PURCHASER FOR LOST PROFITS, LOSS OF PRODUCT, LOSS OF USE OF EQUIPMENT, INTERRUPTION OF BUSINESS,

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COST OF CAPITAL, COST OF DOWNTIME, LOST OPPORTUNITIES, FAILURE TO DETECT ANY FLAW IN THE SUBJECT MATTER OF A TEST, CLAIMS OF PURCHASER'S CUSTOMERS OR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS, LOSS OF PRODUCT, INTERRUPTION OF BUSINESS, LOSS OF OPPORTUNITIES, OR ANY OTHER DAMAGES. This limitation of liability may not be altered except by an agreement in writing signed by a duly authorized officer of Magic Steel.

If Purchaser is supplying Magic Steel's goods to a third party, Purchaser shall require the third party to agree to be bound by this Section. If Purchaser does not obtain this agreement for Magic Steel's benefit, Purchaser shall indemnify, defend and hold Magic Steel harmless from and against any and all claims made by the third party in excess of the limitations and exclusions of this article and shall pay all costs and expenses associated therewith, including, without limitation, attorney fees.

15. Applicable Law. The Contract shall be deemed to have been entered into and shall be construed according to the Uniform Commercial Code as adopted in the state of origin of shipment by Magic Steel. Purchaser agrees and submits to the exclusive jurisdiction of the federal and state courts of Michigan for resolution of any disputes arising hereunder. Purchaser waives any objection based upon forum non conveniens or any objections to venue of any such action.

16. Force Majeure or Other Excuse. The supply, shipment and delivery of the goods are subject to, and Magic Steel shall not be liable for any delay in or impairment of performance resulting in whole or in part from, any war (whether or not declared), act of terrorism, strike, difference with workmen, accident, fire, flood, acts of God, delay in transportation, shortage of materials, equipment breakdowns, laws, regulations, orders or acts of any governmental agency or body or any cause beyond the reasonable control of Magic Steel, or if performance by Magic Steel becomes impracticable due to the occurrence of a contingency, the non-occurrence of which was a basic assumption on which the sale was made, basic assumptions of every Magic Steel contract include, but are not limited to, availability of raw material, accurate forecasting and timely releases of material. In any such event, Magic Steel shall have such additional time to perform as may be reasonably necessary and shall have the right to apportion its production among its Purchasers in such manner as it deems equitable.

17. Statutes of Limitation. Any action against Magic Steel based on Magic Steel's alleged breach of its obligations hereunder must be commenced within one (1) year after the cause of action has accrued.

18. Assignment. Purchaser shall not assign any of its rights, or delegate any of its duties, under these terms and conditions without the prior written consent of Magic Steel, and any attempt to do so shall be void.



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19. Entire Agreement. Purchaser's order, subject to these Terms and Conditions and the terms of Magic Steel's Acknowledgment, shall constitute the entire agreement between Magic Steel and Purchaser for sale of the goods or services specified on the Quotation, superseding all other agreements between Magic Steel and Purchaser respecting the transaction contemplated herein, whether written or oral, including, but not limited to, any documents, correspondence, brochures, advertisements or other memoranda respecting the goods.