

ProTrade Steel Company, Ltd. Terms and Conditions of Sale

Last modified: February 11, 2022

- 1. Terms and Conditions; Parties; Order.** Every Sales Contract written, faxed, or electronically transmitted by ProTrade Steel Company, Ltd. ("ProTrade") is subject to all terms and conditions contained in these Terms and Conditions of Sale ("Terms and Conditions"). These Terms and Conditions and the terms and conditions stated in the ProTrade Sales Contract that references and incorporates them ("the Contract") constitute the entire agreement between the parties with respect to the subject matter, and supersede all prior negotiations, representations or agreements, written or oral, and may not be supplemented by any course of dealing, course of performance, or trade usage, unless otherwise provided herein. These Terms and Conditions and the Contract are collectively referred to herein as "this Contract." Any conflict between these Terms and Conditions and those in the Contract will be resolved in the following order of priority: Contract; Terms and Conditions.
- 2. Acceptance.** Receipt of the Contract by Buyer or Buyer's acceptance of delivery of any material ("Material") specified in the Contract shall be deemed to be an acceptance by Buyer of the terms and conditions of this Contract regardless of whether the Buyer has acknowledged the Contract. Receipt by ProTrade of any purchase order, contract or similar document from Buyer or ProTrade's shipment of Material to Buyer does not constitute an acceptance by ProTrade of any term or condition of such purchase order or contract or any proposed terms and conditions. Any conditional, additional or inconsistent terms or conditions are not binding on ProTrade unless agreed to in writing by ProTrade. All purchase orders or contracts are subject to express acceptance by ProTrade. No notice of cancellation or termination shall relieve Buyer from any obligations created by this Contract, without the prior written consent of ProTrade, which consent may be withheld in ProTrade's sole and absolute discretion.
- 3. Warranties, Representations, and Covenants.** Material specified in the Contract is sold for the sole purpose of remelting or recycling, and ProTrade warrants the Material will conform to the description of the Material on the face of the Contract with variations in size, composition, and quality consistent with norms in the trade. ProTrade is not the producer of the Material sold under this Contract, and ProTrade has not made any independent chemical or physical analysis or any other test of the Material specified in the Contract. **SUBJECT TO THE FOREGOING, ALL MATERIAL BEING SOLD UNDER THIS CONTRACT IS BEING SOLD "AS IS." ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY TYPE AND KIND, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED. IN NO EVENT WILL PROTRADE'S LIABILITY ARISING IN CONNECTION WITH THE MATERIALS OR ORDER (REGARDLESS OF CAUSE AND REGARDLESS OF THE THEORY OF LIABILITY ASSERTED BY BUYER, WHETHER CONTRACT, TORT OR OTHERWISE) EXCEED THE PURCHASE PRICE FOR THE MATERIALS.**
- 4. Inspection.** Buyer will inspect each shipment of Material within one (1) business day of arrival at destination and immediately notify ProTrade of any nonconforming Material for which Buyer rejects the shipment in part or in whole. If Buyer fails to give ProTrade such notice, all Material contained in any such shipment will be deemed to conform to the Contract, and Buyer will be deemed to have accepted the Material upon unloading and release of the transporting vehicle.
- 5. Export Sales Claims.** Notwithstanding the foregoing, if Buyer claims that Material shipped for delivery outside of the United States of America is nonconforming, such claim must be submitted to ProTrade in full with all required documentation within 75 days after the shipment date. Required documentation includes the following: booking number(s), container number(s), itemization of claim, calculation of claim amount and photographs of (i) the outside container number(s), (ii) the material in the container(s), (iii) the inside container(s) number, (iv) the material being removed from the container(s); (v) the weight of the material; and (vi) the issue upon which the claim is based. Claims based on weight shortage will be negotiated at the sole discretion of ProTrade. In the event of a weight discrepancy at the point of destination, shipped weight(s) shall govern. Under no circumstances will any claims be considered, negotiated or paid if they are received by ProTrade after that 75-day period.
- 6. Price Changes.** If the price stated in the Contract is based on market pricing as published in trade publications such as "Scrap Price Bulletin" or "American Metal Market" then ProTrade reserves the right to adjust its pricing formula in the event that such publication makes it known that they have reassessed or changed their market appraisals independent of the market move for that month. Such non-market move driven changes are typically clearly marked by the publication.
- 7. Payment; Invoices.** Buyer will make payment to ProTrade in the manner and strictly in accordance with the payment terms set forth on the face of the Contract. Buyer may not withhold payment due ProTrade on the Contract, or on any future delivery by or contract with ProTrade, under any circumstances or for any reason, including, without limitation, the assertion of a claim for delivery of nonconforming material. Payment to ProTrade in full and in strict accordance with the terms of the Contract is required and payment shall not be withheld, in whole or in part, without ProTrade's prior

written approval. If the Contract allows shipment of Material specified in the Contract without prior payment, such shipment is subject to approval of ProTrade's Credit Department. In such a case, ProTrade, in its sole discretion, may at any time decline to make shipment ("Credit Hold") prior to receipt of payment or adequate assurances of payment. In the event of any Credit Hold, the time period specified in this Contract for shipment shall be extended for a period equal to the time lost because of the Credit Hold.

8. **Buyer Representations and Warranties.** Buyer hereby represents and warrants to ProTrade that Buyer is solvent as that term is defined in the Uniform Commercial Code ("UCC") and has the unrestricted ability to pay its debts in the ordinary course of business as and when such debts are due and payable. Buyer also acknowledges and agrees that each purchase order or request from Buyer to ProTrade shall constitute a written reaffirmation of Buyer's representation of solvency as of the date of Buyer's request, which representation shall be deemed to grant to ProTrade the maximum right of reclamation available at law or in equity under either under the UCC or any other applicable state law, or in any bankruptcy or insolvency proceeding.
9. **Title and Risk of Loss.** Risk of loss of the Material passes to Buyer at the F.O.B. point specified in the Contract.
10. **Security Interest.** ProTrade shall have, and Buyer hereby grants to ProTrade, a security interest in all of the Material, and in any proceeds thereof, to secure payment of the Contract price of the Material, and ProTrade shall have all of the rights and remedies of a secured party under the UCC in force in the jurisdiction where ProTrade seeks to enforce any of such rights or remedies. If requested by ProTrade, Buyer shall sign and deliver to ProTrade such documents, in a form acceptable to ProTrade, as ProTrade may require in order to confirm or perfect its security interest in the Material and proceeds thereof.
11. **Delay or Failure to Perform.** ProTrade shall not be liable to Buyer for any failure to perform, failure to deliver, or for any delay in delivery due to an Act of God, any act, omission or failure of Buyer, or any actions, events, conditions, inactions or any other cause beyond ProTrade's or its suppliers' reasonable control. In the event of any such delay, the date for performance or delivery shall be extended for a period equal to the time lost by reason of the delay.
12. **Termination and Cancellation.** If Buyer breaches or repudiates any provision of or fails to comply with this Contract, ProTrade may at its option, (i) cancel this Contract, (ii) resell the Material in the open market after due notice and within a commercially reasonable time and recover from Buyer the difference between the market price of the Material at the time of resale and the Contract price, or (iii) obtain any other remedy or relief provided by law including, but not limited to, the right to a setoff against any amount Buyer is due from ProTrade or its affiliate companies, provided, however, that written notice of such breach, repudiation, or noncompliance is provided to Buyer.
13. **Limitations of Liability, Remedy and Damages.** **IN NO EVENT WILL PROTRADE BE LIABLE FOR ANY SPECIAL, INDIRECT INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INJURIES TO PERSONS OR TO PROPERTY OR LOSS OF PROFITS OR LOSS OF FUTURE BUSINESS OR REPUTATION, WHETHER BASED ON TORT OR BREACH OF CONTRACT OR OTHER BASIS, EVEN IF PROTRADE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
14. **Indemnification.** Buyer shall indemnify, defend, and hold ProTrade harmless from any claim, liability, damages, lawsuits, and costs (including attorney's fees), whether for personal injury, property damage or other, brought by or incurred by Buyer, Buyer's employees, or any other person, arising out of Buyer's use, storage, sale, processing, application, or other disposition of the Material or products produced with the Material. This provision will survive the termination or expiration of this Contract.
15. **Assignment.** No assignment of this Contract shall be made by Buyer without prior written consent of ProTrade.
16. **Waiver.** ProTrade's failure to require Buyer's performance of any obligations hereunder shall in no way affect its rights to require such performance at any time thereafter.
17. **Severability.** The invalidity and unenforceability of any term of this Contract shall not affect the validity and enforceability of the remainder of this Contract or any of its other terms, and such other terms shall be construed as though such invalid or unenforceable term was not included herein.
18. **Governing Law; Jurisdiction.** This Contract shall be governed by, and construed and enforced in accordance with the laws of the State of Ohio, without giving effect to the conflict of law rules thereof. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this contract. All parties hereby submit and consent to the venue and the jurisdiction of the Courts of the State of Ohio. Under no circumstances shall ProTrade be subjected to the jurisdiction of foreign courts without its prior written consent.
19. **Amendment.** No waiver, alteration or modification of the terms of this Contract as herein set forth, nor any understanding or agreements not set forth herein, shall be valid and binding upon ProTrade unless made in writing and signed by a duly authorized representative of ProTrade. Notwithstanding the foregoing, ProTrade may make any changes to these Terms and Conditions without the consent of Buyer by emailing, mailing, or posting the updated terms and conditions on ProTrade's website. ProTrade will use commercially reasonable means to inform Buyer of any such changes to the Terms and Conditions.

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