



TERMS AND CONDITIONS OF SALE ATH Stainless Steel Manufacturing

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1. **AGREEMENT.** Whenever used herein, the term “Agreement” means these Terms and Conditions of Sale as may be amended at the sole discretion of ATH Stainless Steel Manufacturing (“ATH Stainless”) at any time and from time to time, together with the Credit Application and Agreement (if applicable).
2. **PAYMENTS.** Unless otherwise agreed by ATH Stainless in writing, all amounts payable hereunder shall be due to ATH Stainless within thirty (30) days of invoice date, time being of the essence. Late payments shall bear interest at the rate of 18% per annum or the highest rate permitted by law, whichever is less.
3. **TAXES AND PRICING.** All prices quoted are subject to change without notice and are exclusive of taxes.
4. **SHIPMENT.** Scheduled shipment date is an estimate only. On or after the scheduled shipment date, Customer shall accept shipment upon notification by ATH Stainless.
5. **TITLE.** Title in the goods shall remain with ATH Stainless until such goods have been paid for in full.
6. **ACCEPTANCE OF GOODS.** Customer shall inspect or test all goods upon receipt. Customer shall be deemed to have effected final acceptance of the goods at the earliest of: (a) the fifteenth (15th) day after the date of shipment, unless written notice is received by ATH Stainless before such day; or, (b) the date when the goods are used or otherwise placed in commercial operation.
7. **WARRANTY.** (a) ATH Stainless warrants that title to the goods sold shall be free from any encumbrance, and that the goods will conform to the description contained on ATH Stainless’s invoice. (b) SUBJECT TO APPLICABLE LAW, ATH Stainless MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, EXCEPT AS PROVIDED IN WRITING SIGNED BY AN AUTHORIZED OFFICER OF ATH Stainless, AND SPECIFICALLY EXCLUDES ALL LEGAL OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. (c) Customer is responsible for the designation and selection of product sold by ATH Stainless. Customer shall hold ATH Stainless harmless and indemnify and defend ATH Stainless (including its affiliates, assigns, directors, officers, employees, agents and representatives) for any claims arising out of or relating to the design, specification, or use of product(s) sold by ATH Stainless to Customer.
8. **CUSTOMER’S REMEDY.** ATH Stainless’s sole responsibility and liability and Customer’s exclusive remedy under this Agreement shall be limited to the repair or replacement of goods (f.o.b. ATH Stainless’s shipping point), or, at ATH Stainless’s option, return of the goods and refund of moneys paid thereon, without interest, provided Customer is not in default hereunder. SUBJECT TO APPLICABLE LAW, IN NO EVENT SHALL ATH Stainless BE LIABLE FOR INDIRECT, INCIDENTAL,



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CONSEQUENTIAL, OR EXEMPLARY DAMAGES, OR LEGAL FEES. ATH Stainless's obligation hereunder is subject to receipt of written notice of defect (containing detailed particulars of the alleged defect) from Customer prior to the time of deemed acceptance specified in paragraph 7.

9. RETURNS. Material cut to Customer's specifications is not returnable.
10. DELAY OR NONPERFORMANCE. ATH Stainless shall not be liable for failure or delay in performance hereunder due in whole or in part to strikes, work stoppages, fires, acts of terrorism, accidents, wars, rebellions, civil commotion, public strife, acts of any government whether legal or otherwise, acts of public enemies, force majeure, inability to secure or delay in securing transportation, inability to obtain or delays in obtaining goods, materials, or qualified labor, or any other causes beyond ATH Stainless's reasonable control, including without limitation delays or inability to obtain product because of the actions of ATH Stainless's suppliers.
11. DEFAULT. Customer shall be in default under this Agreement if any of the following occurs: (a) Customer refuses to accept shipment or fails to make any payment when due; (b) there is a breach of any covenant or agreement by Customer; (c) Customer dies, ceases to exist, becomes insolvent or the subject of bankruptcy, insolvency, or liquidation proceedings; (d) Customer attempts to assign its rights and obligations under this Agreement without the prior written consent of ATH Stainless; (e) any representation, warranty, condition, or certification of Customer or any information provided by Customer in or pursuant to this Agreement is false in any material respect when made; (f) ATH Stainless, in good faith, considers that payment or performance of any obligation of Customer to ATH Stainless arising out of this Agreement or any other agreement between Customer and ATH Stainless or any affiliate of ATH Stainless, including any modifications, renewals or extensions thereof, is impaired.
12. REMEDIES UPON DEFAULT. In the event of Customer's default: (a) ATH Stainless may, at its option, (i) charge Customer interest at the rate of 18% per annum or the highest rate permitted by law, and/or (ii) take immediate possession of the goods and remove same without notice and without legal proceedings, and/or declare all unpaid amounts immediately due and payable and/or suspend shipments to Customer; (b) Waiver by ATH Stainless of any breach or default shall not constitute a waiver of any subsequent breach or default; (c) ATH Stainless shall be entitled to set off any amount owed by Customer or any of Customer's related entities against any amount payable by ATH Stainless in connection with any unpaid monies due to Customer; (d) ATH Stainless at its discretion and option shall be entitled to retain all money paid by Customer on account as liquidated damages; and, (e) ATH Stainless shall have all the rights and remedies provided by law in addition to all other rights as established herein, which rights and remedies shall be cumulative.
13. CANCELLATION. Upon receipt of written notice from Customer, ATH Stainless shall cancel any orders as instructed, subject to ATH Stainless's (or its subcontractors') right to continue processing raw or finished material to the point at which processing can be halted with the least disruption



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and cost to ATH Stainless. Customer shall be responsible for all costs associated with the cancellation and completion of processing of material.

14. ACCEPTANCE. This Agreement shall be binding on Customer by its purchase of goods from ATH Stainless and may only be modified in writing, signed by ATH Stainless, and each of the provisions of this Agreement shall remain in effect unless and until explicitly contradicted by the aforesaid writing. If Customer submits an order form with contrary terms or conditions, such order form shall be considered only as confirmation of the order and shall in no way amend, prevail over, supplement, or supersede any of the provisions of this Agreement. Customer waives any defense to the validity or enforceability of this Agreement arising from any electronic submission of it to Customer. Customer acknowledges and agrees that it has the ability to access each URL referenced in any quote or other document delivered to it by ATH Stainless.
15. GENERAL. ATH Stainless may assign its rights and obligations under this Agreement. Customer may not assign its obligations under this Agreement to any person without ATH Stainless's prior written consent. If Customer changes its corporate status, both Customer and its successors continue to be bound by this Agreement, and ATH Stainless reserves its rights and remedies on default. No prior representation, affirmation, or agreement shall be enforceable unless set forth herein.
16. DISPUTE RESOLUTION/GOVERNING LAW. The validity, construction and enforcement of this Agreement are governed by the laws of the province of Ontario and the federal laws of Canada applicable therein. The Customer irrevocably submits to the non-exclusive jurisdiction of the courts of the province of Ontario. Reasonable legal fees and costs shall be awarded to the prevailing party in any litigation. Customer must institute any action against ATH Stainless within one (1) year after Customer's claim arises, or, subject to applicable law, such claim shall be barred notwithstanding any statutory limitations to the contrary.
17. SEVERABILITY. If, in any jurisdiction, any provision of this Agreement or its application to any party or circumstance is restricted, prohibited, or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition, or unenforceability, without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other party or circumstances.