

# **TEMPEL STEEL COMPANY**

## **INVOICE TERMS AND CONDITIONS**

**1. ACCEPTANCE.** The offer in any purchase order or other document tendered, either heretofore or hereafter, by Buyer ("Order") is hereby expressly rejected in whole. This document is a counter-offer to the Order. Acceptance of this counter-offer by Buyer is expressly limited to the terms and conditions herein contained. Tempel Steel Company ("Tempel") is proceeding with this transaction based on Buyer's expressed interest in purchasing the goods and/or services ("Products") covered by this document. In the event Buyer elects to reject this counter-offer, Buyer may only reject the same in whole in writing prior to the earlier of delivery of the Products, commencement of service, or ten (10) days after Buyer's receipt of these terms and conditions; otherwise, Buyer shall be deemed to have agreed to the terms and conditions herein contained. The counter-offer may be withdrawn by Tempel at any time prior to acceptance by the Buyer of each and every term and condition hereof. Upon acceptance by the Buyer, all of the terms and conditions contained herein shall supersede any additional or inconsistent provision in any Order. The provisions hereof shall not be supplemented by any usage of trade or any course of prior dealings or acquiescence in any course of performance.

**2. PRICES.** Unless otherwise specified in writing by Tempel: (a) all prices are subject to change without notice at any time, for any reason, including, without limitation, as a result of costs of labor, materials or overhead; (b) all prices, quotations, shipments and deliveries are F.O.B. point of manufacture at Tempel's facility; (c) all prices together with related extras and deductions are billed at Tempel's price in effect at the time of shipment in U.S. Dollars; (d) all transportation, insurance and other charges shall be born by Buyer, including any increase or decrease in such charges prior to shipment; and (e) if Buyer does not purchase the quantity upon which quantity prices are based, Buyer will pay the non-discounted price for the quantity actually purchased and/or a cancellation fee.

**3. PAYMENT.** Payment is due on the date set forth on Tempel's invoice, or, if no date is set forth, within thirty (30) days from the date of invoice; provided, that any customer not receiving an invoice shall be subject to Tempel's standard credit and payment terms and conditions, as provided from time to time. Payments not received within thirty (30) days of such payments due date may be subject to interest charges to the date of receipt of payment. If Buyer fails to make payment when due, Tempel may (a) defer further shipments until such payments are made and satisfactory credit arrangements are established; (b) cancel any unshipped balance of any Tempel approved request for Products; and (c) pursue any legal or equitable remedies, and Buyer shall bear Tempel's costs of collection and reasonable attorneys' fees. Any requests for Products made by Buyer are subject to credit approval by Tempel. Buyer will submit such financial information as Tempel may reasonably require for determination of credit terms. If Tempel reasonably believes that Buyer's ability to make payments is impaired, Tempel may cancel any Tempel approved request for Products, or remaining balance thereof, and Buyer will remain liable to pay Tempel for Products already shipped, and expenses incurred by Tempel for specially manufactured Products and Tooling, hereafter defined.

**4. CLAIMS.** Claims respecting the condition of the Products, shortages, or any other matter affecting Products shipped to Buyer must be made promptly and, unless otherwise agreed to in writing by Tempel, in no event later than ten (10) days after arrival of the shipment to the destination specified in writing and approved by Tempel, except if the claim concerns any warranty made by Tempel in accordance with Paragraph 8 below. In no event shall Products be returned, reworked or scrapped by Buyer without the express written consent of Tempel. Should Buyer request the return, rework or scrap of Products, Buyer shall comply with Tempel's request for testing or inspection, including delivery of any samples or other items, at Buyer's expense.

**5. DELIVERY.** Delivery date or shipping schedules are approximate, based upon the most recent information available to Tempel and may be adjusted by Tempel upon receipt of subsequent information. Tempel will not be liable for damages due to delay in delivery. Selection of the carrier and delivery route will be made by Tempel unless specifically designated and paid for by Buyer. Delivery of a quantity which does not vary by more than ten (10%) percent from the quantity specified therefore will constitute full performance of such delivery. Delay in delivery of one installment will not entitle Buyer to cancel any other installment. Delivery of any Tooling shall not take place until Buyer has paid in full for all existing and future commitments for Products, and all corresponding spare parts. Any changes in Buyer's requirements will require confirmation or

revision of estimated shipping date. All prices for any rescheduled deliveries may be increased.

**6. CANCELLATION.** Acceptance of a request for Products shall be an irrevocable sale and is non-cancelable. Any cancellation, in whole or in part, must be accepted by Tempel in writing, and Tempel shall have the right to retain all amounts paid to it by Buyer as a nonrefundable deposit against payment of the purchase price therefore without further liability of Tempel to Buyer. Buyer will be responsible for all costs, fees and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Tempel as a result of the cancellation of this agreement, or any Tempel approved request for Products made by Buyer. Tempel shall have the absolute right to cancel this agreement upon breach thereof by the Buyer, failure by the Buyer to make any payment required by this agreement, or the insolvency or bankruptcy of the Buyer.

**7. TAXES.** Prices are exclusive of all federal, state, municipal or other government excise, sales, use, occupational, export, import or like taxes now in force or to be enacted in the future; all of such applicable taxes, levies and duties of any nature whatsoever, are the responsibility of the Buyer. If Buyer is exempt from tax, Buyer shall provide Tempel with an exemption certificate acceptable to the relevant taxing authority upon receipt of this invoice. Without a valid signed tax exemption certificate on file at Tempel, all applicable taxes will be charged to Buyer.

**8. WARRANTY.** Tempel warrants to Buyer for one (1) year from the date of invoice or delivery, whichever is earlier, that the electrical properties of the Products purchased hereunder will reasonably conform to and perform in accordance with the specifications agreed to in writing between Buyer and Tempel for such Products. This warranty shall not apply to any Products or equipment which have been subjected to misuse, neglect or accident, or has been altered or tampered with, or on which corrective work has been done without Tempel's express written consent. This warranty is only applicable to Buyer, and not to any subsequent user, and is not assignable.

**9. LIMITATION OF LIABILITY.** EXCEPT FOR THE LIMITED REMEDY PROVIDED ABOVE, PRODUCTS AND TOOLING ARE PROVIDED "AS IS" WITHOUT OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING EXPRESS OR IMPLIED, INCLUDING THOSE CONCERNING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN NO EVENT WILL TEMPEL OR ITS OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, DISTRIBUTORS, OR LICENSORS, (COLLECTIVELY, "ITS REPRESENTATIVES") BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, EVEN IF TEMPEL OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM. ALL LIABILITY WITH RESPECT TO THE PRODUCTS WILL BE LIMITED TO REPLACEMENT OF A DEFECTIVE PRODUCT, AND IN NO EVENT WILL THE AGGREGATE LIABILITY OF TEMPEL AND ITS REPRESENTATIVES FOR ANY DAMAGES, LOSSES OR CLAIMS, WHETHER DIRECT OR INDIRECT WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT BUYER HAS PAID TO TEMPEL RELATING TO THE SALE OF PRODUCTS IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**10. TOOLING.** All tools ("Tools"), materials, drawings, dies, chutes, bolster plates, jigs, gauges, fixtures, patterns, molds, testing apparatus, machinery, equipment and similar materials necessary to manufacture Products ("Tooling") shall be owned by Tempel, and held in Tempel's possession, unless Buyer has requested that Tempel specially manufacture Tooling for use solely by Buyer, then Buyer shall own title to only the Tools and may take possession of said Tools, however, ownership and possession shall only pass to Buyer once Buyer has paid in full for any existing and future commitments for Products and all corresponding spare parts. Buyer shall be responsible for all expenses incurred by Tempel for Buyer's specially manufactured Tooling while said Tooling is in Tempel's possession.

**11. STANDARD OFFERING.** All parts purchased from Tooling owned by Tempel (catalogue/standard parts) are subject to Tempel tolerance, material specification. Tempel reserves the right to make changes without customer approval. Standard offering can be found on website.

**12. OWNERSHIP OF INTELLECTUAL PROPERTY.** Unless agreed otherwise in writing by Tempel, Tempel shall retain all right, title and interest in and to, and possession of, all its proprietary technology, including but not limited to, all copyright, patent, trade secret and other intellectual property rights associated with any ideas, concepts, methods, processes, techniques, inventions or works of authorship developed or created by or on behalf of Tempel for its Products, including, without limitation, any Tooling or other item used by Tempel to create products ("Intellectual Property"). Tempel may use this Intellectual Property in or with the Products or Tooling, in whole or in part, even if the Products or Tooling were developed expressly for use by Buyer. Buyer shall take such further actions, including the execution and delivery of instruments of conveyance, as may be reasonably requested by Tempel, to give full and proper effect to the provisions of this paragraph.

**13. INDEMNIFICATION.** BUYER HEREBY AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND TEMPEL, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AGAINST ANY AND ALL LOSSES, COSTS, DAMAGES, CLAIMS, LIABILITIES OR EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM ANY INJURY TO ANY PERSON OR DAMAGE TO ANY PROPERTY CAUSED BY (1) THE FAILURE OF BUYER TO PROPERLY INSTALL OR USE THE PRODUCTS OR TOOLING, (2) THE INCORPORATION OR USE OF PRODUCTS OR TOOLING, OR ANY PART THEREOF, IN ANY GOODS NOT SUPPLIED BY TEMPEL, (3) INFRINGEMENT IF THE PRODUCTS WERE IN REASONABLE COMPLIANCE WITH BUYER'S SPECIFICATIONS, DESIGNS OR INSTRUCTIONS, AND (4) BUYER'S MANUFACTURING OR OTHER USE, PROCESS OR SALE OF ANY PRODUCTS, OR ANY PART THEREOF, CONSTITUTING EITHER DIRECT OR CONTRIBUTORY INFRINGEMENT.

**14. FORCE MAJEURE.** Tempel shall not be liable for failures in performance, including delay or non-shipment, resulting from acts or events beyond its reasonable control. Such acts or events shall include, but shall not be limited to, acts of God, terrorism, civil or military authority, civil disturbance, fire, strikes, lockouts or slowdowns, factory or labor conditions, errors in manufacture, inability to obtain necessary labor, materials or manufacturing facilities, delayed issuance of export control licenses, or other "force majeure" events beyond Tempel's reasonable control. In the event of such delay, the date of shipment shall, at the request of Tempel, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time.

**15. ASSIGNMENT.** Buyer may neither assign nor transfer its rights, as set forth herein or otherwise agreed to by Tempel, by operation of law or otherwise, without the prior written consent of Tempel. Tempel's affiliated companies may participate in Tempel's performance hereunder.

**16. GOVERNING LAW/ATTORNEY'S FEES.** The laws of the State of Illinois and applicable laws of the United States, excluding conflict of law rules, shall govern. If Buyer fails to perform any of its obligations, Buyer shall pay Tempel all costs and expenses incurred by Tempel, including all attorney's fees, in enforcing Tempel's rights, whether by formal proceedings or otherwise, in addition to any other remedy available to Tempel.

**17. SEVERABILITY AND SURVIVAL OF TERMS.** Any term or condition hereunder which is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction shall, as to such prohibition or unenforceability, be ineffective only to the extent of such prohibition or unenforceability, without invalidating the remaining terms and conditions.

**18. MODIFICATION.** No addition to, or modification of, any of these terms or conditions shall be binding upon Tempel unless made in writing and signed by a duly authorized representative of Tempel.

**19. COMPLETE AGREEMENT.** These terms and conditions constitute the entire agreement of the parties hereto with respect to the sale of the Products hereunder, and supersede all prior discussions, agreements and understandings of any nature whether written or oral, with respect thereto, and no conditions, warranties or representations other than as expressly provided herein shall be binding upon Buyer or Tempel. The entire understanding between Tempel and Buyer is set forth herein and any promises, representations, warranties or guarantees not herein contained shall have no force and effect unless in writing signed by Tempel and Buyer.