

300 Westway Place  
Arlington, Texas 76018  
Tel: (817) 321-0500 Fax: (817) 321-0599

## ISCAR Terms of Sale Policy

### 1. DEFINITIONS

For purposes hereof the following terms are defined.

- (a) SELLER: Iscar Metals, Inc., a New Jersey corporation with offices at 300 Westway Place, Arlington, TX 76018.
- (b) BUYER: Each person or company specified under "Sold To" on the face of an invoice from Seller (the "Invoice").
- (c) GOODS: The products purchased by Buyer from Seller which are described on the face of the Invoice.
- (d) BLANKET SALE: An order accepted by Seller that specifies more than one Release Date.
- (e) RELEASE DATE: Each date set forth on the face of the Invoice for the shipment of any or all of the Goods.
- (f) TERMS OF SALE: The terms and conditions contained in this document and the Invoice.

### 2. QUANTITY OF GOODS

Buyer shall purchase from Seller the quantity of the Goods set forth on the face of the Invoice and will accept as a conforming delivery hereunder a quantity variation of no more than ten percent (10%) there from.

### 3. PRICING

- (a) Buyer will pay Seller the unit price of each item of the Goods (as such price appears on the face of the Invoice) multiplied by the number of units shipped.
- (b) Blanket Sales are invoiced on each Release Date. For the Goods subject to each Blanket Sale, Buyer will pay Seller's prevailing price(s) for such Goods at the time that Buyer's order for such Blanket Sale is accepted by Seller and such price(s) will be firm during the period ending on the sooner to occur of: (i) the last shipment under such order or (ii) the first anniversary of the date of the first shipment under such order. For each shipment of the Goods covered by such order which occurs thereafter, Buyer will pay Seller's then-prevailing price(s) for the Goods.
- (c) The prices set forth on the face of the Invoice do not include sales, use or similar taxes. Buyer agrees to pay Seller upon request, the amounts of such taxes that Seller is required to collect. Buyer shall have no obligations to Seller for any taxes such as franchise, income or occupational taxes that are not specifically levied on the transactions herein contemplated.
- (d) Seller reserves a purchase money security interest in any and all of the Goods purchased hereunder until full payment of the purchase price is received. A copy of these Terms of Sale may be filed as a financing statement with the appropriate state or local authorities to perfect Seller's security interest, and Buyer hereby appoints Seller its attorney-in-fact for such purpose. Seller's repossession of any or all of the Goods pursuant to its security interest shall be without prejudice to any other remedies of Seller.

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### **4. PAYMENT**

Payment terms are 1% 15 net thirty (30) days after the date the invoice is mailed or electronically transmitted. On a Blanket Sale, Buyer will be invoiced for each shipment and payment for each such shipment will be 1% 15 net thirty (30) days. If discount terms are made available to Buyer, Buyer may take a discount if Seller receives payment within the granted discount days computed from date of invoice. In the event of any delay in payment, there will be a service charge of the lesser of one and one-half percent (1½%) or the maximum allowed by applicable law for each month or fraction thereof that the amount due is in arrears. Acceptance by Seller of payment of such charge shall not be deemed a waiver of any or all of Seller's rights due to non-payment or late payment by Buyer for any or all of the Goods. Buyer shall pay Seller the costs (including without limitation reasonable attorneys' fees) incurred by Seller to collect any and all sums due and unpaid hereunder.

### **5. DEFAULT**

In addition to Seller's rights and remedies provided by law, Seller, without liability, may, but is not obligated to, reject or cancel any or all orders from Buyer (even if previously accepted by Seller) and refuse to make one or more deliveries, if:

- (a) Buyer fails to make any payment when due or on any other order or agreement with Seller; or
- (b) Buyer defaults, breaches or repudiates its obligations under these Terms of Sale or any other agreement with Seller; or
- (c) Buyer becomes insolvent, calls a meeting of its creditors, or makes any assignment for the benefit of creditors; or
- (d) A bankruptcy, insolvency, reorganization or arrangement proceeding is commenced by or against Buyer; or
- (e) A receiver is appointed for Buyer or Buyer ceases to conduct its operations in the normal course of business.

### **6. DELIVERY**

(a) Seller shall use commercially reasonable efforts to deliver the Goods no later than fifteen (15) days after the Release Date specified on the face of the Invoice or, in the event of a Blanket Sale, the applicable Release Date specified on the face of the Invoice. Seller may, however, deliver the Goods, in whole or in part, at any time prior to receipt by Seller of Buyer's written cancellation of Buyer's corresponding order(s), and such delivery shall constitute timely delivery. For purposes of these Terms of Sale, "delivery" and "shipment" (and their derivatives) may be used interchangeably and carry the same intended meaning.

(b) Seller shall not be liable for loss, damage or delay in delivery or production of the Goods resulting from any cause whatsoever beyond Seller's reasonable control. Delivery dates will be extended to the extent of such delay, unless Seller in its sole discretion cancels any or all of the affected orders (even if previously accepted by Seller) by providing written notice thereof to Buyer.

(c) Seller shall have the right to ship all of the Goods at one time or in portions from time to time prior to any or all of the Release Dates specified on the face of the Invoice, and Buyer hereby agrees to accept such Goods,

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provided that in the case of a Blanket Sale, shipment is made no earlier than twenty (20) days prior to the applicable Release Date(s) thereof.

(d) In the case of a Blanket Sale, Buyer acknowledges that the delivery of non-conforming Goods, or a default by Seller of any nature in relation to one or more installments, will not substantially impair the value of the entire Blanket Sale and will not constitute a breach of these Terms of Sale as a whole.

(e) All of the Goods purchased by Buyer from Seller will be F.O.B. Seller's Arlington, Texas facility or such facility or facilities designated in writing by Seller, whether delivered to one or more carriers or to Buyer or its agent(s), representative(s) or designee(s) at such facility or facilities. Shipment of such Goods will be made by the method and carrier of Seller's choice to Buyer at Buyer's address set forth on the face of the Invoice. Title and risk of loss to such Goods shall pass to the Buyer upon such delivery.

(f) Buyer shall pay all freight, express and other transportation charges. The price(es) set forth on the face of the Invoice for the Goods do(es) not include transportation charges of any kind. Such charges shown on the face of the Invoice, if any, are estimates only, and are not binding on Seller.

### **7. WARRANTIES**

(a) For a period of one (1) year from the sale of the Goods by Seller to Buyer (the "Warranty Period"), Seller warrants that such Goods shall meet the descriptions or specifications stated by Seller in writing (subject to the tolerances acceptable to Seller) and shall be free from defects in material and workmanship.

**(b) THE EXPRESS WARRANTIES SET FORTH IN THESE TERMS OF SALE ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN OR UNWRITTEN, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY SELLER.**

(c) If any model or sample was shown to Buyer, such model or sample was used merely to illustrate the general type and quality of the Goods and not to represent that the Goods would necessarily conform to the model or sample.

(d) Each claim under the warranty in Section 7(a) hereof must be made promptly in writing during the Warranty Period, must recite the nature and details of the claim and the Goods to which the claim applies. Seller shall have the option of examining the Goods at Buyer's location or at Seller's facility (in which case Buyer shall return the Goods to Seller's facility freight prepaid). Seller's liability and the sole and exclusive remedy of Buyer and each subsequent purchaser is limited to, in Seller's sole discretion, refund or credit of the purchase price by Seller or repair or replacement by Seller and return of the allegedly defective Goods to Seller. Seller shall have no obligation under such warranty if such claim is due in whole or in part to: (i) the fault or negligence of any or all of Buyer, subsequent purchaser(s) or user(s); (ii) improper storage, handling or use; (iii) use in a manner for which such Goods were not designed or intended; or (iv) causes external to the Goods, including without limitation causes of force majeure.

### **8. LIMITATION OF LIABILITY**

Buyer understands and agrees as follows:

(a) Seller shall not be liable for any loss or damage caused by delay in furnishing the Goods or any other performance under or pursuant to these Terms of Sale.

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(b) The sole and exclusive remedies for breach of any and all warranties and the sole remedies for Seller's liability of any kind with respect to the Goods and all other performance by Seller under or pursuant to these Terms of Sale shall be limited to the remedies provided in Paragraphs 7 and 8 hereof.

(c) IN NO EVENT SHALL SELLER'S LIABILITY OF ANY KIND FOR ANY REASON(S) WHATSOEVER INCLUDE ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

(d) THE LIABILITY OF SELLER FOR BREACH OF THESE TERMS OF SALE IS LIMITED TO THE DIFFERENCE, IF ANY, BETWEEN THE PRICE SET FORTH IN THE INVOICE AND THE FAIR MARKET PRICE ON THE RELEASE DATE SET FORTH THEREIN OF THE GOODS TO BE DELIVERED, PROVIDED BUYER ACTUALLY PURCHASED THE SAME GOODS ELSEWHERE FOR SAID FAIR MARKET PRICE. IN NO EVENT MAY THE COMPUTATION OF BUYER'S DAMAGES FOR SELLER'S BREACH HEREOF INCLUDE LOSS OF PROFIT ON CONTEMPLATED USE OR PROFIT OF ANY OTHER DESCRIPTION.

### **9. LIMITATION OF CLAIMS**

Any claim for breach by Seller of these Terms of Sale shall be barred and waived unless Buyer institutes an action within one (1) year after the claimed cause of action accrued.

### **10. INTERPRETATION AND INTEGRATION**

(a) These Terms of Sale are intended by Buyer and Seller as a final expression of their agreement and are intended as a complete and exclusive statement of the terms of their agreement. These Terms of Sale supersede all proposals, oral or written, and all negotiations, or discussions heretofore had between the parties hereto related to these Terms of Sale. Buyer acknowledges that it has not be induced to accept these Terms of Sale by any representation or statement, oral or written, not expressly contained herein. No course of prior dealings between such parties and no usage of the trade shall be relevant to supplement any term used in these Terms of Sale. Acceptance or acquiescence in an course of performance rendered under these Terms of Sale or any other interaction shall not be relevant to determine the meaning of any provision hereof even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.

(b) Notwithstanding anything to the contrary in these Terms of Sale, if a currently valid Iscar Authorized Distributor Agreement or Iscar Purchase Agreement exists between Buyer and Seller, the provisions of such agreement (and the Ancillary Materials, as defined therein) shall control the relationship between Buyer and Seller.

### **11. AUTHORITY OF SELLER'S AGENTS**

No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty concerning the Goods, and unless an affirmation, representation or warranty made by an agent, employee or representative is specifically included in the Invoice, it has not formed a part of the basis of the bargain and shall not in any way be enforceable. These Terms of Sale can be modified or rescinded only by a written amendment signed by both of Buyer and Seller or their duly authorized agents.

### **12. INTELLECTUAL PROPERTY**

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Seller retains all right, title and interest in and to any and all trade secrets and know-how regarding the Goods, and the sale of the Goods by Seller to Buyer does not constitute a license to use or disclose same, or to alter, modify or copy any or all of the Goods.

### **13. WAIVER**

Seller only in writing may waive any duty or obligation of or restriction upon Buyer under these Terms of Sale. No failure, refusal, neglect, delay, waiver, forbearance or omission of Seller to exercise any right under these Terms of Sale or to insist upon full compliance by Buyer with Buyer's duties, obligations or restrictions hereunder shall constitute a novation or a waiver of any provisions of these Terms of Sale.

### **14. ASSIGNMENT**

These Terms of Sale and any and all duties and obligations hereunder may not be delegated, transferred or assigned by Buyer without the express written consent of Seller. Any delegation, transfer or assignment by Buyer without such consent shall be void.

### **15. APPLICABLE LAW**

These Terms of Sale and each transaction between Buyer and Seller hereunder shall be governed by and interpreted under the laws of the State of Texas without regard to its conflict of laws provisions. Except for personal injury claims brought outside of Tarrant County, Texas by third parties, Buyer and Seller agree that any and all disputes arising out of or relating in any way to these Terms of Sale shall be litigated at the trial level only in state court or federal court in Tarrant County, Texas. Buyer hereby submits to personal and subject matter jurisdiction in such courts and agrees that Buyer will not contest venue. Service of process by certified or registered mail, return receipt requested, shall be sufficient to commence suit; and Buyer waives any right to personal service of process.

### **16. CONFLICTING TERMS**

SELLER IS NOT BOUND BY THE TERMS OR CONDITIONS CONTAINED ON ANY FORM OF BUYER WHICH MAY BE SENT TO SELLER WHICH ARE AT VARIANCE WITH THE TERMS AND CONDITION SET FORTH HEREIN; IT BEING UNDERSTOOD AND AGREED THAT THE BUYER'S ACCEPTANCE OF SELLER'S OFFER TO SELL THE GOODS IS STRICTLY LIMITED TO THESE TERMS OF SALE.

### **17. NOTICES**

Each notice required to be made hereby shall be made in writing and shall be deemed to have been duly given by either party hereto upon mailing if sent by prepaid first class mail to the other party at its address(es) set forth on the face of the Invoice.

### **18. SEVERABILITY**

If any provisions hereof are held by a court of competent jurisdiction to be invalid or unenforceable, then such invalidity or unenforceability shall not affect the other provisions hereof, all of which other provisions are hereby declared to severable.