

TERMS AND CONDITIONS

1. ACCEPTANCE AND TERMS AND CONDITIONS

(a) Seller shall accept this Purchase Order and any amendments thereto by signing the acceptance copy and returning it to Buyer promptly.

(b) By acceptance of this Purchase Order, Seller agrees to be bound by, and to comply with, all the terms and conditions of this Purchase Order, including any supplements thereto and all specifications and other documents referred to in this Purchase Order. In addition, in lieu of an acknowledgment, full or partial performance of the work called for by this Purchase Order at any time shall be deemed acceptance of this Purchase Order.

(c) THE TERMS AND CONDITIONS CONTAINED IN ANY ACKNOWLEDGMENT OF THIS PURCHASE ORDER OR WITH DELIVERY OF ANY GOODS UNDER THIS PURCHASE ORDER WHICH ARE INCONSISTENT WITH OR DIFFERENT FROM OR IN ADDITION TO THE TERMS AND CONDITIONS OF THIS PURCHASE ORDER ARE NOT BINDING UPON BUYER, WHETHER OR NOT THEY WOULD MATERIALLY ALTER THIS PURCHASE ORDER, AND BUYER HEREBY OBJECTS THERETO. ONLY THE TERMS AND CONDITIONS SET FORTH IN THIS PURCHASE ORDER SHALL BE BINDING UPON BUYER AND GOVERN THE RELATIONSHIP BETWEEN THE PARTIES HERETO.

2. **IDENTIFICATION; SHIPPING NOTICES:** Seller's invoices shall contain the following information: (a) our Purchase Order Number; (b) description of goods shipped; and (c) quantity of goods shipped and unit price applicable to such goods.

3. **DELAY AND DEFAULT:** Time of delivery is of the essence under this Purchase Order. Except in instances of delay which are due to causes beyond the reasonable control and without the fault or negligence of Seller and all of its suppliers, Buyer may by written notice of default to Seller (a) terminate the whole or any part of this Purchase Order in any one of the following circumstances: (i) if Seller fails to perform within the time specified herein or any extension thereof; or (ii) if Seller fails to perform any of the other provisions of this Purchase Order, or so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms. and in either of these two circumstances does not cure such failure within a period of ten (10) days after receipt of notice from Buyer specifying such failure; and (b) procure, upon such terms as it shall deem appropriate, supplies or services similar to those so terminated. Seller shall continue performance of this Purchase Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar supplies or services. As an alternate remedy, and in lieu of termination for default, Buyer, at its sole discretion, may elect (1) to extend the delivery schedule and/or (2) to waive other deficiencies in Seller's performance, in which case an equitable reduction in the Purchase Order price shall be negotiated. In the event Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirement of this Purchase Order, Seller shall promptly notify Buyer in writing, which notification shall include details of the causes of such difficulty or delay and the expected delivery date. If Seller does not comply with Buyer's delivery schedule, Buyer may

require delivery by expedited means, and charges resulting from the premium transportation must be fully prepaid and absorbed by the Seller. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order, including, but not limited to, Buyer's rights as specified in the Uniform Commercial Code.

4. INSPECTION:

(a) All goods or services, including, but not limited to, engineering and design or development work, shall comply with all applicable specifications and shall be subject to inspection and test by the Buyer (and, if applicable, its customer) to the extent practicable at all times and places, including the period of manufacture, and in any event prior to final acceptance by the Buyer (and, if applicable, its customer).

(b) If any inspection or test is made on the premises of Seller or its supplier, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests on the premises of Seller or its suppliers shall be performed in such a manner as not to unduly delay the work.

(c) Final acceptance or rejection of the goods shall be made as promptly as practical after delivery, except as otherwise provided in this Purchase Order, but failure to inspect and accept or reject goods or services or failure to detect defects by inspection including latent defects, shall neither relieve Seller from responsibility for such goods or services that are not in accordance with the Purchase Order requirements or any other requirements nor impose any liability on Buyer therefore.

(d) Seller must provide and maintain an inspection and process control system acceptable to Buyer (and, if applicable, its customer) covering the goods or services hereunder. Records of all inspection work by Seller shall be kept complete and made available to Buyer (and, if applicable, its customer) during the performance of this Purchase Order and for seven years after completion of this Purchase Order upon Buyer's request.

5. WARRANTIES:

Seller warrants and represents to Buyer and to each customer of Buyer that acquires any of the goods as follows:

(a) all goods and services sold hereunder or pursuant hereto will be free of any claim of any nature by any third person and Seller will convey clear and rightful title thereto to Buyer as provided hereunder, and

(b) all goods sold hereunder or pursuant hereto will be free from all defects in design, workmanship and materials, latent or otherwise, and that the goods and services are provided in strict accordance with the specifications, samples, drawings, designs or other requirements (including performance specifications) recommended by Seller and approved or adopted by Buyer and in accordance with applicable laws and regulations. Seller hereby agrees to remedy, at no expense to Buyer, any defect in design, workmanship and materials, latent or

otherwise, of all goods sold hereunder or pursuant hereto by Seller or by any other party to Seller and such goods are incorporated in the deliverable product.

The warranties contained in this Purchase Order shall be in addition to, and shall not be construed as restricting or limiting any warranties or remedies of Buyer, expressed or implied, which are provided by contract or law. Any attempt by Seller to limit, disclaim, or restrict any such warranties or remedies of Buyer, by acknowledgment or otherwise, in accepting or performing this Purchase Order, shall be null, void, and ineffective.

6. REJECTIONS: If any of the goods ordered are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Purchase Order, including any applicable drawings and specifications, Buyer, in addition, to such other rights, remedies and choices as it may have by contract or by law, at its option and sole discretion may: (a) reject all or some of the goods and return such rejected goods at Seller's expense; or (b) require Seller to inspect the goods and remove and replace nonconforming goods with goods that conform to this Purchase Order. If Buyer elects option (b) above and Seller fails to promptly make the necessary inspection, removal and replacement, Purchaser may at its option inspect and sort the goods and Seller shall pay the cost thereof.

7. BUYER'S PROPERTY: Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Seller by Buyer or specialty paid for by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Buyer. Such property, and whenever practical, each individual item thereof, may be plainly marked or otherwise adequately identified by Seller as "Property of Feralloy Corporation and /or any of its Affiliates" and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with any loss payable to Buyer and shall be subject to removal at Buyer's written request, in which event Seller shall prepare such property for shipment and shall redeliver to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted, all such property at Seller's expense.

8. CHANGES: The Buyer may at any time, in writing, make changes within the general scope of this Purchase Order. If any such change causes an increase or decrease in the cost of, or the time required for the performance, of any work under this contract, whether changed or not changed, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted within thirty (30) days from the date of the receipt by the Seller of the notification of change; provided, however, that the Buyer, if it so chooses, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Any change in this Purchase Order shall be authorized only by a duly executed Purchase Order Amendment hereto.

9. NON-ASSIGNMENT; NO DELEGATION OF PERFORMANCE: Assignment of this Purchase Order or any interest herein, without the prior written consent of the Buyer, shall be void. The Seller shall not delegate its performance under this Purchase Order without the prior written consent of the Buyer and without providing assurances requested by Buyer from

Seller's assignee. Any attempted delegation of performance by Seller contrary to the terms herein is null and void. Buyer is only obligated to pay Seller for the goods delivered hereunder until Buyer is notified in writing that any amount due or to become due has been assigned and that payment is to be made to the assignee. The written notice must reasonably identify the rights assigned and Seller must furnish proof that the assignment has been made, otherwise Buyer must pay Seller.

10. SET-OFF: Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer or any of its affiliated companies against any amount payable to Seller at any time by Buyer in connection with this Purchase Order.

11. COMPLIANCE WITH LAWS: Seller agrees to comply with the applicable provisions of any federal, state, or local law or ordinance and all lawful orders, rules, and regulations issued thereunder. Seller shall also comply with any provision, representation or agreement, or contractual clause required thereby to be included or incorporated by reference or operation of law in the contract resulting from acceptance of this Purchase Order. If requested by Buyer, Seller shall promptly certify to Buyer or to Buyer's customer as to compliance by Seller with applicable laws or other requirements.

12. SELLER'S INFORMATION: Any knowledge or information which the Seller shall have disclosed or may hereafter disclose to the Buyer, and which in any way relates to the goods or services covered by this Purchase Order, shall not, unless specifically marked by Seller as "Privileged and Confidential" or if the information was conveyed orally, such information is reduced to writing within 10 days of disclosure and marked "Privileged and Confidential," be deemed to be confidential or proprietary information, and shall be acquired by Buyer, free from any restrictions (other than a claim for patent infringement), as part of the consideration for this Purchase Order.

13. FOR WORK ON BUYER'S OR ITS CUSTOMER' PREMISES: If Seller's work under this Purchase Order involves operations by Seller on the premises of the Buyer or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such work, and except to the extent that any such injury or damage is due solely and directly to Buyer's or its customers' negligence, as the case may be, Seller shall defend Buyer against any claim which may result in any way from any act or omission of the Seller, its agents, employees or subcontractors. Seller shall maintain Comprehensive General Liability (including Contractual Liability coverage insuring the liabilities assumed above), Automobile Liability and Employees' Liability insurance with limits as reasonably required by Buyer, as well as appropriate Workers' Compensation as will protect Seller from all claims under any applicable Workers' Compensation and Occupational Disease Act. Seller shall furnish to Buyer a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverages are in effect and naming Buyer as an additional insured under Seller's insurance coverages and said coverages will not be canceled or materially changed until ten days after prior written notice has been delivered to the Buyer.

14. INSOLVENCY: If Seller ceased to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by the Seller,

Buyer may terminate this Purchase Order without liability, except for deliveries previously made or for goods covered by this Purchase Order then completed and subsequently delivered in accordance with the terms of this Purchase Order.

15. TERMINATION: The Buyer may terminate all or any part of this Purchase Order at any time by written notice to Seller. Upon termination, Buyer and Seller shall negotiate and agree upon reasonable termination charges which will be identified by Seller within 30 days of termination.

16. BUYER'S INFORMATION: Seller shall keep confidential any technical, process or economic information derived from drawings, specifications and other data furnished by Buyer in connection with this Purchase Order and shall not divulge, directly or indirectly, such information for the benefit of any other party without obtaining Buyer's prior written consent. Except as required for the efficient performance of this Purchase Order, Seller shall not use such information or make copies or permit copies to be made of such drawings, specifications, or other data without the prior written consent of Buyer. If any reproduction is made with prior consent, notice referring to the requirements of the foregoing paragraph shall be provided thereon. Upon completion or termination of this Purchase Order, Seller shall promptly return to Buyer all materials incorporating any such information and any copies thereof, except for one record copy.

17. WAIVER: No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. The failure of Buyer to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of Buyer thereafter to enforce each and every such provision.

18. PATENTS: Seller shall defend any suit or proceeding brought against Buyer or its customers that is based on a claim that any article or apparatus, or any part thereof constituting goods furnished under this Purchase Order, as well as any device or process necessarily resulting from the use thereof, constituted an infringement of any patent of the United States or any other country, if notified promptly in writing and given authority, information, and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein. In case use of said article, apparatus, part, device or process is enjoined, Seller shall, at its own expense and at its option, either procure for Buyer the right to continue using said article or apparatus, part or device, or replace same with a noninfringing equivalent; or remove same article or apparatus and refund the purchase price and the transportation and installation costs thereof.

19. PUBLICATIONS: The Seller agrees that no acknowledgment or other information concerning this Purchase Order and the supplies or services provided hereunder will be made public by the Seller without prior written agreement of the Buyer.

20. EXTRA CHARGES: No extra charges of any kind will be allowed, except as agreed to in writing by the Buyer.

21. TRANSPORTATION, DELIVERY AND RISK OF LOSS: All items to be delivered in connection with this Purchase Order shall be packed and packaged by Seller to ensure safe arrival at their destination and to comply with the requirements of all relevant carriers. Seller shall reimburse Buyer for any additional costs or losses incurred due to improper packing, marking, loading or routing. Delivery shall be made by Seller at such times and places and of such items and quantities as are designated by Buyer in the Purchase Order or otherwise agreed by the parties. Buyer will have no liability for payment for materials or goods which are in excess of quantities specified in this Purchase Order, nor shall Buyer be liable for services which go beyond the face of this Purchase Order. Title and risk of loss shall remain in Seller until goods are delivered to the F.O.B. point specified in this Purchase Order. Notwithstanding such delivery, Seller shall bear risk of loss or damage to goods purchased hereunder from the time that Buyer gives notice of rejection of goods pursuant to the inspection provisions of this Purchase Order.

22. ANTICIPATION OF DELIVERY SCHEDULE: Unless otherwise agreed in writing, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedule. It is Seller's responsibility to comply with this schedule but not to anticipate Buyer's requirements. Goods shipped to Buyer in advance of schedule may be returned to Seller at Seller's expense.

23. MODIFICATION: This agreement may be modified or rescinded only by a writing signed by both parties or their duly authorized agents.

24. SEVERABILITY: Any term, condition or provision of this Agreement which is, or is deemed to be, void, prohibited, or unenforceable in any jurisdiction is, as to such jurisdiction, severable herefrom, and is ineffective to the extent of such avoidance, prohibition or unenforceability without in any way invalidating the remaining terms, conditions and provisions hereof.

25. INDEMNIFICATION: Seller shall absolutely and unconditionally indemnify and hold Buyer and its customers harmless from and against any and all losses, claims, damages, liabilities, and expenses of any kind or nature whatsoever, including attorneys' fees, which may arise out of, result from, or be reasonably incurred in connection with Seller's performance of and compliance with the provisions of this Purchase Order (including, without limiting the generality of the foregoing, losses, claims, damages, and liabilities to employees or agents) to which Buyer or its customers may become subject, including, without limiting the generality thereof, losses, claims, damages, liabilities, and expenses (and actions in respect thereof) which relate to injury to or death of persons or damage to property that may have been caused, or that may be alleged to have been caused, directly or indirectly, by Seller, its employees, or agents, or its subcontractors, their employees or agents.

26. REMEDIES: The remedies set forth herein shall be cumulative and in addition to any other remedies provided in law or equity.

27. DISPUTE RESOLUTION: If a dispute arises between the parties which cannot be resolved by good faith negotiation on the part of the parties, Buyer and Seller agree that such dispute shall be subject to mediation before pursuing any other legal remedies such as commencing litigation. The parties shall agree upon the rules governing the mediation and the mediator. Mediation involves each side of a dispute sitting down with an impartial person to attempt to reach a voluntary settlement, with no formal court proceedings, procedures, or rules of evidence and with an independent mediator who has no power to render a binding decision or force an agreement on the parties.

28. APPLICABLE LAW: IT IS SPECIFICALLY AGREED BY THE PARTIES THAT THE PURCHASE ORDER AND/OR CONTRACT AND THE GENERAL CONDITIONS SET FORTH HEREIN SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICT OF LAWS THEREOF.

29. ENTIRE AGREEMENT: This Purchase Order, with such documents as are expressly incorporated herein by reference, is intended by the parties as a final expression of their agreement with respect to such terms as are included herein, and it is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.