

# KEYSTEEL

## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS:

In these Terms and Conditions of Sale, the following definitions shall apply:

- A) "Contract" means the binding contract between Keysteel and Customer for the purchase of Goods, consisting of these Terms and the Order;
- B) "Customer" means the person or entity purchasing the Goods pursuant to the Contract;
- C) "Goods" means the goods purchased pursuant to the Contract, as described in the Order;
- D) "Keysteel" means Keysteel Corporation, with principal office at 18900 W. Industrial Parkway, New Caney, Texas 77357;
- E) "Order" means the written purchase or other order placed by Customer for the purchase of Goods;
- F) "Quotation" means a written quotation of prices, rates and other commercial terms relating to the purchase of Goods provided to Customer by Keysteel;
- G) "Specifications" means the fabrication specifications agreed upon by the parties for the fabrication of Goods other than off-the-shelf Goods; and
- H) "Terms" means these Terms and Conditions of Sale.

### 2. CONTRACT:

- A) Customer agrees that, to the greatest extent allowed under applicable law, these Terms will exclusively apply to and govern the purchase of Goods under any Order issued by Customer and accepted by Keysteel; no terms and conditions or similar documents issued by Customer and purporting to apply to such transaction(s) (including but not limited to any terms and conditions issued by Customer in connection with the Order or purporting to be incorporated therein) shall in any way modify or supersede these Terms, and any such terms and conditions are hereby rejected in their entirety and shall be null and void. Keysteel's acceptance of any such Order is expressly conditioned on Customer's acceptance of these Terms as the exclusive terms and conditions governing such transaction(s). Upon acceptance of such Order by Keysteel, a Contract shall be deemed to have been entered into by and between the parties, incorporating these Terms. In addition, the Order may incorporate terms from the Quotation, if any, and any Quotation issued by Keysteel for the purchase of Goods shall be governed exclusively by these Terms.
- B) The Contract shall constitute the entire agreement between Customer and Keysteel with respect to the purchase of Goods described in the Order. The parties shall not be bound by any statement, representation, promise, inducement, or understanding of any kind not set forth in the Contract. Any change, amendment or modification of any of the terms and conditions of the Contract or waiver of any of the terms and conditions thereof must be made in writing and executed by the parties.

### 3. ORDER OF PRECEDENCE:

In the event of a conflict or ambiguity between the provisions of these Terms and the Order, the provisions of these Terms shall supersede the Order.

### 4. PURCHASE OF GOODS:

- A) No Order for the purchase of Goods shall be binding on Keysteel unless accepted by Keysteel by written confirmation or issuance of an invoice.
- B) The terms of the purchase of Goods from Keysteel by Customer shall be as set forth in this Section 4, except that the term of the purchase price and delivery terms, and a description of the Goods to be purchased, shall be as set forth in the Order. Payment terms shall be net thirty (30) days. All amounts due shall be payable in full to Keysteel Corp. at the address listed above.
- C) Unless otherwise stated in the Order, any applicable sales, use or similar taxes levied in connection with the purchase of the Goods are not included in the purchase price, and shall be the sole obligation of Customer.
- D) Keysteel shall deliver the Goods purchased hereunder to Customer in accordance with the delivery terms set forth in the Order. If no delivery terms are specified in the Order, delivery terms shall be Ex Works – Keysteel's applicable facility, which shall be interpreted in accordance with INCOTERMS 2010. Freight charges are included in the purchase price unless the Order states otherwise; in the event that freight charges are not included in the purchase price, and Keysteel pays such freight charges, Customer agrees to reimburse Keysteel therefor promptly upon written demand.
- E) Stated delivery times are an estimate only and Keysteel will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods nor will any delay entitle Customer to terminate or rescind the Contract. If Customer refuses or fails to take delivery of the Goods within the Customer's normal working hours on the delivery date, or if Keysteel is unable to deliver the Goods

on time because Customer has not provided appropriate instructions, documents, licenses or authorizations, Keysteel may store the Goods and Customer shall in addition to the price payable for the Goods pay all related storage costs and expenses (including without limitation, the costs for insurance). In addition, if Customer fails to take delivery of the Goods, Keysteel may rescind the Contract and recover damages.

- F) Keysteel reserves the right, at its sole option, to cancel or withhold the delivery of any Goods (whether in whole or in part) if Customer is in breach of any of the terms of the Contract, or any invoices from Keysteel to the Customer are unpaid and overdue.
- G) Customer or its designee shall inspect the Goods upon delivery and notify Keysteel in writing within ten (10) days after delivery if the Goods is defective or fails to conform to the description set forth in the Order, which notice shall describe in reasonable detail the defective or non-conforming nature of the Goods. If the Goods are defective or do not conform to the descriptions set forth in the Order or the Specifications, Customer may reject such Goods in writing and may require Keysteel to replace the rejected Goods at Keysteel's expense, or refund the purchase price therefor upon return of the Goods delivered. If such notice is not received by Keysteel within ten (10) days after delivery of the Goods, it shall be conclusively presumed that the Goods have been received in good working condition and conforms to the description set forth in the Order, and such sale shall then be final. Except as otherwise set forth in this subsection, Customer agrees to obtain Keysteel's written authorization before returning any Goods.
- H) Customer agrees that Keysteel shall have (and hereby grants to Keysteel) a security interest in the Goods and proceeds and/or products thereof to secure payment in full of the purchase price therefor, and Customer shall, upon request, execute and deliver Uniform Commercial Code financing statements to Keysteel for filing in the public records.
- I) For Goods that are not off-the-shelf Goods, the parties will agree on the applicable Specifications in writing and the same will be incorporated into the Order.
- J) In the event that Keysteel stocks or fabricates Goods that are not off-the-shelf Goods for Customer, and Customer ceases the purchase of such Goods from Keysteel, Customer agrees to purchase Keysteel's entire inventory of such Goods and work-in-process upon request, at the purchase price last charged by Keysteel to Customer for similar or the same Goods.
- K) Keysteel warrants that Customer will have good title to all Goods once payment of the purchase price has been received in full. This warranty is non-assignable. SUBJECT TO THE FOREGOING SENTENCE, THE GOODS PURCHASED HEREUNDER ARE PROVIDED WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, INCLUDING AS TO (A) CONDITION, DESIGN, OPERATION, FITNESS FOR USE OR MERCHANTABILITY OF ANY GOODS, (B) FITNESS OF THE GOODS FOR ANY PARTICULAR PURPOSE OF CUSTOMER, OR (C) ANY OTHER MATTER WHATSOEVER OTHER THAN TITLE; IT BEING AGREED THAT ALL OTHER RISKS ARE TO BE BORNE BY CUSTOMER.

5. **CREDIT TERMS:**

Prior to delivery of any Goods or Equipment or the performance of any Services, and at any time thereafter, upon Keysteel's request, Customer will promptly provide Keysteel, and hereby authorizes Keysteel to obtain from Customer or any third party, such credit information and documentation as Keysteel may reasonably require to determine Customer's creditworthiness. If at any time, in the sole opinion of Keysteel, the financial responsibility of Customer is impaired or unsatisfactory, or Customer fails to provide such credit information, Keysteel may, in its sole discretion, terminate pending Orders, suspend deliveries or performance, cancel or modify extensions of credit, or place Customer on a cash-in-advance status until arrangements are made for security satisfactory to Keysteel or until all outstanding amounts are paid. Keysteel may cancel or modify extensions of credit at any time in its sole discretion. Customer agrees to notify Keysteel in writing of any proposed change in Customer's ownership, at least thirty (30) days in advance thereof, and in such event, Customer may be required to complete a new credit application.

6. **TERMINATION PRIOR TO DELIVERY/COMPLETION:**

Unless a separate agreement relating to cancellation has been entered into by the parties, Customer may terminate the Contract only with the prior written consent of Keysteel, which consent may be subject to applicable cancellation fees.

7. **FORCE MAJEURE:**

In the event that Keysteel is unable to perform any obligation hereunder due to a Force Majeure Event, Keysteel shall be excused from such performance for the duration of such Force Majeure Event. "Force Majeure Event" means the occurrence of conditions beyond the reasonable control of Keysteel, including but not limited to, acts of God, civil or military authorities, or a public enemy, fire, floods, wind, storm, labor disorders, strikes, work stoppages or other labor trouble, accidents, riots, civil commotion, terrorist acts or threats, closing of the public highways, and other contingencies, similar to the foregoing, beyond the reasonable control of Keysteel.

8. **MISCELLANEOUS:**

No right or remedy conferred upon or reserved to Keysteel by the Contract shall be exclusive of any other right or remedy herein or by law provided; all rights and remedies of Keysteel conferred upon Keysteel by the Contract or by law shall be cumulative and in addition to every other right and remedy available to Keysteel. The failure of Keysteel to enforce any provisions of the Contract shall in no way be construed as a waiver of such provisions nor in any way affect the right of Keysteel thereafter to enforce any such provisions. No waiver by Keysteel of any default of Customer under the Contract shall constitute a waiver of any subsequent default, whether or not the subsequent default is of a similar or different nature. In the event that Keysteel should bring an action for enforcement of the Contract, Customer agrees that Keysteel shall be entitled to award of its reasonable attorney's and professional fees and court costs associated with such enforcement proceedings. The Contract shall not be assigned or transferred by Customer to any third party without prior written approval by Keysteel. Any such approval shall not relieve Customer of any of its obligations under the Contract. If any provision of the Contract is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of the Contract shall continue in full force and effect.

9. **GOVERNING LAW/DISPUTE RESOLUTION:**

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, excluding its conflicts of laws provisions. In the event of any dispute arising out of or relating to the Contract or the Goods, the parties hereby submit to exclusive jurisdiction in the federal or state courts located in Harris County, Texas, and agree that venue is proper and convenient in such forum.

10. **NO CONSEQUENTIAL DAMAGES:**

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, (a) IN NO EVENT SHALL KEYSTEEL BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, COST OF CAPITAL, LOSS OF ANTICIPATED PROFITS OR REVENUES, BUSINESS INTERRUPTION DAMAGES, OR LOSS OF USE, IN CONNECTION WITH THE CONTRACT OR THE PERFORMANCE OR NON-PERFORMANCE OF THE OBLIGATIONS OF KEYSTEEL DESCRIBED IN THE CONTRACT, EVEN IF NOTICE WAS GIVEN OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE; AND (b) IN NO EVENT SHALL THE AGGREGATE LIABILITY OF KEYSTEEL FOR ANY CLAIM ARISING IN CONNECTION WITH THE CONTRACT EXCEED THE AGGREGATE AMOUNT ACTUALLY RECEIVED BY KEYSTEEL FROM CUSTOMER PURSUANT TO THE ORDER WITH RESPECT TO WHICH SUCH LIABILITY AROSE.

12. **NOTICES:**

Any written notices issued by one party to another party pursuant to the Contract shall be sent by (a) special courier, or (b) certified or registered mail (return receipt requested), to the other party. In the case of Keysteel, such notice shall be delivered to its address set forth in Section 1. In the case of Customer, such notice shall be delivered to its address set forth in the Order. Notices shall be deemed to have been given when delivered to such party. Notwithstanding any provision to the contrary herein, any party may change its address for notice by written notice to the other party.

13. **LATE PAYMENTS:**

In the event that any amounts payable hereunder are not paid in full when due, interest shall accrue on such unpaid amounts at the lesser of (a) 1.5% per month (18% per annum), and (b) the maximum interest rate allowed by law, until such amounts are paid in full. Customer agrees to reimburse Keysteel upon request for any collection fees incurred by Keysteel in collecting (or attempting to collect) any past due amounts from Customer.