

O'BRIEN STEEL SERVICE CO. – TERMS & CONDITIONS

The following Terms & Conditions of Sale apply to all sales of products and services by O'Brien Steel Service Co., unless alternative terms and conditions are agreed to in writing by O'Brien Steel Service Co. and you.

Acceptance – All orders are subject to acceptance by O'Brien Steel Service Co. pursuant to our terms and conditions stated herein. These terms and conditions supersede and take precedence over any and all terms and conditions on any contrary documents including, but not limited to confirmations, purchase orders, shipping release forms, or other documents submitted by you to us. Orders cannot be cancelled or changed without our written consent. Acceptance of delivery of any or all products ordered by you shall constitute assent by you to these terms and conditions of sale.

Prices – Prices quoted may be changed by us without notice to reflect our current price in effect at time of shipment. We reserve the right to correct any obvious errors in specifications and prices. Raw material, energy or transportation surcharges imposed upon us by our suppliers at the time of shipment shall be passed through to you. Any taxes which we may be required to pay under any current or future law with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any products or services covered shall, if not separately shown, be added as a separate item to the quoted price and shall be paid by you to us on demand. Unless expressly provided, any tools, dies or fixtures which may be developed for use in the production of products for you shall be owned by us or our supplier, as we may elect, even though you are charged in whole or part for the cost of such tools, dies and fixtures.

Payment Terms – Unless otherwise expressly provided, our payment terms are net thirty (30) days from date of invoice. We reserve a right to charge a finance charge up to one and one-half percent (1.5%) per month on the amount of the invoice which remains unpaid thirty (30) days after the invoice date. If in our judgment reasonable doubt exists as to your financial responsibility or if you are past due in payment of any amount owing us, we reserve the right, without liability and without prejudice to any other remedies, to suspend performance, decline to ship or to stop products in transit, until we receive payments of all amounts owing to us, whether or not due, or adequate assurance of such payment. A three percent (3%) surcharge will be added to credit card payments at time of payment.

Deliveries and Claims Against Carrier – Delivery dates are quoted in good faith but are not guaranteed. We shall not be liable for damages of any kind on account of our failure to deliver products in accordance with the delivery dates quoted by us or specified by you. Delivery of products to the carrier shall constitute delivery to you and such delivery shall transfer all risk of loss or damage to you as of such time. Claims for shortages or damages to products in transit must be noted on both your copy and the carrier's copy of the bill of lading, packing list, receipt, freight bill (as the case may be) at the time of receipt with a description of the shortage or damage and the signature of the carrier's driver or representative. Claims for shortage or damage shall be filed by you directly with the carrier.

Inspection – Products shall be inspected by you immediately upon receipt to determine conformity with applicable specifications. You must not cut, fabricate or otherwise use products without such inspection. In the event you believe any products do not conform to applicable specifications, you must provide us and our suppliers a reasonable opportunity to inspect the same. If after such inspection, any products are determined to be nonconforming, we shall have the opportunity to replace such products at the original point of delivery, in accordance with the limited warranty provisions set forth below. No products may be returned without our written consent.

Limited Warranty – All products are sold subject to tolerances and variations consistent with usual trade practices and shall also be subject to deviations from tolerances and variations consistent with testing and inspection methods. We provide a limited 60-day warranty that products will conform to their description stated in an applicable purchase order, subject to the limiting provisions herein. This warranty does not extend to any products which have been subject to misuse or neglect, damage by accident, rendered defective by reason of improper assembly or installation. **WE MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM AND EXCLUDE ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.** YOU AFFIRM THAT YOU HAVE NOT RELIED UPON THE SKILL OR JUDGEMENT OF US OR ANY OF OUR AGENTS, EMPLOYEES OR REPRESENTATIVES TO SELECT OR FURNISH MATERIAL SPECIFICATIONS OR GRADES FOR ANY PARTICULAR PURPOSE, AND THE SALE IS MADE WITHOUT ANY WARRANTY BY US THAT ANY PRODUCT IS SUITABLE FOR ANY PARTICULAR PURPOSE. It is expressly understood and agreed that you will not use, cause to be used or make available for use the goods contained herein in any nuclear application including, but not limited to, use in connection with any nuclear reactor, any nuclear power generating system or any nuclear waste or spent fuel disposal project. Any subsequent nuclear application of the products is wholly unauthorized and shall be deemed to be unknown to, unforeseeable to and unintended by us.

Exclusive Remedy – The limited warranty stated above constitutes your sole and exclusive remedy for any defect in our products or in our performance of services. If a product is proven to be other than as warranted, we will, at our option, (a) issue credit for, or (b) repair or (c) replace the relevant product or part thereof, provided that you give us written notice of the defect within 60 days after your receipt of such product. If we elect to repay the purchase price, you must return the product(s) to us immediately. Except for actions to collect amounts due and owing by you that you have failed to pay, any action arising out of this contract must be commenced within one year from the date of delivery. **IN NO EVENT WILL WE BE LIABLE FOR ANY OTHER DAMAGE, INCLUDING ANY DIRECT OR CONSEQUENTIAL DAMAGE OR LOSS, ARISING FROM CONTRACT, TORT OR OTHERWISE, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LOSS OR DAMAGE TO BUILDINGS, CONTENTS, PRODUCTS OR PERSONS.** Our maximum liability shall not exceed the amounts actually paid by you to us relative to the particular product(s) at issue. You must immediately discontinue use of any product claimed to be defective. No charge for labor or expense required to repair a defective product or occasioned by it will be paid. You hereby indemnify us and hold us, our officers, directors, employees and agents harmless against any and all losses, claims, damages, judgments, liabilities, costs and expenses arising out of or in any way related to the use of the products sold to you by us by any third party including, but not limited to, attorney's fees and expenses and claims of infringement of any patent or other property right in connection with such products.

Force Majeure – We are not liable for damages for any delay or failure in the performance of any purchase order or contract resulting from any cause beyond our reasonable control. Such causes shall include but not be limited to acts of God, strikes, riots, sabotage, war, fire, explosion, snow, ice, floods, accidents, epidemics, governmental order or regulations or inability to secure any necessary governmental or other permits, court orders, breakdown in machinery or the failure of our suppliers to provide materials in a timely manner.

Final Agreement – This document is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. Any subsequent modification or amendment to it may be made only in writing signed by both parties.

Venue – Any and all disputes, claims, or causes of action arising out of or in any way relating to any products supplied by O'Brien Steel Service Co. must be brought in the Circuit Court for the Tenth Judicial Circuit, Peoria County, Illinois.