

AGREEMENTS, TERMS AND CONDITIONS

1. **CUSTOMER'S ACCEPTANCE OF TERMS:** TOMA METALS, INC. shall hereinafter be referred to as "TOMA" and the applicant shall be referred to as "CUSTOMER." CUSTOMER desires to purchase goods and/or services from TOMA, and CUSTOMER agrees in consideration thereof to be bound by the terms and conditions stated in this agreement. TOMA hereby does not agree with and objects to any terms or conditions at variance with, different from or additional to those terms and conditions stated herein unless such terms and conditions are hereafter set forth in a writing signed by TOMA. Anything herein to the contrary notwithstanding, no amendment to, or waiver, modification or deletion of, any of the terms and conditions stated herein shall be deemed effective unless any such amendment, waiver, modification or deletion, as the case may be, shall have been approved and accepted in writing by an officer of TOMA.

2. **THE OPEN CREDIT ACCOUNT:** TOMA reserves the right to approve, approve with conditions or disapprove any request for extension of any form of credit in its sole discretion. The amount and duration of credit extended to CUSTOMER will be determined by TOMA and may vary from time to time. CUSTOMER waives notice of any change in CUSTOMER'S credit limit. All amounts charged to the open account are CUSTOMER'S responsibility. CUSTOMER agrees to pay any and all invoices, charges, fees and costs which CUSTOMER or any authorized person incurs on CUSTOMER's account. Unless CUSTOMER notifies TOMA in writing within five (5) days of any unauthorized use of CUSTOMER's credit account, CUSTOMER agrees that any other person who incurs charges on CUSTOMER's account is authorized to do so. Notwithstanding the foregoing, any and all contracts, certificates, invoices and other writings signed on behalf of CUSTOMER by any employee of CUSTOMER shall be deemed to have been executed on behalf of CUSTOMER with full authority.

3. **OPEN ACCOUNT PAYMENT TERMS:** All sums owing TOMA by CUSTOMER shall be paid in accordance with the terms and conditions expressed on any written quotation signed by TOMA and CUSTOMER, or on TOMA's invoice. In the absence of such express terms and conditions, TOMA's terms for CUSTOMER will be Net 30 days. CUSTOMER agrees to notify TOMA in writing, of any error in any invoice within ten (10) days after the date of that invoice. If not so noticed, the invoice shall be deemed to be correct, and accepted as rendered.

4. **CREDIT; CUSTOMER'S REPRESENTATIONS:** Credit will be extended by TOMA to CUSTOMER in TOMA'S sole discretion. When CUSTOMER submits an application to TOMA for credit, CUSTOMER agrees that any financial information or documents provided TOMA are true and correct, and will provide TOMA such documents, from time to time upon request. CUSTOMER represents to TOMA that it is solvent as of the date of this agreement, and that any Financial Statement attached accurately reflects the present financial condition of CUSTOMER as of the date of this agreement. TOMA is authorized to check CUSTOMER's credit background.

5. **DEFAULT:** Failure to make timely payment as provided in paragraph 3 above shall result in all charges on the account being deemed past due. Whether or not expressed in any quotation or invoice, all sums past due shall bear an interest charge at the rate of one and one-half percent (1.5%) per month until paid in full, or at the maximum statutory interest rate, whichever is less. In addition, CUSTOMER agrees to reimburse and pay TOMA for all expenses, costs, and attorney's fees (including in-house counsel fees) incurred or expended by TOMA in enforcing any of its rights hereunder and/or collecting any past due sums, whether or not suit is commenced.

6. **PURCHASE ORDERS:** Issuance of a purchase order by CUSTOMER shall be deemed an acceptance of TOMA'S terms and conditions contained herein, notwithstanding anything to the contrary in CUSTOMER'S purchase order documents. CUSTOMER acknowledges and agrees that issuance of a purchase order creates no burden on the part of TOMA to verify its accuracy or validity, and goods or services that are provided to CUSTOMER pursuant to a purchase order shall be the full responsibility and obligation of the CUSTOMER.

7. **SHORTAGES AND/OR DEFECTIVE OR DAMAGED GOODS:** Any alleged shortages and/or defective or damaged goods received by CUSTOMER in connection herewith must be reported in writing by CUSTOMER to TOMA within 5 days after delivery of said goods. Delivery of goods shall be subject to normal variations in weight, color, size, quantities, etc., as are standard in the trade. After such 5-day period, CUSTOMER shall be deemed to have irrevocably accepted the goods, if not previously accepted. After such acceptance, CUSTOMER shall have no right to reject the goods for any reason or to revoke acceptance. CUSTOMER hereby agrees that such 5-day period is a reasonable amount of time for such inspection and revocation.

8. **CANCELLATION AND RETURNS:** CUSTOMER may not cancel any order of goods without TOMA's express, written consent. Any cancellation so authorized shall be subject to a cancellation charge of 15% at TOMA's sole discretion. Unused goods, processed material or specially manufactured materials not normally carried in TOMA's inventory may not, under any circumstances, be returned. The amount of credit, if any, allowed to CUSTOMER for returned goods shall be at the sole discretion of TOMA.

9. GOVERNING LAW AND VENUE: Customer agrees that for and in consideration of TOMA's extension of credit, this agreement is to be construed under the laws of the State of Pennsylvania, and that if legal action is brought to enforce this agreement, that Allegheny County, Beaver County, and Cambria County, Pennsylvania, shall be the exclusive jurisdiction and legal venues for said action, unless TOMA initiates said legal action concurrently against other parties to enforce statutory remedies (such as mechanic's lien, stop notices, payment bonds, etc.) in connection with a debt incurred by CUSTOMER; in such case, the jurisdiction and legal venue will be determined by the requirements of the Pennsylvania Civil Code or Code of Civil Procedure in order for TOMA to enforce such statutory rights.

10. ASSIGNMENT: No right or interest in this agreement shall be assigned by CUSTOMER without the written permission of TOMA, and no delegation of any obligation owed or of the performance of any obligation by CUSTOMER shall be made without written permission of TOMA.

11. SEVERABILITY: If any term, covenant or condition of this agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this agreement shall be valid and shall be enforced to the fullest extent permitted by law.

12. NON-WAIVER BY TOMA: No waiver of any term, provision or other condition of this agreement by TOMA, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this agreement.

13. ACCEPTANCE / ENFORCEABILITY OF COPIES: CUSTOMER agrees that TOMA may, at TOMA's sole discretion, accept, utilize and rely upon a facsimile copy or photocopy of this agreement and the foregoing Continuing Personal Guaranty or Corporate Guaranty, in lieu of an original document. CUSTOMER acknowledges that, by transmitting a facsimile copy, electronic copy or photocopy of this document to TOMA, CUSTOMER, and the Guarantor (if applicable), agree to be bound by the terms and conditions contained in this document to the same extent as if an original were transmitted to TOMA. CUSTOMER, and Guarantor (if applicable), consent to TOMA's use of this document and waive any right to object to the use of a copy in place of the original and any right to require Seller to subsequently produce an original document. This Credit Application and Agreement cannot be altered, amended, revised, or otherwise modified unless an officer of TOMA provides prior written consent thereto.

THE UNDERSIGNED AGREES WITH THE TERMS SET FORTH HEREIN, CERTIFIES THAT THE INFORMATION FURNISHED IN ANY ACCOMPANYING APPLICATION IS TRUE AND CORRECT, AND AGREES THAT THE UNDERSIGNED HAS READ AND ACCEPTED ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT NOTED ON THE FRONT AND REVERSE PAGES OF ANY ACCOMPANYING APPLICATION. **OFFICER, AUTHORIZED AGENT OR OWNER SIGNATURE IS REQUIRED.**

Signature of Owner/Officer/ Authorized Agent

Print Name/ Title

Date