

# **UNION ELECTRIC STEEL CORPORATION AND SUBSIDIARIES**

## **TERMS AND CONDITIONS OF SALE**

### **FORGED AND CAST ENGINEERED PRODUCTS**

#### **1. DEFINITIONS**

As used in these Terms and Conditions of Sale: (a) "Seller" is Union Electric Steel Corporation or any of its subsidiaries named in the order acknowledgement; (b) "Buyer" is the buyer of Goods and/or Services; (c) "Goods" are the goods that are the subject of a sale from Seller to Buyer; (d) "Services" are the repair and/or other services provided by Seller to Buyer; (e) "Service Items" are the tangible items on which Services are performed; and (f) "Laws" are all federal, state or local laws and regulations applicable to the transactions covered hereby, including, without limitation, any Laws related to anti-bribery or anti-corruption. When referred to individually, Seller and Buyer may be referred to as a "Party" and collectively as the "Parties."

#### **2. EXCLUSIVE TERMS, CONDITIONS AND LIMITATIONS OF SALE**

These Terms and Conditions of Sale (together with the terms and conditions set forth in the applicable quotation by Seller, the "Terms and Conditions") govern in all respects all sales of Goods and Services from Seller. The Terms and Conditions constitute an offer to sell the Goods and Services and are not an acceptance of any offer by Buyer. Unless specifically agreed to in writing by a duly authorized officer of Seller, or other authorized person in Seller's employ, Seller shall not be bound by any terms or conditions other than those stated herein, whether written or oral, whether contained in Buyer's purchase order or other, business forms of Buyer. Any such terms and conditions are hereby expressly objected to and rejected by Seller. These Terms and Conditions can be modified, altered, or added to only by a subsequent written instrument signed by an authorized Seller representative. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, shall constitute a waiver or serve to explain or interpret these Terms and Conditions.

#### **3. PURCHASE PRICE; ACCEPTANCE OF ORDERS AND CANCELLATION CHARGES**

The purchase price of the Goods and/or Services shall be as stated on the applicable Seller order acknowledgement; provided, however, that if Seller announces a surcharge, such surcharge shall become effective for Goods scheduled for shipment beginning on the date set forth in Seller's announcement of such surcharge or, if there is no such date, immediately upon such announcement.

All orders are subject to Seller's credit department approval prior to acceptance by Seller. Seller makes no assurance or guarantee regarding any amount of credit or the continuation of credit to Buyer.

For any order cancelled by Buyer prior to shipment, for convenience, Buyer will pay Seller a cancellation charge in the amount equal to the total direct and indirect costs incurred prior to the date of cancellation by Seller, less scrap value of the Goods. If applicable, Buyer will also pay for any cancellation costs incurred by Seller relating to a forward currency exchange contract or a commodity hedge associated with an order.

#### **4. TAXES; DUTIES AND OTHER CHARGES**

Unless otherwise specifically noted, the amount of any sales, use, occupancy, excise tax, or any other tax (excluding federal, state or local income or franchise taxes of Seller), of any nature, federal, state or local, for which Seller is legally liable, either initially or through failure of payment by Buyer, shall be added or be in addition to the price quoted and Buyer agrees to pay the same to Seller. Unless expressly agreed otherwise, Buyer shall also pay all import/export duties, tariffs, levies and impositions and all other governmental charges, assessments, fees, and any interest or penalties thereon (collectively, "Tariffs"), whether payable by Seller or Buyer, imposed or levied on or with respect to Buyer's purchase order, the amounts payable therein, the Goods or the possession, sale, use, furnishing or ownership of the Goods. Buyer shall also be responsible for obtaining and paying for any permits, licenses, or other governmental authorizations necessary for the exportation or importation of the Goods into the designated country of importation, and it shall comply with all laws and regulations thereof. Seller's refund of any Tariffs previously paid by Seller for any Goods shall be expressly subject to Seller's prior receipt of a refund of such Tariffs from the applicable governmental agency.

#### **5. LIMITED WARRANTY**

(a) Goods

**SELLER WARRANTS THAT ALL GOODS WILL CONFORM TO THE EXPRESS SPECIFICATIONS SET FORTH ON ITS ORDER ACKNOWLEDGEMENT, FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF DELIVERY, EXCEPT AS SET FORTH BELOW.**

**THE 1-YEAR WARRANTY AS TO CONFORMITY TO THE EXPRESS SPECIFICATIONS SET FORTH ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTY THAT THE GOODS ARE FIT FOR THE PURPOSES FOR WHICH GOODS OF THE SAME DESCRIPTION WOULD ORDINARILY BE USED. NO PROMISE, STATEMENT OR AFFIRMATION OF FACT MADE BY ANY EMPLOYEE, AGENT, OR REPRESENTATIVE OF SELLER, NOR ANY SAMPLE PROVIDED TO BUYER, SHALL CONSTITUTE A WARRANTY OR GIVE RISE TO ANY LIABILITY OR OBLIGATION.**

**WITHOUT PREJUDICE TO THE FOREGOING, NO STATEMENT OR UNDERTAKING CONTAINED IN ANY STANDARD OR TECHNICAL SPECIFICATION AS TO THE SUITABILITY OF THE GOODS FOR ANY PARTICULAR PURPOSE SHALL GIVE RISE TO ANY LIABILITY. BUYER SHALL SATISFY ITSELF THAT THE GOODS ARE SUITABLE FOR ANY PURPOSE OR APPLICATION FOR WHICH THEY ARE TO BE USED BEFORE THE GOODS ARE EMPLOYED FOR SUCH PURPOSE OR**

## **APPLICATION.**

**SELLER IS NOT RESPONSIBLE FOR THE DESIGN OF THE GOODS AND WILL NOT HAVE ANY WARRANTY, INDEMNIFICATION OR ANY OTHER LIABILITY OR OBLIGATION FOR ANY ACTUAL OR ALLEGED DEFECTS, QUALITY ISSUES, INTELLECTUAL PROPERTY INFRINGEMENT OR OTHER NON-CONFORMITIES WITH RESPECT TO ANY GOODS TO THE EXTENT RELATING TO OR ARISING OUT OF THE DESIGN AND/OR SPECIFICATIONS FOR SUCH GOODS. WHILE SELLER MAY, FROM TIME TO TIME, OFFER ADVICE, RECOMMENDATIONS AND/OR OTHER SUGGESTIONS AS TO THE DESIGN, USE OR SUITABILITY OF ANY GOODS, SUCH ADVICE, RECOMMENDATIONS AND/OR OTHER SUGGESTIONS DO NOT CONSTITUTE OR CREATE ANY WARRANTIES WITH RESPECT TO ANY GOODS. SELLER DISCLAIMS ANY SUCH WARRANTIES AND BUYER ASSUMES FULL RESPONSIBILITY AND LIABILITY FOR ACCEPTING AND/OR USING SUCH ADVICE, RECOMMENDATIONS AND/OR OTHER SUGGESTIONS.**

Unless otherwise agreed by Seller in writing, such warranty as to conformity to express specifications runs only to Buyer and is non-transferable and non-assignable either directly, indirectly, or by operation of law, and any such purported or attempted transfer or assignment shall be null and void. Seller's warranty does not include purchased parts or parts supplied by Buyer, whether new or used, however, Seller will assist Buyer to resolve claims with parts suppliers.

If any Goods furnished to the Buyer fail to conform to Buyer's specifications, Buyer shall give written notification thereof to Seller, setting forth in reasonable detail the basis of such non-conformity, within thirty (30) days after Buyer discovers or should have discovered such non-conformity, subject, moreover to the 1-year warranty period set forth above. Such non-conforming Goods shall be held by Buyer for inspection by Seller and Buyer shall only be entitled to return the goods upon Seller's written permission.

### **(b) Services**

**FOR A PERIOD OF NINETY (90) DAYS AFTER THE SERVICE IS PERFORMED, SELLER WARRANTS TO BUYER THAT SERVICES WILL BE PERFORMED IN A COMPETENT, DILIGENT MANNER IN ACCORDANCE WITH ANY MUTUALLY AGREED SPECIFICATIONS, OR, IN THE ABSENCE OF SUCH SPECIFICATIONS, SPECIFICATIONS AS SELLER REASONABLY DETERMINES ARE APPLICABLE. UNLESS SELLER EXPRESSLY AGREES OTHERWISE IN WRITING, ANY GOODS AND MATERIALS THAT ARE THE SUBJECT OF SERVICES SHALL CARRY ONLY THE WARRANTY THAT THE ORIGINAL MANUFACTURERS PROVIDE, AND SELLER GIVES NO WARRANTY ON BEHALF OF THE MANUFACTURERS OF SUCH GOODS OR MATERIALS.**

**THIS SECTION PROVIDES THE EXCLUSIVE REMEDIES FOR ALL CLAIMS BASED ON FAILURE OF OR DEFECT IN SERVICES, WHENEVER THE FAILURE OR DEFECT ARISES AND WHETHER A CLAIM, HOWEVER DESCRIBED, IS BASED ON CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE WARRANTY PROVIDED IN THIS SECTION IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES. NO PROMISE OR AFFIRMATION OF FACT MADE BY ANY EMPLOYEE, AGENT, OR REPRESENTATIVE OF SELLER, NOR ANY SAMPLE PROVIDED TO BUYER, SHALL CONSTITUTE A WARRANTY OR GIVE RISE TO ANY LIABILITY OR OBLIGATION.**

If the Services do not meet the warranty set forth above, Buyer shall promptly notify Seller in writing within the 90-day warranty period. Seller shall thereupon, at Seller's option, either re-perform the defective Services or, if Seller determines, in its reasonable judgement, that the Services may not be re-performed, Seller shall refund or credit monies paid by Buyer for that portion of Services that do not meet the above warranty. No repair, replacement or re-performance by Seller hereunder shall extend the applicable warranty period. The Parties shall mutually agree on the specifications of any test to determine the presence of a defect.

## **6. LIMITATIONS ON DAMAGES**

**BUYER'S SOLE REMEDY FOR BREACH OF WARRANTY SHALL BE STRICTLY AND EXCLUSIVELY LIMITED, AT SELLER'S OPTION, TO THE REPAIR OR REPLACEMENT OF NONCONFORMING GOODS OR RE-PERFORMANCE OF THE SERVICES, AS THE CASE MAY BE, OR TO A FULL OR PARTIAL CREDIT OF PURCHASE PRICE. IN NO EVENT SHALL THE LIABILITY OF SELLER EXCEED THE PURCHASE PRICE OF THE GOODS OR SERVICES.**

**IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOSS OF USE, LOST PROFITS, BUSINESS INTERRUPTION, AND LOSS OF PRODUCT), INCIDENTAL, SPECIAL, LIQUIDATED, PUNITIVE, OR ANY OTHER DAMAGES IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, CONTRIBUTION, INDEMNITY, INFRINGEMENT, STATUTE, OR OTHERWISE. 7. CONFIDENTIALITY**

All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, designs, plans, drawings, documents, data, business operations, customer lists, or pricing disclosed by Seller to Buyer, whether disclosed orally, in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential", is confidential, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return or destroy 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 who was not subject to any obligation of confidentiality to Seller.

## **8. SELLER'S INTELLECTUAL PROPERTY**

With the exception of developments, inventions, discoveries, designs and improvements created for Buyer's exclusive use, Seller shall exclusively own all rights, title and interest in or to any know-how, trade secrets, developments, inventions, discoveries, designs, improvements

or intellectual property created during, or that arise out of performance of this contract, including without limitation, all improvements, modifications, and efficiencies to Seller's manufacturing process.

## **9. NUCLEAR APPLICATION EXCLUSION**

It is expressly understood and agreed that Buyer will not use, cause to be used or make available for use, the Goods described on the face hereof in any nuclear application including, but not limited to, use in connection with any nuclear reactor, any nuclear power generating system or any nuclear waste (or spent fuel) disposal project, unless written notice of the specific proposed or intended nuclear application has been given to and acknowledged by Seller at the time of Buyer's offer for the Goods. Unless such notice has been given, any subsequent nuclear application of the Goods is wholly unauthorized and shall be deemed to be unknown to, unforeseeable to, and unintended by Seller. **UNLESS SUCH NOTICE HAS BEEN GIVEN, BUYER SPECIFICALLY AGREES THAT AS TO NUCLEAR APPLICATIONS, THE GOODS AND SERVICES FURNISHED BY SELLER ARE FURNISHED WITHOUT ANY WARRANTIES WHATSOEVER, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IT IS FURTHER SPECIFICALLY AGREED THAT BUYER WAIVES ALL REMEDIES AND ANY CLAIM, INCLUDING ANY STATUTORY OR COMMON-LAW CLAIM, FOR CONTRIBUTION OR INDEMNIFICATION AGAINST SELLER WITH RESPECT TO ANY NUCLEAR APPLICATION OF THE GOODS AND SERVICES FOR WHICH SUCH NOTICE HAS NOT BEEN GIVEN AND ACKNOWLEDGED.**

## **10. DELIVERY, FORCE MAJEURE, RISK OF LOSS AND TITLE**

(a) Estimated dates for shipping of Goods and/or delivery of Services are provided to Buyer on the basis of Seller's best estimate for informational purposes only and are not guaranteed.

(b) Neither Seller nor Buyer shall be liable for loss or damage resulting from delay or failure of delivery or performance due to accident, equipment breakdown or equipment malfunction; strike, lockout, or any labor dispute; fire, flood, accident, quarantine restrictions, earthquake, tornado, hurricane, pandemic, epidemic, or other casualty or act of God; war, riot, civil disobedience, or other emergency, or acts of civil or military authorities; compliance with orders, priorities, or requests of any government agencies or courts or arbitrators; embargoes; inability or delay in obtaining transportation, power, fuel, and or raw materials; or any cause, condition, or contingency beyond the reasonable control of Seller. In the event of any of the foregoing, Seller may apportion its production and all stock material among its customers in such manner as Seller deems equitable in its sole discretion.

(c) Risk of loss shall pass to Buyer when risk of loss transfers in accordance with delivery terms specified in Seller's order acknowledgement.

(d) Buyer shall bear the risk of loss (including by reason of damage or delay) for Services during the period when Services are rendered, whether at Seller's facilities or in transit.

(e) Until payment is received in full, Seller is granted and shall retain a security interest in all Goods ordered by Buyer and/or Services and Buyer authorizes Seller to execute on Buyer's behalf a financing statement and/or file a financing statement to perfect Seller's security interest under the applicable filing provisions of the Uniform Commercial Code or equivalent applicable statute or commercial code governing the Buyer.

## **11. DISPUTE RESOLUTION, APPLICABLE LAW AND JURISDICTION AND SAVINGS CLAUSE**

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions or any other agreement between the Parties. Any dispute arising under these Terms and Conditions will be governed by the law of the Commonwealth of Pennsylvania, United States of America, including the Pennsylvania statutes of limitations, but excluding conflict of laws provisions. Any dispute, controversy or claim relating to the validity, interpretation, performance or termination of these Terms and Conditions shall, in the first instance, be amicably settled by and between the Parties. In the event the Parties fail to amicably settle their disputes, controversies or claims within sixty (60) days, such disputes, controversies or claims shall be submitted to non-binding mediation, such costs to be split evenly between the Parties.

If Buyer is located in the United States or Canada and mediation proves to be unsuccessful, then the disputes, controversies or claims shall be finally resolved by arbitration pursuant to Commercial Arbitration Rules established by the American Arbitration Association ("AAA"). There shall be one neutral arbitrator, appointed by the AAA, in accordance with its rules. The decision of the arbitrator shall be final and binding on the Parties. Judgment upon the award may be entered in any court having jurisdiction. The arbitration proceedings described above shall be conducted in the English language and shall take place in Pittsburgh, Pennsylvania. The costs of the arbitrator and the arbitration proceedings shall be evenly split between the Parties but each Party shall pay for its own attorney fees and expenses.

If Buyer is located outside of the United States or Canada and mediation proves to be unsuccessful, then the disputes, controversies or claims shall be finally resolved by arbitration pursuant to the Arbitration Rules established by the International Chamber of Commerce ("ICC"). There shall be one neutral arbitrator. The decision of the arbitrator shall be final and binding on the Parties. Judgment upon the award may be entered in any court having jurisdiction. The arbitration proceedings described above shall be conducted in the English language and shall take place in Amsterdam, The Netherlands.

If any term set forth herein is to any extent invalid, illegal or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality or unenforceability; all other terms hereof shall remain in full force and effect.

## **12. BUYER'S RESPONSIBILITY AND DEFAULT IN PAYMENT**

If Seller has any doubt as to Buyer's responsibility, or if Buyer fails to fulfill the terms and conditions of payment set forth herein or in Seller's order acknowledgement, Seller may decline to make any further shipment or delivery hereunder, except upon receipt of satisfactory security, including, but not limited to, full or partial prepayment.

If Buyer fails to make payments on this or any other contract between Buyer and Seller in accordance with the terms hereof or thereof, Seller may defer further shipments or delay the provision of Services until such payments are made or, at its option, cancel the contract with respect to any balance. If pursuant to this provision, Seller defers any shipments or cancels in whole or in part the contract, Buyer shall be liable for and reimburse Seller for all reasonably foreseeable damages incurred by Seller as a result of such deferral or cancellation.

### **13. NO WAIVER**

Failure by Seller to enforce any of the terms, conditions, or limitations as set forth herein shall not constitute a waiver thereof or a waiver of any other terms, conditions, or limitations. The failure of Seller to exercise any rights arising from default of Buyer shall not constitute a waiver of such right or any other right. The terms, conditions, or limitations herein may be enforced by Seller at any time in whole or in part.

### **14. TERMS OF PAYMENT**

Unless otherwise specified in Seller's order acknowledgement, payment terms are net 30 days. Interest charges of 1.5% per month will be applied to past due payments. Seller will have the option of billing for partial shipments or shipments delayed by Buyer.

The purchase price is payable on the terms set forth herein without deduction, set-offs, counterclaims, back-charges, or any other charges or claims of Buyer of whatsoever nature, and the obligations of Buyer to Seller shall remain unimpaired regardless of disputes which may arise between Buyer and third parties.

### **15. COMPLIANCE WITH LAW**

Buyer will comply with all Laws. Certain Goods sold or Services provided pursuant to the terms and conditions set forth herein may be subject to export controls under the laws of the United States, the United Kingdom, the European Union or other jurisdictions. Buyer must comply with all such Laws and not export, re-export or transfer, directly or indirectly, any such Goods or Services except in compliance with such Laws. Buyer agrees and shall cause each of its customers to agree, that it shall commit no acts which directly or indirectly violate any United States export control law, regulation, treaty or other international agreement to which the United States adheres or complies or any applicable export, import or other laws of any other jurisdiction and agrees to indemnify and hold Seller harmless from any and all liabilities or costs incurred by Seller or its affiliates for any reason arising from or connected with any such violation, incurred intentionally or unintentionally.

### **16. ASSIGNMENT**

Buyer shall not assign its rights or obligations under these Terms and Conditions or under any contract with Seller, without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed. Any attempted assignment in contravention of the foregoing shall be null and void.

### **17. THIRD PARTY RIGHTS**

Other than the rights of Seller's affiliates under these Terms and Conditions, no third parties will have any rights under these Terms and Conditions.

### **18. SEVERABILITY**

If any provision of these Terms and Conditions is found to be void or unenforceable, the remainder of these Terms and Conditions shall not be affected. The Parties will replace any such void or unenforceable provision with a new provision that substantially achieves the same practical or economic effect and is valid and enforceable.

### **19. SURVIVAL**

Sections 7, 8, 12, 14 and 15 shall survive the termination or cancellation of these Terms and Conditions.

### **20. CONSTRUCTION**

No provision of these Terms and Conditions shall be construed against the Seller as the drafting Party. The term "including" means "including without limitation." The term "days" means calendar days unless otherwise expressly stated.