



**STANDARD SURPLUS SALES CONTRACT
TERMS & CONDITIONS**

A. NOTICE OF OBJECTION TO DIFFERING TERMS:

Seller hereby gives notice of its objection to any different or additional terms and conditions except for any such terms and conditions as may be expressly accepted by it in writing.

B. PRICE:

1. The price(s) specified do not include weighing fees, sales, use, excise, or other taxes payable on account of this transaction; and all such taxes now in effect and/or hereafter levied which are applicable to this transaction are in addition to such price(s) and shall be paid by Buyer.
2. A sales or use tax certificate of exemption, as appropriate, shall be completed and returned by Buyer to Seller. Buyer may use the enclosed Sales Tax Resale Certificate or an equivalent certificate exemption for this purpose.

C. PAYMENT:

1. Seller may at any time require payment in advance or satisfactory security or guarantee that invoices will be promptly paid when due. If Buyer fails to comply with any terms of payment or requirements to secure payment, Seller reserves the right to withhold deliveries or terminate this Contract, and any unpaid amount shall thereupon become immediately due.
2. Terms of payment are as stated on the face sheet. Payments are due from date of invoice. If not paid when due, interest will be charged.

D. MERGER:

Seller's employees ORAL STATEMENTS DO NOT CONSTITUTE WARRANTIES, shall not be relied upon by the Buyer, and are not part of this Contract. The entire Contract is embodied in this writing and NO OTHER WARRANTIES are given beyond those set forth in this written Contract. This writing constitutes the final expression of the parties' agreement, and it is a complete and exclusive statement of the terms of that agreement.

E. "AS IS":

1. MATERIALS SOLD ARE SURPLUS, SELLER DOES NOT WARRANT AND MAKES NO REPRESENTATIONS AS TO THE CONDITION, SAFETY, SUITABILITY, OR UTILITY OF THE MATERIALS BUYER PURCHASES THE SAME "AS IS" AND THE DATE OF PASSAGE OF RISK TO BUYER IS AS DEFINED IN "F" BELOW. SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR BUYER'S PARTICULAR USE OR PURPOSE, OR ANY OTHER WARRANTIES, EXPRESS OR IMPLIED.

2. Buyer represents that he has inspected the materials prior to purchase as fully as he desires.

3. If the materials are subsequently damaged, decreased, or destroyed by any cause whatsoever prior to passage of risk to Buyer as provided in "F." Buyer's sole and exclusive remedy therefore shall be to terminate this Contract prior to such passage of risk. Otherwise, Buyer shall accept the materials without recourse against Seller.

F. DELIVERY AND SHIPMENT:

1. If Buyer must dismantle or disassemble and load the materials (see face sheet), all risk of loss, damage, and other incidents of ownership to all the materials shall pass to Buyer immediately as of the date such dismantling and/or disassembling begins, but in no event later than the latest date shown in "Date of Removal," on the face sheet hereof.

2. If the materials are to be loaded on the carrier by Buyer, such loading shall be at Buyer's cost and expense; and if the risk has not already passed to Buyer as provided in paragraph 1 above, all risk of loss, damage and other incidents of ownership to all the materials shall pass to Buyer immediately as of the date such loading begins, but in no event later than the latest date shown in "Date of Removal," on the face sheet hereof.

3. Unless otherwise stated on the face sheet, Seller will dismantle (as necessary) and load and upon delivery of materials f.o.b. carrier, all risks of loss, damage, and other incidents of ownership shall immediately pass to Buyer.

4. In all cases, however, title to such materials will be retained by Seller as security for Buyer's performance until payment in full is received.

5. Seller is not an insurer of the materials, nor does it have the liability or duties of a warehouseman or bailee.

6. If the materials are sold by weight, the weights shown on the face sheet shall govern, subject to adjustment by weights of certified public weighmaster, as designated by Seller. The cost of such weighing shall be for Buyer's account.

7. Buyer assumes all transportation costs and risks.

G. DELAYS:

Seller shall not be liable for delay or failure in performance hereof arising from any cause not within Seller's reasonable control, including, but not limited to, accidents to, or breakdowns to, or mechanical failure of, any machinery or equipment or to the materials arising from any cause whatsoever; strikes or other labor troubles; labor or transportation shortages; fires; floods; wars; acts of the public enemy; acts of God; priorities; allocations; limitations or other acts required or requested by federal, state, or local governments and any subdivisions, bureau, or agency thereof; or theft or damage by any third party.

H. LIMITATION OF LIABILITY:

In the event of delay or failure of performance not otherwise excused hereunder or any other breach of this Contract, Seller's liability shall not exceed that portion of the invoice price represented by the quantity of the material delayed or not shipped. In no event shall Seller be liable for any consequential, incidental, indirect, special, or contingent damages.

I. CANCELLATION – BUYER'S LIABILITY:

1. Buyer may not cancel or modify this Contract except in writing and with the express consent of Seller in writing (except as provided in subsection E.3 above).
2. Buyer shall be liable for any loss suffered by Seller by reason of Buyer's cancellation of materials ordered, including the loss of Seller's reasonable profits or other consequential damages. In the event of Buyer's failure or refusal to accept materials hereunder or other default, and in addition to any other remedies Seller may have, Seller may, without notice, retain or repossess said materials; and Buyer shall be liable for the full purchase price, less an allowance for the then current market value thereof in the area, after deducting storage, handling, and any other costs occasioned by such refusal.

J. INDEMNITY:

Buyer agrees to protect, defend, indemnify, and hold harmless Seller, its agents, officers, directors, employees, shareholders, representatives, insurers, parent, subsidiary and affiliated companies, contractors, and subcontractors, and all of their respective agents, officers, directors, employees, shareholders, insurers, contractors, and subcontractors (collectively, for purposes of this Article, "Seller") from and against all claims, losses, costs (including but not limited to, reasonable attorneys' fees and court costs and other costs of suit), demands, damages, lawsuits, suits, judgments, penalties, civil penalties, liabilities, debts, expenses, and causes of action of whatever nature or character, whether known or unknown, whether predating this Contract or not, and whether arising out of contract, tort, strict liability, breach of warranty, products liability, misrepresentation, violation of applicable law, and/or any cause whatsoever, without limit and without regard to the cause or causes thereof, including, without limitation claims due to bodily injury, alleged bodily injury, death, or loss of personal property (collectively referred to herein as "Claims"), which in any way arise out of or are related to Buyer's performance under this Contract, and which are asserted by or arise in favor of Buyer or any contractor

or subcontractor or any of its or their agents, representatives, employees, invitees (and/or their spouses or relatives), insurers, contractors, and subcontractors, WHETHER OR NOT CAUSED BY THE SOLE, JOINT, COPARATIVE, AND/OR CONCURRENT NEGLIGENCE, FAULT, OR STRICT LIABILITY OF OWNER. THIS CONTRACT IS INTENDED TO INDEMNIFY OWNER AGAINST THE CONSEQUENCES OF ITS OR THEIR SOLE NEGLIGENCE, FAULT, OR STRICT LIABILITY AND AGAINST THE CONSEQUENCES OF ITS OR THEIR OWN NEGLIGENCE, FAULT, OR STRICT LIABILITY OCCURRING JOINTLY, CONCURRENTLY, OR COMPARATIVELY WITH THE NEGLIGENCE, FAULT, OR STRICT LIABILITY OF CONTACTOR OR ANY CONTRACTOR OR SUBCONTRACTOR OF ANY OF ITS OR THEIR AGENTS REPRESENTATIVES, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS. It is the intent of the Seller and the buyer hereby to allocate to Buyer the duty to purchase insurance for the benefit of all parties who are or may be affected by goods sold or to be sold or services performed or to be performed under or in connection with this Contract, all as set forth in greater detail in Article K of this Contract.

In any and all Claims against Seller by any employee of Buyer, any contractor, any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, the indemnification obligation of Buyer under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Buyer or any contractor or subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.

Bodily Injury Defined – "Bodily Injury" as used in this Article shall be construed to include, but not limited to, any injury, physical pain, illness, sickness, disease, or impairment of physical condition of the body as well as any personal injury including but not limited to any invasion of personal rights such as libel or slander, invasion of privacy, tortuous interference with a third party contract, or mental suffering.

If it is judicially determined that any of the indemnity obligations contained herein are invalid, illegal or unenforceable in any respect, said obligations shall automatically be amended to conform to the maximum monetary limits and other provisions in the applicable law for so long as that law is in effect.

K. INSURANCE:

a. During the term of the Contract and until final acceptance by Seller of all work to be performed hereunder, Buyer shall carry the minimum insurance described below in this Section a, Paragraphs (i), (ii), and (iii) of this Article K.

(i) Workers' Compensation Insurance and Employer's Liability Insurance including occupational disease in accordance with the laws of States or Provinces where the work is to be performed.

(A) Workers' Compensation Insurance shall have the minimum limits as required by statute for the State or Province where the work will be performed.

(B) Employer's Liability Insurance shall have the following minimum limits:

- (B.1) Bodily injury by accident -- \$2,000,000 each accident;
- (B.2) Bodily injury by disease -- \$2,000,000 each employee;
- (B.3) Bodily injury by diseases -- \$2,000,000 policy limit

If the performance of this Contract requires the use of watercraft or is performed over water, Buyer shall also provide coverage for liability under U.S. Longshoremen's and Harbor Workers' Compensation Act and liability for admiralty benefits and damages under the Jones Act.

(ii) Commercial General Liability Insurance, including contractual liability, products, completed operations (completed operations coverage shall be extended for a period of two years following final acceptance of the work by Seller), and personal injury liability coverage with limits of not less than \$2,000,000 combined single limits each occurrence.

(iii) Automobile Liability Insurance, on each and every unit of automobile equipment, whether owned, non-owned, or hired, operated, or used by Buyer and/or its subcontractors in the performance of this Contract, covering injury, including death, and property damage in an amount not less than \$2,000,000 per accident.

(iv) Nothing contained in this Section shall be construed as limiting the liability assumed by Buyer under Article J above.

b. Buyer shall abide by the following additional insurance requirements:

(i) Add to Policies as Additional Insured: All insurance purchased and maintained by Buyer in compliance with Section a, Paragraphs (ii) and (iii), of this Article K, as well as any excess and/or umbrella insurance that Buyer purchases and maintains in regard thereto, shall name Seller, its directors, officers, agents, representatives, and employees as additional insured's.

(ii) Waiver of Subrogation: All insurance policies purchased and maintained by Buyer in compliance with Section a, Paragraphs (ii) and (iii) of this Article K, as well as any excess and/or umbrella insurance policies that Buyer purchases and maintains in regard thereto, shall be endorsed to provide that underwriters and insurance companies of Buyer shall not have any right of subrogation against Seller or any of its directors, officers, agents, employees, invitees, servants, insurers, underwriters, and such other parties as Seller may designate.

c. Primary Insurance: All insurance policies purchased and maintained by Buyer in compliance with Section a of this Article K., as well as any excess and/or umbrella insurance policies that Buyer purchases and maintains in regard thereto, shall be endorsed to provide that the coverage provided by Buyer's insurance shall always be primary coverage, and noncontributing as respects any insurance maintained by Seller.

d. Notice of Cancellation: All insurance policies purchased and maintained by Buyer in compliance with Section a of this Article K, as well as any excess and/or umbrella insurance policies that Buyer purchases and maintains in regard thereto, shall be endorsed to provide that thirty (30) day's prior written notice shall be given Seller in the event of cancellation or material change in the policies.

e. The general liability insurance policy purchased and maintained by Buyer in compliance with Section a, Paragraph (ii) of this Article K, as well as any excess and/or umbrella insurance policies that Buyer purchases and maintains for this purpose shall be endorsed to provide coverage for liability assumed by the Buyer under all written contracts between Seller and the Buyer.

f. The Buyer and its subcontractors at all times shall waive any right of recovery against Seller, or any of its directors, officers, agents, employees, invitees, servants, insurers, underwriters, and such other parties as they may designate for loss or damage covered by insurance of the types purchased and maintained by the Buyer in compliance with Section a, Paragraphs (ii) and (iii) of this Article K, as well as any excess and/or umbrella insurance policies that Buyer purchases and maintains in regard thereto.

g. With respect to all the insurance described above in Section a of this Article K, buyer shall furnish Seller, prior to the commencement of any operations under this Contract, with a certificate or certificates, properly executed by the insurance carrier, showing all such insurance to be in force. Said certificates shall include specific reference to compliance with the above Section b, Paragraphs (i), (ii), (iii), (iv) and (v) of this Article K, and shall include the following statement, "The General Liability and any excess and/or umbrella liability insurance certified hereunder includes coverage for liability assumed by the Insured under all written contracts between Constellium Rolled Products Ravenswood, LLC and the Insured."

L. MISCELLANEOUS:

1. The waiver by Seller of any term, provision, or condition hereunder shall not be construed to be a waiver of any other term, condition, or provision hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same condition or provision.

2. In the event Buyer shall default in his obligations hereunder, Buyer shall be liable for Seller's costs of collection, including reasonable attorneys' fees.

3. This Contract shall be governed by and construed in accordance with the law of West Virginia.