

BILSTEIN COLD ROLLED STEEL LP'S PURCHASE ORDER TERMS & CONDITIONS

The following Purchase Order Terms and Conditions shall govern all transactions except as otherwise specifically agreed in writing between Bilstein Cold Rolled Steel LP (the "Owner"), and the person, firm, company or other organization selling the goods or providing the services identified on the Purchase Order (the "Vendor"). In the event these terms conflict with terms identified on the Purchase Order ("Order"), the Purchase Order terms shall prevail.

1. **SCOPE.** The Order is for the supply and delivery of goods, equipment, tools, instrumentation, supplies, consumables, hardware and software ("Materials"), and/or labor and services, which may include labor and services constituting design, construction, consultation, fabrication, erection, installation, inspection, maintenance, programming, testing, and expediting work ("Services" or "Work"), as more particularly described in the Order.

2. **ACCEPTANCE.**

(a) This Order is Owner's offer to Vendor and does not constitute an acceptance by Owner of any offer to sell contained in any quotation, catalog, proposal or bid. Any reference to such offer to sell contained in a quotation, catalog, proposal or bid is solely for the purpose of incorporating the description and specifications of the Materials contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of this Order.

(b) This Order, when accepted by Vendor, as evidenced by either its signature, other written confirmation, or performance, shall constitute a binding contract and agreement between the parties. **ACCEPTANCE OF THIS ORDER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS**

CONTAINED IN VENDOR'S RESPONSE HERETO SHALL BE DEEMED OBJECTED TO BY THE OWNER WITHOUT NEED OF FURTHER NOTICE OF OBJECTION AND SHALL BE OF NO EFFECT NOR IN ANY CIRCUMSTANCES BINDING UPON OWNER. VENDOR WILL BE DEEMED TO HAVE ASSENTED TO ALL TERMS AND CONDITIONS CONTAINED HEREIN IF ANY PART OF THE DESCRIBED MATERIALS IS SHIPPED OR IF VENDOR HAS BEGUN PERFORMANCE ON THIS ORDER.

3. **PRICE.** The price to be paid by Owner for all Materials and Services purchased hereunder shall be the price agreed to by Owner and Vendor as written on the face of this Order. If at any time it is determined that Owner has overpaid Vendor for Materials or Services purchased hereunder, Vendor shall promptly refund to Owner the amount of such overpayment. Unless otherwise stated on the face of this Order, all prices are F.O.B. Destination As used herein, "F.O.B. Destination" means a price that includes all applicable charges including, but not limited to, packing, packing material, loading, freight and insurance to the delivery destination, and all applicable taxes and duties that may be levied upon the manufacture, sale or delivery of the Materials purchased hereunder.

4. **INVOICES AND STATEMENTS.**

(a) Payments of Vendor's invoice are subject to adjustment for overshipment, shortage, rejection, and quality and completion of performance.

(b) Individual invoices showing the order number, item number and description of items as shown on this Order must be issued for each shipment pursuant to this Order. One copy of each individual invoice must be plainly marked "ORIGINAL".

- (c) Unless otherwise specified in this Order, payment for accepted Materials and Services will be on payment terms of “net 45” following: (1) receipt of the Materials and a correct invoice or (2) satisfactory completion of Services. Payment due dates, including discount periods will be computed from: (1) date of receipt of Materials or date of receipt of correct invoice (whichever is later) to date Owner’s check is mailed or (2) date of satisfactory completion of Services to date Owner’s check is mailed. Unless freight and other charges are itemized, any discount taken will be taken on full amount of invoice.
- (d) Any applicable sales tax, duty, excise tax, use tax or other similar tax or charge for which Owner has not furnished an exemption certificate must be itemized separately on Vendor’s invoice.

5. TIME FOR PERFORMANCE AND DELIVERY SCHEDULE. Time is of the essence for this Order. Shipments, deliveries, and completion of Services (as specified in this Order) shall be strictly in accordance with the quantities and schedule specified in this Order (“Schedule”). If at any time it appears Vendor will not meet such Schedule, Vendor shall promptly notify Owner in writing of the reasons for and estimated duration of the delay and if requested by Owner, ship Materials via air or other expedited transportation to avoid or minimize delay to the maximum extent possible, the added cost to be borne by Vendor. This is in addition to Owner’s other remedies. In shipment, all title and risk of loss shall pass to Owner upon delivery at the delivery destination stated on the face of this Order. Owner shall have no liability for (i) failure to accept, (ii) reshipment to Vendor, and/or (iii) for payment for Materials delivered to Owner which are in excess of quantities specified in the Schedule(s). Owner may return to Vendor, at Vendor’s expense and risk, quantities in excess of those stated in this Order, and Vendor shall pay all of Owner’s costs of handling, sorting, packing and returning such quantities. Owner may from time to time change the Schedule(s) or direct temporary suspension of scheduled shipment.

Vendor shall perform the delivery of Materials or Services on the specific dates and times established in the Schedule or as otherwise established by Owner. If the Parties are unable to agree on the dates for performance, Owner may cancel this Order in whole or part without any liability to Vendor. Once established, Vendor shall strictly comply with the dates set forth in the Schedule, unless Vendor is granted a time extension in writing by Owner.

6. PACKING FOR TRANSIT (MATERIALS). All Materials shall be carefully and properly prepared, secured and packed in accordance with the requirements stated on the face of this Order and in a manner suitable to provide adequate protection against damage in transit to destination. Any Materials damaged in transit due to improper or inadequate packing shall be repaired or replaced at Vendor’s expense. Owner shall not be responsible for the return of packing containers or Materials.

7. INSURANCE AND PERMITS (SERVICES). Vendor shall, before proceeding with Work, obtain insurance with limits and coverages adequate for the project at Vendor’s expense with: (a) certificates of insurance requested by, and satisfactory to, Owner; and (b) all certificates, permits and/or licenses required for performance of Vendor’s obligations hereunder. Vendor will have its insurer name Owner, and its parents, affiliates, and subsidiaries, at all tiers, as additional insureds. The furnishing of the insurance required hereunder shall in no way relieve, or limit, or be construed to relieve or limit, any liability, responsibility or obligation whatsoever imposed on Vendor or any of its subcontractors, sub-subcontractors and/or material Vendors, at any tier.

8. CHANGE ORDERS. Owner may at any time by a written order make changes within the general scope of this Order, in any one or more of the following: (i) drawings, designs or specifications, (ii) method of shipments or packing, (iii) place of inspection, delivery or acceptance, (iv) reasonable increases or decreases in quantities, (v) reasonable changes in delivery

schedules, and (vi) method of performance of Services. Upon receipt of such a change order, Vendor shall proceed immediately to perform this Order as changed. This Order shall not be altered, amended or modified by Vendor without Owner's prior written approval.

9. CANCELLATION. Owner shall have, and Vendor hereby grants Owner, the option to cancel by oral or written notice any Services or unshipped Materials, whereupon Vendor shall cease all performance hereunder except as otherwise directed by Owner, and if Vendor is not in default, Owner shall pay to Vendor the agreed unit prices for Materials delivered or Services performed.

10. RECEIVING BY OWNER. Owner shall not be responsible for failure to receive any Materials subject to this Order, if occasioned by war, strikes, fires, the acts of God or the public enemy, labor or transportation difficulties, or other causes beyond Owner's reasonable control.

11. WARRANTY.

(a) Materials. Vendor expressly warrants and guarantees to Owner and to any subsequent purchasers or users of the Materials supplied hereunder (i) that the Materials supplied hereunder will be fit for the specified purpose for which they are purchased by Owner and will be free from all defects, and in strict accordance with any plans or specifications set forth in or referred to in this Order (ii) that said Materials and the sale or use of them does not infringe directly or indirectly any valid United States or foreign patent, copyright, trademark, license or other intellectual property right and that Vendor will at Vendor's expense, defend, indemnify and hold Owner and its customers, subcontractors and associated companies free and harmless from and against any claims, demands, actions and litigation based on alleged or actual infringement thereof and any and all resulting liabilities, losses, costs and expenses (including, without limitation, attorneys' fees) (iii) that all amounts charged by Vendor and payable pursuant to this Order are lawfully chargeable under, and shall not violate directly or indirectly the provisions of any present

or future laws, decrees, regulations, rules or orders of any government authority which in any manner fix, limit, regulate or otherwise affect prices at which said items may be sold; (iv) that all laws applicable to furnishing Materials or sales of merchandise have been fully complied with (including without limitation the applicable requirements of the Fair Labor Standards Act and the orders and regulations of the Department of Labor issued thereunder); (v) that said Materials are new unless otherwise stipulated on the face of this Order; (vi) that Vendor has good title to said Materials free and clear of all liens, security interests or encumbrances of any kind; (vii) that in supplying said Materials to Owner, Vendor has complied with all applicable foreign, state, federal and local laws, codes, rules and regulations; and (viii) that any services incidental to the supply of Materials hereunder will be rendered in a good and workmanlike manner, free of any and all defects in workmanship, or errors or omissions resulting in a failure to comply with the terms of this Order. Any inspection or acceptance of Materials by Owner shall not be deemed to alter or affect the obligations of Vendor or the rights of Owner and its customers under the foregoing warranties.

(b) Services. Without limitation of any other warranties, express or implied, Vendor hereby warrants to Owner that: (a) all Work covered by this Purchase Order shall strictly conform to (i) the plans, specifications, shop drawings, samples, models, and other descriptions and data furnished and approved in accordance with the terms hereof; and (ii) comply with all laws and regulations governing the manufacturer, sale and use of the Work for the purposes intended; (b) all materials shall be new, merchantable, free from defects in design, material and workmanship and fit and sufficient for the purpose intended; (c) all work shall meet industry standards for good workmanship; (d) Vendor has full right, power and authority to, and shall, sell, transfer and deliver all materials furnished hereunder free and clear of any lien, encumbrance, right or claim of others; and (e) the furnishing of Services hereunder, and the production, sale or use thereof, does not and will not infringe on any patent, copyright, trademark or similar right. Vendor

shall repair and/or replace any faulty or defective work (and any property damaged by the work) at its own expense, in addition to and not in lieu of any other rights or remedies which Owner may have against Vendor with respect to such faulty or defective work, and shall bear the cost of uncovering work if Vendor was at fault in covering same. If any materials furnished under this Purchase Order carry a manufacturer's warranty, Vendor shall deliver such manufacturer's warranty in favor of Owner as an additional condition precedent to final payment hereunder. Vendor shall cause its employees, contractors, subcontractors, agents, and assigns at every tier, to be bound by this provision, and all other provisions of the Purchase Order Terms & Conditions and related documents.

12. INSPECTION, REJECTION AND REMEDY OF DEFECTS.

- (a) All Materials and Services furnished in the performance of this Order shall be subject to inspection and testing for a reasonable period following receipt at the delivery destination or completion of Services.
- (b) Owner shall have the right to reject any Materials or Work found to be defective in material or workmanship (with or without instructions as to their disposition) and to require their replacement or correction. Unless Vendor elects to correct or replace Materials or Work which Owner has a right to reject and is able to make such correction or replacement within the required delivery schedule, Owner may require that the delivery of such Materials or completion of Work be at a reduced price which is equitable under the circumstances. If any Materials or Work subject to this Order are rejected by Owner, Owner shall be relieved of any obligation to accept and pay for such Materials or Services.

13. EQUAL EMPLOYMENT OPPORTUNITY. Vendor agrees that the contract provisions set forth in: (1) Section 202 of the Executive Order 11246, dated September 24, 1965, pertaining to equal opportunity and nondiscriminatory 2286156

employment practices, (2) Section 60-250.4 of the Affirmative Action Regulations for Veterans codified as 41 CFR 60-250, and adopted pursuant to the Veterans Readjustment Act of 1974, and (3) Section 60-741.4 of the Affirmative Action Regulations on Handicapped Workers codified as 41 CFR 60-741, relating to Section 503 of the 1973 Rehabilitation Act, are incorporated herein by reference, except to the extent that this contract may be exempt from the provisions of said Regulations and Order by rules and regulations issued thereunder.

14. SAFETY AND HEALTH. Vendor warrants that the Materials or Services furnished under this Order conform to and comply with all applicable standards pursuant to the Occupational Safety and Health Act of 1970, as amended. It is the obligation of Vendor to advise Owner of any precautions necessary in the storage and handling of Materials purchased pursuant to this Order.

15. TERMINATION AND DEFAULT. Upon the occurrence of a default, Owner may terminate this Order upon oral or written notice without prejudice to any other rights or remedies it may have in law or equity. The term "default" as used herein means the occurrence of any of the following events: (i) the failure of Vendor to punctually and properly perform any covenants, agreements or conditions contained herein, (ii) the insolvency of Vendor, (iii) the appointment of a receiver, administrator, administrative receiver or liquidator with respect to Vendor or any of its assets, (iv) the adjudication of Vendor as a bankrupt (whether pursuant to a voluntary or involuntary petition) or the grant of any other relief against Vendor under any bankruptcy, reorganization, debtor's or insolvency laws now or hereafter existing, (v) the voluntary assignment by Vendor of its assets for the benefit of creditors, and/or (vi) the reasonable belief by Owner that the prospect of performance by Vendor of any of Vendor's covenants, agreements and other duties hereunder is impaired. In the event of such termination, Owner shall be relieved of all further obligations hereunder, and Vendor shall indemnify Owner against and hold Owner free and harmless from any costs incurred by Owner in obtaining

substitute Materials or Services, to the extent such costs exceed the purchase price specified in this Order.

16. **OWNER'S TERMINATION FOR CONVENIENCE.** Owner may terminate all or any part of this Order immediately at any time for its convenience by delivering written notice to Vendor ("Termination for Convenience"). Upon Termination for Convenience, Owner shall have no liability whatsoever to Vendor except as expressly set forth in this Section. Upon Termination for Convenience, Owner shall pay to Vendor the following amounts without duplication: (a) the agreed Price or actual cost of Materials or Services which have been completed in accordance with this Order prior to Owner's notice of Termination for Convenience and not previously paid for, and (b) the actual, documented costs of work-in-process incurred by Vendor prior to Owner's notice of Termination for Convenience in a good faith and commercially reasonable effort to provide the Materials or Services subject to this Order.

17. **INDEMNITY.** Vendor agrees to defend, indemnify, and save Owner and any subsequent purchasers or users of the Materials or Work supplied hereunder and their respective employees, officers, and agents ("Indemnitees") harmless from and against all claims of and liability to third parties (including, without limitation, all employees of Owner and Vendor and all subcontractors and their employees) for injury to or death of any person or damage or destruction of any property arising out of or relating to Vendor's performance of this Order or any Materials furnished under this Order, unless Seller's obligation hereunder arises from the sole negligence of any Indemnitees, in which case Vendor shall have no obligation to defend, indemnify and save any Indemnitees harmless.

18. **NON-ASSIGNMENT.** Any assignment of this Order, any interest herein or any payment due or to become due hereunder, without the prior written consent of Owner, shall be void.

19. **PROPRIETARY INFORMATION.** All specifications, drawings, designs, manufacturing

data and other information transmitted to Vendor by Owner in connection with the performance of this Order are the property of the Owner and are disclosed in confidence upon the condition that they are not to be reproduced or copied or used for furnishing information, materials or services to others, or for any other purpose detrimental to the interest of Owner. Specifications or drawings furnished by Owner shall be confidential, shall remain Owner's property, shall be used only in the performance of orders from Owner, shall not be disclosed by Vendor to any person, firm, or corporation other than Vendor's employees, and shall be returned or delivered to Owner immediately upon request. Vendor hereby assigns to Owner all intellectual property rights relating to or associated with design, incorporated by Vendor into specifications and drawings furnished by Owner.

20. **SEVERABILITY.** If any provision of this Order or the application thereof to any person, entity, or circumstance shall be invalid or unenforceable to any extent, then such provision or application shall be modified to the minimum extent necessary to render it valid and enforceable, and the remainder of this Order and the application of such provisions to the parties hereto and the transactions contemplated hereby shall not be affected and shall be enforced to the greatest extent permitted by law.

21. **NON-WAIVER.**

(a) Failure of Owner to insist upon strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any rights or remedies that Owner shall have and shall not be deemed a waiver of any subsequent default of the terms and conditions hereof. Shipping or receiving of any Materials under this Order shall not be deemed a waiver of any right Owner may have for any failure by Vendor to comply with any of the provisions of this Order.

(b) The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or in equity. No waiver of a breach of any provision of this

Order shall constitute a waiver of any other breach of such provision.

22. ARBITRATION.

Any dispute arising under or out of or relating to this Order, or its negotiation, performance, breach, or termination, shall be finally resolved by binding arbitration. The parties acknowledge that this Order evidences a transaction involving interstate commerce. The Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall govern the interpretation and enforcement of and the proceedings pursuant to this arbitration provision. The arbitration shall be administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules (the “Rules”) except to the extent modified by this arbitration provision. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitration hearing will take place in Bowling Green, Kentucky, and shall be governed by substantive law of the Commonwealth of Kentucky, without regard to its conflict of laws provisions. There shall be one neutral, impartial arbitrator, selected in accordance with the Rules. Any dispute regarding discovery, or the scope thereof, shall be determined by the arbitrator, whose determination shall be conclusive. The award shall be made no later than twelve months after the filing of the demand for arbitration, and the arbitrator shall agree to comply with this schedule before accepting appointment. This time limit may only be extended by agreement of the parties. The award of the arbitrator shall be in writing, shall be signed by the arbitrator and shall be accompanied by a statement of the reasons for the disposition of each claim. The arbitrator shall have no authority to award punitive, special or other damages not measured by the prevailing party’s actual damages, except as may be required by statute, or to award consequential or incidental damages. Each party shall bear its own attorneys’ fees, costs and expenses and an equal share of the arbitrator’s fees and the administrative fees of arbitration.