

GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. **Applicability.** These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by Everzinc USA, Inc. or any of its affiliates (collectively, "**Seller**") to the buyer of such Goods ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The accompanying quotation, confirmation of sale, or invoice (the "**Sales Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
2. **Offers and orders.**
 - (a) Offers made by Seller are strictly limited to the specified objects and exclude all accessories packing and other such items which are not mentioned and which are not indispensable.
 - (b) All offers made by Seller are valid for a period of 2 hours from the moment on which they are made, unless otherwise specified. The prices stated in the offer are only valid to the extent that the complete offer is purchased.
 - (c) The placing of an order or any other form of confirmation of agreement with an offer issued by Seller to which the Terms have been attached, shall imply unconditional acceptance of the Terms. Terms shall remain fully applicable to all future orders.
 - (d) Seller can only be considered bound by an order if it has issued a written order confirmation to that effect. Seller is not obliged to accept any order, and is entitled to refuse orders, e.g. in cases Buyer still has debts outstanding vis-à-vis Seller.
 - (e) Each and every order placed by Buyer constitutes the latter's irrevocable intent to purchase. Once accepted by Seller, an order can no longer be modified or cancelled. Nonetheless, Seller may expressly and in writing agree to:
 - i) A change in the order, with the proviso that Seller reserves the right to postpone its original delivery date in consequence of such change;
 - ii) The cancellation of an order by Buyer with the proviso of payment by the latter of an indemnity covering the loss of profit and administration costs of Seller amounting to 25 % of the total order price.
 - (f) Any request to change the order shall only be taken into consideration if it is notified to Seller in writing at the e-mail address that confirmed the order to Buyer.
 - (g) Any changes to the order approved by Seller shall result in an automatic extension of the delivery date stated in Section 3 in accordance with Seller's estimate. In no event shall Seller be held liable for alleged damage due to extensions of the delivery dates arising from changes in the order requested by Buyer. In the event of changes to the order, the initial delivery dates can only be maintained with the express approval of Seller, always on the condition that Buyer shall assume all additional costs necessary to enable Seller to still meet the initial delivery dates.
 - (h) Negotiations concerning changes to the order can in no way affect the fulfillment of the initial purchase agreement. Neither party shall be entitled to suspend the fulfillment of the initial order or any commitments arising therefrom (such as payment for goods delivered) as a result of negotiations concerning changes to the order.
3. **Delivery.**
 - (a) The goods will be delivered on or by such date (i) as set forth on the Sales Confirmation, (ii) as set forth in Seller's reasonable non-binding delivery estimate, which is subject to change at any time without notice to Buyer, or (iii) within a reasonable time after the receipt of Buyer's purchase order. In each case, Seller shall not be liable for any delays, loss or damage in transit.
 - (b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods according to the Incoterms 2020 mode of transport and to the location as set forth in each case on the Sales Confirmation (the "Delivery Point"). Buyer shall provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.
 - (c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
 - (d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered and the price shall be immediately due and payable to Seller from the initial delivery date; (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and (iv) Seller, at its sole option, may effect a forced sale of the Goods by reversing the transaction on the London Metal Exchange ("LME") or to renew or extend its cover on the LME for a time period of Seller's choice.
4. **Non-Delivery.**
 - (a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
 - (b) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.
5. **Quantity.** If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.
6. **Shipping Terms.** Delivery shall be made according to the Incoterms 2020 mode of transport and to the location as set forth in each case on the Sales Confirmation.
7. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the North Carolina Uniform Commercial Code.
8. **Amendment and Modification.** These Terms may only be amended or modified by Seller in a writing which specifically states that it amends these Terms.
9. **Inspection and Rejection of Nonconforming Goods.**
 - (a) Buyer shall inspect the Goods within two days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
 - (b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, according to the applicable Incoterms 2020 mode of transport, upon Seller's request, the Nonconforming Goods to Seller's facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, according to the applicable Incoterms 2020 mode of transport, the replaced Goods to the Delivery Point.
 - (c) Buyer acknowledges and agrees that the remedies set forth in Section 9(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 9(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.
10. **Price.**
 - (a) Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in the Sales Confirmation.
 - (b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
11. **Payment Terms.**
 - (a) Buyer shall pay all invoiced amounts due to Seller on the terms set forth in the Sales Confirmation. Buyer shall make all payments hereunder by wire transfer and in US dollars.
 - (b) If Buyer fails to pay the total invoiced amount by its due date:
 - i) Buyer shall pay interest at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.
 - ii) Buyer shall pay a fixed compensation of 10% of the total price invoiced.
 - iii) Any postponement of payment granted for other deliveries shall lapse, and all other invoices, even those not yet payable, shall become immediately payable.
 - iv) Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder.
 - (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

12. **Limited Warranty.**
- (a) Seller warrants to Buyer that for the shorter of (i) the shelf life period set forth on Seller's technical data sheet applicable to the Goods, or (ii) the shelf life period set forth for the Goods on the Certificate of Conformity accompanying the Goods ("Warranty Period"), that such Goods will materially conform to the specifications set forth the Certificate of Conformity accompanying the Goods.
 - (b) **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 12(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
 - (c) The Seller shall not be liable for a breach of the warranty set forth in Section 12(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within two days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business, according to the Incoterms 2020 mode of transport, for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.
 - (d) The Seller shall not be liable for a breach of the warranty set forth in Section 12(a) if: (i) Buyer did not acquire the Goods legitimately; (ii) Buyer makes any further use of such Goods after giving such notice; (iii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iv) Buyer alters or repairs such Goods without the prior written consent of Seller.
 - (e) Subject to Section 12(c) and Section 12(d) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, according to the Incoterms 2020, return such Goods to Seller.
 - (f) **THE REMEDIES SET FORTH IN SECTION 12(E) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 12(A).**
13. **Limitation of Liability.**
- (a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
 - (b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.** The limitation of liability set forth in this Section 13(b) shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.
14. **Compliance with Law.** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.
15. **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
16. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
17. **Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
18. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, hurricanes and other storms, extreme winter weather, natural catastrophes, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) epidemics or pandemics, including, without limitation, the COVID-19 pandemic. The Impacted Party shall give notice within a reasonable period of time of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ninety consecutive days following written notice given by it under this Section, either party may thereafter terminate this Agreement upon [fifteen] days' written notice.
19. **Intellectual Property.** Every technical document, technique or asset to which Seller holds intellectual property rights must be returned at the latter's request and may not be sold, copied, used or marketed without prior written consent from Seller. Any patentable inventions and protectable creations as well as their results arising from Buyer's order shall belong to Seller.
20. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
21. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
22. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
23. **Governing Law.** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of North Carolina.
24. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of North Carolina in each case located in the City of Raleigh and County of Wake, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
25. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (each with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
26. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
27. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.