Terms and Conditions

These terms and conditions are exclusive and in lieu of all other terms and conditions appearing on Buyer's purchase order or elsewhere and apply to all quotations made and purchase orders accepted by the Seller unless specifically stated to the contrary on the face of this document. Seller is not responsible for typographical or clerical errors made in any quotations, orders or publications. All such errors are subject to correction. The terms and conditions contained herein, together with the terms of Seller's, constitute the entire agreement between Seller and Buyer with respect to the goods and services rendered by the Buyer pursuant to no order and supersede all communications and agreements thereto. Any acceptance by Seller of Buyer's purchase order is expressly conditioned upon Buyer's acceptance of these terms and conditions and the terms and conditions of Seller's quotation, which may not be changed or waived except in a writing signed by both parties. In the event of any conflict between the terms and conditions set forth herein and the terms and conditions set forth in the Seller quotation, those set forth in the Seller quotation shall prevail. Any additional, inconsistent or different terms and conditions in Buyer's purchase order or other communications from Buyer are hereby expressly rejected.

1. Price. Shipping allowances and prices are subject to change by Seller without notice. Increases in labor, transportation and other costs before completion of contract plus applicable overhead may be invoiced to Buyer. If a delivered price has been quoted, any charges at destination for spotting, switching, handling, storage and other accessorional services and demurrage shall be borne by Buyer, and the quoted price subject to change. Accordingly, Seller reserves the right to correct any errors in specifications or prices.

2. Quotations. Quotations are limited to the specific processes and treatments services quoted therein; processes and treatments not specifically quoted will not be provided even if such processes and treatments are referenced in general specifications set forth in Seller's Quotation unless such Quotation is modified in writing to specifically quote such additional processes and treatments and the charges therefor. Buyer acknowledges that, unless specifically set forth in its purchase order and/or specifications, Seller does not know the handling, manufacturing and processing history of the parts and material provided to Seller for processing and treatment, and Seller is not responsible for the omission of pretreatment processes such as cleaning, peening, stress relieving, etc., unless such pretreatment processes are specifically referenced in its Invoice and/or Certificate of Conformance.

3. Processes and Treatments. Seller has performed only the specific processes and treatments set forth in its Invoice and/or Certificate of Conformance; processes and treatments not specifically set forth therein have not been performed even if such processes and treatments are referenced in general specifications set forth in its Invoice and/or Certificate of Conformance. Buyer acknowledges that, unless specifically set forth in its purchase order and/or specifications, Seller does not know the handling, manufacturing and processing history of the parts and material provided to Seller for processing and treatment, and Seller is not responsible for the omission of pretreatment processes such as cleaning, peening, stress relieving, etc., unless such pretreatment processes are specifically referenced in its Invoice and/or Certificate of Conformance.

4. Delivery. Unless specifically set forth in this document, all deliveries are FOB point of shipment. Shipment shall be made in accordance with instructions issued by Seller. Upon delivery, delivery and performance dates are approximate and are not guaranteed.

5. Inspection and Acceptance. Parts and/or material processed by Seller shall be presumed to be inspected and accepted as satisfactory by Buyer if Seller is not notified of damages, shortages, or other discrepancies within ten (10) working days of Seller's receipt of such parts and/or material. Rejected parts and/or material must be returned to Seller for rework. Further processing or assembly of rejected parts and/or material by Buyer or any other party shall constitute a waiver of any liability on Seller's part.

6. Force Majeure. Seller shall not be liable for any delay or other failure of performance due to causes beyond its reasonable control including without limitation: acts of God; acts of Buyer; acts of military or civil authorities; good regulations, order, directives and/or restrictions; fire or other casualty; strikes; lockouts; weather; epidemic; war; riot; delays in transportation or car shortages; or inability to obtain necessary raw materials, components or finished goods through Seller's usual and other sources at usual and regular prices. In any such event, Seller may at any time and from time to time without further liability to Buyer, (a) postpone its performance under this contract, (b) make partial performance or cancel all or any portion of this contract, or (c) allocate available quantities among its customers in any manner which Seller deems reasonable. Cancellation of any part of this contract shall not affect Buyer's duty to pay for performance of any other part hereof.

7. Warranty. Where Seller is given detailed instructions as to how to perform or to process the service to be performed, Seller warrants that it has reasonably followed such instructions. BUT MAKES NO OTHER WARRANTIES OR REPRESENTATIONS WHATSOEVER REGARDING SUCH SERVICES.

8. If within thirty (30) days from the date of shipment the Buyer notifies the Seller that any services do not meet the warranty specified above, Seller shall hereupon correct any such defect by repairing any defective services; provided, however, that Buyer shall pay all transportation charges. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO ANY GOODS OR SERVICES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR PURPOSE, AND SUPERSEDE AND EXCLUDE ANY ORAL OR WRITTEN WARRANTIES OR REPRESENTATIONS MADE OR IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING BROCHURE OR OTHER MATERIALS.

9. Limitation of Seller's Liability. Seller's liability on any claim with respect to Buyer's parts and/or material directly damaged by Seller's processing is limited to direct labor and material cost of such parts and materials. Furthermore, Seller shall be liable only for the amount of such claim which can be demonstrated to have been caused directly by the Seller's negligence or breach of conditions, the Seller's quotation or otherwise and whether arising in contract, tort (including without limitation, negligence), or otherwise, shall not exceed an amount equal to three (3) times Seller's charges for the particular services or goods which are the subject matter of a claim by Buyer.

10. Damages. Seller shall not be liable for the results of metal finishing operations that are unsatisfactory due to metal imperfections, changes in grade or composition of material, manufacturing and/or fabrication imperfections, or damage resulting from the plating or other finishing operation was not reasonably designed, and similar variables over which Seller has no control. In such cases, Buyer remains responsible to pay the contracted price for the finishing operations performed by Seller.

Where operations or processing services performed by Seller are in the nature of “saving” parts and/or material, the work will be performed on a "best effort" basis and no liability shall attach to Seller unless it has previously agreed to such liability in writing prior to beginning the job.

IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANTICIPATED PROFITS), OR DAMAGES IN THE NATURE OF PENALTIES.

11. Indemnification and Waiver. Buyer shall defend, indemnify and hold harmless Seller from and against all loss or damage sustained directly by Seller, and from and against all claims asserted against Seller with respect to the goods or services supplied hereunder, and from attorneys' fees/costs incurred by Seller in connection therewith, arising in whole or in part out of Buyer, its agents, employees and/or customers (a) failing to follow specifications, instructions, warnings or hindrances furnished by Seller; (b) failing to comply with all applicable legal, regulatory and business requirements; (c) failing to provide for proper materials; (d) making misrepresentations; (e) being solely or contributively negligent, and/or (f) providing designs, plans, specifications or other instructions which infringe or are alleged to infringe any patent, trademark, copyright or other intellectual property right. Buyer hereby waives and releases Seller from all right of contribution or indemnity to which it may otherwise be entitled. As used in this paragraph 9, the term "Seller" shall include Seller, its officers, directors, agents, employees, subcontractors, parents, subsidiaries, divisions and affiliates.

12. Taxes/Other Charges. All taxes and other charges imposed by federal, state, local, foreign or national governments/authorities on the manufacture, sale, shipment, import, export, or use of the goods or in connection with the services supplied hereunder (other than income taxes) shall be paid by Buyer. Buyer shall defend, indemnify, and hold harmless Seller from and against all liabilities for such taxes or charges and any attorney's fees or other costs incurred by Seller in connection therewith.

13. Payment; Security Agreement. Unless otherwise provided on the face of this document or in a written agreement, payments to Seller shall be made in United States dollars within thirty (30) days after the date of Seller's invoice and are subject to a 1.5% monthly service charge. On orders to countries other than the United States, payment shall be made to Seller through the medium of a Letter of Credit to be established by the Buyer at its expense including any bank confirmation charges. All Letters of Credit shall be in favor of and acceptable to Seller, shall be maintained in sufficient amounts and for the period necessary to meet all payment obligations; be irrevocable and issued or confirmed by a bank in the United States satisfactory to Seller within thirty (30) days after acceptance of any order; shall permit partial deliveries; shall provide for pro rata payments upon presentation of Seller's invoices and Seller's certificate of delivery of goods to Buyer; or of delivery into storage with certification of cause therefore, and for the payment of any termination charges.

To secure payment of all sums due hereunder or hereafter, Seller shall retain a security interest in the goods supplied or processed hereunder and this contract shall be deemed a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect such security interest. Seller is relying on Buyer's representation of solvency, and if at any time reasonably believes that Buyer is insolvent or that Buyer's credit is impaired, or if Buyer fails to make payment when due, payment is not made within ten (10) days after receipt of notice of the same from Seller, Buyer shall be in material breach hereof. Seller may, without liability to Buyer, withhold performance hereunder, stop any goods in transit, change the payment terms, and/or repossess goods therefore delivered. The Seller's security interest in the goods supplied or processed hereunder shall remain until payment in full is received. Payment amount arrears shall bear interest at the maximum amount allowed by law or at three percent (3%) above the prime rate prevailing at the principal New York branch of Chase Manhattan Bank, or its successor, as of the date each amount falls due pending actual payment thereof in full without prejudice to any other remedy available to the Seller. Seller shall be liable to Seller for all costs of collection, including attorneys' fees.

14. Notices. Notices supplied hereunder shall be deemed to have been duly given if delivered or mailed first class, registered mail, postage prepaid, or via any overnight courier, to the addresses set forth on the face of this document or at such other addresses as is usual and regular places. In any such event, Seller may of its own motion terminate any contract or agreements, as hereunder not expressly accepted by Buyer without prior written consent of the Seller.

NOTICE: Some metal plating products contain chemicals, including cadmium, chromium, nickel, and iron, identified by the State of California as carcinogenic or reproductive toxins. Contact Seller for further information if you believe the intended use of the product may cause persons significant risk of exposure to such chemicals.

Form EF 149 Rev C
Seller is an equal opportunity employer