



## Terms and Conditions Agreement

This Terms and Conditions Agreement (the "Agreement") is made effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date") by and between \_\_\_\_\_ having a place of business at \_\_\_\_\_ and EAGLE METALS having a place of business at 1243 Old Bernville Road, Leesport, PA 19533.

### TERMS AND CONDITIONS

1. Complete Agreement. These terms and conditions represent the final and complete agreement of the parties and no terms or conditions in any way modifying or changing the provisions stated herein shall be binding upon Eagle Metals unless made in writing and signed and approved by an officer or other authorized person at Eagle Metals. No modification of any of these terms shall be modified by Eagle Metals shipment of goods following receipt of Buyers purchase order, shipping request or similar forms containing printed terms and conditions additional to or in conflict with the terms herein. If any term, clause or provision is declared to held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision herein contained.

2. Payment

(a) In addition to the price specified, the amount of freight charges, if applicable, and transportation taxes, if any, and any present or future sales, use, excise or any similar tax or governmental charge applicable to your order and to the sale and/or furnishing of the materials and/or services rendered by your order, shall be paid by you.

(b) If you fail to make payment when due, or if Eagle Metals at any time has any doubt as to your ability or intention to pay, we may decline to make any further shipments on this or any other order with you. The rights and remedies of Eagle Metals set forth herein shall not be exclusive, and Eagle Metals shall have all other rights and remedies at law.

(c) In the event of a default by you in making any payment due under this order or any other contract with or obligation to Eagle Metals, until you cure such default, Eagle Metals may, at its election, apply any payments from you in such proportion to your various accounts with Eagle Metals as it deems proper. Payments not received within thirty (30) days of shipment shall be deemed delinquent and shall bear interest at an annual rate of eighteen percent (18%) or at the maximum legal rate.

3. Delivery and Risk of Loss for Collect Shipments.

(a) All prices and deliveries are **EXW EAGLE METALS**

(b) Risk of loss shall pass to you upon Eagle Metals delivery to carrier or upon tender to your agent.

(c) Pursuing claims with carriers for loss or damage in transit shall be your responsibility.

(d) Eagle Metals shall not be liable for any delay in delivery due to fires, floods, explosions, the elements, acts of God, labor dispute, accidents to machinery, acts of sabotage, riots, war, delays in transportation or lack of transportation facilities, restrictions imposed by federal or state legislation, or any cause, condition or contingency beyond the control of Eagle Metals, whether similar to those enumerated or not. In the event of any of the foregoing, Eagle Metals may apportion its production and all stock material among its customers in such a manner as it may consider equitable. Eagle Metals shall not be liable for any consequential, liquidated, penal, or other damages for delay in or failure to deliver or perform, irrespective of whether claims or actions for such damages are based upon contract, tort, negligence, strict liability, warranty or otherwise.

4. Title and Risk of Loss. Delivery to carrier shall constitute delivery to Buyer, and thereafter risk of loss or damage shall pass to Buyer. Any claim of Buyer relative to damage during shipping or delivery should be made directly to the carrier. Any claims by Buyer against Eagle Metals for shortage or damage occurring prior to such delivery to carrier must be made within five (5) days after receipt of the goods and accompanied by original transportation bill signed by carrier noting that carrier received the goods Eagle Metals in the condition claimed. Notwithstanding passage of the risk of loss to Buyer, title and right of possession to the goods sold hereunder shall remain with Eagle Metals until all payments hereunder, including deferred payments evidenced by notes or otherwise, interest, carrying charges, and attorneys' fees, shall have been made in cash, and Buyer agrees to do all acts necessary to perfect and maintain such right and title in Eagle Metals.

5. Warranty, Limitation of Warranty and Damages, Indemnification. Eagle Metals warrants that the materials will, upon shipment, be in substantial conformity with the description on the Purchase Order Agreement with Buyer and written specification, if any, furnished by or agreed to by Eagle Metals. THE AFORESAID WARRANTY AS TO DESCRIPTION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

EAGLE METALS SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PENAL, OR OTHER DAMAGES, AND YOU RELEASE EAGLE METALS FROM ANY AND ALL LIABILITY, WHETHER BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, AND YOU FURTHER AGREE TO INDEMNIFY AND SAVE EAGLE METALS HARMLESS WITH RESPECT TO ANY CLAIM OR ACTION BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT THERETO.

6. Claims

(a) Claims for shortages, defective materials and/or nonconformity to specifications will be investigated promptly provided that you give Eagle Metals notice of the alleged defect or nonconformity, in writing, within thirty (30) days after receipt of the materials. If the alleged defect or nonconformity to specifications is discernible from prompt inspection of the materials, advise Eagle Metals immediately upon receipt of the materials.

(b) In any event, if you do not provide Eagle Metals with written notice of any defect or nonconformity within six (6) months after delivery, such failure to notify Eagle Metals shall constitute an irrevocable acceptance of the materials and workmanship, a waiver, and admission that you have had full and complete opportunity to inspect the materials, an admission that the materials and workmanship fully comply with all terms and specifications, and you shall be stopped from claiming otherwise.

(c) Eagle Metals shall be responsible to produce the material(s) in accordance with the Purchase Order Agreement and written specifications, if any, of Buyer. Eagle Metals is neither required to nor responsible to manufacture material(s), which will produce a satisfactory part for the Buyer. Rather, it is the responsibility of Buyer to specify the material(s) necessary in the Purchase Order Agreement and written specifications, which will enable Buyer to produce a satisfactory part. Under no circumstances shall Eagle Metals be liable to or accountable to Buyer for the inability of Buyer to produce a satisfactory part with the material(s) provided by Eagle Metals.

7. Miscellaneous

(a) Change Order. All requests for changes of an open order must be submitted in writing by the Buyer. If Eagle Metals is able to accommodate the requested change(s), Eagle Metals will so notify the Buyer. At this point, the Buyer must execute a revised Purchase Order, which is clearly marked as a "Change Order". Upon receipt, a representative of Eagle Metals will sign, date and return the Change Order to the Buyer, which shall evidence the confirmation of the requested change(s) by Eagle Metals. All costs for changes will be at the expense of the Buyer, subject to the terms and conditions herein. Without possession of a Change Order signed by a representative of Eagle Metals, the Buyer must proceed with the understanding that Eagle Metals has not approved the Change Order, whereby the Buyer is responsible for the material(s) as specified in the Purchase Order Agreement. Eagle Metals will not put an Order on hold or otherwise, while a Change Order request is pending.

(b) Order Reschedule. In general, the Buyer is responsible to take receipt of the material(s) on the date of delivery specified in the Purchase Order Agreement. Eagle Metals may entertain a request to reschedule the date of delivery in the event that the Order has neither started in manufacturing nor required the procurement of material intended solely for the Order in question. Upon request of a Buyer to reschedule a date of delivery, Eagle Metals shall have sole discretion to determine whether or not to accommodate such request to reschedule the date of delivery. In accordance with Eagle Metals policy, all orders scheduled to ship in a certain month must be shipped by the end of said month.

(c) Order Cancellation. Eagle Metals will only entertain a free and clear request to cancel an Order in the event that the Order has neither started in manufacturing nor required the procurement of material intended solely for the Order in question. If the Order has already started in manufacturing and/or requires the procurement of material intended solely for the Buyer, a cancelled Order will subject the Buyer to payment of "cancellation costs", as hereinafter defined, for such cancellation. The "cancellation costs" shall include, but not be limited to, accrued processing costs, generated scrap material and costs relative to the future reusability of the coil.

(d) Eagle Metals failure to insist upon strict performance of any provision of this Agreement shall not constitute a waiver of that or any other provision or any of Eagle Metals rights under this Agreement, nor shall it constitute a waiver by Eagle Metals of any subsequent default by you in the performance of this Agreement. The terms, conditions, and limitations here, and the rights of Eagle Metals, may be enforced at any time in whole or in part.

(e) You agree to pay any and all costs, expenses, and attorneys' fees which Eagle Metals may incur or become liable for by reason of Eagle Metals enforcing or attempting to enforce the terms of this Agreement.

(f) This Agreement shall be construed according to the laws of the Commonwealth of Pennsylvania and you agree to submit to jurisdiction and venue in the State and Federal Courts in and for Berks County, Pennsylvania.

(g) This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, receivers, legal representatives, successors, and assigns of the parties.

(h) All of the provisions of this Agreement are separate and severable. If any provision or part of any provision is held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such provision or any other provision of this Agreement.

(i) If a customer elects to cancel an order, the customer will be liable for cancellation charges, which shall include, but not be limited to, all processes performed and the purchase of all in-process scrap that had been developed, among other things. Eagle Metals will not apply cancellation charges only in the event that the order had not been started in production and that Eagle Metals was not required to secure material purchased solely for the cancelled order.

**TERMS AND CONDITIONS OF SALE FOR PLATED PRODUCT  
ADDENDUM TO EAGLE METALS STANDARD TERMS AND CONDITIONS**

EAGLE METALS warrants that the Product supplied hereunder shall comply with specifications contained on the face of the customer purchase order as acknowledged. Commercial tolerances will apply to all specifications unless otherwise agreed to in writing by EAGLE METALS. In the event that within thirty (30) days from the date of delivery of any Product sold hereunder, the Customer establishes that Product does not meet said specifications and within said thirty (30) days gives EAGLE METALS written notice of deficiency, then EAGLE METALS shall, upon agreeing with said notice, and at its option, rework or replace said Product.

EAGLE METALS LIABILITY IS LIMITED TO THE SALE VALUE OF METAL DEFINED BY EAGLE METALS INVOICE TO CUSTOMER. EAGLE METALS shall, however, not be responsible for any changes in the finish characteristics of PLATED product which may occur following delivery as a result of environmental conditions.

**EAGLE METALS**

obligations hereunder are conditional upon the product having been properly specified, properly stored, not having been subject to accident, misuse, or abuse and further upon the Customer giving EAGLE METALS full access to its facilities and records to investigate the cause of any alleged defect.

**IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have duly executed this Confidentiality Agreement the day and year first above written.**

\_\_\_\_\_  
**EAGLE METALS INC.**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Print Name)

Name: Charles J. Bernard

Title: \_\_\_\_\_

Title: President