



TMS INTERNATIONAL DE MÉXICO, S. DE R.L. DE C.V. TERMS AND CONDITIONS OF PURCHASE (OCTOBER 2018)

- 1. CONTRACT.** These terms and conditions, together with the terms set forth in the purchase order / confirmation (collectively, the “Terms”), (a) constitute the entire contract between the seller named in the purchase order / confirmation (“Seller”) and TMS International de México, S. de R.L. de C.V. (“Buyer”), with respect to the transaction described in the purchase order / confirmation, regardless of whether Seller has acknowledged acceptance of the purchase order / confirmation and / or these terms and conditions, and (b) expressly limit Seller’s acceptance to the Terms. If the purchase order / confirmation is construed as an acceptance or a confirmation acting as an acceptance, then Buyer’s acceptance is EXPRESSLY CONDITIONAL ON SELLER’S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN SELLER’S WRITING. Further, if the purchase order / confirmation is construed as the offer, acceptance thereof is EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND BUYER HEREBY EXPRESSLY OBJECTS TO ANY ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS; NO SUCH ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS SHALL BE BINDING ON BUYER UNLESS AGREED TO IN WRITING BY BUYER. Buyer’s acceptance of Seller’s sales confirmation or other writing, or commencement of performance (including payment for the material) shall not constitute acceptance of any of Seller’s terms and conditions. In any event, Seller’s assent to the Terms shall be conclusively presumed from Seller’s (a) acceptance of the Terms by checking the box on the electronic purchase order / confirmation, (b) receipt of the purchase order / confirmation without written objection sent to Buyer within ten (10) days after receipt of same, (c) procurement, preparation and / or shipment of any of the material to be sold hereunder after receipt of the purchase / order confirmation, or (d) acceptance of all or any part of Buyer’s payment for the material ordered.
- 2. PRICE AND CONDITIONS OF ACCEPTANCE; PAYMENT.** If an F.O.B. point is not otherwise specified in the purchase order / confirmation, the price stated is F.O.B. delivered to the consignee. Regardless of the point of delivery, all material shall be received subject to acceptance of the material by Buyer’s ultimate consumer (the “consumer”), with the weights, specifications and grading of that consumer to govern, or if no ultimate consumer is known at the time of shipment, all material shall be received subject to acceptance by Buyer, with the weights, specifications and grading of Buyer to govern. All costs incurred to satisfy such consumer’s (or Buyer’s, if applicable) delivery requirements will be for Seller’s account. Despite any shipping terms or arrangement, Seller shall have risk of loss for all material shipped until received and accepted by the consumer (or Buyer, if applicable), at which time title to and risk of loss with respect to the material shall pass to the consumer (or Buyer, if applicable). Rejected material remains Seller’s property at Seller’s risk and subject to Seller’s disposition. Seller must load clean transportation equipment. Any expense or shortage incurred because of foreign matter in the shipment or because equipment is loaded in excess of or less than carrier’s loading rules will be paid by Seller. Payment terms are as set forth in the purchase order / confirmation. If no payment terms are specified, the net amount shall be payable within 45 days after the later of (a) delivery and acceptance of the material or other performance conforming with the Terms, and (b) Buyer’s receipt of Seller’s invoice. In all cases, Seller must mail the original invoice, including any receiving / weight tickets, if Seller is paying the freight, to Buyer to receive payment. Unless otherwise stated in the purchase order / confirmation, the price stated includes all duties, levies, freight charges, insurance charges, and any other charges whatsoever in connection with the sale or delivery of the material.
- 3. WARRANTY.** In addition to all other warranties express or implied with respect to the sale of the material, Seller warrants to Buyer that (a) Seller has good and marketable title to the material, and the right to transfer such material free and clear of all liens, restrictions, and / or encumbrances, (b) the material will conform to the specifications and / or other descriptions set forth on the purchase order / confirmation, and any samples provided or shown to Buyer, and (c) the material and its sale and transportation hereunder will comply with all applicable federal, provincial, state or local laws, ordinances, rules and regulations.
- 4. BUYER’S RIGHTS; FORCE MAJEURE.** Time shall be of the essence in the performance of this contract. In the event of nonconformity, non-delivery, partial delivery or late delivery, Buyer may, at its option, (i) cancel this contract, or (ii) replace the material in the open market after due notice and within a reasonable period of time and, in either case, recover from Seller, at Buyer’s option, (a) the Buyer’s anticipated profit from the sale of the material to the consumer, or (b) the difference between the market price of the material at the time of replacement and the contract price (if Buyer elects to replace the material); provided, however, that Buyer’s cancellation of the contract shall not be a necessary condition of any such recovery. The foregoing rights and remedies of Buyer are in addition to all of its other rights and remedies under this contract or at law. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owed to it by Seller against any amount payable by Buyer to Seller under this contract or any other contract between the parties. No extension of time granted by Buyer shall constitute a waiver of this provision. Buyer shall not be liable for any delay or failure of performance due to a request for delay by the consumer, strikes, acts of God, or other causes beyond its control, provided that Buyer shall have given notice to Seller of any such cause for delay or anticipated delay promptly following the commencement thereof. If any delay in Seller’s delivery impairs Buyer’s ability to meet its delivery schedule to the consumer, Buyer may, at its option, and without liability to Seller, cancel this contract and any outstanding deliveries hereunder in whole or in part.
- 5. SELLER’S INDEMNITY (INCLUDING ENVIRONMENTAL INDEMNITY).** Seller represents and warrants that the material furnished by Seller hereunder does not contain closed containers (including uncut steel rollers), or any hazardous materials, including, without limitation, gasoline, petroleum products, explosives, radioactive materials, hazardous wastes, hazardous or toxic substances, polychlorinated biphenyls or related or similar materials, asbestos or any material containing asbestos, or any other substance or material that may be defined or listed as a hazardous or toxic substance, or otherwise regulated by any federal, state or local law, ordinance, rule or regulation including, without limitation, the Mexican General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*), the Federal Law of Environmental Responsibility (*Ley Federal de Responsabilidad Ambiental*), Mexico’s National Waters Law (*Ley de Aguas Nacionales*), Mexico’s General Law on Prevention and Integral Waste Management (*Ley General para la Prevención y Gestión Integral de los Residuos*) and Mexican Official Standards (*Normas Oficiales Mexicanas*) NOM-001-SEMARNAT-1996, NOM-002-SEMARNAT-1996, NOM-052-SEMARNAT-2005, NOM-053-

SEMARNAT-1993, NOM-138-SEMARNAT/SS-2012, NOM-147- SEMARNAT/SSA1-2004, and NOM-010 STPS-1999, if applicable, in each case, as amended or supplemented from time to time, and any regulations adopted and publications promulgated pursuant thereto and analogous federal, state, or local statutes. Seller acknowledges that Buyer is relying on Seller's representations and warranties made in the Terms in connection with its agreement to enter into this contract. Seller agrees to indemnify, defend and save harmless Buyer, its affiliates and their respective officers, directors, employees, contractors and agents (collectively, the "Indemnified Parties") from and against any and all loss, liability, expenses, claims, demands, actions and causes of action including attorneys' fees and costs (collectively, "Losses") that arise from or in connection with the sale, transportation or use by any of the Indemnified Parties, or any of their customers, of the material furnished by Seller hereunder or from any breach or violation of any of Seller's representations or warranties made in the Terms. For purposes of clarification, Seller's indemnification obligations shall include and cover (without limitation) any Losses incurred by any of the Indemnified Parties, or any of their customers, as a result of the material furnished by Seller hereunder (i) being used by an ultimate consumer in the production of steel or any other metallic product, and (ii) causing such steel or other metallic product to be rejected or downgraded by such consumer due to unanticipated levels of copper, nickel, tin, molybdenum, chromium, lead, sulfur, or other elements. Seller shall procure and maintain, from reputable providers, product liability insurance with a sufficient amount of coverage to satisfy such requirement.

6. **ADDITIONAL SHIPPING TERMS.** (A) FOR SHIPMENTS BY RAIL: SELLER MUST FURNISH RAIL CAR NUMBERS TO BUYER UPON LOADING. ANY DEMURRAGE, SWITCHING CHARGES OR OTHER EXPENSE CAUSED BY THE FAILURE OF SELLER TO FURNISH SUCH INFORMATION UPON LOADING OR BY REASON OF CARS ARRIVING WITHOUT NOTICE IN ANY CIRCUMSTANCES SHALL BE PAID BY SELLER. IF SELLER LOADS OR UNLOADS A BUYER OWNED OR LEASED CAR (TCTX), AND THE CAR IS NOT RELEASED WITHIN TWO (2) DAYS FOLLOWING PLACEMENT FOR LOADING OR UNLOADING, A CHARGE OF FIFTY DOLLARS OF THE UNITED STATES OF AMERICA OR ITS EQUIVALENT IN MEXICAN PESOS ("**DOLLARS**") (US\$50.00) PER DAY, PER CAR WILL BE ASSESSED AGAINST SELLER. (B) FOR SHIPMENTS BY BARGE OR VESSEL: SELLER MUST PROVIDE NOTICE TO TCIMS OF APPLICABLE BARGE NUMBERS OR VESSEL NAME PRIOR TO DEPARTURE FROM LOAD PORT. ANY DEMURRAGE OR OTHER EXPENSE CAUSED BY SELLER'S FAILURE TO PROVIDE SUCH NOTICE IN ANY CIRCUMSTANCES SHALL BE PAID BY SELLER; REGARDLESS OF AND IN ADDITION TO SUCH DEMURRAGE OR OTHER EXPENSE PAYABLE BY SELLER, IF SELLER FAILS TO GIVE THE NOTICE REQUIRED HEREBY, A CHARGE OF (I) ONE HUNDRED FIFTY DOLLARS (US\$150.00) PER BARGE, PER DAY FOLLOWING DATE OF DEPARTURE FROM LOAD PORT, AND / OR (II) ONE HUNDRED FIFTY DOLLARS (US\$150.00) PER VESSEL, PER DAY FOLLOWING DATE OF DEPARTURE FROM LOAD PORT, WILL BE ASSESSED AGAINST SELLER. (C) FOR ALL SHIPMENTS: Seller must certify on the bill of lading that shipment is for recycling purposes. Except as otherwise required to meet consumer's specific delivery requirements, Seller must ship evenly throughout the month. Any fuel surcharge will be for the account of Seller. All charges by the consumer for non-notification of cars, failure to provide or delayed barge or vessel notice, or incomplete shipping information and charges related to rejection will be for Seller's account. Buyer shall have the right to set off any amount owed by Seller under this Section 6 at any time against any amount payable by Buyer to Seller under this contract or any other contract between the parties.
7. **DISCHARGE OF BUYER.** If (a) Seller (i) becomes insolvent, (ii) has a business failure, dissolves or is dissolved, (iii) enters (voluntarily or involuntarily) any bankruptcy, *concurso mercantil* or receivership proceeding, (iv) assigns assets for the benefit of its creditors, or (v) fails to maintain its account with Buyer on a current basis, (b) at any time, Buyer reasonably believes that Seller may fail to perform any of its obligations under this contract for one of the foregoing reasons, or (c) Seller has failed to substantially or timely perform its obligations under any other contract with Buyer, then Buyer may immediately cancel this contract without liability to Seller.
8. **TAXES.** The parties agree that the Seller is responsible for the payment of any sales, use, value added tax or other taxes, tariffs, or similar charges arising from the sale of material pursuant to this contract, and that any such taxes are included in the price set forth in the purchase order / confirmation. Seller will reimburse Buyer if it pays any such taxes, tariffs or other charges directly to the relevant authorities, including any interest and / or penalties thereon.
9. **AMENDMENT; NON-WAIVER.** The Terms may not be modified, altered or waived, either orally, by usage of trade, course of performance or course of dealing. Any change to, deviation from, or waiver of the Terms shall only be made pursuant to a writing signed by the party to be bound.
10. **SEVERABILITY; ASSIGNABILITY; CONFLICT.** If any term or provision of this contract is declared invalid, illegal or unenforceable in any jurisdiction, (a) the affected provision will be modified to conform to applicable law, if possible, and (b) such invalidity, illegality or unenforceability shall not affect any other term or provision of this contract or invalidate or render unenforceable such term or provision in any other jurisdiction. No assignment of this contract shall be made without prior written consent of Buyer. In the event of a conflict between the terms set forth in the purchase order / confirmation and these terms and conditions, the terms set forth in the purchase order / confirmation shall prevail.
11. **JURISDICTION.** All disputes arising directly or indirectly hereunder or in connection herewith shall be resolved in a court of competent jurisdiction sitting in Mexico City, Mexico. Seller waives the right to assert that any action in any such court is in an improper venue or should be transferred to a more convenient forum due to the location of its domicile or for any other reason. The losing party in any lawsuit shall pay its own and the prevailing party's attorney's fees, costs and expenses.
12. **APPLICABLE LAW.** All questions arising hereunder, in connection herewith, or in connection with a quotation or any other document submitted in connection therewith shall be interpreted and resolved in accordance with the Federal laws of Mexico without regard to its conflicts of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods.