

# **NEW PROCESS STEEL, L.P., AND ITS AFFILIATES AND SUBSIDIARIES (“NPS”)**

## **TERMS AND CONDITIONS OF SALE**

**1. ACCEPTANCE AND AGREEMENT.** On NPS acceptance of a Purchase Order from Buyer, issuance of a Confirmation Letter, or issuance of an invoice, these Terms and Conditions of Sale exclusively govern NPS’s sale and Buyer’s purchase sale of the materials, parts or accessories (collectively, “Materials”, unless otherwise designated in the Purchase Order, Confirmation Letter or invoice), unless otherwise agreed in a writing signed by NPS. If a Purchase Order is deemed to be an offer by Buyer, then NPS’s acceptance of such offer is expressly conditioned on Buyer’s assent to these Terms and Conditions of Sale. Any additional, different or conflicting terms that Buyer proposes in any offer, acceptance, confirmation, (including any Buyer Purchase Order or specifications) or otherwise (a) are hereby rejected by NPS and (b) will not be binding on NPS in any way.

**2. PRICE.** The purchase price(s) for the Materials will be stated on NPS’s invoice(s) to Buyer, which will be as stated on NPS’s Confirmation Letter, unless otherwise modified as provided in this Section 2. Buyer agrees to pay for the Materials at the price(s) and subject to the discounts, if any, listed on NPS’s invoice. Unless otherwise agreed in a writing signed by NPS, NPS is not obligated to notify Buyer in advance of any price increases or decreases. If, as a result of an Excusable Event, the cost of Materials projected at the time of NPS’s acceptance of Buyer’s Purchase Order increases, then NPS may: (a) increase the purchase prices and/or adjust the completion date and/or (b) terminate its agreement with Buyer. NPS will not be obligated to seek an alternative source or supply of Materials if an Excusable Event occurs.

**“Excusable Event”** means any (i) delay or interference with, or suspension or stoppage of NPS’s obligations under its agreement with Buyer caused by the acts (including any instructions) or omissions of Buyer or Buyer’s representative; (ii) act or omission of Buyer or Buyer’s representative in material violation of its agreement with NPS; (iii) A Force Majeure Event (as defined in Section 9 of these Terms and Conditions); (iv) a change in law; or (v) any increase in duties (including anti-dumping duties, countervailing duties, safeguard duties, or other duties allowed under U.S. law) above the duties on either components or Materials that were in the place at the time NPS issued a price quotation to the Buyer or the imposition of any import restriction, such as an import quota, on any components used to produce Materials or on any Materials that was not in place at the time that NPS issued a price quotation to the Buyer. Unless otherwise noted on Buyer’s Purchase Order and NPS’s Confirmation Letter or invoice, all prices are exclusive of insurance, freight, taxes, duties, and shipping or other transportation or transportation -related charges. “NPS reserves the right to revise pricing without advanced notice should rules, regulations, formally issued governmental guidance and/or laws regarding CO2 emissions (or other carbon footprint measurements) be revised in such a manner as to affect NPS cost basis.”

**3. PAYMENT.** NPS will issue invoices as soon as practicable after each shipment of materials or, if otherwise agreed between NPS and Buyer, within a specified number of days prior to shipment. Buyer must make payments for Materials and any other money due NPS to NPS at its principal office in Houston, Harris County, Texas. All invoices will be payable thirty (30) calendar days net, unless otherwise agreed in a writing signed by NPS. If Buyer does not make payment in accordance with the terms of this Paragraph and/or the applicable invoice(s), any balance remaining

unpaid will incur a finance charge in the amount of one and one-half percent (1½ %) of such unpaid balance per month, commencing thirty-one (31) calendar days after the date of shipment of the Materials covered under each unpaid invoice, added to the balance due and payable to NPS for the Materials. Additionally, if Buyer fails or refuses to make payment in accordance with the terms of this Paragraph and/or the applicable invoice(s), NPS reserves the right to delay or discontinue further shipments of materials to Buyer until payment is made or NPS receives from Buyer assurances adequate to NPS of performance, and/or to terminate its agreement with Buyer.

**4. TAXES.** The price(s) of the Materials are exclusive of all city, state and federal sales, use, excise, value added, and similar taxes levied on, or measured by, the sales price, or duties, fees, charges or expenses payable with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the Materials. NPS will separately list on its invoice any such taxes payable by Buyer, unless Buyer provides NPS with a tax exemption certificate satisfactory to the applicable taxing authority. Buyer will be also responsible to pay any duties and fees attributable to the importation, storage or transportation of the Materials.

**5. SECURITY INTEREST.** Buyer hereby grants to NPS a security interest in all Materials described in Buyer's Purchase Order or NPS's Confirmation of Purchase Order and being purchased by Buyer. Such security interest is to secure payment of the full purchase price and all other charges Buyer owes to NPS and is a "purchase money security interest" under the Uniform Commercial Code. These Terms and Conditions of Sale constitute a contract and security agreement, and Buyer hereby authorizes and appoints NPS as its attorney-in-fact to sign on Buyer's behalf appropriate financing statements and to file those financing statements with the appropriate agency to perfect the security interest granted herein.

**6. BUYER'S CREDIT.** All orders for Materials are subject to credit approval by NPS Buyer must provide NPS with such financial and business information as NPS requests to establish and/or monitor Buyer's creditworthiness. If Buyer's credit or financial responsibility becomes impaired or otherwise unsatisfactory to NPS, or Buyer fails to keep or perform any terms or conditions of this or any other contract with NPS then, NPS may, at its option, require Buyer's advance cash payment for the Materials, specify other credit terms, or demand satisfactory security. If Buyer fails to make such advance payment, refuses to agree to other credit terms NPS specifies or fails to provide security on demand therefor, then NPS may withhold or cancel further shipment of Materials to Buyer, and/or terminate its agreement with Buyer.

**7. INSPECTION.** Buyer must inspect all Materials for their substantial conformity to the terms of its Purchase Order after the arrival of the Materials at Buyer's facility. Unless Buyer provides NPS with written notice of any claim for shortage or nonconformity in the Materials ten (10) calendar days after the Materials arrive, the Materials will be deemed finally inspected, checked and accepted by Buyer, and Buyer's failure to provide such notice will constitute a waiver of any such claim.

**8. SHIPMENT, PACKAGING AND DELIVERY.** Shipments and delivery of Materials to Buyer are subject to NPS's production schedule and its ability to obtain raw materials. NPS specified shipping dates are approximate only. NPS may, at its option, ship the Materials to Buyer in lots of any size that NPS, in its sole judgment, believes are reasonable. If shipment is delayed at Buyer's request, NPS may invoice Buyer immediately for any Materials held at NPS's facility and may include in such invoice a reasonable charge for any storage or other costs NPS incurs as a result of such requested delay. Buyer assumes any damages to the Materials caused by deterioration resulting from Buyer's delay. Unless otherwise agreed in Buyer's Purchase Order, all domestic delivery of Materials will be, via carrier of NPS's choosing, and all international delivery of Materials will be F.O.B NPS's plant, with

Buyer responsible to pay all costs and expenses of transportation. Domestic shipments sold F.O.B. customer's plant will be shipped via a Carrier at NPS's choosing. Buyer bears risk of loss or damage to the Materials and is responsible to file claims with the carrier. Unless otherwise agreed to in a writing signed by NPS, all shipments will be packaged as slit-pallets, with banding and corner protection; sheet-skid/runner with banding and corner protection. Stamped products will be packaged in cardboard with disposable gaylords. Expanded Metal Products will be packaged stretch wrapped on wooden skids. Unless otherwise agreed to, all shipments will be made on tarped, flat-bed truck. Unless otherwise agreed to, all shipments will be forty-four thousand (44,000) pounds minimum per shipment, bundled in a minimum of "product of a coil" quantities.

**9. FORCE MAJEURE.** NPS will not be liable to Buyer or to third parties who purchase materials from Buyer for any direct or consequential partial or total loss or damage occasioned by its failure to make delivery or for any delay in making delivery, when such failure or delay results from "**Force Majeure**" (as defined in this Section 9) causes, events or circumstances. "Force Majeure" means any cause, event or circumstance, whether of the kind described in this Section 9 or otherwise, that is beyond NPS's reasonable control, whether or not foreseeable, including, but not limited to (i) fire, flood, accidents, lightning, storm, hurricane, tornado, landslide, natural disasters or other acts of God or fortuitous cause; (ii) acts of war (whether declared or undeclared), invasion, armed conflict, embargo, revolution, terrorism or threat thereof, riot, civil war, blockade, insurrection, civil disobedience, or civil disturbance; (iii) strike, lockout, labor dispute or difficulty (iv) prohibition of commerce, imposition of additional tariffs or duties and restrictive export or import duties, including countervailing duties; (v) steel mill closures; (vi) expropriation, confiscation or nationalization, restrictions of production or rationing or allocation of same, whether imposed by law, decree, or regulation by request or instructions of any governmental authority or organization controlled by any government, or any person purporting to represent a governmental authority, (vi) truck or

car shortage or other transportation delay or difficulty or inability to obtain or scarcity of labor or any materials. NPS will not be obligated to seek an alternative source or supply of Materials if a Force Majeure cause, event or circumstance occurs. If any such cause, event or occurrence precludes timely shipment: (i) NPS reserves the right to apportion available supplies of materials among its Buyers, including Buyer, in any manner that NPS, in its sole judgment, deems fair and reasonable. If any such cause, event, or circumstance precludes delivery or timely shipment, the delivery date(s) will be postponed for a period of time equal to the time required to remedy, correct or alleviate such cause, event or circumstance. However, if a Force Majeure Event continues for more than 60 (Sixty) calendar days, NPS will have the right to terminate this agreement on 30 (Thirty) calendar days' written notice to Buyer.

**10. WARRANTY AND WARRANTY DISCLAIMER - INTERMEDIATE PURCHASERS.** NPS warrants to any Buyer only that the quantities stated were weighed and measured in accordance with NPS standard weights and measures, +/- one percent (1%) actual measured weight, and such quantities will be in substantial conformance with Materials specified by Buyer and conditions which like class of manufacturing are found to be within the industry. **THIS WARRANTY SUPERSEDES AND IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, BOTH OF WHICH ARE HEREBY DISCLAIMED.** As the sole and exclusive obligation of NPS under its warranty, NPS will, at its option, repair or replace or, without replacement, render a refund of invoice value for any Materials which, if properly handled and stored, prove defective or otherwise fail to conform to the warranty stated above and/or these Terms and Conditions of Sale. NPS will not be liable for, and Buyer hereby waives, any and all other claims for damages, whether direct or indirect, incidental or consequential, and whether based on NPS's negligence,

breach of warranty, contract or strict liability in tort, including, but not limited to, claims for property damage, personal injury, delay or loss of business or profit. NPS, in its sole discretion, may request and require a binding arbitration enforcement proceeding regarding the Buyer's claim and will also be entitled to designate the arbitrator and the time and place of such proceeding. Buyer or any intermediate purchaser or distributor must file any litigation proceedings with respect to defective or nonconforming Materials, within one (1) year of shipment of the Materials, or will be precluded by limitations. Buyer or any intermediate purchaser or distributor will permit NPS access to and a reasonable opportunity to inspect all allegedly defective Materials. If NPS elects to provide replacement Materials for any Materials found to be defective or nonconforming, NPS will ship them F.O.B. the original destination point.

**11. WARRANTY AND WARRANTY DISCLAIMER - RESALE.** If Buyer resells any of the Materials, Buyer must include the following language in a conspicuous place in the document or agreement covering such resale:

The warranties of the manufacturer and seller of the materials sold hereunder are limited to the manufacturer's standard, published warranties in effect at the time of delivery of the materials, which warranties are limited and obligate the manufacturer and/or seller only to repair or replace defective materials or to refund a portion of their purchase price, at manufacturer's or seller's option, within the time limits specified therein. THOSE WARRANTIES SUPERSEDE AND ARE EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, BOTH OF WHICH ARE HEREBY DISCLAIMED. No representation or warranty, express or implied, made by any sales representative, agent or distributor that is not specifically set forth in the manufacturer's standard,

published warranties will be binding on the manufacturer or seller.

**12. INDEMNITY.** To the extent that any Buyer who is an intermediate purchaser or distributor makes or extends to any ultimate purchaser or consumer any warranty or representation with respect to the Materials except as stated in NPS's standard, published warranties, or fails to include in any agreement covering the resale of the Materials the statement specified in Section 11 above, Buyer must indemnify and hold harmless NPS from and against any and all loss, cost, claim, damage, judgment or expense (including all defense costs, expenses and attorney's fees) arising or to arise as a result thereof, as they are incurred.

**13. CANCELLATION.** Once NPS has accepted Buyer's Purchase Order, Buyer may not cancel such Purchase Order without NPS prior written approval. Prior to shipment of any Materials, Buyer may cancel a Purchase Order only on written notice to NPS and payment of NPS's cancellation charges which will include, but are not limited to, reasonable profits, a reasonable restocking charge and all costs and expenses NPS incurs NPS to prepare the Materials for and arrange shipping. Buyer may not cancel an order after the materials are loaded for shipment from any NPS plant.

**14. APPLICABLE LAW, VENUE, ATTORNEY'S FEES AND EXPENSES.** The rights, duties and obligations of the parties under these Terms and Conditions of Sale are governed and construed in accordance with the laws of the State of Texas and all disputes hereunder are subject to agreed venue in Harris County, Texas. If there is any dispute between Buyer and NPS, the prevailing party will be entitled, in addition to all other damages at law or in equity, to recover reasonable and necessary attorney's fees, costs of court and all expenses, of whatever nature, incurred by the prevailing party to the dispute.

**15. FORECAST AND COMPLIANCE.** If NPS has contracted with Buyer to be a "just-in-time" supplier, Buyer agrees to, at least once every thirty (30) days, prepare and deliver to NPS, a Web-based transmission forecast of Materials to be purchased from NPS within the next one hundred eighty (180) days. Each forecast will be a



rolling forecast for the successive one hundred eighty (180) day -period. If Buyer deviates from any forecast by +/- ten percent (10%) during any rolling one hundred eighty (180) day -cycle, Buyer will pay to NPS any added costs due to Buyer's increased or decreased usage. Buyer is responsible to pay for all inventory of obsolete Materials that NPS has acquired or fabricated for Buyer based on Buyer's forecasts. NPS may invoice Buyer for any Materials that NPS has acquired or fabricated for Buyer based on Buyer's forecasts that have not been fully released or utilized within any one hundred eighty (180) day -period. At the termination of any contract period, if NPS has been replaced, in part or in whole, as the supplier of Materials for which NPS is the "just-in-time" supplier, Buyer will be responsible to pay for any Materials NPS elects to invoice to Buyer, within ninety (90) days from the termination of the contract or relationship regarding those Materials.

**16. RETURN POLICY.** To qualify for the right to return Materials to NPS, Buyer must, within ten (10) calendar days of receipt of Materials from NPS, notify NPS, in writing or by electronic communication, including applicable tag numbers, weight and description of possible defect. **Buyer will waive any transit claim if visible damage or moisture in transit is not noted on the Bill of Lading on Buyer's receipt.** All physical defects must be supported by samples, photographs or other physical evidence. Late notice will be deemed harmful to NPS for rust claims, if more than thirty (30) calendar days from receipt of Materials and for any claim more than one hundred eighty (180) calendar days from receipt of Materials. For any authorized return of Materials, NPS, will designate the manner and means of the return, including the NPS location or designated location for the return. No returns not expressly authorized in a writing signed by NPS will be accepted.

**17. ANTICORRUPTION.** In relation to any transaction involving Materials, Buyer warrants that it will not seek to obtain or retain business or gain any other advantage by making or offering to make any payment of money or by providing or offering to provide

anything of value, directly or indirectly, to: (a) any governmental official, or (b) any nongovernmental person, in either case with the intent that such official or person will perform their responsibilities improperly. Buyer warrants that it will comply with the anticorruption laws and antibribery laws of any country having jurisdiction over Buyer or the transaction involving the Materials and will in all cases comply with the U.S. Foreign Corrupt Practices Act.