



*Where Quality Isn't Expensive.....It's Priceless!*

# **DIVERSIFIED METALS**

**INCORPORATED**

**TOLL FREE: 800-628-3035**

**EMAIL: SALES@DIVERSIFIEDMETALS.COM**

**WEBSITE: WWW.DIVERSIFIEDMETALS.NET**

**49 MAIN STREET MONSON, MA 01057-0065**

**FAX: 413-267-3151**

**PHONE: 413-267-5101**

**CAGE CODE: 57067**

**PO BOX 65**

## ***TERMS AND CONDITIONS OF SALE***

### **1. GENERAL**

All quotations offers and contracts are subject to and contingent upon the following terms and conditions.

The Seller shall mean Diversified Metals, Inc., 49 Main Street, P.O. Box 65, Monson, Massachusetts, 01057. The Buyer shall be the other party in any quotation offer or contract entered into with the seller.

No additions to, or variations from, or exclusion of, these conditions (whether contained in any official order form of the Buyer or otherwise) shall be binding upon the Seller unless such addition, variation or exclusion has been expressly and specifically accepted in writing by the Seller.

Any cancellation, variation or addition to any contract shall be binding upon the Seller if contained in writing and signed by a Director, or other duly authorized person of the Seller.

All contracts and orders are subject to the Seller's written acceptance by the Seller's duly authorized representative and to the Seller being able to obtain materials.

Quotations are given subject to the Seller's approval of the Buyer's account. Offers for delivery from stock are made subject to goods remaining unsold on receipt of order.

### **2. DOCUMENTS**

Unless otherwise stipulated in the Seller's acknowledgement, or quotations, or correspondence from the Seller, all descriptions, illustrations, drawings, estimates of performance, weights and measures or any other specification provided by the Seller are approximate only. Any drawing, description, tooling, fixtures, machine protocols, molds, jigs, illustrations, or similar documentation generated by the Seller are the Seller's property unless previously agreed by Seller in writing. Information supplied by the Buyer remains the Buyer's.

The Seller reserves the right at any time to correct clerical or technical errors in any documentation.

The Buyer shall furnish the Seller with all necessary specifications with the order. It is the Buyer's responsibility to state clearly, and to state if goods are to conform to a specification or government requirement. The Seller will supply to the specification as stated in the order acknowledgement.

The Seller will not accept responsibility for material to achieve or conform to any other specification than that detailed in the quotation or acknowledgement. Any inspection from an Inspecting Authority will be carried out at the Seller's premises before dispatch at the Buyer's expense.

### **3. PRICES**

All prices are exclusive of any applicable sales taxes, tariffs, duties, surtaxes, excise taxes and use taxes which either Buyer or Seller may become legally liable for as a result of this contract. Any excise, levies or taxes which Seller is required to pay or collect, under any existing or future law or regulation (domestic or foreign), upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered hereby, shall be for the account of the Buyer, and Buyer agrees to pay the amount thereof to Seller upon request.



*Where Quality Isn't Expensive.....It's Priceless!*

# **DIVERSIFIED METALS**

**INCORPORATED**

Unless otherwise designated on a quotation/order acknowledgement, all shipment of goods shall be F.O.B. Seller's Warehouse. Any alternate terms must be agreed to between the Seller and Buyer. The method of delivery is to be agreed between the Buyer and the Seller, and will be reflected and form part of the quoted price. Items shipped by the Seller by special delivery or form of transportation to expedite delivery will be at the Buyer's cost. A delivery to the nominated carrier is, in such circumstances, delivery to the Buyer.

The Seller reserves the right to amend quotations in the event of currency exchange for metal price variations or fluctuations.

All prices are based on current freight rates and the Seller reserves the right to amend these in the event of changes in the freight rates at the time of shipment.

The Seller reserves the right to charge storage fees or increase the cost of goods delivered or ready for delivery which are not accepted by the Buyer at a time when the Seller is ready to deliver, when delivery is consistent with contract/order scheduled delivery.

All prices, whether herein named or heretofore quoted or proposed, shall, at Seller's option be adjusted to Seller's prices in effect at the time of shipment. Buyer shall pay Seller for the goods in accordance with the terms agreed upon in the contract. Buyer agrees to execute either prior or subsequent to delivery, upon Seller's request, such security agreement, financing statements, and any other documents or agreements necessary to grant to Seller a perfected security interest with respect to all goods and proceeds thereof, and to pay the cost of filing the same in any public office. Buyer represents that it is not insolvent as defined in Section 1-201 (23) of the Uniform Commercial Code. In the event that Buyer becomes insolvent before delivery of the goods, Buyer agrees to notify Seller. Failure to notify Seller shall be construed as a reaffirmation of Buyer's solvency at time of delivery.

#### **4. THE TERMS OF PAYMENT**

Unless otherwise specifically stated on a document of sale furnished by Seller or agreed to in writing and signed by Seller, the terms of payment for each order without setoff shall be net cash (U.S. Dollars) in thirty (30) days from date of invoice, F.O.B. Monson, Massachusetts. Restrictive endorsements on Buyer's checks will not reduce Buyer's obligations to Seller. The unpaid portion of any amounts due to Seller shall bear interest at the rate of 1.5% per month, or the maximum legal rate if less.

The Seller reserves the right to suspend deliveries until all arrears of payment due to the Seller have been fully discharged. All shipments and deliveries made hereunder shall be at all times subject to the approval of the Seller's credit department, and if at any time in the judgment of Seller's credit manager, there is any doubt as to the Buyer's responsibility, the Seller may decline to make any shipments hereunder except upon receipt of satisfactory security or cash, if this security or cash be not received, Seller may terminate the order.

#### **5. PACKAGING**

All goods will be packaged as considered appropriate for the weight, shape and destination. Any specific requirements requested by the Buyer must be agreed in writing by the Seller when the order is placed.

#### **6. DISPATCH**

Processing of materials and shipment will be quoted/scheduled as nearly as possible to meet the customer's requirements, but shall be based also upon our responsibilities to fill prior orders. Also, the Seller shall not be liable to the Buyer, or deemed to be in breach of contract, by reason of any delay in performing or failing to perform, any of the Seller's obligations in relation to the goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control; the Buyer failing to furnish necessary information or instructions, war, civil commotion, government restrictions, transport difficulties, strikes, lock outs, accidents or stoppages at work, shortage of labor, materials, equipment, fuel or power, machinery breakdown, trade disputes

(whether involving employees of the Seller or of a third party).

The Seller will use all reasonable endeavors to effect dispatch within any stipulated period, or if no such period be stipulated, within a reasonable time. The Seller shall be under no liability for any loss or damage sustained by the Buyer or any other third party arising directly or indirectly out of late dispatch or delivery whether due to the Seller's default or not, nor shall late dispatch or delivery be deemed to be a breach of the contract, nor entitle the Buyer to cancel the contract.

The Seller shall be entitled without liability on the Seller's part and without prejudice to any other rights to terminate the contract or any unfulfilled part thereof, or, at the Seller's option, to make partial deliveries if the Buyer requests the Seller to carry out works or modifications in addition to or in variation of the contract.

The above terms and conditions are applicable to any subcontractor employed by the Seller in relation to the Buyer's order. Any such cause shall be deemed to prevent, hinder, or delay the Seller or the Seller's suppliers if the Seller or the suppliers respectively are thereby prevented, hindered, or delayed from fulfilling all aggregate obligations both under the contract, and under all other contracts, whether with the buyer or with third parties related to the supply of the same or similar goods.

#### 7. DELIVERY

Where delivery is affected on the Seller's vehicles or by any independent contractor arranged by the Seller, the Buyer shall be bound to accept delivery of the goods on arrival at the Buyer's works or other place of destination when risk in the goods shall pass to the Buyer. The Buyer must notify the Seller and the carrier in writing (otherwise than upon the carriers documents) of any damage in transit, mis-delivery or quantity discrepancy immediately upon arrival and make written claim within 6 days. Goods accepted without checking must be signed for as "not examined" otherwise no claim of any nature will be accepted by the Seller. The Buyer must notify the Seller and the carrier in writing (otherwise than upon the carrier's documents) of non-delivery within 6 days when delivery is effected through the post or on the Seller's own vehicles (followed by a detailed written claim within 10 days).

Where delivery is affected on the Buyer's vehicles or is arranged by the Buyer, risk in the goods shall pass to the Buyer immediately following loading. Without prejudice to any other rights of the Seller, if the Buyer shall for any reason fail to accept delivery of the goods on arrival, the Seller shall be entitled at the Buyer's risk and expense to store the goods and/or to procure or effect storage of the goods elsewhere or sell the goods at the best price readily obtainable with the Buyer liable for the difference.

The Buyer warrants that any necessary unloading facilities and tools will be available at the place of delivery.

The Seller reserves the right to deliver goods to within 10% of the quantity or weight specified in the Buyer's order and payments shall be made for the actual quantity supplied pro rata.

#### 8. WARRANTY AND RESTRICTIONS ON CUSTOMER'S CLAIMS

Upon collection of, or delivery of, the goods the Buyer must immediately examine them and any visual faults or defects must be notified to the Seller immediately upon arrival and in writing within 6 days of accepting delivery or collection.

All non-visual faults or defects must be notified to the Seller in writing and Buyer agrees to notify Seller within thirty (30) days of discovery of defective materials or non-conforming conversion services. No claim shall be allowed by any party other than the Buyer. Any claim for breach of the express warranty of compliance with specifications that is not made within the timeframes set forth herein shall be deemed to have been waived.

Unless otherwise agreed to in writing by Seller, Buyer shall set aside, protect, and hold such materials without



*Where Quality Isn't Expensive.....It's Priceless!*

# **DIVERSIFIED METALS** **INCORPORATED**

further processing until Seller has an opportunity to inspect and advise of the disposition, if any, to be made of such materials. In no event shall any materials be returned, reworked, or scrapped by Buyer without the written authorization of the Seller.

Any claim for shortage in any shipment must be given within 6 days after delivery.

We warrant that the goods will be supplied in accordance with applicable specifications and will be free from defects in material and workmanship. Our obligation under this paragraph shall be limited to repairing or replacing, or at our option, issuing a credit for any of the goods with respect to which we are given specific notice of defect within 30 days after delivery and which our examination discloses to have been thus defective. Goods claimed defective shall be segregated and held by the customer for such time as shall be reasonable to permit our inspection and disposition thereof. We shall not be liable for indirect or consequential damages of any kind resulting from defects in material, workmanship or design

Buyer shall have sole responsibility for selection and specification of the goods or services appropriate for the end use of such goods or services, even if buyer has informed Seller of the end use of such goods or services. Buyer acknowledges that it alone has determined that the materials specified, purchased or processed hereunder will suitably meet the requirements of their intended use and Buyer shall indemnify, defend and hold Seller harmless from any and all claims, suits, damages, and costs (including reasonable attorneys' fees) asserted against seller relating in any way to the goods or Buyer's subsequent use thereof. **SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR, AND BUYER RELEASES SELLER FROM ANY AND ALL LIABILITY FOR NEGLIGENCE BY SELLER WITH RESPECT TO ANY ACTIVITY ENGAGED IN BY SELLER WITH REGARD TO THE GOODS OR SERVICES SOLD HEREUNDER AND FROM ANY AND ALL LIABILITY IMPOSED UPON MANUFACTURERS OR SELLERS OF GOODS OR SERVICES UNDER ANY PRODUCT LIABILITY THEORY OR UNDER ANY SIMILAR LEGAL THEORY. SELLER SHALL NOT, UNDER ANY CIRCUMSTANCES INCLUDING, BUT NOT LIMITED TO, DELAY IN DELIVERY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, OR USE OF MATERIAL SOLD OR PROCESSED BY SELLER, BE LIABLE TO BUYER OR ANY OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR LOSSES OF ANY KIND WHATSOEVER. IN NO EVENT SHALL SELLER'S LIABILITY FOR DEFECTIVE MATERIAL SOLD TO BUYER EXCEED THE PURCHASE PRICE THEREOF, AND IN NO EVENT SHALL SELLER'S LIABILITY FOR NON-CONFORMING CONVERSION SERVICES EXCEED THE PRICE PAID FOR SAID SERVICES. EXCEPT AS SPECIFICALLY SET FORTH IN THESE TERMS AND CONDITIONS, AND NOTWITHSTANDING ANY LANGUAGE IN THIS OR ANY OTHER PROVISION TO THE CONTRARY, SELLER NEITHER MAKES, NOR ASSUMES ANY LIABILITY UNDER, ANY WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. NO REPRESENTATIONS OR WARRANTY, EXPRESS OR IMPLIED, MADE BY ANY SALES REPRESENTATIVE OR OTHER AGENT OR REPRESENTATIVE OF SELLER WHICH IS NOT SPECIFICALLY SET FORTH IN THESE TERMS AND CONDITIONS SHALL BE BINDING UPON SELLER.**

## 9. CANCELLATION:

If, without fault on our part, this order is cancelled in whole or in part, or delivery of the goods is suspended or postponed, we shall have the right to stop work on each order, or the cancelled or suspended portions thereof; to cancel related subcontractors and orders for materials, making such payments as may be necessary or expedient to the subcontractors and the suppliers of such materials; to take inventory of materials acquired, and on hand, for use in connection with this order, and to sell or to dispose of any such materials not otherwise useful; and to compute and collect from the buyer the total uncompensated cost and loss resulting from such cancellation or suspension, including a reasonable allowance for loss of profit. Our bills for such cost and loss shall be subject to audit by the customer for a reasonable time. An order cannot be modified or cancelled by Buyer without the written consent of Seller and in no event shall any order be modified or cancelled for any portion thereof already



*Where Quality Isn't Expensive.....It's Priceless!*

# **DIVERSIFIED METALS**

**INCORPORATED**

processed, manufactured, or in process of manufacture, processing or performance, at the time the request for modification or cancellation is received by Seller, except upon terms, satisfactory to Seller, which protect and indemnify Seller against all loss.

## 10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY INFRINGEMENT:

Each party acknowledges that the other possesses and retains all rights to confidential and proprietary information belonging to the other and/or potentially to third parties. Each party shall mark such information disclosed to the other as such and shall protect such marked confidential and proprietary information of the other from disclosure. Neither party shall use such information other than for the specific purpose for which it was disclosed. Buyer shall indemnify and hold Seller harmless from, and release and not make claim or suit against Seller because of any suits, claims, losses, or other liability made against, or suffered by, Buyer arising from any claim of, or infringement of, patent, copyright, trademark, trade secret or other proprietary right, at common law, or claim of unfair trade practices or of unfair competition, resulting from or occasioned by Seller's possession or use of drawings, specifications or information provided to Seller or materials, precursors, finished goods, or performance of services associated with producing goods requested by Buyer or by Buyer's use, possession, sale or delivery of the goods sold to Buyer.

## 11. EXPORT RESTRICTIONS:

Information provided by the Buyer to the Seller may be subject to export control restrictions of the U.S. or foreign governments. Buyer is responsible for notifying Seller of any such restricted information both marked on that information in such a way that it is obvious upon opening or viewing every time and also in any covering or accompanying correspondence. The ultimate shipment by Seller of products under this agreement is subject to the right and ability of Seller to make such sales under all decrees, statutes, rules and regulations of the U.S. Government presently in effect or which may be in effect hereafter, which govern exports or otherwise pertain to export controls. Any order which cannot be fulfilled due to the inability of Seller to obtain necessary export approvals shall be considered to have been rejected by Seller upon receipt. In the event that the products are exported from the United States or re-exported from a foreign destination by Buyer, Buyer shall insure that the distribution of export/re-export of the products are in compliance with all laws, regulations, orders and other restrictions of the U.S. Export Administration regulations. Buyer agrees that neither it nor any of its subsidiaries will export/re-export any technical data, process, products or service, directly or indirectly, to any country for which the United States government or any agency thereof requires an export license or other government approval without first obtaining such license or approval. The parties agree that when title transfers for the products subject to this agreement, or when the products are delivered to Buyer, whichever occurs first, responsibility for the submission of any required export or re-export licenses or related export control approvals for these products also transfers to Buyer. Any export license requirement under any applicable export control statute, regulation or practice, from any U.S. Government agency, including but not limited to the Department of Commerce's Bureau of Industry and Security, the Department of Treasury, Office of Foreign Assets Control, the U.S. Department of State, Directorate of Defense Trade Controls, and the Nuclear Regulatory Commission, are solely the responsibility of the Buyer. Further, Buyer warrants that it will comply with all applicable export and re-export controls related to these products and indemnify, defend and hold Seller harmless from any and all claims, suits, damages, and costs (including reasonable attorneys' fees) asserted against Seller relating in any way to 1) Buyer's failure to properly mark or alert seller of the restricted nature of the goods or associated information; 2) the goods or 3) Buyer's or subsequent users use thereof.

## 12. INTERNATIONAL SALES:

The International Chamber of Commerce Terms (Incoterms) shall be used when there is an obligation for delivery of goods for International contracts of sale.

13. WE agree to comply with business ethics best practices and all applicable Federal State and local laws, rules and regulations, including for example, but without limitation by enumeration, the Foreign Corrupt Practices Act, the Fair Labor Standards Act, laws pertaining to Equal Employment Opportunity and Nondiscrimination.



*Where Quality Isn't Expensive.....It's Priceless!*

# **DIVERSIFIED METALS**

**INCORPORATED**

## 14. ARBITRATION

All disputes and differences and questions which may at any time arise between the parties hereto, or their respective representatives or assigns, touching or arising out of, or in respect of, these conditions or the subject matter thereof shall be referred to any single arbitrator appointed by agreement, or in default of any such agreement either party may apply to a Court in the State of Massachusetts. Any such dispute shall be governed by Massachusetts law.

## 15. REPRESENTATIONS

Any representations concerning the goods are only valid to the Buyer if confirmed in writing by a Director of the Seller. If any advice or recommendations given verbally by any of the Seller's servants or agents are acted upon by the Buyer such acts shall be entirely at the risk of the Buyer.

16. GOVERNMENT CONTRACT TERMS / MANDATORY FLOW DOWNS If Buyer's order is for a U.S. government contract, and goods or services ordered from Seller are to be used in the performance of said contract, only those mandatory flow down clauses of applicable U.S. government procurement regulations required by federal statute to be included in U.S. government subcontracts shall be incorporated herein by reference.

17. MERGER CLAUSE / ENTIRE AGREEMENT / MODIFICATION OF TERMS – These terms and conditions and sales documentation constitute the entire contract between Seller and Buyer. To the extent that any terms in the sales documents and these terms and conditions conflict, the terms on the front of Seller's sales documents shall control and prevail. No modification hereof shall be of any force and effect unless in writing and signed by the party claimed to be bound thereby. A waiver of any of the terms or conditions hereof shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed. If any portion of these terms and conditions is declared to be unenforceable by a court of competent jurisdiction, all other portions shall be considered to be valid and enforceable to the intent that they are reasonably severable. The headings contained in these terms and conditions are for convenience of reference only and are not intended to have any substantive significance in interpreting this document.

Revised 08/31/17 (Addition to ¶1, 2, 3, 7, 8, 10, 11, 14)