



## MARKIN TUBING, LP

### General Terms and Conditions of Sale

1. **BUYER'S ACCEPTANCE.** THE TERMS AND CONDITIONS OF SALE CONTAINED HEREIN APPLY TO ALL QUOTATIONS MADE AND PURCHASE ORDERS ENTERED INTO WITH MARKIN TUBING, L.P. (hereinafter called "Seller"). Any product sales to Buyer are made on the express condition that Buyer assents to the promises, terms, and conditions set forth below, whether or not they are additional to or different from any terms and conditions proposed by Buyer. These Terms and Conditions of Sale as herein acknowledged supersedes and cancels all previous inconsistent understandings and proposals between the Seller and Buyer with respect to product sales. Buyer and Seller further agree that there should not be a "battle of forms" as described in Section 2-207 of the Uniform Commercial Code. Seller's commencement of performance is not to be construed as acceptance of any of Buyer's terms or conditions.

All orders or contracts must be approved, accepted and acknowledged in writing by Seller.

2. **FORCE MAJUERE.** The Seller shall not be liable for delays in shipment or impossibility of performance due to fires, strikes, acts of God, accidents, delays in transportation, ability to procure supplies and raw materials, extraordinary price increases or the imposition of tariffs on supplies or raw materials, other governmental regulation or other contingencies beyond its control.
3. **LIMITATION OF BUYER'S REMEDIES.** Seller's liability hereunder shall be limited to the obligation to replace only those portions of products proven to have failed to meet in material respect the specifications on the Seller's Order Acknowledgment or Invoice or to have been defective in quality or workmanship at the time of delivery. Alternatively, Seller may allow credit therefore, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product sold to Buyer shall NOT in any case exceed the purchase price paid by Buyer for such product. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, CLAIMS FOR LABOR, OR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER BUYER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, OR STRICT LIABILITY, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S EXCLUSIVE REMEDIES. Claims for defective material must be made within thirty (30) days after receipt of material by Buyer. The Seller will not consider nor be held liable for any claim of rust when the material is ordered without proper surface treatment or without suitable shipping protection.
4. **HARDNESS.** Markin Tubing products are "process annealed" to relieve stresses created during the forming and welding stages of the manufacturing process. This in-line process is continually monitored, measured and adjusted as appropriate to ensure product specification conformance as it relates to our buyer's hardness requirements. It is Markin Tubing's policy to record and certify the product hardness at the time the product is manufactured off the tube mill; any warranty thereof is limited to the values obtained at such location and by such procedures.
5. **TOOLING.** Tooling will be invoiced at quoted prices and will be held for Buyer's exclusive use. Such tooling will remain in the possession and control of the Seller. In the event Buyer desires to remove tooling there will be an additional charge to cover the cost of relocation. In the event of no reorder for a period of two (2) years, Seller may scrap such tooling after reasonable notice to Buyer. Other than normal wear and tear, any maintenance costs for tooling will be at the expense of Buyer. Any changes in tooling made at Buyer's request will be paid for by Buyer.
6. **CANCELLATION AND CHANGES.** Orders cannot be cancelled or modified or releases held up by the Buyer after the Seller initiates order fulfillment, except with Seller's written consent. Unless Seller consents in writing, the Buyer will be invoiced for all product produced for the Buyer against a purchase order. Any changes in the order, to be effective, must be made in writing by Buyer and may have an impact on price and delivery schedule. Such changes shall be agreed upon between the parties before work is commenced on the changes. The Buyer will also take full responsibility for the condition of the material if not shipped on the originally agreed date. The Buyer will be invoiced for any material left on the Sellers premises for more than two weeks beyond the originally agreed ship date.
7. **PRICES.** Any Seller price quotation or pricing letter is for Buyer information only. Prices on Goods covered may be adjusted at Seller's option. Seller may adjust prices (a) to those Seller has in effect at the time of shipment; (b) if Seller cancels, to cover labor expended, material poured, processed or partly processed, and reasonable overhead expenses applicable. **ALL BUYER ORDERS AND ACCEPTANCES ARE EXPRESSLY CONDITIONED UPON ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON. TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE IN THESE CONDITIONS OF SALE ARE REJECTED.** The Buyer and Seller agree that the terms and conditions printed hereon are accepted in good faith by both parties as the controlling and final terms and conditions.
8. **STORAGE CHARGES.** Should shipments be held or stored beyond the delivery date for convenience of Buyer, Seller may, at its option, assess reasonable charges for any expense incident to such delay.
9. **TAXES.** The Seller shall not be liable for payment of any taxes with respect to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any of the materials or services supplied under this order. The Buyer shall promptly pay the amount of any taxes levied by any government entity to the Seller upon demand but may in lieu of such tax payments issue a tax

exemption certificate acceptable to the appropriate taxing authority.

10. **DRAWBACK.** Where the materials described herein are to be exported, the Seller specifically reserves to itself all rights to drawback of duty or taxes paid on materials entering into the manufacture of the materials exported, to which right the Buyer disclaims all interest, and agrees to furnish the Seller with proof of exportation and all documents necessary to obtain payment of such drawbacks and to cooperate with the Seller in obtaining such payment.
11. **PATENT INDEMNITY.** The Buyer shall defend at Buyer's expense and pay costs and damages awarded in any suit brought against the Seller for the infringement or contributory infringement of any patent: a) by any article made or furnished hereunder to Buyer's specifications or plans; b) by the use of such article; or c) by the performance of any process if the Buyer has actively induced performance or such process. Likewise, Seller shall indemnify and defend Buyer against any judgment for damages and costs awarded in any suit brought against the Buyer on account of infringement of any patent for the articles supplied by the Seller under this order. Both parties agree to promptly notify the other of the commencement of any such suit.
12. **TRANSPORTATION AND OTHER CHARGES.** All transportation and other charges, in addition to the mill price, shall be for the account of the Buyer.
13. **PRODUCING OR SHIPPING POINT.** Seller reserves the right to produce and ship all or any part of the materials covered hereby from any of its plants or from any plant or plants other than the plant or plants designated on the face of this order. Seller's price or prices at such producing or shipping point plant shall apply; provided, however, that if such applicable price or prices, excluding any and all transportation or other charges are higher than those at the plant designated on the face of the order, and if the tubing has not been in process, Buyer may cancel the portion of this order to which such higher prices apply by giving written notice thereof to Seller within ten (10) days after receipt of notice of such higher prices.
14. **CREDIT AND PAYMENT.** The Buyer shall promptly pay all invoices when due. The Seller reserves the right to modify or withdraw credit terms at any time without notice and to request guarantees, security or advance payment of the amount of credit involved.
15. **PERMISSIBLE VARIATIONS.** a) Material to be within the limits and sizes published by the Seller and subject to Seller's standard variations for rolling. b) Seller reserves the privilege of shipping overages or underages of weight, length, size and or quantity in accordance with Seller's standard practice.
16. **LIMITED WARRANTY.** Seller warrants only that the material to be supplied will conform to the mutually agreed upon requirements of the order and Seller will convey good title thereto and that the material will be delivered free from any security interest or other lien or encumbrance of which the Buyer at the time of placing this order has no knowledge. THERE ARE NO WARRANTIES OF MERCHANTABILITY NOR OF FITNESS OF SAID MATERIAL FOR ANY PARTICULAR PURPOSE NOR IS THERE ANY OTHER WARRANTY EXPRESSED OR IMPLIED EXCEPT AS HEREIN SET FORTH.
17. **DEFAULT IN PAYMENT.** In the event Buyer shall fail to make payments to Seller, when due on this or any other order between Buyer and Seller, the Seller may defer further shipments until such payments are made, or may, at its option, cancel any unshipped balance.
18. **ENTIRE AGREEMENT, ADDITIONS OR MODIFICATIONS, WAIVER.** This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and replaces and supersedes all prior representations, understandings, and agreements (whether written or oral) between the Parties. Any additions or modifications to this Agreement must be made in writing and signed by the Parties. A waiver of any provision of this Agreement will not constitute a waiver of any other provision(s) or a subsequent waiver of the same provision.