

## TERMS AND CONDITIONS OF SALE

### **PURCHASE AGREEMENT TERMS AND CONDITIONS OF SALE:**

All goods sold by New Castle Metal, Inc. and NCBP Metals LLC d/b/a New Castle Metal, and S & K Distribution, L.L.C. d/b/a New Castle Building Products (collectively or individually referred to as the "Seller") are subject to the Terms and Conditions ("Terms") herein. In the event these terms conflict with any other instrument between Seller and Buyer, these terms shall control.

1. Any purchase made on credit requires that Buyer have on file with Seller an approved Credit Application. Buyer further confirms Buyer's consent to Seller's Credit Agreement, the terms and conditions of which have been read by Buyer and are incorporated by reference herein. In these Terms "Buyer" means, collectively, the persons, entities and Guarantor(s) listed on the Seller's Credit Application and Seller's Order. These Terms represent the final and complete agreement between Seller and Buyer and apply to all, including future, sales of goods by Seller, unless modified or excluded by express written agreement by an officer of Seller.
2. Seller acknowledges and accepts Buyer's order, Seller's acknowledgement and acceptance is expressly conditioned upon Buyer's acceptance of the terms and conditions herein. No terms or conditions other than those stated herein, whether contained in Buyer's purchase order, shipping release, or elsewhere, and no written or oral agreement that purports to vary these terms and conditions shall be binding upon Seller unless hereafter set forth in a writing signed by Seller's authorized representative. All negotiations, proposals and representations are merged herein, and this writing constitutes the complete and exclusive statement of the terms and conditions of this Purchase Agreement between Buyer and Seller. In the event Buyer fails to accept this Purchase Agreement in writing, Buyer's consent to the terms and conditions herein shall be conclusively presumed, either from Buyer's failure to object in ten days in writing or from Buyer's acceptance or use of the material delivered hereunder. Unless Buyer notifies Seller in writing to the contrary prior to making a purchase, Buyer hereby represents and warrants that any employee or agent action on Buyer's behalf shall be deemed to be authorized by Buyer and Seller may rely upon such representation.
3. In any case, in which Seller makes delivery, Buyer hereby agrees to pay Seller's customary shipping charges. Delivery shall be made at the project site or other place of delivery adjacent to the closest public right of way. The risk of loss shall pass to Buyer upon delivery of the goods should Buyer not be present to accept delivery. Buyer hereby authorizes Seller to unload the goods and leave them at the delivery destination. Buyer shall release Seller and shall indemnify and hold harmless Seller from and against any and all claims, demands, actions, causes of action, cost, expenses, and attorney's fees arising out of or in connection with any and all injury including death, to any person or persons (whether third parties or agents, servants, or employees of Buyer), any and all damages to or loss of any property (whether belonging to Buyer or a third party), and any and all other damages recognized at law or in equity caused in whole or in part by or in any way related to the delivery of goods onto the project site.
4. Buyer shall have the right to inspect the goods upon arrival. Buyer's inspection rights shall expire 24 hours after the arrival of the goods at the delivery destination. A failure to make inspection within that time shall waive notice of any defect which reasonable inspection would have revealed. A rejection of the goods by Buyer shall not be effective unless it is made and written notice thereof is given to Seller within 5 calendar days of delivery.
5. Seller shall have the right, without prejudice to any other rights, to suspend further deliveries of any items purchased if Buyer defaults in payment of any amounts due, or whenever Seller may deem itself insecure as to Buyer's performance, until Buyer remedies such default or provides adequate assurance to Seller of Buyer's ability to perform.
6. Unless otherwise provided by law, Seller may require Buyer to pay or to reimburse Seller for any tax (except income tax) which now or hereafter may be imposed by any taxing authority with respect to the items purchased or the sale, purchase, manufacture, delivery or use thereof.
7. Seller reserves the right to discontinue, without liability hereunder, deliveries of any merchandise, the manufacture, use and/or sale of which in the opinion of Seller would infringe any patent now or hereafter issued and under which Seller is not licensed.
8. Where Buyer requires tests or inspection not regularly provided by Seller, Seller may charge Buyer for the actual cost of such test or inspections.
9. An order may be terminated by Buyer, in writing, no later than five (5) business days before completion only with Seller's written consent, in which event Buyer shall pay to Seller:
  - (a.) The contract price for all products, which shall have been delivered or completed prior to receipt of notice of termination;
  - (b.) All actual costs incurred by Seller in connection with the uncompleted portion of the order; and
  - (c.) Cancellation charges, if any, of Seller.
10. Buyer shall not hold Seller responsible for any delay caused in whole or in part by circumstances beyond Seller's reasonable control, including but not limited to, force majeure, fires, pandemics, or accidents; strikes or other differences with workmen; war (whether declared or undeclared), riots, or embargoes; delays by carriers; delays in shipment or receipt of materials from suppliers; or any legislative, administrative or executive law, order, or requisition of the federal or any state or local government or any subdivision, department, agency, officer or official thereof. Seller shall not be liable in any event for any special, incidental, or consequential damages caused by Seller's failure or delay in performance or delivery due to any cause whatsoever, if Seller is unable, due to any cause beyond Seller's control, to supply Buyer's total demand for products. Seller may allocate its available supply among Seller's customers, including Seller's branches and affiliates, in any manner Seller deems reasonable.
11. **SELLER SHALL ASSIGN OR TRANSFER TO BUYER ANY ASSIGNABLE OR TRANSFERABLE MANUFACTURER'S WARRANTIES, IF ANY, APPLICABLE TO THIS PURCHASE, IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. SELLER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT EXTENDS BEYOND THE DESCRIPTION ON THE FACE OF THIS PURCHASE AGREEMENT. BUYER ACKNOWLEDGES THAT BUYER IS MAKING THIS PURCHASE BASED UPON BUYER'S SPECIFICATIONS TO SELLER OF THE GOODS REQUIRED BY BUYER AND NOT BY REASON OF ANY STATEMENT MADE BY OR ON BEHALF OF SELLER AS TO THE MERCHANTABILITY, SPECIFIC ATTRIBUTE OR OTHERWISE OF THE GOODS.**
12. Seller shall not be liable under any circumstances for consequential or Incidental damages arising out of, or in connection with, this Purchase Agreement. The liability of Seller under this Purchase Agreement is limited to repayment of the purchase price of items not conforming to the description on the face hereof upon return of the items. This remedy is the exclusive remedy of Buyer under this Purchase Agreement. Seller shall not be liable for any damages attributable to product abuse, misuse, neglect or any other cause, which is not the fault of Seller.
13. Buyer agrees to indemnify and hold harmless Seller from and against any and all claims, demands, actions, causes of action, costs, expenses, and attorney's fees arising out of or in connection with any and all injury, including death, to any person or persons (whether third parties or agents, servants or employees of Buyer), any and all damages to or loss of any property (whether belonging to Buyer or to a third party), and any and all other damages recognized at law or in equity, caused by or resulting from in whole or in part, any act(s) or omission(s), negligent or otherwise, of Buyer, or any of Buyer's agents, servants, employees, subcontractors or customers. In the event that the applicable law prohibits enforcement of this clause as written, then and only then, this clause shall be modified to provide the maximum indemnification to Seller, as indemnitee, allowable under that applicable law.
14. This Purchase Agreement shall be governed by and construed according to the laws of the State of New York without giving effect to the principles of conflicts of law that would require application of laws of another jurisdiction. Any action brought, upon or by reason of, this Purchase Agreement or any

transactions made in connection therewith, shall be brought, in the Supreme Court of the State of New York, County of Nassau. Notwithstanding the provisions of any other document, in Seller's sole discretion, Seller may elect to bring an action in any State and County where Seller's branch is located, in any State or County where Seller's principal credit department is located, or in any State or County where the project for which the goods are to be used is located. Buyer agrees that, in the event, any action is brought upon, or due to, this Purchase Agreement by either Buyer or Seller, and Seller prevails, Buyer shall pay Seller's reasonable attorney's fees and other costs incurred because of or in connection with such action, in the maximum amount permitted by law.

15. Waiver by Seller of any terms or conditions of this contract or waiver of any breach hereof shall not be construed as a waiver of any other term, condition, or breach. Determination that any provision of this Agreement is illegal or invalid shall not affect the validity or enforceability of the remaining provisions of this Agreement.
16. Buyer consents to Seller's execution and recording of a UCC1 security interest in the good purchased, any replacement goods and any proceeds from the sale of the goods.
17. **Risk of Loss and Title to Goods.** Risk of loss or damage to the Goods shall pass to Buyer: (i) in the case of delivery of the Goods somewhere other than the Seller's location, when Seller tenders delivery of the Goods to Buyer, which may include drop-ship to a jobsite; (ii) in the case Buyer is designated to pick-up the Goods from Seller, at the time Seller notifies Buyer that the Goods are available for pick-up. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, title to the Goods shall not pass to Buyer until Seller has received in readily available, cleared funds or cash, payment in full of all amounts owed from Buyer to Seller (including, but not limited to, the Purchase Price, any interest, or late fees, owed pursuant to these Terms, and any other amounts owed from Buyer to Seller for other goods). Until such time as title for the Goods passes to Buyer pursuant to the terms and conditions hereof, Buyer shall hold the Goods as Seller's fiduciary agent and bailee and shall keep the Goods separate from the goods of Buyer and third parties, properly stored, protected, insured, and identified. Buyer hereby irrevocably authorizes Seller or its representatives to enter upon any of Buyer's premises to search for the Goods, repossess the Goods, and, if Seller so chooses, resell the Goods.
18. **Shortage and Non-Conforming Goods Claims.** Any claim for a shortage of Goods or that such delivered or picked-up Goods are non-conforming must be made to Seller in writing within twenty-four (24) hours of the date of the delivery or pick-up of the Goods ("Claim"). A failure to provide Seller notice of the Claim within twenty-four (24) hours of the date of the delivery or pick-up of the Goods shall constitute Buyer's complete acceptance of the Goods in the manner, amount, and conformity delivered. Should Buyer timely submit a Claim to Seller, Seller shall have a commercially reasonable period of time in which to remedy such Claim. Buyer shall give Seller reasonable access to his/her/its facilities or relevant job site in order to inspect the Goods in order to remedy the Claim. A failure of Buyer to provide Seller reasonable access to his/her/its facilities or relevant job site shall constitute a waiver of the Claim, and Seller shall not be liable to Buyer for any shortages in or non-conformity of the Goods in such event.
19. **Terms of Payment:** If timely payment is not made, the Buyer's account will be considered past due. Buyer agrees to pay Seller (i) a finance charge in the amount of 1.5% per month on any unpaid balance over 30 days from the date of invoice, and (ii) court costs and reasonable attorneys' fees.
20. **Lien upon the Goods.** Buyer agrees to take any and all necessary steps to assist Seller in perfecting a lien upon the Goods, including, but not limited to, the following: (1) Buyer will provide accurate information to Seller relating to the location where the Goods will be used or consumed; (2) the name and address of any general contractors Buyer is working with; (3) Buyer will provide Seller with a copy of any contract or agreement with any general contractors Buyer is working with to supply the Goods; and (4) Buyer will supply Seller with such other information or assistance as is requested by Seller to perfect, protect, and enforce its liens on the Goods. Buyer, as an inducement for Seller to sell and deliver the Goods, expressly represents and covenants to Seller that the Buyer has not done, and will not do, anything, directly or indirectly, which has, or will have, the effect of releasing, waiving, or surrendering the lien rights of Seller prior to full payment of the Purchase Price, and any interest, late fees, or storage fees incurred in addition thereto.
21. **WAIVER OF JURY TRIAL. BUYER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, HIS/HER/ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THESE TERMS, AND/OR THE TRANSACTIONS CONTEMPLATED BY OR COVERED BY THESE TERMS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BUYER, THAT SELLER NOR ANY PERSON ACTING ON BEHALF OF SELLER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BUYER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR SELLER TO ENTER INTO THESE TERMS AND THE TRANSACTIONS CONTEMPLATED BY OR COVERED BY THESE TERMS, AND THAT SELLER HAS RELIED ON THIS WAIVER ENTERING INTO THESE TERMS AND THE TRANSACTIONS CONTEMPLATED BY OR COVERED BY THESE TERMS.**