

# **TERMS & CONDITIONS OF SALE**

## **TST, INC.**

*Buyer acknowledges having received and approved a copy of this Sales Contract. Buyer accepts all of the terms and conditions of this Sales Contract by either signing the reverse side of this Sales Contract or by accepting delivery of any of the goods identified on the reverse side of this Sales Contract. If this Sales Contract applies to the conversion/exchange of scrap materials, Buyer accepts these terms and conditions by delivering the scrap materials to Seller or by allowing Seller to pick up the scrap materials.*

**1. SALES CONTRACT.** This Sales Contract sets forth the entire agreement between the parties regarding this transaction. No waiver or modification of any of the terms or conditions hereof nor any additional or inconsistent terms shall be effective against Seller unless approved in writing by an officer of Seller. In the event that Buyer has or hereafter submits a purchase order or other document to Seller regarding this transaction and such document contains any additional or inconsistent terms, such additional or inconsistent terms shall be deemed material alterations within the meaning of California Uniform Commercial Code section 2207(2)(b) and shall not become a part hereof unless approved in writing by an officer of Seller.

**2. NO WARRANTY OR GUARANTEE.** SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT ONLY THAT SELLER WARRANTS THAT THE GOODS TO BE SOLD OR CONVERTED/EXCHANGED BY SELLER PURSUANT TO THIS SALES CONTRACT SHALL SUBSTANTIALLY CONFORM TO THE DESCRIPTION SET FORTH ON THE REVERSE SIDE HEREOF. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

**3. DELIVERY.** Unless otherwise approved in writing by Seller, all goods sold or converted/exchanged by Seller under this Sales Contract shall be delivered to Buyer at the address set forth on the reverse side hereof. Buyer acknowledges that the delivery date set forth on the reverse side hereof is an approximate date only and that the actual date of delivery may vary due to freight schedules, Seller's melting schedules and other causes. A delivery which is made within thirty (30) days of the date set forth on the reverse side of this Sales Contract, and which does not vary by more than five percent (5%) of the quantity specified in this Sales Contract shall constitute full compliance by Seller with the delivery terms hereof. Seller shall have the right to ship the goods in separate lots. Any increase in freight charges shall be at Buyer's expense. Any deliveries which are postponed at the request of Buyer and which are consented to by Seller shall be on a "bill and hold" basis and all expenses incurred by Seller as a result thereof shall be for Buyer's account.

**4. FORCE MAJEURE.** Notwithstanding anything herein to the contrary, Seller's performance hereunder shall be suspended where prevented or hindered by causes beyond the control of Seller, such as accidents, strikes, fire, floods, earthquakes, war, civil disturbance, sabotage, equipment failure, theft or acts of God. If as a result of such event Seller's performance is delayed for more than one month Seller shall have the right to terminate any remaining performance of Seller under this Sales Contract. Seller has advised Buyer to carry its own insurance to protect itself against loss upon the occurrence of any such event.

**5. RISK OF LOSS.** Title and risk of loss and damage to any goods subject to this Sales Contract shall pass to Buyer immediately upon loading of the goods on the carrier's trucks or rail cars, except that risk of loss on "bill and hold" goods shall pass to Buyer on invoicing by Seller. Buyer consents to any chartering or other transportation arrangements made by Seller. If Buyer has any particular requirements regarding chartering or transportation arrangements, Buyer must notify Seller thereof at least thirty (30) days prior to the scheduled date of shipment or delivery. Seller reserves the right to reject any such requirements which are unacceptable to Seller.

**6. PRICE; TAXES.** The purchase price for the goods is payable in United States currency without deduction or offset, and free of any exchange unless provided otherwise herein. Any taxes, levies or other charges which may be imposed or levied on the sale or conversion/exchange of the goods by Seller shall be paid by Buyer. Buyer shall be responsible for all personal property taxes imposed on its scrap materials.

**7. LATE PAYMENT CHARGE.** If Buyer fails to make any payment required hereunder when due, Seller shall have the right without notice to impose a late payment fee equal to the greater of ten percent (10%) per annum or the Wall Street Journal-Western Edition prime rate plus two percent (2%) on the unpaid amount, due on demand, but in no event to exceed the maximum charge permitted by law.

**8. CLAIM NOTIFICATION.** Buyer must notify Seller in writing of any rejection of goods, short shipment, defective goods or other claim within five (5) days after the date of delivery of such goods if delivered within the United States, Canada or Mexico. Notification of any claim on a delivery to any other location must be made in writing to Seller within thirty (30) days after unloading of the vessel or receipt thereof by Buyer, whichever occurs first.

**9. CREDIT APPROVAL.** Buyer acknowledges that Seller's obligations under this Sales Contract are subject to Seller's approval of Buyer's credit. Seller shall have the continuing right until the time of shipment to approve or disapprove of Buyer's credit. If at any time prior to shipment of all of the goods subject to this Sales Contract Seller becomes dissatisfied with Buyer's credit for any reason, Seller may, in its sole discretion, elect to (i) require payment in full for all goods before shipment of any remaining goods, (ii) require satisfactory security or personal guaranties, or (iii) cancel this Sales Contract. If Seller elects option (iii) above, Seller shall refund any advance payments made by Buyer and Buyer shall return at its expense all goods previously shipped by Seller; Seller shall have the right to reclaim such goods, wherever located, without notice, if Buyer fails to return such goods promptly.

**10. LIMITATION OF DAMAGES.** Buyer's damages on account of a breach or repudiation hereof by Seller shall be limited to the difference between the contract price and the market price of the goods. In no event shall Seller be liable for any consequential, incidental or exemplary damages, including but not limited to lost profits.

**11. CONVERSION/EXCHANGE SERVICES.** If this Sales Contract relates to conversion/exchange services to be performed by Seller, Buyer hereby represents and warrants to Seller that all scrap materials to be converted/exchanged shall be free of foreign objects, including but not limited to tanks and cylinders; that such materials shall be free of any hazardous waste or substance, as such terms are defined under the California Public Resources Code; and that Buyer has title to all such scrap materials. In the event of any breach by Buyer of any of such representations and warranties, Seller shall have the right to terminate its performance hereunder and either to require Buyer to pick up such materials or to arrange for their disposal at a licensed hazardous waste disposal facility. Buyer shall provide its own insurance coverage on any scrap materials provided to Seller for conversion/exchange. All scrap materials delivered to Seller for conversion/exchange shall be at Buyer's risk.

**12. MATERIALS.** Buyer hereby grants to Seller a lien on all scrap materials delivered to Seller to secure the payment of all other obligations of Buyer to Seller, including but not limited to payment for any conversion/exchange services to be performed by Seller. In the event of any default by Buyer hereunder or in the payment of any other sums due to Seller, Seller shall have the right to retain the scrap materials or to sell them in a commercially reasonable manner and to apply either the value thereof or the sales price, as the case may be, against any sums due from Buyer to Seller.

**13. SEVERABILITY.** If any provision of this Sales Contract shall be found to be invalid or unenforceable, that shall not affect the remainder of this Sales Contract. The offending provision shall be reformed so as to make it as near as possible in intent and effect as originally written but yet be valid and enforceable.

**14. GOVERNING LAW; ATTORNEYS FEES.** This Sales Contract shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws principles. No course of dealing or performance between the parties shall be utilized in interpreting this Sales Contract. In the event of any dispute arising out of or otherwise relating to this Sales Contract or for the interpretation or enforcement hereof, the matter shall be decided by the State courts of the State of California, County of San Bernardino, which shall have exclusive jurisdiction and venue over this Sales Contract and transaction. Seller and Buyer hereby agree to such exclusive jurisdiction and venue. The prevailing party in any dispute or action between the parties shall be entitled to recover its reasonable attorneys' fees and costs, including any fees and costs incurred in enforcing any judgment hereon.

**15. AUTHORITY.** If Buyer is a corporation, partnership or other entity, the person executing this Sales Contract on behalf of Buyer hereby represents and warrants to Seller that this Sales Contract has been duly authorized by Buyer and is a legal and valid binding agreement of Buyer, and that he/she has been duly authorized to execute and deliver this Sales Contract on behalf of Buyer.

**16. ASSIGNMENT AND BINDING EFFECT.** This Sales Contract shall inure to and shall be binding upon the parties hereto and their respective heirs, representatives, successors and assigns.

**17. MISCELLANEOUS.** In the event that Seller consents in writing to waive any of the provisions hereof with respect to a particular matter or event, that shall not constitute a waiver of such provision with respect to any other matter or event. The section headings in this Sales Contract are for convenience only and are not to be deemed a part of this Sales Contract or used in the construction hereof. Buyer acknowledges that Seller has made no representations, warranties or covenants of any kind regarding this transaction except as expressly set forth in this Sales Contract. This Sales Contract is entered into at Fontana, California.