

TERMS AND CONDITIONS OF SALE - 1

ALASKAN

ALASKAN COPPER & BRASS COMPANY ALASKAN COPPER WORKS

1. **Price.** Unless otherwise indicated on the applicable quotation, acknowledgement or invoice, prices are based on delivery F.O.B. Alaskan Copper & Brass Company's, Alaskan Copper Works' (the Seller's) plants or factory in Seattle, Washington or Portland, Oregon (the "Plants" or "Factory") and do not include expenses attributable to storage, loading or shipping the goods purchased hereunder or to the export packaging thereof. The Purchaser whose account for billing is indicated on the applicable quotation, acknowledgement or invoice (the "Purchaser") shall pay to Seller on demand any charges made by Seller or others for storage, export packaging, loading or shipping the goods on behalf of Purchaser. Revision of the prices stated on the applicable quotation, acknowledgement or invoice to correct any clerical or computational errors incorporated therein shall be effective upon the giving of written notice thereof to Purchaser.
2. **Payment.** All invoices shall be due and payable in cash within thirty (30) days of the date thereof, unless otherwise indicated on the applicable quotation, acknowledgement or invoice. An invoice not so paid shall have interest added to the unpaid balance thereof, on a monthly basis, at the rate of eighteen percent (18%) per annum.
3. **Delivery.** Delivery to the carrier at the Plants or Factory shall constitute delivery to Purchaser. The securing of the goods on board the carrier shall be deemed to have occurred subsequent to delivery. Risk of loss and damage shall pass to Purchaser upon delivery of the goods to the carrier, or upon receipt by Seller of Purchaser's directive to place the goods purchased hereunder in storage. Purchaser understands and agrees that delivery dates are estimated and approximate. Purchaser authorizes Seller to execute any shipper's or carrier's standard bill of lading or contract for carriage of the goods purchased hereunder.
4. **Taxes.** Any taxes which Seller may be required to pay or collect, upon or with respect to the manufacture, sale, purchase, storage, use or consumption of the goods or any material relating thereto, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of Purchaser, which shall promptly pay such to Seller upon demand.
5. **Performance Excused.** Seller shall not be liable for loss, damage or delay in manufacture, shipment or delivery of the goods or for its inability to perform any or all of its obligations hereunder due to the failure or happening of events or conditions rendering performance commercially impracticable, or to any causes beyond Seller's control, including but not limited to, acts of God, any acts or omissions of Purchaser, acts of civil or military authorities, fire, floods, windstorm, earthquake, strikes or other labor disturbances, civil commotion, war, delays in transportation, late delivery by Seller's suppliers or subcontractors, fuel or other energy shortages or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. If any such failure of events or conditions results in a delay in performance, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay, and such extension shall be Purchaser's exclusive remedy. Acceptance of the equipment by Purchaser shall constitute a waiver of all claims for loss or damage due to delay resulting from any cause.
6. **Warranty; Disclaimer.**
 - (a) For purchases from Alaskan Copper & Brass Company:
SELLER IS A WHOLESALER OF GOODS ONLY, AND AS SUCH ONLY WARRANTS THAT THE GOODS WILL CONFORM TO THE DIMENSIONAL DESCRIPTION STATED OR REFERENCED ON THE APPLICABLE QUOTATION, ACKNOWLEDGEMENT OR INVOICE. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USAGE OR TRADE), TO ANY PERSON OR ENTITY WITH REGARD TO THE GOODS COVERED HEREBY AND FORBIDS PURCHASER TO REPRESENT OTHERWISE TO ANYONE WITH WHICH IT DEALS. SELLER HEREBY ASSIGNS TO PURCHASER THE WARRANTIES, IF ANY, COVERING THE GOODS WHICH SELLER RECEIVES FROM THIRD PARTIES, BUT SELLER SHALL HAVE NO DUTY TO ENFORCE SUCH WARRANTIES.
 - (b) For purchases from Alaskan Copper Works:
SELLER WARRANTS TO PURCHASER, BUT NOT TO ANYONE ELSE, THAT THE GOODS WILL CONFORM TO THE EXPRESS SPECIFICATIONS SHOWN ON THE APPLICABLE QUOTATION, ACKNOWLEDGEMENT OR INVOICE. SELLER MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, (INCLUDING NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USAGE OR TRADE), TO ANY PERSON OR ENTITY WITH REGARD TO THE GOODS OR SERVICES COVERED HEREBY AND FORBIDS PURCHASER TO REPRESENT OTHERWISE TO ANYONE WITH WHICH IT DEALS.
7. **Defects; Inspection; Notification.**
 - (a) Purchaser must inspect the goods, at its sole expense, within ten (10) days of the receipt thereof and notify Seller of any claimed defect, shortage or inaccuracy therein within ten (10) days thereafter or it shall be held to have waived its right to seek remedy thereof or recovery thereon from Seller. If Purchaser shall have timely notified Seller of alleged defects in the goods and made the goods available for inspection and testing by Seller, Seller shall determine whether defects exist which are attributable to it, rather than to Purchaser's improper installation, use or maintenance and, if it determines that there are, proceed to remedy the defects under the options available to it in paragraph 8 thereof.

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(b) NO GOODS SHALL BE DEEMED DEFECTIVE IF THE ALLEGED DEFECT IS DISCOVERABLE ONLY BY INSPECTION MEANS MORE STRINGENT THAN THOSE REQUESTED BY PURCHASER IN CONNECTION WITH THE PLACING OF ITS ORDER.

8. **Exclusivity of Remedy; Limitation of Damages.** PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE GOODS OR SERVICES SHALL BE, AT SELLER'S OPTION, REPAIR, REPLACEMENT OR REFUND OF PURCHASE PRICE. SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR BREACH OF WARRANTY (EXPRESS OR IMPLIED), TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, FOR ANY ACTUAL, INCIDENTAL, CONTINGENT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR OUT OF THIS AGREEMENT OR THE GOODS OR SERVICES PURCHASED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, NO LIABILITY FOR LOSS OF PROFITS OR REVENUE, LOSS OF USE OF GOODS OR SERVICES OR OTHER ITEMS TO BE FURNISHED TO PURCHASER HEREUNDER, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, ADDITIONAL COSTS INCURRED BY PURCHASER AT ITS PLANT OR IN THE FIELD (WHETHER BY WAY OF CORRECTION OR OTHERWISE) OR CLAIMS OF PURCHASER'S CUSTOMERS OR OTHER THIRD PARTIES FOR DAMAGES.
9. **Patent Infringement.** Purchaser warrants to Seller that the manufacture or other processing by Seller of any products listed on the applicable quotation, acknowledgement or invoice for which Purchaser has provided the design will not infringe upon the patent or other property rights of any person. Purchaser shall indemnify and hold Seller harmless from all losses, damages, costs and causes of action arising out of the inaccuracy of such warranty.
10. **Proprietary Rights of Seller.** If the goods listed on the applicable quotation, acknowledgement or invoice are described only in terms of their capacity (whether it be output, storage or otherwise) without reference to an existing design, and Seller designs a product to meet the desired capacity, Seller retains all design and other property rights with regard thereto. Purchaser covenants that it will not use such design or reveal or communicate it to any third party without Seller's prior written consent.
11. **Dies, Tools and Patterns.** Seller's use of any die, tool or pattern in connection with the production of the goods described on the applicable quotation, acknowledgement or invoice shall not transfer to Purchaser any rights therein, and all such dies, tools and patterns shall continue to be Seller's exclusive property.
12. **Repudiation.** If Purchaser repudiates this contract prior to Seller's delivery of the goods, Purchaser shall, within forty-eight (48) hours of such decision, notify Seller thereof in writing at P.O. Box 3546, Seattle, Washington 98124. After giving such notice, Purchaser shall pay to Seller, on demand, the full contract price, as indicated on the applicable quotation, acknowledgement or invoice and modified under terms of paragraph 1 hereof, less (a) the fair value which Seller could readily obtain for the work and material appropriated to the contract and (b) the costs from which Seller has been relieved by virtue of such repudiation, such value and cost to be determined by Seller in its sole and commercially reasonable judgment.
13. **Assignment.** Purchaser agrees that it will not assign this contract or the purchases hereunder prior to payment in full therefore without Seller's prior written consent.
14. **Security Agreement.** Seller hereby retains, and Purchaser hereby grants to Seller, a purchase money security interest in all goods described on the applicable quotation, acknowledgement or invoice which shall continue until Seller has been paid the full amounts due hereunder. Purchaser shall execute such financing statements and other documents as may be required to give Seller's security interest priority over the interests of all other persons or entities and grants to Seller a power of attorney coupled with an interest authorizing it to execute such documents on its behalf. Purchaser shall keep all goods subject to this security interest fully insured against damage due to fire, theft, accident and the elements under a policy in form satisfactory to Seller which names Seller as loss payee. Purchaser shall pay, before delinquency, all taxes and other charges assessed against the goods purchased hereunder and keep said goods free from all liens and security interests other than that created hereby, except with Seller's written consent. Seller reserves all rights and remedies available to it under the Uniform Commercial Code.
15. **Solvency.** Purchaser warrants that it is solvent and able to pay for the goods being purchased hereunder in accordance with the payment terms. If the financial condition of Purchaser at any time does not, in Seller's sole and commercially reasonable judgment, justify continuing performance on Seller's part, Seller may, in addition to any other remedies provided hereunder or available under state law, require full or partial payment prior to completion, or may terminate the order, in which case Purchaser shall be liable to Seller for the full contract price, together with any charges or expenses incidental to such termination, less (a) the fair value which Seller could readily obtain for the work and material appropriated to the contract, and (b) any costs from which Seller shall be relieved by reason of such termination. If Purchaser becomes insolvent within the meaning of the Washington Uniform Commercial Code (RCW 62A 1-201 (23)), or is the subject to a voluntary or involuntary petition in bankruptcy under the federal Bankruptcy Act or comparable state law or if a receiver, trustee or assignee is appointed for Purchaser, such event shall be deemed a material breach hereof.
16. **Default.** If Purchaser breaches any term or condition hereof, Seller may, in addition to exercising any other right it has hereunder or under State law, accelerate all sums due to Seller under the terms hereof, and/or terminate the contract and discontinue

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Seller's performance hereunder, seeking recovery of the damages it suffers as the result of such breach, both direct and consequential. If Seller retains legal counsel to enforce any term, condition or covenant herein, or to recover damages from Purchaser arising from Purchaser's alleged breach of any such term, condition or covenant, or if Purchaser commences suit against Seller for any alleged breach of this contract and is not successful in such action, then Purchaser shall pay Seller's reasonable attorney's fees together with cost of suit at both trial and appellate levels.

17. Waiver. Waiver by Seller of a breach by Purchaser of any provision contained herein shall not be deemed a waiver of future compliance therewith, and such provision, as well as all other terms, covenants and conditions hereof, shall remain in full force and effect.
18. Limitation of Action. Any action by Purchaser against Seller for any breach of this contract must be commenced within one (1) year following Seller's delivery of the goods to Purchaser or one (1) year of such breach, whichever occurs first.
19. Notices. All notices required or permitted hereunder shall be in writing, sent by certified U.S. Mail, postage prepaid, return receipt requested, and addressed to Seller at P.O. Box 3546, Seattle, Washington 98124 or to Purchaser at the address appearing on the applicable quotation, acknowledgement or invoice or to such other address as either party may from time to time advise in writing. All notices shall specify their subject matter with reasonable particularity. If Purchaser is required to give Seller notice within a seasonable or reasonable time period, such notice shall be given no later than ten (10) days following the occurrence requiring the giving of such notice.
20. Acceptance.
 - (a) For purchases from Alaskan Copper and Brass Company:
SELLER'S ACCEPTANCE OF THIS CONTRACT IS EXPRESSLY CONDITIONED ON PURCHASER'S ASSENT TO ALL OF THE FOREGOING TERMS AND CONDITIONS OF SALE. Any additional or different terms or conditions which may appear in any communication from Purchaser are hereby objected to and shall not be effective or binding unless recognized and assented to in writing by Seller's President, Vice President or authorized representative, and no such additional or different terms or conditions in any printed form of Purchaser shall become part of this contract despite Seller's acceptance of the contract unless such acceptance so specifically recognizes and assents to their inclusion. If Purchaser objects to any of the terms stated herein, Purchaser shall advise Seller in writing of the particular objection within ten (10) days or shall be held to have waived its objection.
 - (b) For purchases from Alaskan Copper Works:
SELLER'S ACCEPTANCE OF THIS CONTRACT IS EXPRESSLY CONDITIONED ON PURCHASER'S ASSENT TO ALL OF THE FOREGOING STANDARD TERMS AND CONDITIONS OF SALE AND SHALL IN NO EVENT BE EFFECTIVE UNTIL THIS CONTRACT IS ACKNOWLEDGED IN WRITING BY THE SIGNATURE OF SELLER'S AUTHORIZED REPRESENTATIVE ON THE APPLICABLE ACKNOWLEDGEMENT. Any additional or different terms or conditions which may appear in any communication from Purchaser are hereby objected to and shall not be effective or binding unless specifically recognized and assented to in writing by Seller's President, Vice President or authorized representative, and no such additional or different terms or conditions in any printed form of Purchaser shall become part of this contract despite Seller's acceptance of the contract unless such acceptance so specifically recognizes and assents to their inclusion. If Purchaser objects to any of the terms stated herein, Purchaser shall advise Seller in writing of the particular objection within ten (10) days or shall be held to have waived its objection.
21. Applicable Law. The terms, conditions and covenants contained herein shall be governed by and construed in accordance with the laws of the State of Washington, as they apply to transactions between merchants, and venue in any action herein may be laid in or transferred to King County, Washington. If any provision or provisions hereof are void or are declared to be void, such provision or provisions shall be deemed and hereby are severed from this document which shall otherwise remain in full force and effect.