

1. ACCEPTANCE - These Terms and Conditions of Sale are part of each quotation ("Quotation") by the Berry Metal Company ("Seller") and each resulting contract for the sale to the Buyer identified on such Quotation ("Buyer") of Seller's products ("Products") described in the Quotation. THE MAKING OF A CONTRACT ("CONTRACT") BETWEEN BUYER AND SELLER IS EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO THE PRICES AND TERMS ON THE FACE OF THE QUOTATION AND TO THESE TERMS AND CONDITIONS AND UPON SELLER'S APPROVAL OF BUYER'S CREDIT. AFTER SELLER'S APPROVAL OF BUYER'S CREDIT AND SUCH ASSENT BY BUYER, ALL THE PROVISIONS OF THIS QUOTATION AND OF SELLER'S ACKNOWLEDGMENT CONSTITUTE THE CONTRACT; EACH OF (i) ISSUANCE OF A PURCHASE ORDER OR OTHER WRITING BY BUYER IN RESPONSE TO THIS QUOTATION, AND (ii) ACCEPTANCE BY BUYER OF SELLER'S PRODUCTS, SHALL INDEPENDENTLY CONSTITUTE SUCH ASSENT TO THESE TERMS AND CONDITIONS BY BUYER.

2. NO OTHER TERMS - No terms or conditions in addition to or different from Seller's terms and conditions, whether contained in Buyer's purchase, shipping or other documents, or elsewhere, shall be binding on Seller (and are hereby expressly rejected by Seller) and none of them shall be part of the Contract unless hereafter set forth in writing and signed by Seller's authorized representative.

3. TAXES, DUTIES - Buyer shall pay, or reimburse Seller for, the amounts of any sales, use, value added, excise, gross receipts, gross income, business and occupation or similar present or future taxes, duties or other assessments imposed by any governmental authority on the sale, purchase, delivery, transporting, use, or storage of, or otherwise in connection with, the Products, or in connection with any transactions contemplated by this Quotation and Contract, as well as the amounts of any fine, penalty, or interest thereon incurred as a result of Buyer's acts or omissions. Upon request, Buyer shall supply to Seller copies of evidence of payment of or exemption from any taxes, duties or other assessments which Buyer is obligated to pay.

4. LIMITED WARRANTY - Seller warrants that the Products, insofar as they are of Seller's manufacture, will be free from defects in material and workmanship at the time of delivery. All products manufactured by Seller's vendors and sold in conjunction with Seller's Products carry only the warranty given by the vendor which warranty Seller, at its option, will either assign or make available to Buyer without recourse against Seller. If Seller receives written notice promptly after delivery to Buyer of the discovery of any defect in the material or workmanship of the Products warranted by Seller, Seller shall correct each defect, at Seller's option, either by (1) making available Ex-Works Seller's factory repair or replacement part(s); or (2) repairing any defective part(s). THE FOREGOING IS SELLER'S SOLE LIABILITY UNDER THIS WARRANTY, AND BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER MAKES NO WARRANTY WHICH COVERS ANY DAMAGE TO THE PRODUCTS TO THE EXTENT CAUSED BY IMPROPER USE, ABUSE, NEGLIGENCE, ACCIDENT, FORCE MAJEURE OR BY ANY OTHER CAUSE BEYOND THE CONTROL OF SELLER.

5. LIMITS OF LIABILITY - SELLER SHALL NOT BE LIABLE FOR ANY LOSSES, DAMAGES OR EXPENSES, WHETHER DIRECT, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL, CAUSED BY OR RESULTING FROM THE USE OF DEFECTIVE OR NONCONFORMING PRODUCTS OR FROM DELAY IN

DELIVERING PRODUCTS. SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR EXPENSES WHATSOEVER. SELLER'S TOTAL LIABILITY, WHETHER ARISING FROM OR BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, INCLUDING SELLER'S NEGLIGENCE, STRICT LIABILITY, INDEMNITY OR ANY OTHER CAUSE OR BASIS WHATSOEVER, IS EXPRESSLY LIMITED TO THE PURCHASE PRICE OF THE PRODUCTS INVOLVED.

6. FORCE MAJEURE - Seller will not be responsible for delays or deficiencies in production or shipment or defective Products caused in whole or in part by: acts of God, wars, riots, fires, explosions, breakdowns or accidents; strikes, lockouts or other labor difficulties; lack or shortages of labor, materials, utilities, energy sources, or transportation facilities; delays of carriers; compliance with governmental rules, regulations, priorities, allocations or other governmental requirements; substantial change in economic conditions; any other like causes; or any other unlike causes beyond Seller's control. The foregoing shall be in addition to and not in limitation of any excuses for nonperformance available to Seller under the Uniform Commercial Code or any other applicable law.

7. CANCELLATION, CHANGE OR POSTPONEMENT OF ORDERS - Orders under this Quotation and Contract cannot be changed or canceled by Buyer, in whole or in part, without Seller's written consent. In the event Buyer requests any change or cancellation to an order, Seller in its sole discretion may accept, conditionally accept, or reject such change or cancellation. Buyer acknowledges and agrees that accepted orders involve extensive pre-production work, planning, preparation, and expenditures by Seller, including work performed and expenses incurred in preparing the Quotation and in planning the order's production ("Pre-Production Activities"). Buyer agrees that where Seller accepts or conditionally accepts any cancellation requested by Buyer, Seller will suffer actual damages with respect to Pre-Production Activities that will be difficult to calculate, and the parties agree that the liquidated damages set forth in clause (1) of the following sentence are a reasonable estimate of those damages and will not be viewed as a penalty.

BUYER AGREES THAT IN THE EVENT ANY CANCELLATION REQUEST OF BUYER IS ACCEPTED BY SELLER, BUYER SHALL, SUBJECT ONLY TO THE TERMS OF THIS SECTION 7, PAY SELLER THE FOLLOWING AMOUNTS, COLLECTIVELY REFERRED TO AS "CANCELLATION CHARGES": (1) LIQUIDATED DAMAGES WITH RESPECT TO PRE-PRODUCTION ACTIVITIES IN AN AMOUNT EQUAL TO 25% OF THE QUOTATION PRICE (THE "PREPARATION CHARGE"), AND (2) IN ADDITION TO THE PREPARATION CHARGE, ANY ADDITIONAL AMOUNTS EXPENDED OR INCURRED BY SELLER WITH RESPECT TO THE ORDER AND THE QUOTATION FOLLOWING THE COMMENCEMENT OF PRODUCTION (the "PRODUCTION CHARGE").

Upon acceptance of a cancellation request, Seller shall provide Buyer with an invoice (the "Cancellation Invoice") for the aggregate Cancellation Charge, along with reasonable details of the components of the Production Charge. Buyer shall have two business days from its receipt of the Cancellation Invoice to withdraw its cancellation request. If Seller does not receive written notice from Buyer withdrawing the cancellation request within such two business days, the cancellation shall be final, and Buyer shall pay the Cancellation Charge to Seller in immediately funds within ten business days of receiving the Cancellation Invoice, less the

amount of any deposits held by Seller relating to the Quotation or Order being cancelled, which Seller may retain and offset against the Cancellation Charge. Any request by Buyer to postpone an order for more than 30 days shall be deemed to be a request to cancel such order.

Buyer further agrees that where Seller accepts or conditionally accepts any request to change an order, Buyer shall pay or reimburse Seller for all reasonable amounts incurred by Seller in effecting such change (the "Adjustment Charge"). Seller shall provide Buyer with an invoice (the "Change Invoice") for the Adjustment Charge, along with reasonable details of the components of such Adjustment Charge. Buyer shall pay the Adjustment Charge to Seller in immediately funds within ten business days of receiving the Change Invoice. Any request by Buyer to postpone an order for between one and 30 days shall be deemed to be a request to change that order.

8. SHIPMENT - Unless otherwise agreed in writing by Seller, title and all risk of loss or damage to the Products passes to and is assumed by Buyer Ex-Works Seller's Plant (as construed under INCOTERMS 2000, BCC No. 560). Buyer is responsible for all freight charges and for filing timely and proper claims against carriers in the event goods are lost or damaged in transit.

9. CLAIMS - Claims for errors, shortages, defective products and any other claims of Buyer relating to the Products must be made in writing within thirty (30) days after delivery of the products.

10. BUYER'S DATA - Buyer acknowledges that Seller has relied upon all specifications, information, representation of operating conditions and other data supplied by Buyer to Seller in the selection and design of the Products and the preparation of this Quotation and Contract. In the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Seller, any warranties contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed in writing, and any modification to the Products necessitated thereby shall be subject to the provisions of Section 7 CHANGE OR CANCELLATION.

11. PATENTS - Seller assumes the expense of, and shall have the option to direct the defense of, suits brought against Buyer in the United States on the charge that a Product manufactured by Seller and used by Buyer in the manner for which it was sold constitutes in and of itself an infringement of a United States Patent, in an amount not to exceed the aggregate purchase price of the items or parts thereof found to directly infringe any such U.S. patent. If, as a result of any such suit, the use of the Product is enjoined, Seller shall have the option to procure for Buyer the right to use the Product, modify it so that it no longer infringes, replace it with a non-infringing Product, or refund the purchase price of the Product and remove it. Seller's above obligations are conditional upon Buyer notifying Seller promptly in writing when such suit is brought or threatened and giving Seller full authority, information and assistance for the defense of the suit. Seller's obligations under this Section do not apply to any item, or part thereof, manufactured to Buyer's specifications, or to any manufacturing process, or to any product manufactured by use of Seller's Products; as to such item, process, or product, Seller assumes no liability for patent infringement, and Buyer agrees to defend, indemnify and hold harmless Seller from and against all such liability for patent infringement. EXCEPT AS ABOVE EXPRESSLY SET FORTH, SELLER SHALL HAVE NO LIABILITY FOR PATENT OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT OF ANY KIND, INCLUDING NO LIABILITY FOR

ANY IMPLIED WARRANTY AGAINST PATENT OR OTHER INFRINGEMENT.

12. CONFIDENTIAL INFORMATION - All drawings, data, specifications, trade secrets, and other technical information, and pricing and other business information included in this Quotation and Contract or otherwise supplied by Seller relating to the design, manufacture, installation, operation, and maintenance of the Products or Seller's prices and business are proprietary and confidential materials and information of Seller (herein called "Confidential Information"). Buyer shall not disclose any Confidential Information to others or to any of its employees except on a need-to-know basis and only if they agree to be bound by the provisions of this Section. Buyer shall not use any Confidential Information other than for purposes of evaluating the Quotation and exercising its rights under the Contract; Buyer shall not reproduce, copy or circulate it. Excluded from the provisions of this Section is any Confidential Information which at the time of transfer or disclosure to Buyer is in the public domain or which subsequently falls into the public domain without the fault of Buyer, its employees or agents.

13. GOVERNMENTAL REQUIREMENTS - Any provisions required to be included in a contract of this type by any applicable U.S., federal, state or local law or ordinance or governmental rule, regulation, order, or other governmental requirement in the United States ("Governmental Requirement") shall be deemed to be incorporated herein; provided, however, except to the extent legally required by any such Governmental Requirement, Seller does not assume responsibility for compliance therewith.

14. ASSIGNMENT - The Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, provided however that Buyer may not assign any of its rights or obligations under the Contract without the prior written consent of Seller.

15. WAIVER OR INVALIDITY - Waiver by Seller or Buyer of any provision or of the breach of any provision of the Contract shall not be construed as a waiver of any other provision or of any other breach of any provision of the Contract. The invalidity of any provision of the Contract shall not affect the validity of the remaining provisions or of the Contract as a whole.

16. APPLICABLE LAW AND JURISDICTION - Buyer and Seller agree that interpretation of the Quotation and Contract and all performance under the Contract as well as all other aspects of the subject transaction, shall be governed by the laws of the Commonwealth of Pennsylvania, including the Uniform Commercial Code; that any action at law, suit in equity or other judicial proceeding with respect thereto may be brought and maintained in the federal and state courts of record situate in the Commonwealth of Pennsylvania; and that the mailing to the last known address of the respective parties of any process by certified mail, or service of process by such other means as authorized by any such court, shall constitute lawful and valid service of process. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

17. CAPTIONS - All captions set forth at the beginning of each Section herein are intended only for reference and are of no legal force and effect.