

METALPLATE GALVANIZING, L.P. TERMS AND CONDITIONS OF SALE

1. Any failure by Customer to make payment in accordance with the terms of this agreement or failure to comply with any provision hereof, shall constitute reasonable grounds for Metalplate Galvanizing, L.P. ("Metalplate") to demand adequate assurance of due performance and until Metalplate receives such assurance Metalplate may suspend any performance for which Metalplate has not already received the agreed return. Without limitation of the foregoing and in addition to any other remedies available to Metalplate upon any such failure by Customer, Metalplate may, at its option, refuse to perform on any portion of this order. Customer is to remain liable for all unpaid amounts. Unless otherwise agreed, payment will be due upon delivery or, if credit has been extended, payment shall be net 30 days from invoice. In the event Customer fails to make payment in accordance with the terms of this agreement, Customer's account shall be deemed to be delinquent and a service charge of the lesser of (a) one and one-half percent (1½%) per month or 18% per annum, charged weekly, or (b) the maximum rate allowed by law, will be made on the unpaid balance. Metalplate shall have the right to credit toward the payment of any monies that may become due Metalplate hereunder any sums which may now or hereafter be owed to Customer, by Metalplate. Customer agrees to pay all collection costs and expenses, including reasonable attorneys' fees, incurred by Metalplate in collecting or attempting to collect amounts owed by Customer. For purposes of the foregoing, it is hereby agreed that a reasonable attorneys' fee is not less than 20% of the price of this order. Payment by the Customer of the price of this order when due shall be a condition precedent to Customer's right to assert any claim against Metalplate hereunder. As consideration for Metalplate's undertaking the galvanizing for Customer, and/or for Metalplate's extension of credit to Customer under this and/or other contracts with Customer (if applicable), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Customer, Customer agrees that Metalplate shall have a general lien against all of Customer's material and merchandise in Metalplate's possession for all monies owing by Customer to Metalplate, whether or not due or payable, and whether or not such monies are owing to Metalplate for work, labor, or services rendered, or equipment used in connection with such material or merchandise, and whether or not such materials are in Metalplate's possession under this or any other contract with Customer. Nothing contained in the foregoing shall preclude Metalplate's right to proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Customer of the applicable covenants and terms of this agreement.

2. Unless otherwise agreed to in writing, this order is quoted f.o.b. Metalplate's plant and oral or written quotations are valid for thirty (30) days only. Freight charges on all shipments and spotting, switching, demurrage, or drayage are to be paid by Customer. If a specific carrier is required, Customer must designate such carrier in writing to Metalplate prior to shipment. Metalplate reserves the right to make partial shipments. Prices do not include packaging in other than containers furnished by Customer. Any extra or alternative packaging must be requested in writing by Customer and the costs for said packaging, labor and materials shall be added to the quoted price and paid by Customer.

3. All delivery or shipping dates provided at any time by Metalplate are approximate. Metalplate will use commercially reasonable efforts to comply with Customer's requested shipping and delivery dates and to obtain similar commitments from Metalplate's subcontractors and suppliers. In no event shall Metalplate be liable to Customer or any third party for any loss, damage, or expense or charge of any kind resulting from delays in galvanizing, shipment, or delivery. Without limitation of the foregoing, and under no circumstances, shall Metalplate be liable for any failure or delay in completing the contract resulting from any cause beyond Metalplate's control, including, but not limited to, provisions of law or governmental regulations; accident, explosion, fire, windstorm, flood, or other casualty; strike, lockout, or other labor difficulty (whether occurring at Metalplate's plant or elsewhere); acts of God; riot, war, insurrection; shortage or inability to secure labor or other services, raw materials, fuel, power, production or transportation facilities; or for delays or failures by third parties to provide supplies, components, services, parts, or equipment required by Metalplate to complete the contract. Should Metalplate notify Customer of Metalplate's inability to perform any agreement for any of the foregoing causes, Customer is required, at its own risk and expense, to pick up at Metalplate's plant the raw, finished, or unfinished materials which Metalplate has in its possession belonging to Customer.

4. Prices do not include any present or future federal, state or local taxes based upon or measured by the coating or processing, delivery or shipment of the materials covered hereby, or the amount of zinc or other materials used or transferred to Customer's products. All such taxes shall be for Customer's account and, if paid by Metalplate, Customer agrees to reimburse Metalplate on demand for the full amount thereof.

5. Prices for galvanizing are based on the after-galvanized weight per hundred pounds, unless otherwise stated. All prices quoted are based on new material free from heavy rust, rolled in scale, pitting, paint, sand, heavy grease, tar and/or asphalt, old galvanizing or other conditions that will prevent galvanizing without special cleaning. Where it is necessary for Metalplate to clean such material, there will be an extra charge and such extra charge shall be added to the quoted price and paid by Customer.

6. In order for welds to be completely covered by galvanizing, they must be completely clean of flux. This cleaning is the Customer's responsibility. Should Customer desire Metalplate, or should it be necessary for Metalplate to perform this service, an extra charge for such service shall be added to the quoted price and paid by Customer.

7. All tubular or pipe fabrication must be properly vented to insure proper galvanizing and to eliminate explosion hazards when the material is immersed in molten zinc. Where it is necessary for Metalplate to vent such material, an extra charge for such service shall be added to the quoted price and paid by Customer.

8. Where it is necessary to hand brush, chase, or tap threads on any threaded material, an extra charge for such service shall be added to the quoted price and paid by Customer.

9. All inspections of the materials must be made by the Customer at Metalplate's plant before the materials are shipped and must be in the presence of an authorized representative of Metalplate. Any special inspection requirements of Customer must accompany Customer's order, and will not be binding on Metalplate without its written approval and acceptance signed by an authorized officer of Metalplate.

10. Metalplate assumes no liability for any loss or damage to merchandise or material while in transit to or from Metalplate's plant, whether in trucks or vehicles owned by Metalplate, the Customer, or any third person acting on Metalplate's or the Customer's behalf, or for any loss or damage to said merchandise or materials while the same are in Metalplate's possession for any cause whatsoever, including, but not limited to, theft, fire, casualty, or act of God.

11. All galvanizing, or other coating, or processing by Metalplate will be performed in accordance with ASTM standards A123 and/or A153, most current versions, and, except as hereinafter set forth, is warranted to be free from defects in material or workmanship for a period of ten (10) working days after receipt of material by Customer or Customer's consignee to whom the material is delivered, provided Customer notifies Metalplate in writing of the defect within said ten (10) day period and defect is confirmed by Metalplate as being covered by this warranty. Customer hereby expressly assumes the risk of discovering any such defect in said period of time. Defective materials must be returned by Customer to Metalplate at Metalplate's plant, transportation and other charges prepaid. No material may be returned to Metalplate under these conditions without special written permission signed by an authorized officer of Metalplate. In no event shall Metalplate have any responsibility or liability for (a) damage, defects, or loss during storage or transportation of Customer's material resulting from the use of Customer's containers; (b) any damage, defects, or loss if any fabrication, including, without limitation, welding, bending, machining, punching, drilling, or cutting, has been performed subsequent to shipment of the materials to Customer or Customer's consignee; or (c) damage or defects due to accident, abuse, misuse, shipment, improper storage after shipment, abnormal conditions of temperature, moisture, abrasion or corrosion.

Furthermore, Customer shall be responsible for adherence to ASTM standards A143, A384, and A385 and in no event shall Metalplate have any responsibility or liability for any warping, buckling, blistering, cracking or breaking of any of Customer's material, whether the same occurs in the process of galvanizing or otherwise. Metalplate shall have no responsibility or liability for determining or failing to determine or for notifying or failing to notify Customer that warpage, buckling, blistering, cracking or breakage may occur with respect to any materials furnished by Customer for galvanizing.

ALL OTHER WARRANTIES ARE EXCLUDED, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE. METALPLATE SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES DIRECTLY OR INDIRECTLY ARISING OR RESULTING FROM THE BREACH OF ANY OF THE TERMS HEREOF OR FROM THE GALVANIZING OR OTHER COATING, OR PROCESSING, HANDLING, OR USE OF THE ABOVE DESCRIBED MERCHANDISE. CUSTOMER'S EXCLUSIVE REMEDY HEREUNDER, EITHER FOR BREACH HEREOF OR FOR NEGLIGENCE, IS EXPRESSLY LIMITED TO METALPLATE REFINISHING THE MERCHANDISE WITHOUT CHARGE, UPON CUSTOMER'S DELIVERY TO METALPLATE AT METALPLATE'S PLANT OF THE MATERIALS, PROVIDED SUCH MATERIALS ARE RETURNED IN THE SAME CONDITION AS ORIGINALLY SHIPPED BY METALPLATE. CUSTOMER'S REMEDY CONTAINED HEREIN SHALL BE EXCLUSIVE OF ANY OTHER REMEDY OTHERWISE AVAILABLE TO CUSTOMER.

12. Special tools, racks, and fixtures required for the performance of work for a Customer and built by Metalplate shall be and remain Metalplate's property whether or not Customer is charged for time and/or materials in connection therewith.

13. No contract is subject to cancellation or to modification unless agreed to in writing by an authorized officer of Metalplate. In the event of any cancellation, and without limitation to other available remedies to Metalplate, Customer shall pay Metalplate within thirty (30) days of such cancellation the contract price, including applicable taxes, for all articles, materials, and services which have been completed prior to cancellation plus all costs and other expenses incurred by Customer for uncompleted items (including without limitation all commitments to Metalplate's supplier, subcontractors, and others) and a cancellation charge in an amount equal to twenty percent (20%) of the total of the foregoing. In the event of any modification of the contract, Metalplate shall be entitled to revise its prices and delivery schedules to reflect such modification.

14. Customer agrees to accept delivery of any part or all of the materials upon completion by Metalplate and failure of Customer to furnish Metalplate with shipping instructions shall in no way alter the terms of payment of Metalplate's invoice for any of the materials offered for delivery. Any deferred delivery request by Customer shall be subject to Metalplate's written approval. On any approved deferred delivery Metalplate shall have the right to render invoice for the completed portion of the order and to warehouse all completed materials at Customer's expense and risk of loss. Furthermore, on the uncompleted portion of the order, Metalplate reserves the right at its option to either make a cancellation charge on the same conditions and terms of payment as outlined in Section 13 hereof, or to revise its prices and delivery schedules on the uncompleted portion to reflect its increased costs, delays and expenses.

15. No claim for shortage in weight or count will be valid or allowed unless presented to Metalplate in writing within three (3) working days after receipt of material by Customer or Customer's consignee to whom the material is delivered.

16. A minimum charge per order will be made. A minimum charge will be made for centrifuge lots which must be segregated. When the above minimum charges do not apply, small orders will be subject to quantity extras as follows: 0 to 1,000 pounds, 45%; 1,000 to 2,999 pounds, 30%; and 3,000 to 4,999 pounds, 15%.

17. Metalplate shall have no responsibility or liability whatsoever to Customer or any third party for or on account of, and Customer agrees to release, indemnify and hold Metalplate harmless from any claims of Customer and third parties and/or liability for, any damages, loss, cost, expense, or obligation whatsoever regarding any personal injury or property damage resulting from, or directly or indirectly related to, any use or failure of any product or materials furnished by Customer for galvanizing, other coating, or processing by Metalplate, regardless of whether any such personal injury or property damage occurs during Metalplate's possession of any such product or materials or after completion of Customer's order or upon or after redelivery of the products or materials to Customer or others for Customer's account.

18. Waiver of any term or provision of this agreement or of any breach of this agreement, or of any term or provision hereof, shall not be construed as a waiver of any other term or provision or of any other breach, nor shall any such waiver be deemed or construed as a continuing waiver of any such term, provision, or breach. Any provision of this agreement prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof. The failure of Metalplate to require strict performance of any provision shall not diminish Metalplate's right thereafter to require strict performance of the same or any other provision.

19. This agreement shall be governed under and according to the internal laws of the State of Alabama. Customer may not assign this agreement without Metalplate's prior written consent.

20. There are no terms, understandings or agreements between Metalplate and Customer other than those stated herein, and all prior proposals and negotiations are merged herein. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used in the agreement.

NO TERMS AND CONDITIONS IN ANY WAY ALTERING OR MODIFYING ANY PROVISION HEREOF SHALL BE BINDING UPON METALPLATE UNLESS AGREED TO IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF METALPLATE. NO MODIFICATION OR ALTERATION OF ANY PROVISION HEREOF SHALL RESULT FROM METALPLATE'S ACKNOWLEDGMENT OF CUSTOMER'S PURCHASE ORDER OR METALPLATE'S GALVANIZING OR OTHER COATING, OR PROCESSING OF MATERIAL, OR OTHER AFFIRMATIVE ACTION BY METALPLATE TOWARDS PERFORMANCE HEREUNDER FOLLOWING RECEIPT OF CUSTOMER'S PURCHASE ORDER OR OTHER FORMS CONTAINING PROVISIONS, TERMS, OR CONDITIONS IN ADDITION TO OR IN CONFLICT OR INCONSISTENT WITH ANY PROVISION HEREOF. THESE TERMS AND CONDITIONS SHALL APPLY TO ANY ORDER OR AGREEMENT FOR THE COSTING OR PROCESSING OF ANY MATERIAL OR MERCHANDISE. ANY PROPOSAL FOR ADDITIONAL OR DIFFERENT TERMS, OR ANY ATTEMPT BY CUSTOMER TO VARY IN ANY DEGREE ANY OF THE TERMS HEREIN IS HEREBY OBJECTED TO AND REJECTED.