

ALU-FORGE, INC. dba AMERICAN HANDFORGE
TERMS & CONDITIONS OF SALE

1. **ORDER; SOLE TERMS AND CONDITIONS.** This statement of terms and conditions of sale (this "Statement") sets forth the entire agreement between Seller and Buyer regarding the transaction identified in Seller's quote to which this Statement is attached or in which reference to it is made, and reflected in acceptance by Buyer of such quote or (if such quote is not otherwise specifically accepted in such purchase order) in acceptance by Seller of a purchase order issued by Buyer that does not specifically identify exceptions to the terms and conditions set forth in this Statement (collectively, the "Order"). A purchaser order issued by Buyer that specifically identifies exceptions to the terms and conditions set forth in this Statement, and Seller specifically and expressly accepts such exceptions, will also constitute an Order for purposes of this Statement, subject to such exceptions. The Order (as thus incorporating this Statement and reflecting such acceptance) supersedes all prior orders, agreements, negotiations and representations (oral or written) regarding this transaction, except only as specifically stated in such quote or written acceptance of a purchase order. No waiver, amendment or modification of any of the terms or conditions set forth in this Statement shall be effective against Seller unless specifically approved in writing by an officer of Seller. In the event that Buyer has submitted or hereafter submits a purchase order or other document to Seller regarding this transaction and such document contains any additional, substitute or inconsistent terms (including, without limitation, its own form of terms and conditions of sale), such terms shall be deemed material alterations within the meaning of California Uniform Commercial Code section 2207 (2) (b) and shall not become a part of an Order unless specifically approved in writing by an officer of Seller. Performance by Seller of undertakings pursuant to the quote or purchase order issued with respect to it shall not otherwise be deemed to constitute acceptance of such additional, substitute or inconsistent terms.
2. **NO WARRANTY OR GUARANTEE. SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE EXCEPT ONLY THAT SELLER WARRANTS THAT GOODS TO BE SOLD OR CONVERTED/EXCHANGED BY SELLER PURSUANT TO THE ORDER SHALL CONFORM IN ALL MATERIAL RESPECTS TO THE SPECIFICATIONS SET FORTH IN THE QUOTE TO WHICH IT RELATES OR IN A PURCHASE ORDER ACCEPTED BY SELLER AS PROVIDED HEREIN. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.**
3. **DELIVERY.** Delivery of all goods shall be "Ex Works" (as defined in Incoterms 2000) Seller's manufacturing facility in Rialto, CA unless otherwise specified in an Order relating to such goods or as specifically accepted in writing by Seller. Unless otherwise approved in writing by Seller, all goods sold or converted/exchanged by Seller under the Order shall be delivered to Buyer per a purchase order in form approved for that purpose by Seller or specifically accepted in writing by Seller and evidencing an Order. Buyer acknowledges that the delivery date set forth in a quote (and/or specified in a purchase order in accordance with such quote or in a written acceptance of a purchase order) is an approximate date only until such time as a specific delivery schedule has been established for such goods and that the actual date of delivery may vary due to freight schedules and other causes beyond the control of Seller. Seller shall have the right to deliver the goods in separate lots. Any and all freight charges and insurance charges for goods sold under such Order (including any increases of such charges after the date of the quote pursuant to which the Order was created) shall be at Buyer's sole expense unless otherwise specified in such quote or as specifically accepted in writing by Seller.
4. **POSTPONEMENT; "BILL-AND-HOLD."** Buyer shall not have the right to postpone any deliveries without the prior written consent of Seller, which consent may be withheld in Seller's sole and absolute discretion. Seller may treat any deliveries that are postponed at the request of Buyer with the consent of Seller on a "bill-and-hold" basis (also referred to as "bill-in-place") and all expenses incurred by Seller as a result thereof (including, without limitation, storage and lost manufacturing capacity) shall be for Buyer's account and shall be the obligation of it. Any notice of postponement by Buyer to which Seller does not provide such consent may be treated by Seller (at its sole and absolute discretion) as a Late Cancellation under paragraph 11 of this Statement. Buyer agrees that, if so requested by Seller, it will give separate written acknowledgement of its obligations under this paragraph 4 with respect to "bill-and-hold" goods and will commit to make payment on an invoice delivered in connection therewith within the time specified in the Order for payment of such invoice. Any failure to make such payment within the time specified may be treated by Seller at sole discretion as a Late Cancellation under paragraph 11 of this Statement.
5. **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 or other labor disturbances, fire, floods, earthquakes, natural disasters, war, civil disturbance, governmental or military order, shortages, inability of Seller to obtain, receive or process material, a widespread or systemic computer software error or malfunction (including failure of the world wide web or material reduction of its capacity for prolonged periods, if normally used in communications between the parties or between Seller and its suppliers), sabotage, equipment failure or repair, failure of Seller's supplier(s) to deliver goods, plant shutdown, theft or acts of God. Seller advises Buyer to carry its own insurance to protect itself against loss upon the occurrence of any such event.
6. **TITLE; RISK OF LOSS.** Unless otherwise specified in an Order, title and risk of loss and damage to any goods subject to the Order shall pass to Buyer at the later of the date specified in the Order for pickup by Buyer or the date

on which Seller gives Buyer notice that such goods are available for pickup. Notwithstanding the foregoing, risk of loss on goods thus identified for "bill-and-hold" treatment (as specified in paragraph 4 of this Statement or as otherwise agreed to in writing by the parties) shall pass to Buyer on notice thereof or on invoicing by Seller, whichever occurs first but title for such goods shall not pass until full payment has been made. Unless otherwise provided, Seller shall have no obligation to insure any goods. Buyer consents to any chartering or other transportation arrangements made by Seller (if Buyer fails to do so) at its sole discretion.

7. **PRICE; TAXES.** The purchase price for the goods is payable in United States currency (within the time period specified in the quote to which the Order relates) 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.
8. **LATE PAYMENT CHARGE.** If Buyer fails to make any payment required under the Order 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 an amount in excess of the maximum charge permitted by law.
9. **CLAIM NOTIFICATION.** Buyer must notify Seller in writing, as specified in paragraph 19 of this Statement, of any rejection of goods, short shipment, defective goods or other claim within five (5) days after the date of physical receipt of such goods if Buyer is located within the United States, Canada or Mexico. Notification of any claim on physical receipt at any other location (if so indicated in the Order) must be made in writing to Seller within twenty (20) calendar days after unloading of the vessel or ten (10) calendar days after receipt thereof by Buyer, whichever occurs first. **Buyer acknowledges that it may not machine, process or otherwise alter in any way any goods rejected by it without the prior written consent of Seller,** and further acknowledges that doing any such machining or processing will cancel the effectiveness of any rejection claim notification with respect to such goods or otherwise relieve Seller of its obligations with respect to such goods.
10. **CREDIT APPROVAL.** Buyer acknowledges that Seller's obligations under the purchase order to which the Order relates are subject, among other things, to Seller's approval of Buyer's credit. Seller shall have the continuing right until the time of delivery to approve or disapprove of Buyer's credit. If, at any time prior to delivery of all the goods subject to the Order pursuant to paragraph 3 of this Statement, 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 such delivery of any remaining goods, (ii) require satisfactory security or personal guaranties, or (iii) cancel the Order. If Seller elects option (iii), Seller shall refund any advance payments made by Buyer (net of any charges payable hereunder 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. Buyer hereby grants a first security interest in all such goods to Seller if Seller elects option (iii) above.
11. **CANCELLATION. Buyer may not cancel an Order except as provided in this paragraph 11.** Buyer may cancel the Order only if
 - (a) such cancellation is given in writing not later than the earlier of the following: (1) a date specified in the quote to which the Order relates or in the corresponding purchase order if it is specifically accepted by Seller, (2) if such acceptance is not given and the purchase order has not been rejected by Seller within seven (7) calendar days following receipt of such purchase order by Seller, the date specified in such purchase order, or (3) if neither subclause (1) or (2) hereof applies, three (3) business days following receipt of such purchase order by Seller unless prior thereto Seller gives written notice of acceptance of it as an Order; OR
 - (b) goods delivered by Seller pursuant to the Order do not meet the specifications for them set forth in the Order and Buyer has promptly notified Seller of such deficiency pursuant to paragraph 9 of this Statement, and Seller has not promptly corrected any deficiency to the reasonable satisfaction of Buyer; OR
 - (c) except as permitted under paragraph 5 or paragraph 12 of this Statement, delivery of goods pursuant to the Order has not been made by ten (10) calendar days (or the next business day if the final such calendar day is not a business day of Seller) after the dates indicated for delivery in the quote or delivery schedule issued by Seller pursuant to such quote unless (1) Buyer has consented to later delivery, or (2) Buyer has previously accepted (or indicated willingness to accept) delivery at a later time and has not thereafter notified Seller that future such delays in delivery will not be accepted.

Any cancellation by Buyer after the date provided in clause (a) of this paragraph 11 (a "Late Cancellation") or for a reason not specified in clause (b) or clause (c) of this paragraph 11 shall constitute a Default as defined in paragraph 12 of this Statement but shall otherwise be of no effect. A Late Cancellation shall not relieve Buyer of its payment obligations under the Order, unless expressly approved in writing by Seller in its sole discretion. If Buyer concludes that the goods covered by the Order do not meet its needs (including as a result of adverse reactions of the goods that occur during processing by Buyer) but Buyer is otherwise not able to cancel under clause (b) above (collectively, "Buyer-Failed Goods") or elects not to do so, Buyer may cancel purchases of products not yet delivered under the Order (a "Buyer-Failed Goods Cancellation") but only if Buyer specifically accepts in writing its continuing obligation to pay Seller for goods delivered prior to a Buyer-Failed Goods Cancellation and for the full amount of any costs incurred or obligated by Seller to the date of such cancellation, including (without limitation)

from changing market price of raw materials, and to reimburse Seller for any losses reasonably demonstrated by Seller to have resulted from such cancellation (excluding any claims for lost profits or lost opportunities, but including administrative charges not to exceed 20% of the total amount of such losses).

Seller may cancel an Order at any time prior to the date specified in clause (a) of this paragraph 11 (a "Seller Pre-Commencement Cancellation"). Seller may also cancel such Order after that date if Buyer has given Seller notice that the goods delivered pursuant to the Order are (or reasonably appear to Seller potentially to be) Buyer-Failed Goods but has not yet given notice of a Buyer-Failed Goods Cancellation (a "Seller Post-Commencement Cancellation"). Seller shall have no further obligation to Buyer for a Seller Pre-Commencement Cancellation or for a Seller Post-Commencement Cancellation. Seller may not cancel an Order except as provided in this paragraph 11 (through exercise of option (iii) in paragraph 10 of this Statement) or as covered by paragraph 14 of this Statement.

Any suspension of Seller's obligations under an Order pursuant to paragraph 5 of this Statement that remains in effect for more than thirty (30) consecutive calendar days, or for more than a total of thirty (30) calendar days within a time period of forty-five (45) consecutive calendar days, shall thereupon be deemed to be a cancellation of such Order by mutual consent of the parties.

Except as specifically provided in this paragraph 11 of the Statement, no cancellation of an Order shall relieve Buyer of its obligations with respect to goods already delivered pursuant to paragraph 3 of this Statement at the date of such cancellation, except as such cancellation shall have been determined in arbitration pursuant to paragraph 16 of this Statement (or by written acknowledgement of Seller) to be permitted under clause (b) of this paragraph 11 or to be a direct result of failure of Seller's warranty under paragraph 2 of this Statement.

12. **DEFAULT; TERMINATION.** If Buyer wrongfully rejects or revokes acceptance of goods under an Order or fails to make any payment required thereunder when due, or if Buyer repudiates or otherwise is in default of any of its representations, warranties or covenants thereunder (each, a "Default"), Seller may, among other things and at its sole discretion, withhold delivery of goods, stop delivery of any goods in transit and recover the damages from Buyer. Seller shall not be required to resell any returned, rejected or undelivered goods. All remedies of Seller set forth in the Order (as incorporating this Statement) shall be cumulative and in addition to all other remedies available to Seller at law or in equity, all of which are hereby reserved. In the event of a Default by Buyer that has not promptly been cured following notice thereof by Seller pursuant to paragraph 19 of this Statement, Seller in its sole discretion may elect to sell (including for scrap value) goods for which Buyer has not physically taken possession and has not otherwise paid in full, including work in process at the time of such Default. Any sale of such goods by Seller shall not relieve Buyer of its obligations under the Order except to the extent of the net proceeds (after brokerage, consignment, transportation, processing or similar charges) actually received by Seller from such sale.
13. **LIMITATION OF DAMAGES.** Buyer's damages on account of a breach, or wrongful repudiation, hereof by Seller shall be limited to the difference between the contract price as set forth in the Order (unless such price is subsequently modified in a writing approved by an officer of Seller, which modified price shall control) and the market price of the goods, less expenses saved by Buyer as a result thereof. In no event shall Seller be liable for any consequential, incidental, special or punitive damages, including but not limited to lost profits. At its option, Seller may fully offset any such damages resulting from failure of any item substantially to conform to specifications in the Order by delivery to Buyer (at Seller's cost and within standard lead times consistent with the Order) of a replacement item that so conforms to such specifications.
14. **SEVERABILITY.** If any provision of this Statement shall be found to be invalid or unenforceable, that shall not affect the remainder of the obligations under the Order. 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. If such provision cannot be reformed, Seller may at its sole discretion rescind the Order, in which event each party shall be restored to its position before any performance under it.
15. **EXPORT / REEXPORT.** The export or reexport of Seller's products is subject to the export laws and regulations of the United States. The United States export laws and regulations include, but are not limited to, the U.S. Commerce Department's Export Administration Regulations, the U.S. State Department's International Traffic in Arms Regulations, the U.S. Treasury Department's Foreign Assets Control Regulations, Census Bureau's Foreign Trade Regulations, U.S. Customs Regulations, and other federal agencies. Seller's products or technology **MAY NOT BE** exported or re-exported, either directly or indirectly, to the following: (1) any country subject to a comprehensive embargo by the United States (on the date hereof including Cuba, Iran, North Korea, Sudan, and Syria); (2) an entity that Buyer knows or has reason to know is involved in any of the following end uses: biological weapons, chemical weapons, military end use, missile and rocket systems, or nuclear activities, and (3) an individual or entity that is listed on the Denied Persons List, Unverified List, Entity List, Specially Designated Nationals List, Debarred List and Nonproliferation Sanctions List (the full lists are available on the U.S. Department of Commerce's Bureau of Industry and Security webpage, located on the date hereof at: http://www.export.gov/ecr/eg_main_023148.asp). Although Seller provides this information to assist Buyer, Buyer remains responsible for exporting or re-exporting these goods in accordance with all applicable U.S. export laws and regulations, as well as the export or import laws and regulations of other countries. Buyer represents that it is

purchasing the products for the purpose of exporting them from the United States and importing them to the country specified in Buyer's purchase order. Buyer acknowledges that it shall be responsible for obtaining any permits, licenses, or other governmental authorization(s) necessary for the export or reexport of the products from the United States, as well as for the importation of the products into the designated country of importation, and it shall comply with all applicable laws and regulations. Upon request, Buyer shall provide documentation satisfactory to Seller verifying delivery at the designated port of entry and receipt by the ultimate consignee. Buyer agrees to indemnify and hold Seller harmless for any violation by it of any United States export law or regulation, or the export or import laws or regulations of other countries.

16. **GOVERNING LAW; ATTORNEYS FEES.** The contractual sales relationship evidenced by the Order is entered into at Fontana, California and shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law principles. The provisions of Article 2 of the California Uniform Commercial Code shall apply to the Order except to the extent inconsistent herewith. Seller and Buyer agree that in the event of any dispute arising out of or otherwise relating to the Order or for the interpretation or enforcement hereof, including but not limited to whether any particular matter is subject to arbitration, the matter shall be presented to and decided by binding arbitration before the American Arbitration Association (the "Association") in Los Angeles, California, pursuant to the Association's Commercial Arbitration Rules as then in effect. Notwithstanding the foregoing, Seller and Buyer reserve the right to seek all provisional remedies to which they would be entitled in the absence of this arbitration provision, including but not limited to that set forth in California Code of Civil Procedure section 1281.8. Seller and Buyer each hereby consents to the jurisdiction of the Association and waives any right it may have to trial by jury. Each party shall pay one-half of the arbitration filing fees and estimated arbitrator's fees prior to commencement of the arbitration. If any party fails to pay its share of such fees, it shall not be allowed to participate in the arbitration and the other party may pay the unpaid portion. The prevailing party in any dispute, action or proceeding between the parties shall be entitled to recover all such fees paid by it and its reasonable attorneys' fees and costs, including any fees and costs incurred in enforcing any judgment.
17. **AUTHORITY.** If Buyer is a corporation, limited liability company, partnership or other business entity, Buyer represents and warrants that the person executing the purchase order in the name of the Buyer (and thereby consenting to the terms of this Statement to the extent provided herein) has been duly authorized by Buyer to execute and deliver the Order on behalf of Buyer and that the Order is a valid binding and enforceable agreement of Buyer. The person executing the Order on behalf of Buyer hereby personally represents and warrants that he or she is authorized to commit the Buyer to the obligations of it hereunder. Such person agrees that if it is subsequently demonstrated that he or she was not authorized to execute documents comprising the Order on behalf of Buyer and had reason to know that, when executing or delivering such documents, such person shall be deemed to have unconditionally guaranteed the obligations of Buyer under the Order and to have waived all rights and defenses that he has or may have under sections 2787 to 2856, inclusive, of the California Civil Code.
18. **ASSIGNMENT AND BINDING EFFECT.** The Order shall inure to and shall be binding upon the parties hereto and their respective heirs, representatives, successors and assigns. Buyer may not assign any of its rights or delegate any of its duties under the Order without the express prior written consent of Seller.
19. **NOTICE.** Any notice that is required or may be given under the Order shall be in writing and given by personal delivery, next business day overnight courier service, certified or registered first class U.S. Mail postage paid, facsimile, or (if specified in the Order) e-mail. Any notice intended for Seller shall be addressed to Seller's street address (165 South Spruce Avenue, Rialto, CA 92376 USA, unless otherwise indicated by Seller in such Order), facsimile number or such e-mail address; any notice intended for Buyer shall be addressed to Buyer at Buyer's street address, facsimile number or such e-mail address set forth in Seller's records for the Order. Unless either party notifies the other to the contrary, a notice given and addressed in such manner shall be deemed received on the first business day after personal delivery, deposit with an overnight courier, facsimile transmission or, such e-mail transmission, or on the third business day after deposit in the U.S. Mail.
20. **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 or a waiver of any other provision hereof. Buyer hereby represents and warrants to Seller that Buyer is not presently insolvent and shall not be insolvent at any time while this commercial contract is in effect. Buyer shall indemnify and hold Seller harmless from any claim or liability arising from any act or omission of Buyer, except where due to Seller's or its agent's gross negligence or willful misconduct. The paragraph headings in this Statement governing the contractual sales relationship between the parties are for convenience only and are not deemed to be a part of the sales contract or used in the construction of the Order reflecting that contract. Buyer acknowledges that Seller has made no representations, warranties or covenants of any kind regarding this transaction except as expressly set forth in the Order. The Order (including any shipping schedules specified under it) and this Statement shall be deemed to constitute a sales contract accepted by both parties in accordance with this Statement.

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