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Novamet Specialty Products Corp

STANDARD TERMS AND CONDITIONS OF SALE

1. Sale and Purchase. Subject to the other terms herein, Novamet Specialty Products ("Seller"), shall sell to Buyer, and Buyer shall purchase and accept from Seller, the quantities of Product scheduled for delivery from time to time in accordance with the terms herein to the extent accepted and confirmed, in writing, by Seller. Buyer shall give to Seller reasonable notice of the requested schedule and quantity of shipments. Buyer's obligations hereunder may not be cancelled or deferred by Buyer (of delivery dates or otherwise) except with Seller's written consent. By placing an order with Seller, Buyer affirmatively accepts and assents to these Terms and Conditions. Seller may reject in whole or in part any purchase order, whether accepted or not, from Buyer, without liability to Buyer, if: (1) based on Seller's sole judgment, Buyer may not be able to timely pay or otherwise comply with the terms of sale; (2) a letter of credit required by Seller is not received; or (3) prepayment required by Seller is not received. Seller reserves the right to reject POs that are not confirmed for any reason. NO MODIFICATION OR WAIVER OF THIS AGREEMENT SHALL BIND SELLER UNLESS IN WRITING AND SIGNED AND ACCEPTED BY AN OFFICER OF SELLER. SELLER WILL NOT ACCEPT AND OBJECTS TO ANY TERMS AND CONDITIONS OR OTHER WRITING ON BUYER'S PURCHASE ORDER WHICH ARE DIFFERENT FROM OR ADDITIONAL TO THE TERMS AND CONDITIONS CONTAINED HEREIN. NO TERM OR CONDITION ON BUYER'S PURCHASE ORDER, EXPRESSLY INCLUDING ANY EFFORT TO NEGATE THE TERMS AND CONDITIONS SET FORTH HEREIN, SHALL BE EFFECTIVE OR BINDING AGAINST SELLER. THESE TERMS AND CONDITIONS SHALL CONSTITUTE WRITTEN NOTICE SIGNED BY SELLER OF OBJECTION TO AND REJECTION OF ANY TERM OR CONDITION IN BUYER'S PURCHASE ORDER, CONTRACT, OR RELEASE INCONSISTENT WITH THE TERMS AND CONDITIONS CONTAINED HEREIN.

2. Price and Shipment. Acceptance of any quotation is limited to the terms and conditions of the quotation and the provisions herein. Except where expressly agreed otherwise in writing, all prices exclude miscellaneous freight and energy surcharges, goods and services, sales, use, occupation, license, customs, excise and other taxes in respect of the manufacture, sale, storage, consumption, transportation or delivery of Product sold hereunder, all of which shall be paid by Buyer as additional charges. Seller's invoice weights and fares govern. Seller may deliver and invoice, and Buyer will accept and pay for weights within 2% of the contract quantity at the contract unit price. Product will be Ex Works unless otherwise set out by Seller. If shipped via "prepaid and add", method of shipment and carrier may be selected by Seller unless Buyer has specified in writing a method and carrier satisfactory to Seller. Any charges for packing, storage, and transportation (including insurance) to point of delivery are deemed to be separate charges for the account of Buyer unless otherwise stated in writing. Requested shipment dates are subject to acceptance by Seller. At Seller's option, Products may be shipped in advance of a requested shipment date and/or in installments or partial lots. Buyer expressly acknowledges that Seller will not be liable and shall be excused for a Force Majeure (as defined herein). Buyer agrees to make an inspection, examination, and test of each shipment of merchandise upon delivery. Buyer's failure to give Seller written notice of any objections within ten (10) days after date of delivery shall constitute a waiver by Buyer of all objections with respect to such shipment and shall constitute an acceptance by Buyer if not previously accepted. Buyer shall make all claims for damage to or loss of Products while in transit directly to the carrier; Seller shall have no liability whatsoever for such damage or loss, and Buyer shall hold Seller harmless from and against any claims or liability resulting from any such damage or loss, detention or other fees and costs incurred by Seller as a result of Buyer's carrier's negligence or other conduct that results in loss to Seller. Seller will not be liable to Buyer or any third party for any damage whatsoever on account of late delivery for any reason. Buyer shall hold Seller harmless from and against any claims or liability resulting from such late delivery.

3. Terms of Payment. Payment for Products and Services is due 30 days from the date of shipment or as otherwise specified in writing. Seller may require prepayment. Seller may charge Buyer interest on all amounts unpaid after thirty (30) days at the annual rate of 1 percent per month (18% per annum) from the date of shipment of the Products or the highest interest rate permitted by law, whichever is lower. If any invoice is not paid when due, Seller may, at any time, suspend delivery or other performance with respect to any Products, without liability or penalty, and take all other action permitted under applicable law. Buyer agrees to be responsible for all costs of collection, including attorney fees, collection fees and court costs incurred to collect amounts due.

4. Title and Risk of Loss. Title to and risk of loss for Products sold hereunder will pass to the Buyer upon delivery by Seller to the carrier transporting the Products. Buyer agrees to hold Seller harmless for all claims arising out of the transportation of the Products subsequent to Seller's tender of product to the carrier.

5. Warranty. Seller warrants only that the product delivered to Buyer shall conform to the specifications provided at the time of delivery to Buyer, and that Seller shall have good title free and clear of any encumbrances and liens. EXCEPT AS SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PRODUCTS, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THE WARRANTY OF NON-INFRINGEMENT. BUYER ACCEPTS FULL RESPONSIBILITY FOR THE

SELECTION AND USE OF THE PRODUCTS TO ACHIEVE RESULTS. **Buyer's sole and exclusive remedy and Seller's only obligation for any claimed breach of warranty, negligence or product nonconformity shall be replacement of nonconforming Products.** In order for Buyer to receive warranty service, Buyer must give Seller written notice of the nonconformity within 10 days of receipt and Seller must determine that the nonconformity did not arise due to accident, misuse, abuse, neglect, improper handling, incompatibility of Buyer, or other conditions beyond Seller's commercial control or fault. In addition, Buyer must receive a "Returned Goods Authorization" executed by Seller's Sales Representative or Officer to prior to returning the nonconforming Products and return the Products freight prepaid F.O.B. Seller's plant or warehouse. If this remedy of replacement is adjudged to have failed of its essential purpose, Seller's total liability will be to replace the product or refund the portion of the purchase price paid to Seller by Buyer for the nonconforming Products at Seller's option.

6. Security Interest and Reclaiming Material. Seller reserves a purchase money security interest in the Products, and all proceeds from the sale thereof, until full payment is received. Buyer hereby agrees to sign upon request any documents necessary to perfect Seller's security interest in said Products. Upon default in payment, Seller shall have all rights and remedies of a secured party, including the right to enter Buyer's premises and take possession of and reclaim the Products using self help. Buyer agrees to protect and secure products purchased from Seller and to make its premises available to Seller for such purpose.

7. Limitation of Liability and Indemnification. Buyer assumes all risk and liability for loss, damage, or injury to persons or to Products or to property of Buyer or others arising out of or relating to the handling, storage, presence or use of the Product shipped hereunder, whether in manufacturing processes or otherwise, or from the failure to make appropriate warnings. Buyer covenants and agrees to indemnify and hold Seller harmless from and against any and all liabilities, losses, damages, costs or expenses, including attorney fees and court costs, which Seller hereinafter may incur, suffer or be required to pay by reason of death, personal injury or property damage, claims of third persons or of Buyer, its agents and employees, whether groundless or not, arising from an accident or other cause relating to, arising out of, or occurring in connections with the sale, handling, transportation, storage or use of Product sold to Buyer hereunder. The total liability of Seller to Buyer from any cause whatsoever, whether arising under contract, warranty, tort (including negligence), strict liability, products liability or any other theory of liability, will be limited to the lesser of Buyer's actual damages or the purchase price paid to Seller for the Products that are the subject of Buyer's claim unless caused by an intentional act of Seller. Seller shall not under any circumstances, be liable for any indirect, special, incidental or consequential damages, including by way of illustration and not of limitation, loss of use, and loss of work in progress, downtime or loss of profits. All claims hereunder against Seller must be brought within one year after the cause of action arises and Buyer expressly agrees to this one year period and waives any other statute of limitations which might apply by operation of law or otherwise.

8. Force Majeure. Seller shall not be considered in default in the performance of its obligations hereunder or be liable in damages or otherwise for any failure or delay in performance which is due to strike, lockout, concerted act of workers or other industrial disturbance, fire, explosion, flood, or other natural catastrophe, civil disturbance, riot or armed conflict whether declared or undeclared, curtailment, shortage, rationing or allocation of normal sources of supply of labor, materials, transportation, energy or utilities, mechanical breakdown, equipment failure, accident, weather or other Act of God, delay of subcontractors or vendors, sufferance of or voluntary compliance with acts of government and government regulations (whether or not valid), embargo, or due to any other cause whether similar or dissimilar to any of the causes or categories of causes described above and which is beyond the Seller's reasonable control. Promptly upon learning of such event and ascertaining that it has or will affect its performance hereunder, Seller shall give notice to the other party, stating the nature of the event, its anticipated duration and any action being taken to avoid or minimize its effect.

9. Impairment of Credit. Unless otherwise required by law, if a petition is brought by or against Buyer under any present or future bankruptcy or insolvency laws seeking any reorganization, arrangement, readjustment, liquidation, dissolution or similar relief with respect to Buyer, or if Buyer shall make any assignment for the benefit of creditors, or if a receiver is appointed for Buyer, or if Buyer shall fail to make payments in accordance with the terms of this Agreement, or if, in Seller's opinion, Buyer's credit is or has been impaired, Seller may, at its option, terminate any Sales Contracts it has with Buyer by written notice to Buyer or impose such payment terms, including cash on delivery or letters of credit, as it deems adequate to protect its interests. The election of any option under Section 8 shall not preclude Seller's exercise of any other rights, remedies, or options.

10. Miscellaneous. Buyer is charged with knowledge of all rules and regulations relating to the storage, sale, shipment and handling of the products at issue, including, inter alia, rules and requirements of the U.S. Department of Commerce's Export Administration Regulations. No modification, amendment, revision, discharge, abandonment, or waiver of these and other terms and conditions of sale shall be binding upon the Seller unless set forth in writing and signed by an Officer of Seller. The Terms and Conditions contained herein, together with all documents incorporated by reference, including the quotation and purchase order, shall constitute the entire agreement between the parties. The failure of either party at any time to require performance by the other party of any provision of these Terms and Conditions shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision herein constitute a waiver of any succeeding breach of the same or any other provision. These Terms and Conditions may not be assigned by Buyer without the prior written consent of Seller. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of Tennessee. If any term or provision of this agreement, or the application thereof to any circumstance, shall be invalid or unenforceable, the remainder of this agreement shall not be affected thereby. Buyer hereby consents to the jurisdiction and venue of the Tennessee State or Federal Courts.