

**TERMS AND CONDITIONS  
FOR SALES BY  
TOTALL METAL RECYCLING, INC.**

1. This document constitutes the entire contract and contains all of the agreements of Total Metal Recycling, Inc. ("Total") and Buyer. All prior written or oral representations, promises, conditions or statements, expressed or implied, are merged herein. These terms and conditions may not be waived, varied or changed, nor are additional or different terms added by the Buyer acceptable except as consented to in writing signed by an authorized representative of Total. Buyer's acceptance is expressly limited to these terms and conditions, notwithstanding any provision contained in Buyer's forms. This contract shall be governed by and construed in accordance with the laws of the State of Illinois. Any lawsuit brought by Buyer arising out of the transactions covered hereunder shall be instituted in the Circuit Court of Madison County, Illinois, and Buyer further submits itself to the jurisdiction of said Court in the event Total elects to institute any action in said Court. The prevailing party in any lawsuit brought hereunder shall be entitled to recover its reasonable attorneys' fees and costs.

2. Total warrants that the material covered by this contract shall conform to the commercial grade of material specified in writing by Buyer and agreed to in writing by Total hereunder. **IN ALL OTHER RESPECTS THE MATERIAL IS SOLD "AS IS". TOTALL MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Buyer assumes all risk of patent infringement by reason of any use Buyer makes of the material in combination with other material or in the operation of any process. In no event shall either party be liable to the other for incidental, consequential or special damages. In the event that the material does not conform to the contract, Buyer's exclusive remedy is to secure replacement of the material from Total. In all other events Total's liability for damages to Buyer under this contract shall in no case exceed the difference between the purchase price and the current market price at the time of delivery as is applicable to that portion of the particular shipment for which damages are claimed. Buyer hereby releases and agrees to indemnify and defend Total from and against any losses, damages, demands, claims, injuries and liabilities of any kind, including any violation of environmental laws, that arise in connection with the purchase, movement, dismantling, handling or eventual disposition of the material.

3. Buyer is responsible for verifying the description, condition and weight of the material unless otherwise agreed between the parties in writing. Time is of the essence. Any claim of nonconformity, including weight shortage, with respect to the material or its shipment or delivery is waived unless made in writing by Buyer to Total specifically stating the details of such nonconformity within a reasonable time not exceeding forty-eight (48) hours after Buyer receives the material. Total shall be given the opportunity to confirm by its or its representatives' inspection the complaint of the Buyer. If in Total's opinion after such inspection the complaint of Buyer is valid, or if it elects not to inspect, it shall thereupon have the right either to replace such material within a reasonable time with other material meeting the

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agreed specifications or to cancel the sale, and Totall shall in either event thereupon have the right to require the return of the original shipment at its cost. Material must be held intact subject to Totall's disposition. Unloading of any material shall be deemed to be acceptance of such material by Buyer.

4. Acceptance by Buyer of each shipment or portion thereof shall constitute a separate contract with respect to the amount thereof. Totall may recover for each shipment or portion hereunder as a separate transaction without reference to any other shipment or portion. Totall shall not be liable for any delay or failure of performance due to strikes, casualty to the material, acts of God, internet transmission failures, or other causes beyond its control, provided that Totall shall have given notice to Buyer of any such cause for delay or anticipated delay reasonably following the commencement thereof. If Totall agrees to delay shipments at request of Buyer, Totall shall be given a reasonable extension in the shipment or delivery time herein specified, not to be less than the period of such delay.

5. Buyer warrants that Buyer is in substantial compliance with the substantive provisions of any and all applicable federal, state and local environmental laws or regulations and any related compliance orders (including any decrees issued pursuant thereto) which are applicable to the handling, processing or reclamation of (or other management activities associated with) recyclable materials.

6. Upon Totall's request, Totall and Buyer will facilitate business transactions by electronically transmitting data. Any data electronically transmitted pursuant to this section will be as legally sufficient, binding and enforceable upon the parties as a written signed paper document exchanged between the parties, notwithstanding any legal requirement that the data be in writing or signed. To the extent required by Totall, each authorized representative of a party will adopt a unique verifiable digital identification consisting of symbols or codes to be transmitted with each electronic transmission and use of such digital identification will be deemed for all purposes to constitute a "signature" and will have the same effect as the signature on a written document.

7. No assignment of this contract shall be made without prior written consent of Totall.

8. If Buyer fails to make payment for material delivered as herein provided, or if in Totall's opinion a change to Buyer's financial condition or other circumstances no longer warrants shipment on the terms originally specified in any contract made hereunder, Totall may at any time limit or cancel the credit to Buyer as to time and amount and may demand payment

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in cash before delivery of any part of the material or may cancel the contract without liability to Buyer. Also, if Buyer fails to make payment for material delivered as herein provided, Totall shall have the right to set-off against any amount Buyer is due from Totall.

9. Totall's failure to require Buyer's performance of any obligations hereunder shall in no way affect its rights to require such performance at any time thereafter.

10. Liability for all taxes, excises or other charges imposed by any local, state or federal authority which have to do with or affect the material herein ordered (except those based on the income of Totall) shall be assumed and paid by Buyer. Buyer further agrees to indemnify and protect Totall against any and all such liabilities for taxes as well as any legal fees or costs incurred by Totall in connection therewith.

11. If any of the purchase price is not paid in full when due, Buyer shall pay a late charge on the amount unpaid for each day from the due date until paid in full at a rate per annum at all times equal to 5% above the prime commercial lending rate during the period from due date until paid as published from time to time in the *Wall Street Journal*, provided however that nothing herein shall require the payment of any amount in excess of the maximum amount permitted by law. Late charges shall be on demand. Totall accepts credit card payments; however, there is a fee of three percent (3%) of the payment amount added to the credit card payment.

12. Totall may at its option and expense, purchase credit insurance on the Buyer for any or all contract(s) entered into with Totall. If credit insurance cannot be obtained in an amount equal to the contract(s) entered into or if credit insurance is denied, cancelled or reduced by the insuring company, Totall may at its option cancel any or all contracts with Buyer, or adjust any or all contracts to coincide with the amount of credit insurance available to Totall.

13. The invalidity or unenforceability of any term of this confirmation shall not affect the validity and enforceability of the remainder of this confirmation, or any of its other terms, and such other terms shall be construed as though such invalid or unenforceable term was not included herein.