

## TERMS AND CONDITIONS (3/2019 Rev.)

In addition to all terms and conditions contained in the parties' Credit Application, these Terms and Conditions shall apply to the relationship of the parties hereto with "Seller" being U.S. Foundry, Inc.

(1) **AGREEMENT.** The Credit Application along with these Terms and Conditions, including without limitation the documents incorporated herein by reference ("Agreement"), embodies the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings relating to the subject matter hereof. Oral representations may not be relied upon. The Customer signing the Agreement represents that he/she is authorized by or is the lawful owner of the property where the materials will be furnished. Failure to enforce all or any of the terms or conditions of the Agreement shall not be interpreted as a waiver of their continuing effect thereof.

(2) **MODIFICATIONS.** No terms or conditions that modify or alter the provisions to the Agreement shall be binding upon Seller, unless specifically amended or modified by a written agreement executed by all parties. Seller hereby rejects Customer's terms and conditions including, without limitation, any that appear on Customer's purchase orders.

(3) **DELIVERY.** Seller's responsibility ceases upon issuance of the Bill of Lading. Seller shall not be liable to Customer for materials, supplies, and equipment that are damaged or lost while in the possession of a common carrier, and it will be Customer's responsibility to insure all deliveries and recover any and all damages directly from the common carrier. All materials, supplies, and equipment shall be shipped/delivered uninsured unless stated otherwise. All freight charges and shipping and delivery dates are approximate only and based upon prompt receipt of all necessary information from Customer. Seller shall not be responsible for any damages and/or delays and/or extra charges associated with shipping, storage, delivery, or unloading.

(4) **DAMAGE TO ITEMS FURNISHED BY SELLER.** The Customer shall be fully responsible for the costs of any damage to Seller's materials, supplies, and equipment caused by Customer, its agents, contractors, subcontractors or shippers, common carriers, or third parties. Customer assumes the risk of loss or damage as further described herein.

(5) **COMPLETION AND ACCEPTANCE.** Customer shall immediately inspect the Seller's materials, supplies, and equipment and any aspect of the materials, supplies, or equipment not acceptable to Customer must be immediately and specifically noticed in writing to Seller. Seller shall then be given a reasonable opportunity to address such issue. A full and complete acceptance of the materials, supplies, and equipment shall be presumed upon the Customer's acceptance or unloading of the materials, supplies or equipment, the failure to provide such notice to the Seller or payment, whichever occurs first.

(6) **RETURNS.** No credit for materials, supplies, or equipment returned by Customer shall be given without Seller's prior written authorization. All returns are subject to a restocking charge.

(7) **LIMITED WARRANTY.** This warranty gives you specific legal rights and you may have other rights that vary from state to state. Seller warrants to Customer that all materials, supplies, and equipment delivered by it will be of standard quality, type and condition, and free from defects. Materials, supplies, or equipment not manufactured by Seller are warranted and guaranteed only to the extent and in the manner warranted and guaranteed to Seller by the original manufacturer of such goods. The commencement date of this limited warranty is the date of first purchase by Customer from Seller of the complained of Product and extends for the following periods, subject to Seller's timely receipt of payment in full and Customer not being in breach of this or any other agreement with Seller:

- Municipal casting products: five (5) years
- Steel hatches and access doors: five (5) years
- Aluminum hatches and access doors: ten (10) years
- Steel Reticuline Grating and Miscellaneous Fabrication, excluding paint, one (1) year

If a covered defect occurs during the warranty period, Seller agrees to replace or pay Customer the reasonable depreciated cost of the defective component. The choice among replacement or payment is solely Seller's. Seller is not responsible for locating, removing and re-installing replacements. Any steps taken by Seller to correct defects shall not act to extend the term of this warranty. Seller shall pay standard freight charges for warranty replacements. Seller must be notified in writing by Customer within 14 days of the existence of any defect. Written notice of a defect must be received by Seller prior to the expiration of the warranty and no action at law or in equity may be brought by Customer against Seller for failure to remedy or repair any defect about which Seller has not received timely notice in writing. Customer must provide Seller with access to the defective product during Seller's normal business hours and Customer may not commence any repair without first obtaining Seller's written consent. The following are excluded from this limited warranty:

- Defects in any item that was not part of the original product as supplied by Seller;
- Defects as a result of the product being modified, damaged, improperly installed and/or used in an application for which it is not intended;
- Defects caused by or worsened by negligence, improper maintenance, lack of maintenance, tampering, accident, abuse, misapplication, improper action or inaction, or willful or malicious acts by any party other than Seller, its employees, agents, or trade contractors;
- Normal wear and tear;
- Loss or damage caused by acts of God, including but not limited to fire, explosion, excessive heat or cold, smoke, water, and circumstances that are not in Seller's direct control;

- Damage to the extent it is caused or made worse by the failure of anyone other than Seller or its employees, agents, or trade contractors to comply with the requirements of this warranty;
- Failure of Customer to take timely action to minimize loss or damage or failure of Customer to give Seller timely notice of the defect;
- Special, incidental, consequential, punitive, business loss, business interruption, or loss of use damages.

Seller warrants the load rating of the products only as set forth in the applicable product literature specifically listing said materials. Purchaser is solely responsible for the design, specifications, application, suitability, care and use of the products for Purchaser's use and requirements, including compliance with all laws, regulations, including, without limitation, any and all applicable environmental laws and regulations. Seller's warranty is strictly limited to conformity of the products to Seller's specifications, free of any material latent.

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER WILL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND ANY CLAIM AGAINST SELLER OR ITS AGENTS, OFFICERS, AND EMPLOYEES SHALL BE LIMITED TO THE REPLACEMENT VALUE OF ITS MATERIALS, SUPPLIES AND EQUIPMENT AND ONLY IF SUCH GOODS ARE FOUND TO BE DEFECTIVE. THIS WARRANTY IS LIMITED IN NATURE AND IS NON-TRANSFERABLE.

(8) **AVAILABILITY.** If materials, supplies or equipment which Seller is required to provide under transactions made pursuant to the Agreement become unavailable through causes beyond the control and without fault of Seller, then in the case of temporary unavailability, the time for delivery shall be extended for such period of time as Seller shall be delayed by such unavailability; and in the case of permanent unavailability, Seller shall be excused from the requirement of furnishing such materials, supplies or equipment. Customer agrees to pay Seller any increase in cost for the closest substitute which is then reasonably available for any materials, supplies, or equipment which have become permanently unavailable. All of the foregoing specifically includes without limitation any and all raw materials, supplies and component parts used in manufacture.

(9) **INDEMNITY AND LIMITATION OF LIABILITY.** Customer shall indemnify, defend and hold Seller and its affiliates, divisions, officers, owners, employees and agents harmless from any and all claims, actions, costs, losses, damages, liabilities, penalties and other expenses, including reasonably attorney's fees and costs, resulting from death, bodily injury, property and economic damages and all other claims, including those of third parties, relating to or arising from Customer's use, storage, negligence, actions or inactions with respect to the materials, supplies or equipment sold by Seller or any failure of Customer to properly install, use, service or maintain the materials, supplies or equipment. Seller shall have no liability or responsibility for any loss, damage or delay arising out of its failure to perform hereunder due to causes beyond its direct and immediate control, including without limitation, acts of others, acts of Customer, acts of God, structural faults, strikes, war, shortages, sudden rain, wind storms, fires, floods, epidemics, quarantine restrictions, riots, vandalism, theft, or delays in transportation. Seller shall not be liable for any damages resulting from the incompatibility with the Customer's existing conditions. Any interruption in the agreed upon delivery of materials, supplies, or equipment which results in delay and is not the sole and direct fault of Seller, Seller's performance shall also be extended for that length of time as may be reasonably necessary to compensate for the delay. All quoted materials, supplies and equipment are based solely on Customer's requests. No representation or warranty is made by Seller that the materials, supplies and equipment, individually or as a system, will meet or satisfy any particular design intent or criteria, performance specification, or law, rule or regulation.

(10) **RIGHTS, RESPONSIBILITIES AND DISCLAIMERS.** Seller disclaims responsibility for variations in color, texture, graining, veining and finish. Exact matches are not guaranteed. All prices for transactions made pursuant to the Agreement are based upon the quantity specified. Reduction in quantity may result in an increase in unit prices. All payments are due within thirty days of invoice unless agreed otherwise in writing and shall accrue interest at 1% per month. Customer acknowledges and agrees that its failure to make timely payments to Seller shall constitute a material breach of the Agreement. It is understood and agreed that Seller shall receive written notice of any breach, default or failure to perform, specifying in detail Seller's unsatisfactory performance and providing a reasonable opportunity for Seller to cure such unsatisfactory issue before Seller shall be considered in breach or default, or be terminated for cause, and before Customer may withhold payments from Seller. In the event that Seller employs the services of an attorney to enforce this Agreement, to enforce the terms of any transactions made pursuant to the Agreement, or brought as a result of the commercial relationship between Customer and Seller, Customer agrees to pay all reasonable costs and expenses of collection, suit, or other legal action incurred by Seller, including all attorney's and paralegal fees, incurred pre-suit, during suit, arbitration, through trial, after suit, on appeal, or in any administrative proceedings. To the extent Seller agrees to release a lien or waive bond rights, said action will not constitute a waiver or release of Seller's rights or claims in contract, tort or equity. All releases are expressly contingent upon receipt of good funds in-hand-paid to Seller. All releases shall be on a form acceptable to Seller. Jurisdiction and venue for any legal action involving the Agreement or transactions made pursuant to the Agreement shall be in Miami-Dade County, Florida and THE PARTIES WAIVE ANY RIGHT TO A TRIAL BY JURY. The Agreement and transactions made pursuant to the Agreement shall be governed by and construed in accordance with the laws of the State of Florida. If Customer fails to comply with these terms and conditions, then Seller reserves the right to terminate, suspend or slow its fabrication and/or delivery of materials,

supplies, and equipment without notice to Customer. Customer certifies it is financially solvent and it will immediately advise Seller if it becomes insolvent or unable to promptly pay its bills. Customer agrees to advise Seller in writing of any changes in ownership of any Customer entity or project upon which Seller is providing materials, supplies, or equipment to within 5 days of such change. Customer further agrees that notwithstanding any change in ownership, status of ownership, business form or entity, all charges incurred will remain the responsibility of Customer. Nothing herein shall limit or abridge Seller's independent lien or bond rights. The captions/headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of any article or paragraph herein. All reference to days shall mean calendar days unless stated otherwise.