

# TABER EXTRUSIONS, LLC

## GENERAL TERMS AND CONDITIONS

### 1. The Contract

**1.1 Offer and Acceptance.** Each purchase order Seller receives ("**Purchase Order**") is an offer to purchase the products ("**Products**") identified in that Purchase Order. Seller will be deemed to have accepted a Purchase Order (1) if it has begun or later begins performance under the Purchase Order, or (2) if it acknowledges in writing its acceptance of the Purchase Order. Upon acceptance, the Purchase Order together with the written acknowledgment, these General Terms and Conditions and any other documents specifically incorporated in the Purchase Order or separately agreed to in writing, such as specifications, drawings, requirements of Seller's customer, or quality requirements, will become a binding contract between Seller and Buyer (collectively, the "**Contract**"). Any alternate terms or printed language on any document or form submitted by Buyer are specifically rejected and shall not alter or modify these terms and conditions unless both Seller and Buyer mutually agree in writing and issue a new or amended Purchase Order containing the modified terms, even if Seller commences or has commenced performance under the Purchase Order. Specific terms and conditions on the Purchase Order and the other documents comprising the Contract will take priority over any inconsistent provision in these General Terms and Conditions.

**1.2 Changes.** Buyer may from time to time by notice to Seller make reasonable changes, within the scope of the Contract, to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or similar requirements prescribed in the Contract. Contract changes must be in writing signed by Buyer and accepted in writing signed by Seller. If such change increases or decreases the cost or time required to perform this Agreement, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease, and must reach agreement before the changes are implemented.

### 2. Delivery

**2.1 Packing and Shipment.** Method of transportation will be as specified in the Contract.

No changes will be made unless accepted and agreed to by Seller in writing. Seller will pack and ship Products in accordance with Buyer's instructions, including labeling, material certifications, if required, at Buyer's expense. If Buyer has not provided packing or shipping instructions, Seller will pack and ship Products in accordance with sound commercial practices.

**2.2 Delivery Schedules.** Seller will deliver Products in accordance with the Contract terms. Unless otherwise stated in the Contract, Products will be delivered FOB Seller's dock and title and risk of loss will transfer to Buyer upon receipt of the Products by the freight carrier.

### 3. Product Quantity Tolerances

The applicable standard quantity tolerance stated below will apply to the quantity of each such item of material specified on Buyer's order based on specific release dates unless another tolerance is stated on the face of the Purchase Order. Tolerances, if any, will be rounded up to reflect the next whole piece.

<u>Quantity</u>	<u>Tolerance</u>
Less than 500 pounds	+/- 25%
501 to 1,999 pounds	+/- 15 %
2,000 to 9,999 pounds	+/- 10 %
10,000 or more pounds	+/- 5 %

### 4. Inspection.

Buyer may, upon reasonable advance notice to Seller, inspect production processes and Property and, subject to Seller's prior written approval, which will not be unreasonably withheld or delayed, conduct testing at Seller's premises for the sole purpose of verifying Seller's performance under the Contract. Seller may restrict Buyer's access as necessary to protect proprietary information and to comply with export regulations, and may require appropriate indemnification and releases.

## 5. Taxes

Unless otherwise stated in the Contract, the Contract price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Buyer.

## 6. Payment Terms

Payment terms are net 30 days from invoice date.

## 7. Product Warranties

**7.1 Seller's Warranties.** Seller warrants to Buyer that the Products will conform to the specifications and drawings provided by the Buyer and acknowledged by the Seller.

Hollow Extrusions made using the structural or porthole method contain one or more internal metallurgical bonds. This material is not suitable for all applications, specifically for those requiring pressurization or vacuum. As such, Seller does not warrant or guarantee the integrity of porthole hollow extrusions when they are subjected to pressurization or vacuum.

**THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES AND ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.**

**7.2 Non-Conforming Products.** Within thirty (30) days of delivery, except claims for damage from transportation which shall be made within three (3) days of delivery, Buyer shall inspect the Products and, if any Product furnished hereunder is rejected because of nonconformity to specifications, Buyer shall have the right to return same to Seller, but only after inspection by Seller and receipt of definite shipping instructions from Seller, such inspection to be made and instruction given within thirty (30) days after notice of rejection by Buyer.

## **7.3 Liability for Non-Conforming Products.**

Seller's sole liability in respect to non-conforming products delivered hereunder shall be limited to replacement, repair or refund of purchase price, at Seller's sole option. Under no circumstances will Seller be liable for any indirect, incidental or consequential damages, losses, costs, or expenses incurred by Buyer resulting from the failure of Seller to deliver conforming Products or to comply with the shipping and delivery or other requirements of Buyer.

## 8. Compliance with Laws

The Parties shall comply with applicable laws, rules and regulations of the country where the Products are manufactured. Seller will provide Buyer with material safety data sheets regarding the Products and, upon Buyer's request, will provide Buyer with other information reasonably required in order to comply with applicable laws.

## 9. Anti-Corruption

The Parties hereby represent, certify and warrant that no agent, affiliate, employee or other person associated with or acting on behalf of the Parties directly or indirectly, have in the past offered to pay or provide or have or will pay or provide anything of value in the form of any unlawful contribution, gift, entertainment or other unlawful expense to any foreign official or foreign political party in any polity for the purpose of gaining or retaining business or obtaining any unfair advantage, nor violated any provision of the U.S. Foreign Corrupt Practices Act, as amended ("FCPA"); the United Nations Convention Against Corruption, (GA Res. 58/4, UN Doc. A/58/422 (2003)) nor the Organization for Economic Co-operation and Development ("OECD") Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, DAFNE/IME/BR(97)20 nor made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment.

## 10. Export Controls

The Parties hereby represent, certify and warrant that they are now and will remain in the future compliant with all export control statutes, regulations, decrees,

guidelines and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this agreement including but not limited to the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2007)) of the U.S. Department of State; the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2007)) of the U.S. Department of Commerce; the antiboycott and embargo regulations and guidelines issued under the EAR; the various embargo regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended.

#### **11. Tooling**

Any equipment (including extrusion dies) acquired by Seller for exclusive use in the production of products for Buyer shall be and remain Seller's property and in Seller's possession and control. Any charges made by Seller therefore shall be only for the use of such equipment and shall not be construed to confer on Buyer any rights with respect to such equipment. When for two (2) consecutive years no orders are received from Buyer for products to be extruded with such equipment, then after giving 30 days written notice to Buyer, Seller may dispose of the equipment as it considers appropriate. Until the expiration of any such two (2) year period, Seller shall maintain and keep available such equipment exclusively for the production of products by Seller for Buyer.

#### **12. Cancellation Charges**

**12.1** If Buyer cancels an order prior to completion or terminates a Contract before the end of its specified term, then Buyer shall purchase completed Products at the Contract price and work-in-process and raw materials at Seller's actual cost, including all material on non-cancellable order with the supplier.

**12.2** If Buyer has entered into a Forward Buy Agreement with Seller, then Buyer agrees to take delivery of and pay for, in accordance with Seller's standard terms of payment, all Products produced in accordance with the price, schedule and quantity set forth in the Contract. Should Buyer not take delivery of the specified quantity during the agreed upon time period or cancel all or part of the order, Buyer shall

pay Seller's invoice for the shortfall amount in accordance with the terms set forth in the Forward Buy Aluminum Extrusion Purchase and Supply Agreement.

#### **13. Limitation of Damages**

**ALL INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR MARKET SHARE OR DAMAGE TO BRAND VALUE), INCIDENTAL, PUNITIVE, AND EXEMPLARY DAMAGES, WHETHER OR NOT FORESEEABLE, ARE EXCLUDED UNDER THESE GENERAL TERMS AND CONDITIONS TO THE EXTENT PERMITTED BY APPLICABLE LAW.**

#### **14. Confidential Information**

Each Party shall (i) keep all of the other Party's information confidential and disclose it only to its employees who need to know such information in order for the Parties to perform under the Contract and (ii) use the other Party's information solely for the purpose of performing under the Contract. "Confidential information" means all information provided by one Party to the other Party, or its representatives or subcontractors, in connection with the business, programs, and Products covered by the Contract, including without limitation, pricing and other terms of the Contract, trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data. Confidential information shall remain the sole property of the disclosing Party. Each Party shall use the same degree of care to safeguard the other Party's Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure but not less than a reasonable degree of care. Upon request by the disclosing Party, the receiving Party will promptly return or destroy the original and all copies of Confidential Information received.

#### **15. Assignment and Subcontracting**

Neither Party may assign or subcontract its duties or responsibilities under the Contract without the prior written consent of the other Party. Unless otherwise stated in the consent, any assignment or subcontracting, with or without the required consent, will not relieve the assigning Party of its duties or

obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor.

## **16. Excusable Non-Performance**

Neither party shall be liable for delays in the performance of its obligations caused by the following conditions of "Force Majeure," namely, acts of God or the public enemy, including an embargo, war, fire, flood, earthquake, terrorist attack, epidemic or other calamity, or other cause beyond the reasonable control of the affected party; provided, however, that it is understood between the parties that normal weather conditions, or inability to procure labor or materials for any reason other than Force Majeure shall not constitute an excuse for failure to perform the Services within the time for performance required by this Contract. Any party wishing to claim Force Majeure as an excuse for non-performance or failure of timely performance must promptly notify the other party in writing of (i) the nature of the Force Majeure being claimed, (ii) its best estimate of the number of days of delay expected to result therefrom, (iii) the steps it proposes to take to reduce to the minimum the number of days of delay, and (iv) the date on which the Force Majeure claimed as an excuse for non-performance terminates. The sole remedy for any permitted delays resulting from Force Majeure shall be an extension of the period of time for performance of those obligations affected by the Force Majeure occurrence for the minimum time period necessary to overcome the effect of such Force Majeure, provided, however, that if a claimed Force Majeure event exceeds or is expected to exceed more than 30 total days the parties agree to meet to decide the next course of action, which may include termination.

## **17. Dispute Resolution**

**17.1 Negotiation and Mediation.** The Parties shall first endeavor to resolve through good faith negotiations any dispute arising under the Contract. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may request non-binding mediation by a mediator approved by both parties. Request for mediation shall be filed in writing with the other party to this Agreement. The request may be made concurrently with the filing of legal or equitable proceedings but,

in such event, mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**17.2 Mediation Fees.** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the location of the producing Seller facility (Russellville, Arkansas or Gulfport, Mississippi) unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**17.3 Litigation.** The parties have selected non-binding mediation as an initial means to attempt to resolve a dispute between them over monetary claims. Either party may pursue through litigation, without first requesting mediation, claims that also involve third parties, claims in litigation commenced by third parties, and claims for injunctive or other non-monetary relief.

## **17.4 Security Interest**

Buyer hereby grants to Seller a security interest in all of the Material now or hereafter acquired by the Buyer hereunder, including Material stored on Seller's or Buyer's premises, until such time as Buyer has paid Seller in full for all Material. Buyer hereby authorizes Seller or any of its assignees to file Financing Statements and any extensions thereto, including notifying other secured parties in order to perfect its security interest, signed only by Seller or its assignee in all places where desirable or necessary to evidence Seller's absolute ownership of the product in all jurisdictions where such authorization is permitted by the Uniform Commercial Code. Further, Buyer agrees that it will upon request execute any Financing Statements reasonably intended to evidence such absolute ownership by Seller. Seller may designate its nominee as the owner of the product in the Financing Statement. Buyer shall notify Seller thirty (30) days prior to the relocation of Buyer's business premises, or a change in Buyer's name or state of organization.

## **18. Miscellaneous**

**18.1 Updates and Amendments.** Seller may amend, revise, and update these Terms and Conditions at any time without prior notice. Any such amendment, revision or update will be published, shall apply from the date of publication forward, and shall apply to all future releases under existing Purchase Orders and Contracts, as well as to Purchase Orders issued after the publication date.

**18.2 Relationship of the Parties.** Buyer and Seller are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

**18.3 Waiver.** The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

**18.4 Entire Agreement.** The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract, including Buyer's request for quotation and Seller's quotation unless specifically incorporated in the Contract. Except as authorized in Section 1.2, no subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the

Contract will be binding unless in writing and signed by both parties.

**18.5 Severability.** A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.

**18.6 Interpretation.** When used in these General Terms and Conditions, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa.

**18.7 Notices.** Any notice or other communication required or permitted in the Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

**18.8 Governing Law.** Unless otherwise agreed in writing, the Contract will be governed by and interpreted as follows: (1) for all Purchase Orders to be fulfilled at Seller's Russellville, Arkansas facilities, according to the internal laws of the State of Arkansas, United States of America; (2) for all Purchase Orders to be fulfilled at Seller's Gulfport, Mississippi facilities, according to the internal laws of the State of Mississippi. The *United Nations Convention on Contracts for the International Sale of Goods* will not apply to the Contract.