

TERMS & CONDITIONS

1. This is an Acknowledgment by KB Alloys, Inc. ("Seller") of an order received from you ("Buyer") for the purchase of goods specified on the reverse side the "Goods" and not an invoice for, nor a notice of shipment of, the Goods. Unless Buyer provides written notice to Seller within ten (10) days of its receipt of this Acknowledgment that it does not agree to any of the terms or conditions of this Acknowledgment, this Acknowledgment shall constitute the entire agreement between Buyer and Seller with respect to the Goods and shall supersede all prior agreements, both written and oral, including without limitation the purchase order of Buyer, between Buyer and Seller. This Acknowledgment may be modified, changed or amended only by a written instrument signed by both of Buyer and Seller.
2. The term "Item" as herein used, means an order for the Goods or that part of an order for the Goods covering one complete combination of specifications for shipment at one time to one destination. Seller reserves the right to ship 10% over or under the quantity specified for any Item.
3. Unless noted otherwise, on the reverse side hereof, terms of payment are net cash thirty (30) days after the rendering of Seller's invoice. All payments due under this Acknowledgment are payable in lawful money of the United States of America.
4. All deliveries of the Goods are F.O.B. Seller's factory in Henderson, Kentucky; Wenatchee, Washington; or other facility from which the Goods are shipped.
5. Buyer's receipt of any Goods shall be an unqualified acceptance of, and a waiver by Buyer of any and all claims with respect to, such Goods unless Buyer provides Seller written notice of a claim with respect to such Goods within ten (10) days of Buyer's receipt of such Goods. Buyer assumes all risk and liability for the results obtained by the use of all Goods delivered hereunder in the manufacturing processes of Buyer or in combination with other materials or substances.
6. The prices stated in this Acknowledgment reflect Seller's prices of the Goods in effect as of the date of this Acknowledgment. These prices are subject to adjustment to reflect Seller's prices of the Goods in effect on the date of shipment of the Goods and each shipment of the Goods will be invoiced at such prices. If any tax, tariff, duty or charge, now or hereafter imposed by any governmental authority or agency, foreign or domestic, upon the Goods sold hereunder or upon the production, sale, transportation, use or delivery thereof, is required to be paid or collected by Seller directly or indirectly, either by governmental authority or agency or by virtue of Seller's contracts with Seller's vendors, the amount thereof shall be added to the price provided for herein and paid by Buyer. Seller may at Seller's option add to the price of the Goods sold hereunder the amount of any increase in transportation charges for shipments to Buyer provided that such transportation charges are payable by Seller hereunder.
7. Seller warrants to Buyer that all of the Goods sold hereunder shall conform to the description and specifications thereof set forth on the reverse side hereof, and shall meet Seller's standard specifications. SELLER EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THAT OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHETHER OR NOT SELLER IS AWARE OF BUYER'S INTENDED USAGE OF THE GOODS. Buyer's remedy for breach of warranty shall be limited to the return of the Goods with respect to which a breach is claimed and, in the event of a return of non-conforming Goods, Seller shall have the option to credit Buyer's account for any amounts paid to Seller for such Goods or to deliver in the manner provided for herein conforming Goods in exchange for the Goods returned by Buyer; and in no event shall Seller be liable for any consequential, incidental or other damages of any kind. In the event Seller fails to deliver any of the Goods in accordance with the terms and conditions of this Acknowledgment and such failure is not excused pursuant to the provisions of paragraph 8 hereof, Buyer's sole and exclusive remedy for such failure shall be to recover from Seller the lesser of (i) the then current market price of the Goods not so delivered and (ii) the amount actually paid by Buyer for the Goods purchased by Buyer as a substitute for the Goods minus the sum of (x) the price of the Goods specified on the reverse side hereof and (y) all amounts and expenses saved by Buyer as a consequence of Seller's failure to deliver the Goods hereunder; and Seller shall in no event be liable for specific performance or for any incidental, consequential or other damages of any kind. It is further understood and agreed that Buyer's failure to deliver any installment of the Goods or Seller's delivery of any installment of non-conforming Goods shall be deemed to be a breach with respect to such installment only and that such default does not substantially impair the value to non-conforming Goods shall be deemed to be a breach with respect to such installment only and that such default does not substantially impair the value to Buyer of this Acknowledgment as a whole nor shall it be deemed to constitute a breach of this Acknowledgment as a whole. If this Acknowledgment is governed by the United Nations Convention on Contracts for the International Sales of Goods (the "Convention") in accordance with the provisions of paragraph 12 hereof, the remedies of Buyer specified in this paragraph 7 are the sole and exclusive remedies of Buyer for any breach of this Acknowledgment and such remedies shall supersede, supplant and be in derogation of and complete substitution for any damages to which Buyer may be entitled under Articles 74 through 77 of the Convention.
8. In the event Seller's performance of this Acknowledgment is limited or prevented in whole or in part by acts of God, fire, war, civil disorders, strikes, explosions, embargoes, accidents, epidemics, floods, storms, shortages or failure of supply of fuel, power, raw materials, equipment, containers or transportation, or failure of any source of supply upon which Seller is dependent, or by any rule, regulation, order or other action adopted or taken by any governmental authority or causes not reasonably within Seller's control whether or not specifically provided herein, Seller shall be excused, discharged and released of performance to the extent such performance is limited or prevented without liability for damages of any kind. Nothing herein contained shall be construed as requiring Seller to accede to any demands of labor or labor unions, suppliers or other parties which Seller considers unreasonable and no event shall Seller be obligated to purchase materials from others in order to enable it to deliver the Goods hereunder. If by reason of any of the aforesaid circumstances Seller's supply of any of the material shall be insufficient to meet all of Seller's requirements hereunder, Seller's orders with its customers and for Seller's own uses, Seller shall have the right at Seller's option and without liability hereunder to apportion Seller's available supply of the material among any and all of Seller's customers, including Seller's affiliates and itself in such manner as Seller in Seller's sole discretion considers equitable.
9. The failure of Buyer to take delivery of the Goods hereunder (or portions thereof) when due, shall, in addition to any of Seller's other remedies under applicable law, give Seller the remedy of termination or cancellation charges in accordance with the accepted practice of the trade. Without limiting the generality of the foregoing, if this Acknowledgment is governed by the Convention in accordance with the provisions of paragraph 12 hereof, Seller shall be entitled to interest under Article 78 of the convention on any payment that Buyer is required to make under this Acknowledgment which Buyer has not made at the rate which is equal to the Base Rate, as announced from time to time, by The First National Bank of Boston, Boston, Massachusetts, U.S.A. on the basis of a 360-day year. In the event of the institution of any proceedings by or against Buyer under any law relating to the relief of debtors, Seller shall have the right to cancel this Acknowledgment forthwith.
10. If in Seller's judgment Buyer's financial condition at any time becomes impaired, Seller may decline to make deliveries except upon receipt, before shipment of any Goods, of payment in cash for such delivery.
11. The advice of the technical staff of Seller is available to the trade with reference to the use of the Goods; Seller does not expressly or impliedly warrant or guarantee the advice given or results obtained, all such advice being given and accepted at Buyer's risk.
12. Seller's waiver of any breach, or failure to enforce any of the terms and conditions of this Acknowledgment at any time, shall not in any way affect, limit or waive Seller's right thereafter to enforce and compel strict compliance with every term and condition thereof. This Acknowledgment shall be governed in accordance with the laws of the Commonwealth of Pennsylvania, provided that if the facility of Buyer to which the Goods are delivered is located in a country which has adopted, acceded to or ratified the Convention, this Acknowledgment shall be governed in accordance with the Convention rather than the laws of the Commonwealth of Pennsylvania to the extent that a matter arising under this Acknowledgment is governed by the provisions of the Convention, shall be binding upon and inure to the benefit of Seller's respective successors and assigns but shall not be assigned by Buyer without Seller's prior written consent.
13. If this Acknowledgment is governed by the Convention in accordance with the provisions of paragraph 12 hereof, all actions to enforce the failure of Seller to perform any of its obligations under this Acknowledgment must be commenced within one (1) year of the date of this Acknowledgment. In the event that the Convention is hereafter amended to specify a statute of limitations which is in excess of such one (1) year period, the minimum period of such statute of limitations shall be substituted in this paragraph 13 for one (1) year period specified in the preceding sentence.

ADDENDUM: This obligation does not extend to alleged infringements (a) resulting from the production of any articles according to Company's specifications, (b) of any process claim of any patent, unless the process claim covers the intended use of the articles sold hereunder and Seller knows the intended use and there is no substantial non-infringing use for the articles, (c) of any product-by-process claim of any patent unless the article sold hereunder is the product of such claim or (d) of any patent of any foreign country. Seller will have full control of the defense and settlement of any and all suits, including appeals, and Company will cooperate fully in connection therewith. Seller may modify such articles so as to not adversely affect their intended use subject to Buyer's evaluation, testing and approval. Seller's obligation to pay money to Company hereunder is limited to the amount of money settlements concurred in by Seller and money judgments, which settlements are judgments actually shall have been paid by Company.