

SUPERIOR ALUMINUM PRODUCTS INC., TERMS OF SALE

In the event there are any objections, notify us immediately. Only the following terms apply and shall be binding on the Seller regardless of any terms contained in your inquiry or order. If the conditions stated herein are in any way unacceptable to you, please notify us at once, otherwise the following terms will become the only terms applicable to this transaction regardless of any conflicting terms or conditions contained in your inquiry and/or order.

1. Contract. No order or quotation is binding on Seller and no contract is formed until Seller's formal acknowledgment of the order on Seller's own form is sent to Buyer. Any special terms or conditions noted on the face of Seller's quotation on which this order is based is incorporated herein by reference and made a part hereof as though specifically set forth herein.
2. Delivery. Title and risk of loss shall pass to Buyer on delivery of goods hereunder by Seller to carrier regardless of who bears the cost of freight. Seller shall not be liable for any delays in or failures of delivery due to acts of God or public authority, labor disturbances, accidents, fires, floods, extreme weather conditions, failure of and delays by carriers, shortages of material, delays of a supplier due to causes beyond its control, any other cause beyond the control of the Seller. Seller shall notify Buyer of any such delay as soon as it becomes apparent. In no event shall Seller be liable for consequential or special damage arising out of a delay in or failure of delivery.
3. Limited Warranties. If Buyer has provided the specifications for the items sold hereunder, or if Buyer has requested special materials, or if Buyer has requested field modifications, then Seller warrants that the items have been manufactured in accordance with the specifications, subject to tolerances and variances consistent with usage of trade and regular shop practices. All goods sold hereunder are warranted to be free from defects in material and workmanship and/or to conform to applicable specifications, drawings, blueprints and/or samples, subject to tolerances and variances consistent with usage of trade and regular shop practices. Seller's sole obligation under these warranties shall be to issue credit, repair, or replace any item or part thereof which is proved to be other than as warranted. Seller shall have the sole right to determine whether such parts shall be repaired or replaced or whether credit shall be issued. No allowance shall be made for any labor charges of Buyer for replacement of parts, adjustments or repairs, or any other work unless Seller gives advance, written authorization for such charges. In no event shall Seller be liable for collateral, consequential or contingent damages. If goods are claimed to be other than as warranted, Seller, upon notice promptly given, will either examine the goods at their site or issue shipping instructions for return to Seller (transportation costs prepaid by Buyer), and if any goods are proved to be other than as warranted, transportation costs (cheapest way) to and from Seller's plant will be borne by Seller and reimbursement or credit will be made for amounts so expended by Buyer. Every such claim for breach of the warranties herein contained shall be deemed to be waived by the Buyer unless made in writing within ninety (90) days from the date of shipment of the goods to which such claim relates. These warranties shall not extend to any goods or parts thereof which have been subjected to misuse or neglect, damaged by accident, rendered defective by reason of improper installation or used for other than the express purpose for which it was designed and built, or by the performance of repairs or alterations outside of Seller's plant, except when performed under Seller's specific authority. These warranties shall not apply to any goods or parts thereof furnished by Buyer or acquired from others at Buyer's request and/or to Buyer's specifications. In no event shall the company be liable for collateral, incidental, contingent, or consequential damages.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AND THERE IS NO EXPRESS OR IMPLIED WARRANTY THAT THE ITEMS ARE MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE. SELLER'S WARRANTY AND THE REMEDIES AS SPECIFIED HEREIN ARE THE SOLE OBLIGATION OF SELLER AND THE SOLE REMEDIES OF BUYER, WHETHER UNDER THEORIES OF BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY.

4. Changes in Specification or Design. Should Buyer request that changes be made in the specifications or design relating to any goods, delivery dates and schedules shall be revised accordingly, if necessary, and an equitable adjustment, upward or downward, be made in price so far as warranted.
5. Termination, Reduction in Quantity, Rescheduling Delivery. In the event Buyer desires to terminate any part of all of the work to be done hereunder, reduce the quantity of goods ordered, or reschedule the delivery of any goods, fair compensation shall be made to the Seller. Seller shall recover without duplication the contract price for articles which have been completed, the actual costs incurred by Seller which are properly allocable or apportionable under recognized commercial accounting practices to terminated work (including the cost of discharging liabilities) plus a reasonable profit, the reasonable costs and expenses incurred by Seller in making settlement hereunder and in protecting property in which Buyer has no interest, and/or the increased costs incurred by Seller by reason of a revision in the delivery schedule.
6. Taxes. Sales and use taxes, payable by Buyer, which are presently or may hereafter be imposed by any taxing authority, are not included in the sale price; any direct or excise tax, payable by Seller, which may hereafter be imposed by any taxing authority, upon the manufacture, sale or delivery of products covered by this order, or any increase in rate of any such tax now in force, shall be added to the sale price; if not collected at time of payment of sale price, Buyer will hold Seller harmless.
7. Security Interest. Buyer grants to Seller a security interest in the items sold hereunder to secure the obligations of Buyer, including the obligation to pay the price for the items. Buyer agrees to take such action as may be necessary or which may be reasonably be requested by Seller from time to time to perfect the security interest, and Buyer further appoints Seller as its attorney-in-fact for the purpose of taking such action to perfect the security interest.
8. Applicable Law. The law of the State of Ohio shall govern this contract. The invalidity of any one clause or portion of this contract shall have no effect on the validity of any other section or portion thereof. Failure at any time of Seller to enforce any provision of this contract, or to exercise any option hereunder, or to require performance by Buyer of any provision hereof, shall in no way be construed as a waiver nor in any way affect the right of Seller to thereafter enforce each and every provision. A waiver by Seller of any term or condition hereof shall not be deemed a waiver of any other term or condition hereof nor as a future waiver thereof. The Courts of the State of Ohio shall have exclusive jurisdiction of disputes arising in connection with this Agreement or the goods sold hereunder.

9. Prevailing Terms. Seller's standard terms of sale shall supplement and complement Buyer's terms and conditions of sale, and both shall form the contract. However, if there is a conflict on content, interpretation, construction, or any other points, between Buyer's and Seller's terms and conditions of sale, Seller hereby expressly rejects such conflicting terms and/or conditions of Buyer, and Seller's terms and conditions shall prevail and supersede Buyer's on those particular points. In any event, delivery of the goods hereunder by Seller and acceptance thereof by Buyer shall constitute Buyer's acceptance of Seller's terms and conditions as set forth herein.

10. Indemnification Provision. The Buyer agrees to defend, indemnify and hold harmless, Seller, its officers, directors, agents, and employees from and against any and all claims, demands, actions, causes of action, damages and expenses (including attorney fees and expenses incurred by Seller in defending against the same) which are hereafter made or brought against Seller, its officers, directors, agents and/or employees by any person, firm, corporation, or association for the recovery of damages for injury, illness and/or death of any person or property which is caused or alleged to have been caused by the possession, handling, or use of any article (s). Seller, its officers, directors, agents, and/or employees may participate with Buyer in the defense of any such item.