

# Heidtman Tubular Products, LLC

## TERMS & CONDITIONS

These Terms and Conditions shall govern any sales transactions between Heidtman Tubular Products, LLC (“HTP”) and any buyer of goods from HTP (a “Purchaser”). These Terms and Conditions shall be deemed an essential part of any Quotation issued by HTP and every Acknowledgment issued by HTP. These Terms and Conditions supersede for all purposes all prior correspondence, Purchaser’s order to HTP, any past or future order by Purchaser, and any other agreement by any agent of either party respecting the goods sold by HTP to Purchaser. Purchaser accepts these terms and conditions by the placement of an order or by accepting delivery of the goods. Purchaser’s acceptance of these terms and conditions will form the contract between the Parties (the “Contract”). No addition to, or other modification of, these terms and conditions (including any attempted modification by Purchaser through Purchaser’s order or other document) shall be binding on HTP unless it is in writing and executed by a duly authorized officer of HTP. HTP hereby expressly objects to, rejects and will not be bound by any terms and conditions in Purchaser’s order or any other document, which are in conflict with or in addition to the terms and conditions herein. Shipment by HTP of the goods whether after the receipt of Purchaser’s order or otherwise, shall not constitute an acceptance of the terms and conditions of Purchaser.

**1. Price Quotations.** All prices indicated on any Quotation by HTP are subject to change without advance notice prior to HTP’s receipt of a firm order from Purchaser and written Acknowledgment by HTP. Prices charged by the material covered hereby shall be HTP’s prices in effect the time of shipment. Unless otherwise stated in the Quotation, all purchase prices are exclusive of any applicable excise, sales, use or other taxes or import, export or customs fees or duties, or surcharges which may be imposed on the sale or delivery of the goods. All such taxes, and charges, when applicable will be charged to, and are payable by, Purchaser. HTP may charge interest on late payments at a monthly rate of 1.5% or the highest rate allowed by law (whichever is less).

**2. Purchase Orders.** Purchaser’s order must specify the quantities requested, otherwise, quantities specified by HTP in its Quotation, or if none, in its Acknowledgment form, shall govern. All sales on an open Purchase order must be completed within 90 days from the date of the Purchase order unless otherwise specified on HTP’s Acknowledgment. Once received by HTP, a Purchaser’s order and/or release may not be modified, canceled or otherwise altered without HTP’s written consent. Any such modification, cancellation or alteration may be subject to cancellation charges or otherwise to conditions as negotiated at such time, which shall protect HTP against any damages or losses resulting therefrom.

**3. Acknowledgment.** HTP’s obligation to sell goods to Purchaser shall become binding only upon written Acknowledgment of Purchaser’s order, subject to these Terms and Conditions and such additional conditions as may be contained in HTP’s Acknowledgment, HTP’s Acknowledgment may be withheld or modified by reason of product availability, mill lead times, available transportation or other constraints. Purchaser’s failure to object in writing within twenty-four hours to the terms of HTP’s Acknowledgment renders those terms final. In the event Purchaser does object, HTP reserves the right to reject Purchaser’s order completely. Unless specifically stated in HTP’s Acknowledgment, HTP may deliver, and Purchaser shall accept and pay for, any quantity of goods within a 10% variation of the quantity set forth in the Acknowledgment. Each shipment pursuant to HTP’s Acknowledgment shall be considered as an individual transaction.

**4. Title and Risk of Loss.** Unless otherwise indicated on the Acknowledgment, all deliveries are F.O.B. HTP's shipping facility. Neither freight charges nor tax is subject to any discount. Risk of loss shall pass upon delivery to Purchaser's carrier and any loss or damage in transit shall be borne by Purchaser, and claims shall be made directly with the carrier.

**7. Shipments.** HTP has no obligation to the Purchaser to make a contract of carriage. However, Purchaser may request HTP to arrange for transportation as agent and strictly on Purchaser's behalf, and in such cases, HTP arranges such transportation solely for the account of Purchaser and HTP shall invoice the freight charges to Purchaser in accordance to the freight terms based on HTP's issued sales order, order confirmation, and/or shipment documentation. Where Purchaser requests HTP to arrange for transportation of the goods to Purchaser's specified location, the Purchaser shall provide HTP with Purchaser's choice of carrier, and if such carrier information is not provided, Purchaser shall be taken to have authorized HTP to select a common carrier on behalf of Purchaser. Unless specifically referenced in the Quotation, this contract is based on present freight rates and is subject to all present and future surcharges. If applicable, freight rates are also subject to future tariffs, import and export duties, border taxes and similar imposts, and taxes which shall be solely at the cost and risk of Purchaser. If any such rates or charges are included in the Quotation price (whether shown as a separate charge or not) and shall be increased pending delivery, Purchaser shall pay such increased rates or charges in addition to the Quotation price of the contract. Where pick-up by Purchaser is specified in HTP's Acknowledgment, if Purchaser does not pick-up the goods within 30 days after the date so specified, HTP reserves the right to ship the goods to Purchaser at Purchaser's expense. Additionally, after said 30-day period, HTP shall invoice Purchaser for the goods, whether or not HTP elects to ship the goods pursuant to the paragraph.

**8. Inspection/Returns.** All claims for rejected goods will be handled in accordance with HTP's *Claims Policy*, a copy of which is available on HTP's website ("Heidtman Tubular Claims Policy").

**9. Credit.** Unless otherwise agreed to in writing by HTP and Purchaser, the entire purchase price for the goods shall be due in full within thirty (30) days after the date of invoice. Purchaser's order is subject to the limit of Purchaser's credit determinable at any time and from time to time by HTP, affecting the whole or any unfulfilled portion of this contract. HTP, in its sole opinion, may at any time, modify or cancel the credit of Purchaser both as to time and amount, and may demand payment in cash before shipment or delivery of the whole or any part of the goods without affecting the obligation of Purchaser to complete the contract. Failure of the Purchaser to make any such payment after demand, may, at option of HTP, be deemed a default of the entire contract. In the event of the Purchaser's failure to pay for the goods in full when due, Purchaser shall be liable for the Seller's costs of collection of all amounts due, including reasonable attorney's fees and expenses.

**10. Default and Purchaser's Impairment.** HTP may delay shipment, reduce quantities shipped, or terminate the Contract if (i) Purchaser fails to make any payment promptly when due or otherwise fails to comply with the Contract or HTP's standard credit terms, (ii) Purchaser ceases to conduct its operations in a normal course of business, (iii) Purchaser is or becomes unable to pay its obligations as they mature, (iv) any proceeding under the Bankruptcy Code or any other insolvency laws is brought by or against Purchaser, (v) a receiver for Purchaser is appointed or an application for a receiver is filed, (vi) Purchaser makes an assignment for the benefit of creditors, or (vii) Purchaser fails to provide adequate assurance of future performance within thirty (30) days after demand by HTP (which will be a repudiation by Purchaser of the unperformed portion of the Contract). In the event of such termination or reduction in the quantities shipped, Purchaser shall be liable to HTP for any and all damages sustained by HTP as a result of the defaults which gave rise to the termination or reduction in the quantities of shipment.

11. **Waiver of Setoff.** Purchaser shall have no right to setoff money owed by HTP to Purchaser against sums owed by Purchaser to HTP without first obtaining HTP's written consent to set off.

12. **Warranty/Claims.** Subject to standard manufacturing variations, HTP warrants that the goods will conform in all material respects to the description and specification of the goods set forth on the face of the Quotation (the "Warranty"). Purchaser acknowledges and agrees that as a steel business, HTP does not have full control of all steel manufacturing processes and that all goods shall be subject to tolerances and variations consistent with usages of the trade and published industry standards concerning dimension, weight, straightness, section, composition and mechanical properties, normal variations in surface, internal conditions and quality, deviations from tolerances and variations consistent with practical testing and inspection methods, and regular mill practices concerning over and under shipments. It is Purchaser's responsibility to determine whether the Purchase order specification is adequate for its intended use. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THESE WARRANTIES AND HTP EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

13. **Warranty Remedies.** No claim for damages on account of the breach of the Warranty shall be allowed unless HTP is first given notice after delivery of the goods and allowed an opportunity to inspect the goods. In the event any goods fail to comply with the Warranty, Purchaser may return the defective goods to HTP, freight prepaid at HTP's discretion in accordance with the *Claims Policy*. Provided however, goods for which damages are claimed, for non-conformance or otherwise, shall not be returned, repaired or replaced without HTP's written consent. Purchaser's sole and exclusive remedy for the nonconformance of any good with the Warranty shall be, at HTP's election, (i) HTP repairs or corrects the nonconformance or defect consistent with HTP's Claims Policy, (ii) HTP furnishes Purchaser, without charge and FOB the Purchaser's facility, with a replacement for the nonconforming or defective good, or (iii) HTP reimburses Purchaser for the purchase price of the nonconforming good. HTP shall not be liable for defects caused by abuse or misuse of its goods. Failure to submit a claim for a breach of Warranty within 120 days of the shipment of the goods shall be conclusive proof that the goods are as warranted and shall release HTP from any further liability with respect thereto. All claims for nonconformance or defect will be handled in accordance with the *Claims Policy*. In the event of a conflict between the terms of this Section 13 and the *Claims Policy*, the terms of the *Claims Policy* shall govern.

14. **Limitation of Liability.** Purchaser acknowledges that the price of the goods is predicated on the enforceability of the following limitation of liability, that the price would be substantially higher if HTP could not limit its liability as herein provided and that Purchaser accepts this limitation of liability in exchange for a lower price: EXCEPT FOR HTP'S DIRECT COSTS IN REPAIRING, CORRECTING OR REPLACING ANY NON-CONFORMING GOODS, HTP SHALL NOT BE LIABLE FOR ANY OTHER EXPENSE CONNECTED WITH THE REPAIR, CORRECTION OR REPLACEMENT OF ANY GOODS. WITH RESPECT TO ANY CLAIM UNDER THE CONTRACT, IN NO EVENT SHALL HTP BE LIABLE TO PURCHASER FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE ACTUAL PRICE PAID TO HTP. HTP SHALL HAVE NO LIABILITY TO PURCHASER FOR LOST PROFITS, LOSS OF PRODUCT, LOSS OF USE OF EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, COST OF DOWNTIME, LOST OPPORTUNITIES, FAILURE TO DETECT ANY FLAW IN THE SUBJECT MATTER OF A TEST, CLAIMS OF PURCHASER'S CUSTOMERS OR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS, LOSS OF PRODUCT, INTERRUPTION OF BUSINESS, LOSS OF OPPORTUNITIES, OR ANY OTHER DAMAGES. This limitation of liability may not be altered except by an agreement in writing signed by a duly authorized officer of HTP. If Purchaser is supplying HTP's goods to a third party, Purchaser shall require the third party to agree to be bound by this Section. If Purchaser does not

obtain this agreement for HTP's benefit, Purchaser shall indemnify, defend and hold HTP harmless from and against any and all claims made by the third party in excess of the limitations and exclusions of this article and shall pay all costs and expenses associated therewith, including, without limitation, attorney fees.

**15. Applicable Law.** The Contract shall be deemed to have been entered into and shall be construed according to the Uniform Commercial Code as adopted in the state of origin of shipment by HTP. Purchaser agrees and submits to the exclusive jurisdiction of the federal and state courts of Ohio for resolution of any disputes arising hereunder. Purchaser waives any objection based upon forum non-conveniens or any objections to venue of any such action.

**16. Force Majeure or Other Excuse.** The supply, shipment, and delivery of the goods are subject to, and HTP shall not be liable for any delay in or impairment of performance resulting in whole or in part from, any war (whether or not declared), act of terrorism, strike, difference with workmen, accident, fire, flood, acts of God, delay in transportation, shortage of materials, equipment breakdowns, laws, regulations, orders or acts of any governmental agency or body or any cause beyond the reasonable control of HTP, or if performance by HTP becomes impracticable due to the occurrence of a contingency, the non-occurrence of which was a basic assumption on which the sale was made, basic assumptions of every HTP contract include but are not limited to, availability of raw material, accurate forecasting and timely releases of material. In any such event, HTP shall have such additional time to perform as may be reasonably necessary and shall have the right to apportion its production among its Purchasers in such manner as it deems equitable.

**17. Statutes of Limitation.** Any action against HTP based on HTP's alleged breach of its obligations hereunder must be commenced within one (1) year after the cause of action has accrued.

**18. Assignment.** Purchaser shall not assign any of its rights, or delegate any of its duties, under these terms and conditions without the prior written consent of HTP, and any attempt to do so shall be void.

**19. Entire Agreement.** Purchaser's order, subject to these Terms and Conditions and the terms of HTP's Acknowledgment, shall constitute the entire agreement between HTP and Purchaser for sale of the goods or services specified on the Quotation, superseding all other agreements between HTP and Purchaser respecting the transaction contemplated herein, whether written or oral, including, but not limited to, any documents, correspondence, brochures, advertisements or other memoranda respecting the goods.