

GENERAL TERMS AND CONDITIONS OF SALE

1. **Definitions.** As used in these Standard Terms and Conditions of Sale (the "Terms and Conditions"): "Buyer" means the purchaser of any of the Goods and/or Services (as defined below) and all others liable for their purchase price, and their agents, successors and assigns; "Contract" means these Terms and Conditions and any additional provisions relating to product price, quantity, specifications, delivery schedules and locations stated on the face hereof or as elsewhere agreed to in writing by the parties; "Goods" means the products sold by Seller and identified in the Contract or the Quotation; and "Quotation" means Seller's standard quotation form, which includes these Terms and Conditions, describing or referencing any of the Goods and/or Services; "Seller" means Nissha Metallizing Solutions Ltd. or any designated wholly-owned subsidiary, division or affiliate thereof; "Services" means labor or services sold by Seller and identified in this Contract or Quotation.
2. **Acceptance.** The sale of Goods and Services by Seller to the Buyer is subject to Buyer's acceptance of these Terms and Conditions. These are the only terms and conditions applicable to the sale of Goods and Services, except for additional terms contained in the Contract. Any additional or different terms or modifications to these terms proposed by Buyer are expressly rejected by Seller and are not part of the Contract. Buyer unequivocally consents to these Terms and Conditions by any of the following: (i) issuing a purchase order based upon, referring to, or arising out of Seller's Quotation; (ii) Buyer's written acknowledgement; (iii) instructing or requesting Seller whether orally or in writing to begin work on or to ship any of the Goods after receipt of this Contract or the Quotation; or (iv) accepting or paying for all or any part of the Goods and/or Services. All orders and shipments are subject to acceptance by Seller and approval of Seller's Credit Department.
3. **Shipment Terms.** All sales of Goods are F.O.B. Seller's designated facility, unless otherwise agreed in writing by Seller. Seller reserves the right to produce and ship all or any part of the Goods from any of its plants or facilities. Title to Goods, as well as the risk of loss, shall pass to Buyer upon delivery to the carrier at Seller's designated facility. All shipping and insurance expenses are assumed by the Buyer. All export and import duties, fees, permits, licenses, etc. for Goods delivered outside the United States will be the responsibility of Buyer. Seller shall not be liable for Goods lost or damaged in transit. Buyer shall present all claims for loss or damage directly to the carrier. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless Buyer shall have entered full details thereof on its receipt to the carrier. Railway or carrier weights at point of shipment shall govern in the event of any disagreement between Seller and Buyer regarding same. Due to the difficulty of checking carrier scales, claimed shortages of less than three percent (3%) of the net weight will not be allowed. Neither Buyer nor any consignee of the Goods shall have the right to divert or reassign any shipment to any destination other than as specified in the bill of lading without permission of Seller. Unless otherwise agreed, Seller reserves the right to select the mode of transportation and routing and to ship loads of any quantity without charge to Seller.
4. **Prices.** The purchase price shall be as stated on the face of the accepted purchase order, or as otherwise confirmed in writing by Seller. All prices are subject to change without notice. Seller reserves the right to add a surcharge to any stated price at any time. A surcharge may be imposed in the event of increased costs beyond Seller's reasonable control, such as, increased energy, raw material, transportation, regulatory or similar costs. Except where prohibited by law, all applicable sales, excise, use or similar taxes or charges for the sale of Goods will be in addition to the stated price. Buyer shall either (1) reimburse Seller for all such taxes or (2) deliver to Seller proper exemption certificates) in lieu of such reimbursement.
5. **Multiple Release Orders.** The following information must be included on multiple release orders: 1) purchase order number, total quantity and price; 2) requested release quantities and corresponding delivery dates. Seller reserves the right to assess reasonable additional monthly storage charges, or sell the Goods without notice or liability to Buyer, for any remaining Goods not released after three (3) months from initial shipment date.
6. **Adequate Assurances.** If Buyer fails to fulfill the terms of payment or to comply with any other provision of the Contract, Seller may (a) defer performance under this and any other orders of Buyer (b) revise its terms of payment and/or credit (c) cancel the unshipped balance, or (d) without waiving any other rights it may have, terminate the Contract. Seller reserves the right before making any shipments to require from Buyer payment in cash or satisfactory security for performance of Buyer's obligations if, in Seller's opinion, the credit or financial condition of Buyer is, or is about to become impaired. Buyer shall provide Seller with immediate written notice in the event of any material change in the solvency of Buyer, or upon the creation or filing of any plan of reorganization, merger, or the filing of any voluntary or involuntary bankruptcy petition.
7. **Payment.** Payment terms are as stated on the face of the accepted purchase order, or as otherwise confirmed in writing by Seller. All amounts shall be paid in US\$. Overdue accounts may be subject to interest on the unpaid invoices, or any portion thereof, at the rate of one and one half (1.5%) percent per month on the unpaid balances (but in no event greater than the maximum rate permitted by law). No discounts, anticipation or allowances are permitted. If Buyer resells the Goods or products manufactured using the Goods, Buyer shall, upon Seller's request, place a portion of the proceeds of such sales equal to the invoiced price of the Goods into a separate, identifiable bank account naming Seller as the beneficial owner thereof and shall pay such amount to Seller upon request. In the event Buyer fails to make payment of the purchase price, including any surcharges or freight charges (if applicable) when due, Seller shall have the right to employ attorneys to collect the balance due and Buyer agrees to pay all collection costs incurred by Seller, including Seller's legal fees. Seller reserves the right to divide Buyer's order into separate shipments and invoice such shipments separately, in which case each shipment shall be deemed a separate Contract and payment thereof due in accordance with the terms hereof.
8. **Rejections and Returns.** Buyer will be deemed to have inspected and accepted all delivered Goods unless written notice of rejection, specifying the basis therefore in reasonable detail, is provided to Seller within thirty (30) days after delivery. Buyer may not return, repair or discard Goods without Seller's prior written approval.
9. **Delivery.** Buyer acknowledges and agrees that delivery dates are approximate and that Seller shall not be responsible for non-shipment of Goods, or delays in delivery due to causes beyond Seller's reasonable control. Notwithstanding the foregoing, Seller has a history of being a reliable and on-time supplier and we will use reasonable efforts to ensure delivery by the target delivery date, and will provide written notice if we anticipate not being able to deliver by the targeted date(s).
10. **Modification.** Buyer may not cancel, modify or amend any terms of this Contract or hold up releases after the Goods ordered are in process, except with Seller's written consent and subject to conditions then to be agreed upon, including timely receipt of all change orders and reimbursement of Seller for all added expense. Seller reserves the right at any time and without notice, to discontinue the manufacture of any of the Goods, to make changes in design and to make improvements to the Goods without incurring any obligation to correct, modify, adjust or improve the Goods previously manufactured and sold by Seller.
11. **Warranty.** Claims for Damaged/Non-Conforming Goods; Damages. Seller warrants that for a period of six months (6) from the date of delivery, its products will be free from latent defects in materials and workmanship. SELLER SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. Without limiting the generality of the foregoing, Seller does not guarantee results from use of the Goods. Seller makes no guarantees or warranties under any local, state or federal law or ordinance. Any description of the Goods contained in this Contract or otherwise is for the sole purpose of identifying the Goods, is not part of the basis of the bargain, and does not constitute a warranty that the Goods shall conform to that description. The use of any sample or model. In connection with this Contract is for illustrative purposes only, is not part of the basis of the bargain, and not to be construed as warranty that the Goods will conform to the sample or model. No affirmation of fact or promise made by the Seller, whether or not in this Contract, shall constitute warranty that the Goods will conform to the affirmation or promise. Seller offers no warranties against patent, trademark or copyright infringement. Claims for damaged or non-conforming Goods must be made in writing, within one hundred eighty (180) days of delivery of the Goods. Failure by Buyer to provide written notice within the one hundred eighty (180) day period shall constitute an absolute and unconditional waiver of Buyer's claim. Seller shall have a reasonable opportunity to investigate any claim for damaged or non-conforming Goods. Seller shall determine what remedial measures shall be taken, if any, to mitigate possible loss or damage to either party. Seller shall in no event be liable for labor charges or consequential damages arising from Buyer's purchase or use of damaged or non-conforming Goods or for the costs to move or store such Goods. Buyer's remedies with respect to any damaged or non-conforming Goods shall be limited exclusively, at Seller's option, to the right to replacement of the damaged or non-conforming Goods or to repayment of the purchase price.
12. **Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT OR ANY OTHER THEORY OF LIABILITY. Under no circumstance shall Seller's liability or Buyer's remedy for damages against Seller exceed the cost to Buyer of the Goods. In the event that Seller's warranty or any other obligation of Seller applicable to the Goods fails of its essential purpose, Buyer's exclusive remedy shall be the lesser of (i) repair or return of, or credit for so much of the purchase price as is applicable to the Goods which are non-conforming or defective, or (ii) Buyer's actual direct damages applicable to the defective or non-conforming goods, but not including incidental or consequential damages. No claim or action arising out of this Contract, Buyer's order or other document pertaining to the Goods, whether in contract, tort or otherwise, may be brought by Buyer more than six (6) months after the date of shipment of the Goods.
13. **Technical Advice.** Seller may, upon Buyer's request, furnish technical advice with reference to the Goods sold hereunder. Seller shall not be responsible for the results of any technical advice, including, but not limited to, advice rendered in connection with the design, installation or use of the Goods sold hereunder.

14. **Patents and Trademarks.** Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, expenses (including its attorney's fees), costs, losses, judgments, and liabilities arising out of any claim by a third party that the manufacture or sale of Goods hereunder to Buyer's specifications constituted, infringement of any patent, copyright or trademark.
15. **Security Interest.** Seller reserves a purchase money security interest in the Goods, all additions and accessions thereto, and all replacements, products and proceeds thereof to secure payment of the purchase price. Such security interest will be retained until the purchase price is paid in full. Buyer authorizes Seller to file such financing statements, addenda or continuation statements pursuant to the Uniform Commercial Code or other applicable law as Seller deems necessary or desirable to evidence or perfect Seller's security interest in the Goods.
16. **Invalid Term.** The invalidity of any term of this Contract shall not affect any other of its remaining terms.
17. **Assignment.** Buyer may not assign its rights under this Contract without the written consent of Seller and any such purported assignment shall, at the election of Seller, be of no effect.
18. **Ownership of Proprietary Materials.** Seller shall retain all intellectual property rights in all Goods, tooling and associated materials, furnished by Seller in connection with the Contract, including, without limitation, patents, utility models, design rights (and any pending applications), trademarks, copyrights, technical, business, economic or know-how information, trade secrets, confidential proprietary information, inventions, data, formulae, material compositions, drawings, specifications, and any night related thereto (whether or not patentable) that is not generally available to the public ("Proprietary Materials"). No Proprietary Materials created by Seller in connection with the Contract shall be considered "works made for hire" as that term is used in connection with the US Copyright Act. Buyer agrees not to reverse engineer, disassemble, decompile or modify any Good s.
19. **Confidentiality.** In connection with the Contract, Buyer may have access to certain of Seller's confidential information (Seller's Confidential Information"). Buyer shall use Seller's Confidential Information only for the purposes contemplated under this Contract and shall not disclose it to third parties, save for those of Buyer's employees and agents who need to know such information in connection with the Contract and who are bound by the terms of this paragraph. Buyer shall maintain the confidentiality of Seller's Confidential Information in the same manner, but in no event less than the manner, in which it protects its own confidential information. Upon termination of the Contract, Buyer shall return or destroy Seller's Confidential Information, at Seller's election. Buyer's confidentiality obligations shall survive termination of the Contract for so long as Seller's Confidential Information remains confidential. Seller shall be entitled to injunctive relief, from any court of competent jurisdiction to enjoin any violation of the foregoing covenants, without the necessity of proving immediate irreparable harm or an inadequate remedy at law.
20. **Termination by Seller.** In addition to any other rights of Seller to terminate or suspend performance under the Contract, Seller may, upon written notice to Buyer, immediately terminate all or any part of the Contract or suspend performance under the Contract, without any liability to Buyer, (a) if Buyer (i) repudiates, breaches, or threatens to breach any of the terms of the Contract, or (ii) fails to accept or threatens not to accept Goods in accordance with the Contract, or (b) upon the occurrence or threat of insolvency or bankruptcy of Buyer. Upon termination of the Contract by Seller: (A) Seller shall be relieved of any further obligation to Buyer; (B) Buyer shall be liable to Seller for the immediate payment of amounts billed to date by Seller to Buyer; (C) Buyer shall purchase and pay Seller immediately for all unique raw materials, work in process and finished goods under the Contract; and (D) Buyer shall immediately reimburse Seller for all preparation and other expenses incurred by Seller in connection with the Contract and for all other losses or costs arising from termination.
21. **Termination by Buyer.** Accepted orders cannot be cancelled, rescheduled or modified without Seller's written consent. Any request by Buyer to cancel this Contract in whole or in part or to reschedule all or any part of the order must be by notice in writing to Seller. Any such cancellation or rescheduling shall be at Seller's option and subject to changes determined by Seller.
22. **Setoff** Seller will administer on a Net Settlement Basis all of the accounts of the Buyer or its Related Companies arising from the sales order acknowledgements and other agreements the Buyer or its Related Companies have with Seller or its Related Companies. Net Settlement Basis means that, unless prohibited by law, the Seller may without notice set off and recoup against the Seller's accounts payable to the Buyer any amounts for which the Seller determines in good faith the Buyer or its Related Companies are liable to it or its Related Companies under any sales order acknowledgement or other agreements with the Buyer or its Related Companies. A Related Company is any parent company of the Seller or Buyer, as appropriate, and any subsidiary or affiliate in which any of them owns or controls at least twenty-five (25%) percent of the voting stock, partnership interest or other ownership interest. A set off and recoupment described above may include the actual professional fees and other costs of enforcement incurred by the Seller or Related Company. Buyer shall have no right of setoff.
23. **Accord and Satisfaction.** Checks or payments, whether full or partial, received from or for the account(s) of Buyer, regardless of writings, legends, or notations upon such checks or payments, or regardless of other writings, statements, or documents, shall be applied by Seller against any amount owing by Buyer with full reservation of all Seller's rights, without an accord and satisfaction of Buyer's liability.
24. **Collection Agency Fees & Commissions.** The Buyer is liable for collection agency fees and commissions incurred by the Seller in the event the Buyer fails to pay for Goods and/or Services delivered within the agreed upon payment terms.
25. **Disputes and Remedies.** The parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Contract. Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the subject of the dispute and the relief requested. The recipient of such notice will respond in writing within five (5) days, with a statement of its position on and recommended solution to the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority shall meet or confer at a mutually agreeable time and place within ten days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. Either party may tender a dispute to a court of competent jurisdiction if negotiations fail to resolve the dispute. The prevailing party shall be entitled to all remedies available at law or in equity, including recovery of attorney's fees and costs.
26. **Force Majeure.** Seller shall not be liable for failure or delay in delivery or performance due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of Buyer, acts of terrorism, wars, riots, strikes or other labor shortages or disturbances, fire, flood or other casualty, governmental regulation or requirements, inability to obtain or material increase in the cost of raw materials, supplies, fuel, power or other utilities, transportation facilities or materials, breakdown of equipment, mill conditions or any other causes beyond Seller's reasonable control whether of similar or dissimilar nature to those enumerated. In no event shall Seller be liable for any consequential damages, claims for labor or any similar damages resulting from failure or delay in delivery. Under any circumstance covered by this paragraph, Seller shall have the right to apportion its production and/or inventory among its customers, in its sole discretion, in such manner as it may consider reasonable.
27. **Contract Work.** Buyer and Seller are independent contractors and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.
28. **Conditions Not Waived.** Seller's delay or failure to enforce or declare a default or breach with respect to any particular term or condition of this Contract shall not constitute a waiver of Seller's right to enforce or be protected by any other term or condition or, on a subsequent occasion, that particular term or condition.
29. **Entire Agreement.** No terms or conditions, other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to modify these Terms and Conditions, whether contained in Buyer's purchase or shipment release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by Seller's authorized representative. Any and all prior proposals, negotiations, and representations regarding the subject matter set forth in the Contract, are merged herein.
30. **Governing Law and Venue.** The Contract shall be construed in accordance with and governed by the internal law of the state in which Seller's office issuing this Contract is located, excluding its conflicts of law principles. Venue for any action arising hereunder shall be proper, and each party hereby submits to the jurisdiction of the relevant State and federal courts located in the state in which Seller's office issuing this Contract is located.
31. **Calibration.** Unless otherwise specified by the customer in the order, calibration is done in three (3), six (6), twelve (12) month intervals depending on the frequency. Tools and instruments should be inspected to manufacturer's specifications and must be traceable to NIST or International standards.