



# TERMS & CONDITIONS

REVISED OCTOBER 12, 2020

## CONTROLLING TERMS & CONDITIONS:

All purchases and sales of products (the "Products") and services (the "Services") between Buyer and BMG Metals Inc. (or any affiliate thereof, "BMG") shall be made pursuant to and on the price terms indicated in BMG's quote and/or order acknowledgment and shall be governed by these Terms and Conditions. These Terms and Conditions and BMG's quote and/or order acknowledgment shall constitute the entire agreement between the parties pertaining to the subject matter hereof, and shall supersede all prior or contemporaneous oral or written negotiations, agreements, understanding or representations with respect thereto. These Terms and Conditions shall supersede any conflicting provision contained in any purchase order of Buyer.

Unless otherwise agreed in writing, nothing contained in any purchase order of Buyer shall in any way modify or add any provision to these Terms and Conditions. These Terms and Conditions may not be amended or any provision hereof waived in any way except by an instrument in writing signed by both parties. If BMG's quote is deemed an offer, Buyer agrees that its acceptance of such offer is expressly limited to provisions contained solely in these Terms and Conditions. Buyer's issuance of a purchase order shall solely be deemed to be an acceptance of these Terms and Conditions. If BMG's order acknowledgment is deemed to be an acceptance of Buyer's purchase order, BMG's acceptance of such purchase order is expressly made conditional on Buyer's assent to any additional and different terms contained herein, and failure by Buyer to specifically object to these Terms and Conditions in writing within twenty (20) days of receipt shall constitute an acceptance of these Terms and Conditions.

## PRICES:

Prices displayed in all printed catalogs or printed promotional materials are effective as of the date of the publication and are subject to change without notification. Prices shown are for product only and do not contain any shipping, handling, sales tax, or other applicable charges. Once an order is accepted by BMG, any cancellation of the order requires BMG authorization and may be subject cancellation charges.

## SALES TAX:

Buyer shall pay, where applicable, any and all such charges, assessments, levies, taxes, value added taxes or other governmental charges of any nature whatsoever now or hereafter imposed by or under the authority of any law, rule or regulation with respect to the Products and Services sold or with respect to the ownership, manufacture, importation, transportation, installation, purchase, sale or use of the Products or Services related thereto, except for income taxes owed by the Seller. For clarity, all prices are exclusive of any of the items set forth in the immediately preceding sentence. In the event Customer provides to BMG a valid sales tax exemption certificate prior to order acceptance, BMG may elect not to collect tax with respect to such order; when placing an order a customer shall indicate any and all items that are tax exempt.

## SHIPPING:

All products are shipped F.O.B. shipping point with the cost of the shipping and handling paid by BMG and charged to Buyer. Delivery time is not of the essence. Delivery is accomplished when Products are released to the shipping agent. Shipment schedules indicated in Seller's quote and/or order acknowledgment are approximate, and Seller will use commercially reasonable efforts to deliver on the date specified or within a commercially reasonable period thereafter. Seller does not accept liability for any loss arising from delay in delivery. Buyer assumes all responsibility for risk of loss or damage to the Products upon the Products being made available to Buyer's freight agent at Seller's designated manufacturing facility.

## PAYMENT TERMS:

Seller shall not be obligated to ship any Products or provide any Services unless Buyer has paid in full all prior invoices in accordance with the terms of payment. For purposes of payment, each order and shipment shall be considered a separate contract and Buyer shall not be entitled to set-off against payments owing any amounts owing or alleged to be owing from Seller to Buyer for adjustments, set-offs or claims hereunder. BMG accepts cash, money orders, Visa, American Express and MasterCard. No cash discounts are allowed for early payment. For customers with established BMG credit, payment terms are net 30 days from date of invoice. Delivery drivers are not authorized to collect cash or checks upon delivery of product to the Buyer. All COD accounts must be paid via a credit card before shipment from Seller to Buyer. If Buyer's credit standing or financial condition becomes unsatisfactory to Seller in its sole discretion, or if Buyer breaches this agreement, Seller reserves the right to (a) require advance payments and/or C.O.D. terms, or (b) withhold shipments of

Products or provision of Services in whole or in part, (c) recall goods in transit. Buyer agrees to pay (a) interest on the unpaid portion of any past due invoices at the rate of one and one half (1.5%) percent per month, or the legal maximum allowed interest rate, if less, and (b) all reasonable and necessary costs and expenses incurred by Seller in collecting any amounts due and owing, including but not limited to reasonable attorney's fees and all litigation expenses.

## PRODUCT RETURNS/CANCELLATIONS:

Buyer shall inspect and examine all Products upon delivery thereof, and such Products shall be deemed accepted by Buyer unless Seller receives a written notice specifically describing the purported defect or nonconformity within fifteen (15) days of delivery. Failure to provide such written notice within such time period shall be deemed an unqualified acceptance and waiver of any rights to return the Products. Contact your BMG representative for instructions relating to product returns or other claims. Returns require a BMG return goods authorization ("RGA").

Proof of purchase will be required. Returns may be subject to a restocking fee. All requests for an RGA or any other claims relating to material shipped must be made within 30 days from the date of product shipment. Seller shall have the right to cancel or terminate any unfulfilled order or any part thereof in the event Buyer (a) threatens or files a petition for voluntary bankruptcy, (b) is threatened with or has led against it a petition for involuntary bankruptcy, (c) has appointed on its behalf a receiver or trustee, (d) executes an assignment for the benefits of creditors, or (e) otherwise breaches these Terms and Conditions. For standard, stock items, Buyer may terminate without charge any unfulfilled order at its convenience by written notice to Seller received and processed by Seller prior to shipment. For all other items, Buyer may terminate any unfulfilled order at its convenience by written notice to Seller received and processed by Seller prior to shipment, but Buyer agrees to pay a restocking fee equal to the greater of twenty five percent (25%) of the Product purchase price or Seller's costs and expenses (whether direct or indirect, general or administrative) incurred in performing and preparing to perform this agreement, and terminating the same, up to the full purchase price (e.g., if Seller is unable to return the Product to the manufacturer). If the restocking fee remains due and owing more than thirty (30) days after Seller's notification of the same, Buyer agrees to pay, all costs and expenses of collection, including but not limited to, reasonable attorney's fees. If requested, Seller will inform Buyer whether an order contains standard, stock items only.

## INDEMNIFICATION:

The customer agrees to defend, indemnify and hold harmless BMG and its affiliates from and against any and all claims or costs, including attorney's fees arising from or related to the customer's use of any products contained herein.

## DISCLAIMER AND LIMITATION OF LIABILITY:

All products contained herein have been manufactured by an unrelated third party and as such are sold by BMG "as is". BMG DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS OF USE FOR A PARTICULAR PURPOSE. BMG SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCURRED BY THE CUSTOMER OR A THIRD PARTY ARISING OUT OF THE PURCHASE OF THESE PRODUCTS. BMG'S LIABILITY IN ALL SUCH CIRCUMSTANCES SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE AFFECTED PRODUCTS IRRESPECTIVE OF THE NATURE OF THE CLAIM.

## ADDITIONAL NOTICE:

Brass and Bronze piping products, purchased from BMG Metals Inc., unless specifically identified as being lead free, are not compliant with the 2014 Federal Safe Drinking Water Act.

The use of these products in a potable water application constitutes a violation of U. S. A. Public Law 111-380, effective 1-4-2014. Steel and other metals products shall be subject to tolerances and variations consistent with usual trade practices regarding dimensions, straightness, composition and mechanical properties and normal variations in surface and internal conditions.

## MANUFACTURER'S WARRANTY:

Please contact your BMG representative with any questions relating to manufacturers' product warranties.