

**CLAD METAL SPECIALTIES, INC.** (“Company”) acceptance of your Company’s order is expressly conditioned upon your company’s assent to the following terms and conditions and in the event any of such terms and conditions conflict with the terms and conditions contained in your company’s order, the conflict will be resolved in favor of the terms and conditions contained herein:

**1.Price and Payment.** The purchase price for a Goods shall be as specified on the face hereof, or in the absence thereof, Company’s price at the time of shipment. In addition to the purchase price, 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 levied on Company’s net income. Purchaser hereby waives its right to off-set any claims it may have under this order or Other Orders (defined below) against funds payable to Company hereunder or under Other Orders.

**2.Delivery; risk of loss and related matters.** (a) Shipping dates are approximate and are based upon prompt receipt of all necessary specifications from Purchaser. Unless otherwise specified on the face of this Acknowledgment (i) Goods shall be delivered “F.O.B. Company’s location”; (ii) Section 2-504 of the UCC shall govern the requirements for proper tender of delivery; and (iii) payment shall be due within thirty (30) days after the date of shipment of the Goods. We also reserve the right to ship +5% overage. The Company may also At Company’s option, Company may for any reason suspend the credit term specified below for any delivery and may demand cash payment on delivery or impose other payment terms including, without limitation, pre-payments.

(b)Unless otherwise specified on the face of this Acknowledgment, delivery shall occur and risk of loss for a Goods shall pass to Purchaser upon delivery of such Goods, at Company’s applicable plant, to a carrier or the truck of Company or Purchaser, as the case may be. Further, for purposes hereof, “shipment” shall also be deemed to occur upon such delivery. Transportation of such Goods shall be at Purchaser’s sole risk and expense. In the event Purchaser breaches any provision hereof or otherwise repudiates its obligations hereunder, the risk of loss of identified Goods at Company’s plant shall immediately pass to Purchaser.

Notwithstanding anything to the contrary contained herein, in the event the Goods are lost, damaged or destroyed after the risk of loss has passed to the Purchaser while in the possession of a third party carrier (“Carrier”), Purchaser hereby acknowledges the Company’s right of action against the Carrier for such loss, damage or destruction of the Goods and hereby agrees to subordinate its right of action against the Carrier for such loss, damage or destruction of the Goods to the Company’s right of action against the Carrier.

(d) Company shall have the right to deliver all of the Goods ordered at one time or individual Goods from time to time within the time of delivery specified in paragraph 6. Payment for each delivery of Goods shall be due thirty (30) days after the date of the invoice, therefore, Any delivery thereof not made in accordance with herewith shall not affect any prior deliveries, nor entitle Purchaser to reject subsequent deliveries or entitle Purchaser to offset any invoices of Company. Notwithstanding the rights of Company contained herein, Purchaser shall not have the right to accelerate, postpone, cancel or otherwise modify delivery dates specified on the face hereof. If Purchaser attempts to do so, it will be deemed to have repudiated this contract.

(e) Claims for shortages shall not be accepted unless such claims are received by the Company in writing within forty-eight (48) hours after delivery of the Goods to the Purchaser. Company will be given a reasonable opportunity to inspect any shipment claimed by Purchaser to have shortages. Use of Goods by Purchaser prior to such inspection by Company shall constitute acceptance of the Goods and waivers of all claims by Purchaser.

**3.Limitation and Disclaimer of Warranties and Liabilities.** (a) Subject to the provisions and qualifications set forth herein, Company warrants only to your company (“Purchaser”) that the goods sold pursuant hereto (collectively the “Goods”) will conform to the applicable Specifications (hereinafter defined) on the date of shipment, subject to permissible variations and defects. 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. (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 so that the proper design of the Goods can be

determined. As a result, Purchaser shall be barred from any

recovery against

Company (including, without limitation, any recovery under the express warranty specified in paragraph 3(a)) by reason of improper design of the Goods, and any liability of Company on account thereof is hereby waived. Further, Purchaser shall also be barred from any recovery (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 stamped 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 to the extent of variations and defects permitted by Company’s standard manufacturing variations (the “Standard”).

**(c)IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE EXPRESS TERMS OF PARAGRAPH 1(a). THE EXPRESS WARRANTY SET FORTH IN PARAGRAPH 1(a) AND THE OBLIGATIONS AND LIABILITIES OF COMPANY HEREUNDER 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, FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT 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.**

(d)The express warranty contained in paragraph 3(a) shall not be extended, altered or varied except by a written instrument signed by Company and Purchaser.

**4.LIMITATION OF REMEDIES, WAIVER OF CONSEQUENTIAL DAMAGES.** (a) EXCEPT AS OTHERWISE EXPRESSLY STATED IN PARAGRAPH 4(b), COMPANY’S SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY WITH RESPECT TO (i) ANY BREACH OF WARRANTY, EXPRESS OR IMPLIED (HEREUNDER OR OTHERWISE), (ii) NON-CONFORMITIES OF THE GOODS OR THE TENDER THEREOF, AND/OR (iii) OTHER BREACHES OF ANY OBLIGATION OR DUTY OWED BY COMPANY HEREUNDER OR UNDER APPLICABLE LAW, AND PURCHASER’S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES WITH RESPECT THERETO, SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT, AT COMPANY’S OPTION, OF SUCH GOODS WHICH MAY PROVE TO BE DEFECTIVE WITHIN THE WARRANTY PERIOD AS A DIRECT RESULT OF SUCH BREACH OF WARRANTY, NON-CONFORMITY OR OTHER BREACH. SUBJECT TO THE PROCEDURES SET FORTH BELOW, COMPANY WILL REPAIR OR REPLACE SUCH DEFECTIVE GOODS, AS THE CASE MAY BE, FREE OF CHARGE.

No Goods may be returned without the Company’s prior written authorization. In order for Purchaser to be entitled to receive the rights and remedies contained in this paragraph 2, Purchaser must have made timely payment in full for the Goods in question, and during the Warranty Period, notify Company in writing of the existence of possible defects in Goods within thirty (30) days after discovery thereof or the time Purchaser should have discovered such possible defect. Otherwise, such claims shall be deemed waived. Such notification shall contain a request for a return material authorization (“RMA”) from Company, and Purchaser shall comply with Company’s then applicable RMA procedures. The purchaser shall deliver the specified Goods to the applicable plant designated by the Company for that purpose, all as stated in the RMA, free from liens and encumbrances. Company may initially only request a small sample of Goods in the RMA. Company will pay for the transportation of the suspect Goods to Company’s plant, all as specified in the RMA. All other costs and expenses in connection therewith shall be the responsibility and liability of Purchaser including, without limitation, insurance, repacking and other costs and

expenses incurred in connection with this paragraph 4(a). Purchaser shall bear the risk of loss of all such Goods returned pursuant to this paragraph 4(a).

The determination of whether Goods are defective will be made by Company in its sole and absolute discretion, and such determination shall be conclusive and binding on Purchaser. If Company determines that the Goods in question are defective, Company will remedy such defects in accordance with this paragraph 4. However, if the Company determines such Goods are not defective or are not covered by the warranty contained in paragraph 3(a), then, to the extent feasible, such non-defective Goods will be returned to Purchaser, at Purchaser's sole cost and expense. In addition, Company shall charge a fee to Purchaser and Purchaser shall promptly pay a fee equal to the costs and expenses of testing and inspecting such Goods as incurred by Company. Purchasers shall promptly reimburse the Company for the transportation expenses incurred by the Company on account of the RMA. Company shall not be liable or responsible for damaged or destroyed Goods as a result of such inspection or testing. Company shall also have no liability or obligation to Purchaser for loss or damage resulting from the testing, repair, replacement, maintenance, loss of use of Goods, removal or subsequent reinstallation of Goods.

The purchaser hereby acknowledges and agrees that the notice and time periods specified in this paragraph 4 regarding discovery of defects and notification of defectiveness are the appropriate, commercially reasonable and fair time and notice periods.

**(b) IF AFTER A REASONABLE NUMBER OF ATTEMPTS BY COMPANY TO REMEDY A DEFECT PURSUANT TO PARAGRAPH 2(a) AND THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNCONSCIONABLE OR UNENFORCEABLE IN THE JURISDICTION IN WHICH ENFORCEMENT IS SOUGHT OR IN THE EVENT REPAIR OR REPLACEMENT IS NOT APPROPRIATE OR PRACTICAL AS DETERMINED BY COMPANY IN ITS SOLE AND ABSOLUTE DISCRETION, PURCHASER SHALL, AT ITS OPTION, EITHER RECEIVE A REFUND OR A CREDIT IN THE AMOUNT EQUAL TO THE PURCHASE PRICE OF THE DEFECTIVE GOODS, IT BEING UNDERSTOOD THAT THE REMEDIES STATED IN THIS PARAGRAPH 4(b) SHALL THEN BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY. PURCHASER'S RIGHTS AND REMEDIES PROVIDED IN PARAGRAPH 4(a) AND THIS PARAGRAPH 4(b) SHALL BE PURCHASER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES HEREUNDER AND ARE EXPRESSLY MADE IN SUBSTITUTION OF ANY AND ALL RIGHTS AND REMEDIES OTHERWISE PROVIDED UNDER APPLICABLE LAW.**

(c) In addition to Company's rights under Section 508 of the New York Uniform Commercial Code (the "UCC"), Company shall have the right to cure all non-conformities of Goods and the tender thereof without regard to whether Company had reasonable grounds for believing that the tender or non-conformities would be acceptable. Company shall have such right to cure even if Company's time to do so pursuant hereto extends beyond the initial time for performance hereunder. The parties acknowledge and agree that, to the extent this Acknowledgment refers to more than one delivery, this agreement is, and shall be deemed to be, an installment contract within the meaning of Section 2-612 of the UCC and the parties rights and obligations hereunder shall be construed in accordance therewith, even if it is determined that this is a unitary contract with several deliveries.

**(d) THE MAXIMUM LIABILITY OF COMPANY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE PURCHASE PRICE OF GOODS SOLD HEREUNDER AND ACTUALLY PAID BY PURCHASER AND RECEIVED BY COMPANY. (IN RESPECT THEREOF, BUYER HEREBY ACKNOWLEDGES THAT SUCH LIMITATION OF LIABILITY IS NOT SUBJECT TO THE PROVISIONS OF UCC SECTIONS 2-718, 2-719(1)(b) OR 2-719(2) AND IF AND TO THE EXTENT SUCH SECTIONS MAY BE APPLICABLE, WAIVES APPLICATION OF SUCH.) UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO PURCHASER, OR TO ANY OTHER PERSON, FOR ANY (i) DAMAGES ARISING OUT OF OR RELATING TO PERMISSIBLE DEFECTS UNDER THE STANDARD; OR (ii) CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, OR LOST PROFITS, EXPENSES OR LOSSES ARISING OUT OF OR RELATING TO ANY (1) BREACH OF WARRANTY, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE; (2) DEFECTIVE GOODS OR ANY NON-**

**CONFORMITIES IN THE TENDER THEREOF; OR (3) OTHER BREACH OF ANY OBLIGATION OR DUTY OWED BY COMPANY HEREUNDER OR UNDER APPLICABLE LAW, REGARDLESS OF WHETHER THE LIABILITY RESULTED FROM ANY GENERAL OR PARTICULAR REQUIREMENT OR NEED WHICH COMPANY KNEW OR SHOULD HAVE KNOWN OF. IN THE EVENT THAT ANY OTHER TERM OF THIS AGREEMENT IS FOUND UNCONSCIONABLE OR UNENFORCEABLE FOR ANY REASON, OR ANY EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, THIS PROVISION OF WAIVER BY AGREEMENT OF CONSEQUENTIAL DAMAGES SHALL NEVERTHELESS CONTINUE IN FULL FORCE AND EFFECT.**

**5. Title.** Solely for the purpose of reserving a security interest in the Goods, the Company retains title to such Goods until they are paid in full by Purchaser. Such retention of title by Company shall not affect the passage of risk of loss as specified in paragraph 3.

**6. Force Majeure.** (a) Notwithstanding any provision herein to the contrary, Company shall not be liable or responsible for any delay in or failure of delivery of a Goods by reason of force majeure, including, but not limited to, Company's inability to obtain raw materials 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, unavailability of necessary raw materials or any other cause 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, the Company shall have the right to allocate production and deliveries of Goods among its customers in such a manner, as it deems appropriate, in its sole and absolute discretion.

(b) In the event Company is unable to make timely delivery of all or any of the Goods ordered hereunder, by reason of any events or occurrences referred to in this paragraph 6, Purchaser must accept delivery of the Goods whenever Company is able to make such delivery regardless of the duration of the delay in delivery of the Goods, or Company may, in its sole and absolute discretion, cancel the undelivered portion of the Goods without liability.

**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. The purchaser, as a special inducement to the Company, agrees not to directly or indirectly copy or reproduce any proprietary manufacturing process and further agrees that it will not decompile or reverse engineer the Goods or otherwise misappropriate or utilize such proprietary information. Any manufacturing information furnished by the 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.** Purchasers 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 a rate of interest shall not exceed the maximum rate permitted under applicable law. In the event the Company refers this Acknowledgment to an attorney for collection, Purchaser shall promptly pay all reasonable legal fees and disbursements incurred by Company in connection therewith. In addition to all other rights available to Company in the event of the breach of this Agreement by Purchaser, Company shall have the right to impose reasonable storage charges and relocation fees.

**9. Company's Right of Possession.** The purchaser acknowledges and agrees that the Company shall have the right, at any time, and from time to time, for credit reasons or because of the occurrence of an Event of Default (hereinafter defined) or Purchaser's default under any other orders or agreements with Company (collectively, "Other Orders"), to withhold shipments of Goods ordered hereunder or under Other Orders, and to recall all such Goods in transit, retake same, and repossess all such Goods which may be stored with Company for Purchaser's account, without the necessity of taking any action and without incurring any liability for exercising its rights hereunder.

**10. Sale of Goods as Scrap on Default.** Upon the occurrence of an Event of Default, the Company shall have the authority, at its option and without the obligation to do so, to sell the completed or partially completed Goods as scrap in a commercially reasonable manner, and the Purchaser shall be liable and responsible for any resulting losses and damages.

**11. Default, Cancellation and Related Matters.** The occurrence of one or more of the following events shall constitute an “Event of Default”: (i) Purchaser’s breach or failure to perform any of its obligations hereunder or under any Other Orders; (ii) Purchaser’s breach or misrepresentation of any representation or warranty made by Purchaser hereunder or under any Other Order; (iii) 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 thereunder, 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; (iv) prohibition of Company by any cease and desist order, injunction, or other valid order, decree, process of law, or restraint from shipping, selling, exporting or distributing any Goods pursuant to the terms hereof; or (v) 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 §1-201(23) of the UCC. Upon the occurrence of an Event of Default, the Company shall have the sole and absolute right to cancel all, or any Goods ordered pursuant hereto and/or under any Other Orders. The 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.

**12. Insecurity.** In the event the 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 the Company shall have the right to demand adequate assurance of due performance.

**13. Choice of Law and Forum.** (a) The parties acknowledge and agree that this sales order shall be a contract made in the United States, State of New York. All questions pertaining to the validity, construction, execution and performance of this sales order shall be construed and governed in accordance with the domestic laws of the State of New York (including, without limitation, the UCC), without giving effect to principles of conflicts of law. (b) 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.

**14. Remedies.** All of the 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, it 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. Purchasers shall pay the Company all costs and expenses, including reasonable attorneys’ fees incurred by the Company in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof.

**15. Patent Infringements; 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 either 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, reasonable legal fees (collectively “Damages”) 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; (ii) the manufacture, sale or distribution of such Goods; or (iii) 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. Any and all amounts due for indemnity shall be paid as Damages are incurred, and in any event, within ten (10) days after written demand thereof.

## **16. 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 admissible to modify, waive, supplement or explain the terms hereof, even if that party is aware of the course of performance and has an opportunity to object to it.

**(b) Assignability.** This Acknowledgment shall be binding upon and shall ensure the benefit of the parties hereto and their respective successors and permitted assigns. The purchaser shall not have the right to assign its rights, benefits or duties hereunder without the prior written consent of Company. Any assignment in contradiction of this provision shall be null and void, 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) Modification or Amendment.** The terms 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 made 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 respective addresses set forth above or to any other address 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 couriers 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 unconscionability 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 terms or provisions of this Acknowledgment in any other jurisdiction. Further, to the extent that any term or provision hereof is deemed so invalid, void or otherwise unenforceable, but may be made enforceable by amendment thereto, the parties agree that such amendment may be made so that the same shall, nevertheless, be enforceable to the fullest extent permissible under the laws and public policies applied in any such jurisdiction in which enforcement is sought.

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

**(i) Survival.** This paragraph and the following paragraphs 3, 4, 5, 7, 13, 15 and this paragraph 16 shall survive the consummation, termination and cancellation of this agreement.

If Purchaser does not agree with the terms and conditions contained herein or if anything herein is incorrect or unacceptable, please advise us immediately in writing.