CLAD METAL SPECIALTIES, INC. ("Company") acceptance of your company’s order is expressly conditioned upon your company’s acceptance of the following terms and conditions. In the event of any conflict with the terms and conditions contained herein or in the order, the conflict will be resolved in favor of the terms and conditions contained herein. Your company’s order, the conflict will be resolved in favor of the terms and conditions contained herein.

1. Pricing and Payment. The purchase price for a Goods shall be as specified on the face hereof, or in the event of any conflict with the terms and conditions contained herein, the price shall be as specified in the price list of the Company. Purchaser shall be responsible for any and all transportation costs, insurance and all applicable federal, state and local taxes or governmental charges imposed on or with respect to the Goods, except taxes exemnated by applicable tax laws. Purchaser waives all rights, claims or demands that it may have under this order or Other Orders (defined below) against funds payable to Company hereunder or under Other Orders.

2. Delivery. In the event of any conflict with the terms and conditions contained herein, the date of delivery shall be as specified on the face hereof or in the event of any conflict with the terms and conditions contained herein, the date of delivery shall be as specified in the quotation or price list of the Company.

3. Title and Risk of Loss. Title to Goods shall pass to Purchaser upon delivery of such Goods, at Company’s expense, to a carrier or the track of Company or Purchaser, as the case may be. For purposes hereof, "carrier" shall mean the person or entity responsible for transporting the Goods during the transportation of the Goods from the point of manufacture or purchase to the delivery of the Goods to Purchaser as contemplated by the Acknowledgement.

4. Acceptance. Purchaser shall inspect the Goods immediately upon delivery of the Goods to Purchaser and shall have no right to reject the Goods for any reason unless Purchaser gives written notice of such claim to Company within ten (10) days of receipt of the Goods. Written notice shall be given to Company within ten (10) days of the time the defect is discovered. Purchaser shall be responsible for any and all costs of transportation, insurance and all applicable federal, state and local taxes or governmental charges imposed on or with respect to the Goods, except taxes exempted by applicable tax laws. Purchaser waives all rights, claims or demands that it may have under this order or Other Orders (defined below) against funds payable to Company hereunder or under Other Orders.

5. Limitation and Waiver of Warranties and Limitations. (a) Subject to the provisions and qualifications set forth in this paragraph, the Company warrants that the Goods sold pursuant hereto (collectively the “Goods”) will conform to the applicable Specifications and will be free from defects in materials and workmanship. The Warranty period is six (6) months from the date of shipment (the “Warranty Period”). For purposes hereof, the term “Specifications” shall mean the specifications provided to Company by Purchaser and mutually agreed upon in writing.

6. Limitation and Waiver of Warranties and Limitations. (b) Notwithstanding any information provided by Company, Purchaser is responsible for consulting with its own engineers and other appropriate professionals who are familiar with Purchaser’s requirements before making any decision to accept the Goods. Company shall be held harmless in any and all aspects of the Goods and any liability or obligation has been hereby waived. Further, Purchaser shall also be barred from any recovery against Company (including, without limitation, any recovery under the express warranty specified in paragraph 3(a)) on account of any of the following, and any liability of Company on account of any of the following is hereby waived: (i) any Goods which have been subject to accident, negligence, alteration, abuse, tampering, improper storage (including, without limitation, exposure to weather), or the like, (ii) any Goods which are damaged or otherwise used by Purchaser or subjected to any secondary processes after delivery, (iii) Permissible Defects (as defined below), (iv) failure to maintain Goods in good condition and repair, or the like, (v) the failure of the Goods to meet any performance criteria, or (vi) the occurrence of an Event of Default, including without limitation, failure of Purchaser to make payments to Company when due. For purposes hereof, the term “Permissible Defects” means deviations from Specifications or performance criteria in any manner not more than the deviations and defects permitted by Company’s standard manufacturing variances (the “Standard”).

7. Time is of the Essence. (a) It is expressly understood and agreed that there are no warranties which extend beyond the description of the EXPRESS TERMS OF PARAGRAPH (a). The EXPRESS WARRANTY SET FORTH IN PARAGRAPH (a) AND THE OBLIGATIONS AND LIABILITIES OF COMPANY HEREBUNDER ARE EXCLUSIVE AND ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY IS AWARE OF PURCHASER’S INTENDED USE OF THE GOODS AND ANY WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE. COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY STATE.

8. Limitation of Consequential Damages. (a) Except as otherwise expressly stated in paragraph 4(b), COMPANY’S SOLE REMEDY AND EXCLUSIVE LIABILITY AND LIABILITY WITH RESPECT TO ANY BREACH OF WARRANTY EXPRESS OR IMPLIED HEREBUNDER OR UNDER APPLICABLE LAW, OR PURCHASER’S SOLE AND EXCLUSIVE REMEDY AND EXCLUSIVE RIGHTS AND REMEDIES WITH RESPECT TO BREACH OF CONTRACT, WHETHER OR NOT CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, OR LOST PROFITS, EXPENSES OR LOSSES ARISING OUT OF OR RELATING TO ANY BREACH OF WARRANTY, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE; (b) DEFECTIVE GOODS OR ANY NON-CONFORMITIES IN THE TENDER THEREOF; OR (c) DEFECTIVE GOODS OR ANY NON-CONFORMITIES IN THE TENDER THEREOF UNDER APPLICABLE LAW, REGARDLESS OF WHETHER THE LIABILITY RESULTED FROM ANY GENERAL OR PARTICULAR REQUIREMENT OR OBLIGATION OF COMPANY HEREBUNDER OR UNDER APPLICABLE LAW, NEITHER THIS AGREEMENT NOR ANY OTHER TERM OF THIS AGREEMENT IS FOUND UNCONSCIONABLE OR UNENFORCEABLE FOR ANY REASON, OR ANY EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, THE NEITHER THIS AGREEMENT NOR ANY OTHER TERM OF THIS AGREEMENT OR AGREEMENT OF CONSEQUENTIAL DAMAGES SHALL, NEVERTHELESS CONTINUE IN FULL FORCE AND EFFECT.

9. Governing Law and Jurisdiction. In the event of any conflict with the terms and conditions contained herein, the Governing Law shall be New York law.

10. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations, understandings and agreements of the parties whether oral or written.

11. Counterparts. This Agreement may be executed in counterparts and delivered by facsimile or email, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12. Amendments. This Agreement may be amended, modified or supplemented only by written agreement signed by Company and Purchaser.

13. Severability. If any provision of this Agreement shall be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected or impaired by such invalidity or unenforceability.

14. Costs. In the event of any conflict with the terms and conditions contained herein, the costs of enforcing this Agreement shall be borne by the losing party.

15. Waiver of Breach. No waiver of any term of this Agreement shall be deemed to be a waiver of any other or subsequent breach of this Agreement.
6. Force Majeure. (a) Notwithstanding any provision herein to the contrary, Company shall not be liable or responsible for any delay or in failure of delivery of a Goods by reason of force majeure, including, but not limited to, Company’s inability to obtain raw materials or supplies from suppliers or to obtain same on a timely basis, or as a result of interruption of transportation, delays in delivery, governmental regulation, labor disputes, strikes, war, fire, flood, accidents, acts of God, civil disturbance, quota restrictions, unusual or unforeseeable circumstances beyond Company’s control, whether or not such cause be of the same class or kind as those enumerated above, such enumeration being expressly understood to be in addition to other causes or classes of causes beyond Company’s control. In the event of the occurrence of any such causes, Company shall have the right to allocate production and deliveries of Goods among its customers in such manner, as it deems appropriate, in its sole and absolute discretion.

7. Design Protection. Purchaser has no right, title or interest in or to the proprietary information relating to the manufacture of the Goods by reason of the purchase of such Goods or otherwise. Purchaser, as a special inducement to Company, agrees not to directly or indirectly copy or reproduce any proprietary manufacturing process and further agrees that it will not desecretize or reverse engineer the Goods or otherwise obtain or utilize such proprietary information. Any manufacturing information furnished by Company to Purchaser shall be kept confidential by Purchaser and not disclosed to any third party nor shall same be used by Purchaser for any purpose other than to assist Company in supplying the Goods to Purchaser.

8. Interest Charges and Attorneys Fees. Purchaser shall pay interest charges on past due amounts at a rate of the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law. Such rate of interest shall not exceed the maximum rate permitted under applicable law. In the event Company refers this Acknowledgment to an attorney for collection, Purchaser shall pay promptly all reasonable legal fees and disbursements incurred by Company in connection therewith.

9. Default, Cancellation and Related Matters. The occurrence of one or more of the following events shall constitute a Default by Purchaser: (a) Purchaser’s breach or failure to perform any of its obligations hereunder or under any Other Orders, (b) Purchaser’s breach or misrepresentation of any representation or warranty made by Purchaser hereunder or under any Other Order, (c) Purchaser makes a general assignment for the benefit of creditors or admits in writing an inability to pay its debts as they mature or takes advantage of, or files under any federal or state insolvency statute or law, including, without limitation, the United States Bankruptcy Code, or consents to the institution of proceedings or the filing of any petition therefor, or any proceeding is filed or commenced against Purchaser under any insolvency statute or law which is not stayed and dismissed promptly, or any substantial part of the properties of Purchaser are placed in the control of a receiver, custodian, trustee or similar official, or Purchaser consents to the appointment thereof; (d) repossession of Company by any order or default order, injunction, or other order or decree, process of law, or restraint from shipping, selling, exporting or disposing any Goods pursuant to the terms hereof; or (e) determination by Company, in its sole and absolute discretion, that the prospect of payment, or Purchaser’s financial condition, has been impaired or Purchaser may be insolvent within the meaning of §303(b)(1) of the UCC.

Upon the occurrence of an Event of Default, Company shall have the sole and absolute right to cancel all or any Goods ordered pursuant hereto and/or under any Other Order. Company shall exercise such right by giving written notice of its intention to do so to Purchaser. Company shall not be liable to Purchaser on account of exercising such cancellation right.

10. Security. In the event Company, in its sole and absolute discretion, believes that an Event of Default has occurred or is likely to occur, then reasonable grounds for insecurity shall be deemed to exist and Company shall have the right to demand adequate assurance of the performance.

11. Choice of Law and Forums. (a) The parties agree and agree that this sales order shall be construed under the laws of the United States, State of New York. All questions pertaining to the validity, constitution, execution and performance of this sales order shall be construed and governed in accordance with the laws of the State of New York (including, without limitations, the UCC), without giving effect to principles of conflicts of law. Any action commenced in connection with this sales order shall be brought in a federal or state court located in the United States of America, State of New York, County of Suffolk, and to the extent not otherwise subject to the jurisdiction of such courts, Purchaser agrees to waive any objection to such jurisdiction and to subject itself to the jurisdiction of such courts.

12. Governing Law. All of Company’s rights and remedies hereunder shall be cumulative and not exclusive and shall be in addition to all other rights and remedies available under applicable law. Failure by Company to exercise any right, remedy or option hereunder or under applicable law, or delay in exercising same, will not operate as a waiver, and being understood that no waiver by Company will be effective unless it is in writing and signed by Company, and then only to the extent specifically stated. Purchaser shall pay Company all costs and expenses, including reasonable attorneys’ fees incurred by Company in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof.

13. Patent Infringement, Indemnity. Company makes no representations or warranties as to whether the Goods furnished by Company hereunder are free from claims of misappropriations of trade secrets or other proprietary rights or if they otherwise infringe or contribute to the infringement of any patents, trademarks or copyrights or otherwise in the United States of America or any foreign country. Company shall in no way be liable in the event of any such misappropriation or infringement or contribution to infringement. Purchaser shall indemnify, defend and hold Company harmless from and against any and all liabilities, damages, losses, claims, actions, proceedings and expenses, including, without limitation and reasonable legal fees (collectively ‘Damage’), of whatsoever kind and nature, imposed upon, incurred by, asserted, threatened or awarded against Company directly or indirectly arising out of, relating to or resulting from (i) the infringement of any patent or trademark and/or their respective successors and permissible successors, or (ii) arising out of or relating to any use of the Goods, whether such claims are made by Purchaser, Purchaser’s customers or other third parties. And all and any amounts due for indemnity shall be paid as Damages are incurred, and in any event, within ten (10) days after written demand therefor.

14. Miscellaneous. (a) Integration. This writing is intended by the parties to be a final, complete and exclusive statement of their agreement with respect to the subject matter hereof. All prior or contemporaneous oral or written statements are hereby excluded and are superseded. It is expressly agreed that no course of performance, course of dealing or usage of trade shall be admissible to contradict, supplement or explain the terms of this Acknowledgment. Furthermore, it is expressly agreed that a party’s acceptance of or acquiescence in a course of performance under this agreement shall not be binding on the other party or in any other transaction and their respective successors and permissible successors.

(b) Assignment. This Acknowledgment is not assignable or transferable except by the written consent of Company, and any use of this Acknowledgment by any assignee or transferee shall be void and null, and of no legal force or effect.

(c) Export Control. The Goods were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

(d) Modifications or Amendment. Any modification of this Acknowledgment may not be modified or amended except by an instrument in writing signed by the party or parties against whom enforcement is sought.

(e) Notices. All notices made hereunder shall be in writing, and shall be deemed adequately delivered if delivered by certified mail, return receipt requested, postage pre-paid or by a courier service that regularly maintains records of its pick ups and deliveries, addressed to the parties at their mutual last address set forth above or to such other addresses designated by a party hereto by written notice of such address change. Mailed notices shall be deemed given when mailed and notices sent by courier shall be deemed given when delivered to the courier service. Both mailed and courier service notices shall be deemed received three (3) days after mailing such notice or delivering it to the courier service, as the case may be.

(f) Captions. The headings and subheadings of this sales order are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent, or intent of this Acknowledgment or any provisions hereof.

(g) Severability. Any term or provision of this Acknowledgment which is invalid or unenforceable in any jurisdiction on account of unenforcementability or otherwise, shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Acknowledgment or affecting the validity or enforceability of any of the term or provisions of this Acknowledgment in any other jurisdiction.

(h) Entire Agreement. This Acknowledgment incorporates by reference all communications between the parties hereto. This Acknowledgment contains the entire agreement between the parties relative to the subject matter hereof and supersedes all prior agreements, written or oral, between the parties.

(i) Waiver of Breach. Any waiver of any of the provisions of this Acknowledgment shall not be effective unless made in writing and signed by Company.