



# INTERNATIONAL PURCHASE AGREEMENT

This International Purchase Agreement ("IPA"), effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, is

BETWEEN: Transcon Steel of Texas, Inc.  
PO Box 113  
Georgetown, Texas 78627

Hereinafter referred to as "Seller"

AND: Custom Name: \_\_\_\_\_  
Customer Address: \_\_\_\_\_  
City, Region, State, Postal: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

Hereinafter referred to as "Buyer." This IPA is entered into in Travis County, Texas, and Buyer's obligations are performable in Travis County, Texas.

## I. DEFINITIONS

- (a) "Agreement" means this International Purchase Agreement and all consistent terms contained in any Product Order which is accepted by Seller in writing.
- (b) "Product" or "Products" mean all materials which are the subject of any Product Order.
- (c) "Product Order" means Buyer's order of materials from Seller.
- (d) "Accepted Product Order" means Buyer's order of materials from Seller which is accepted by Seller in writing in accordance with this Master Purchase Agreement.

## II. AGREEMENT

- (a) The Parties contemplate that there may be multiple orders, estimates, and proposals governed by the terms of this IPA.
- (b) Seller agrees to sell and Buyer agrees to buy Products which are the subject of any Accepted Product Order. A Product Order may be initiated by Buyer, but Seller shall not be bound to produce or deliver Products unless and until Seller accepts the Product Order in writing. If Buyer orders Products from Seller by accepting Seller's written estimate, Buyer shall deliver to Seller Buyer's written acceptance of the estimate by the earliest of: (1) thirty (30) calendar days from the date the estimate is delivered to Buyer; or (2) the written deadline stated on the estimate. For purposes of this IPA, delivery shall mean actual physical delivery of the acceptance to Seller. If Buyer orders Products from Seller by accepting in writing (and by the deadline set forth above) Seller's estimate, Seller shall be deemed to have accepted Buyer's Product Order in writing on the date Buyer delivers Buyer's written acceptance of Seller's estimate to Seller, and an Accepted Product Order shall exist as of that date. No Accepted Product Order shall exist absent timely delivery of Buyer's

acceptance. If Buyer initiates a Product Order from Seller by any other method, Seller will require Buyer to execute a purchase order on Seller's purchase order form, and an Accepted Product Order shall not exist unless and until the executed purchase order is physically delivered to Seller and Seller acknowledges acceptance of the purchase order in writing. Regardless of how a Product Order is initiated, all of the terms and conditions of this IPA shall be conclusively deemed incorporated into the resulting Accepted Product Order, and no term or condition that is inconsistent with this MPA shall form a part of the Accepted Product Order.

### **III. PRICE AND PAYMENT**

- (a) **Pricing.** Pricing of Product(s) is on a per-unit basis. If the Product Order is via Buyer's acceptance in writing (and by the appropriate deadline) of Seller's estimate, the price per unit shall be the price stated on the estimate. If Seller accepts in writing Buyer's purchase order, the price per unit shall be the price stated on the purchase order. Otherwise, the parties shall agree in writing on the price per unit prior to Seller's acceptance of any order. Unless otherwise agreed in writing, the "Product Price" of each respective Product shall be calculated by multiplying the unit price of the Product as reflected on the writing by the number of units of the Product ordered, subject to change in accordance with the terms of this IPA. In addition to the Product Price for each respective Product specified in an Accepted Product Order, Buyer shall be responsible for all delivery charges, installation charges, charges associated with preparing the site, taxes, other government charges, assessments after audit, interest on past-due amounts and any other charges specified herein (collectively, the "Additional Charges"). Delivery shall be as specified in the Accepted Product Order. If Buyer qualifies for tax exemptions, Buyer must provide Seller with appropriate exemption documentation or Buyer will pay to Seller the sales tax amount as if Buyer were not exempt. Wherever applicable, the Additional Charges will be for the account of Buyer and may be added to the invoice as a separate charge to be paid by Buyer. Omission of any of the Additional Charges from an invoice does not limit Buyer's obligation for payment of those charges, taxes or fees or of any other amounts otherwise due Seller. The "Contract Price" shall be the sum of the Product Price for each Product in the Accepted Product Order and the Additional Charges for the Accepted Product Order, as such Contract Price may be amended or modified from time to time in accordance with the terms of this IPA.

Prices are FOB Georgetown, Texas, United States, or to such other point as is named herein by Seller, and include standard packing charges for under deck shipments. There will be an extra charge for tests performed in the presence of the purchaser or tests that are different from those normally made by Seller. Prices include all applicable United States taxes except those from which exemption may be secured by reason of exportation. The purchaser on request shall furnish evidence of exportation establishing tax exemption when required by Seller. If such evidence is not furnished upon request or if the shipment does not qualify for such exemption the purchaser shall reimburse Seller for such taxes upon submission of invoices therefore. Prices quoted do not include United States import duties. Such duties will be to Seller's account. On the request of Seller the purchaser will provide documents and assistance necessary to process Seller's drawback claims. Unless otherwise stated, prices are in United States funds.

- (b) **Changes in Quantity of Product or Products.** Except as stated in this Section III(b) and in Section III(c), Buyer agrees to purchase, at a minimum, the amount of Products which are the subject of an Accepted Product Order and Buyer shall not be entitled to vary the quantity of Products which are the subject of an Accepted Product Order except in accordance with this IPA. If Buyer desires to vary the quantity of any Product(s) from the quantity specified in the applicable Accepted Product Order, Buyer must notify Seller in writing of the change in quantity. If Seller, in Seller's sole and unreviewable discretion, agrees to such change, Buyer and Seller will execute a written change order reflecting the change in quantity and, if applicable, the change in Contract Price. Any agreed increase in quantity that is entered into within 30 days of the date of Seller's acceptance of the original Product Order will bear a per-unit price in the same amount as the original per-unit price agreed to in the Accepted Product Order. However, any variance in quantity from that specified in the applicable Accepted Product Order after 30 days from the date of Seller's acceptance of the Agreed Product Order will result in a higher per-unit price, which shall be the basis of the change in Contract Price specified in the change order. Unless and until Buyer and Seller execute a change order reflecting the change in quantity and, if applicable, change in Contract Price, and Seller receives any additional deposit as set forth in the change order, Seller shall have no obligation to provide any quantity of Product or Products different from the amounts specified in the original Accepted Product Order.
- (C) **Additions to Product or Products.** If Buyer desires to purchase products for any project other than those which are the subject of an Accepted Product Order, those orders and products will be covered by this IPA and will be the subject of separate Product Orders.

- (a) **Deposit Required.** Buyer shall pay Seller a non-refundable deposit (the "Initial Deposit") in accordance with the Seller's estimate or as set forth on Seller's purchase order form, whichever is applicable. Additionally, Buyer shall be required to pay Seller additional deposit(s) as specified in any change order(s). No part of either the Initial Deposit or any additional deposit(s) shall be refundable under any circumstances, including any reduction in the Contract Price or reduction in quantity of Product(s). Seller shall have no obligation to proceed in any manner with respect to Seller's obligations pursuant to this IPA or any Accepted Product Order until the Initial Deposit or any additional deposit(s), as applicable, is received. For all Custom Manufactured Products, 50% of the Contract Price shall be paid by Buyer to Seller prior to the start of production of those Products. Seller shall have no obligation to begin production of any Custom Manufactured Products unless and until Buyer pays the amount referenced in this paragraph.
- (b) **Balance of Contract Price.** The balance of the Contract Price shall be paid in full prior to Seller's shipment of the Products. Seller shall have no obligation to proceed with delivery of the Products unless and until the balance of the Contract Price is received by Seller.
- (c) **Payments.** Terms of payment shall provide for progress payments as detailed in this Agreement, or, alternatively, shall provide for cash payment in United States currency for each shipment upon presentation by Seller of its invoices and evidence of readiness to ship, at a paying agency in Houston, Texas, United States, acceptable to Seller. If the shipment from the factory of products or any part thereof is delayed by the causes set forth below, payments which are related to delivery shall relate to completion of manufacture and the documents to be presented by Seller for payment shall be its invoices and its certification that the manufacture of such products or parts has been completed. At Seller's request, payments shall be made through the medium of an irrevocable letter of credit established by the purchaser at the time of placing the order, in favor of and acceptable to Seller and confirmed by a bank satisfactory to Seller. Such letter of credit shall provide for payment for partial shipments and of any cancellation charges. When practicable, shipments shall be made via United States ports.
- (d) **Delivery Schedule Not Confirmed.** Any delivery schedule given by Seller to Buyer is an estimate only, and is dependent upon a number of factors, including access to raw materials, Buyer's payment of the amounts due under this Agreement, work stoppages, seasonal variations in shipping availability, etc. All lead-times provided by Seller to Buyer are approximate and based upon workload at the time the lead-time is provided by Seller to Buyer. Shop drawings and material delivery may vary depending on the size and complexity of the project. Larger projects may require shop drawings and may require that delivery of Products be in phases.
- (e) **Delivery.** Seller shall deliver to Buyer all items delivered pursuant to this IPA and any Accepted Product Order in accordance with the Accepted Product Order. Regardless of the delivery method, delivery shall be at Buyer's expense and risk of loss. If the Accepted Product Order results from Buyer's acceptance of Seller's written estimate, delivery shall be as follows: Seller shall deliver the products to the purchaser FOB Georgetown, Texas, United States, or to such other point as is named herein by Seller. If, when the products or any part thereof are ready for delivery, such delivery cannot be made because of force majeure or an act of the purchaser, Seller may place the products in storage. In such event, all expenses incurred by Seller in connection with placing the products in storage, such as preparation for and delivery into storage, handling, storage and insurance, shall be payable by the purchaser upon submission of invoices thereof. Title shall pass to the purchaser upon delivery FOB Georgetown, Texas, United States, or FOB point of storage, when goods are stored as herein provided. On such passing of title the purchaser shall assume all risk of loss or damage.

If Seller agrees to make export shipment, all fees and expenses, including, but not limited to, those covering preparation of consular invoices, storage, marine insurance and war risk insurance, shall be payable by the purchaser upon submission of invoices therefore. Unless otherwise instructed by the purchaser, Seller will prepare consular documents according to its best judgment but without liability for fines or other charges due to error or incorrect declarations.

- (f) **Interest Rate and Default.** All invoices which are not paid within thirty (30) days of the date of invoicing, shall bear interest at the rate of eighteen percent (18%) per annum, simple interest. If Buyer is in default in making timely payments or if, in the sole opinion of Seller, the financial status of the Buyer shall at any time become impaired or unsatisfactory to Seller, then Seller may, in Seller's sole and unreviewable discretion, without waiving any other remedy Seller may have: (1) restrict or cease Seller's performance under this IPA or any Accepted Product Order until full payment of the Contract Price is received; (2) request that Buyer provide, in writing, adequate assurance of due performance within twenty (20) days of the request, and restrict or cease Seller's performance under this IPA or any Accepted Product Order until such written assurance is received by Seller; (3) require Buyer to provide Seller with an additional nonrefundable deposit in addition to the Initial Deposit and additional deposit(s), and restrict or cease Seller's performance under this IPA and/or any Accepted Product Order until such additional nonrefundable deposit is received by Seller; (4) require Buyer to obtain and provide to Seller personal guaranties of payment, and not merely collection, of the Contract Price. Seller's right to any of the remedies

set forth in this paragraph shall be cumulative of each other and of Seller's rights to any other remedy at law or in equity, and Seller's invocation of any particular remedy shall not be a waiver of any other particular remedy or be construed as an election of any remedy.

- (g) **Purchase Money Security Interest.** Seller retains a purchase money security interest in each Product Buyer purchases until the Contract Price is paid in full. Buyer appoints Seller as Buyer's agent to sign and file a financing statement to perfect Seller's security interest.
- (h) **Government authorizations.** The purchaser shall be responsible for obtaining any required authorizations such as an export permit, import license or exchange permit except that if Seller is to make the export shipment, Seller will apply for any required export permit. Whoever is the proper party under the applicable regulations shall make prompt application for any United States Government authorization that may be required to permit the export of the products. The parties shall assist each other in every manner possible in securing such authorizations as may be required. Seller shall not be responsible if any authorization is denied, revoked, restricted or not renewed and the purchaser shall not be relieved of his obligation to either accept delivery of and pay Seller for the products when export thereof is authorized, or in the absence of authorization, cancellation charges.

#### **IV. ORDERS**

Subject to and conditioned upon Seller's acceptance of the Product Order and Seller's receipt of Buyer's Initial Deposit, Seller shall begin performance within a commercially reasonable time as set forth below:

- (a) **If No Shop Drawings Required.** If Seller determines, in Seller's sole and unreviewable discretion, that no Shop Drawings are required, then Seller shall begin ordering raw materials necessary for Seller's performance, and will continue with reasonable diligence to perform Seller's obligations, subject to: (1) Seller's right to suspend or restrict performance; (2) Seller's other rights under this IPA, the Accepted Product Order, or applicable law; and (3) Buyer's payment of the portion of the Contract Price when and as due from time to time.
- (b) **If Shop Drawings Required.** If, in Seller's sole and unreviewable discretion, production of Shop Drawings is required, Seller will produce such Shop Drawings and provide one (1) copy of the Shop Drawings to Buyer for Buyer's approval. Buyer shall either approve in writing or disapprove in writing the Shop Drawings. Such approval or disapproval shall be delivered to Seller within ten (10) days of Buyer's receipt of the Shop Drawings. If Buyer fails to deliver an approval or disapproval of the Shop Drawings to Seller within the time required, Buyer will be conclusively presumed to have approved the Shop Drawings submitted by Seller to Buyer. If Shop Drawings have been submitted to Buyer for approval, then upon approval of the Shop Drawings (whether by affirmative act of the Buyer or Buyer's failure to respond within the time required in this Section IV(b)) and Buyer's payment of any amounts then due, Seller shall begin ordering raw materials necessary for Seller's performance, and will continue with reasonable diligence to perform Seller's obligations, subject to: (1) Seller's right to suspend or restrict performance; (2) Seller's other rights under this IPA, the Accepted Product Order, or applicable law; and (3) Buyer's payment of the portion of the Contract Price when and as due from time to time. Buyer may not disapprove the Shop Drawings unless such disapproval is reasonable. If Buyer disapproves the Shop Drawings but such disapproval is not reasonable, Seller shall have no further obligations to Buyer relative to the Accepted Product Order to which the Shop Drawings relate, and Buyer shall pay to Seller immediately upon demand a fee for Seller's time in producing the Shop Drawings that have been unreasonably disapproved, calculated at \$65.00 per hour, in quarter of an hour increments, rounded up to the next highest quarter of an hour. If Buyer reasonably disapproves the Shop Drawings, Seller shall redraw the Shop Drawings once at Seller's expense to attempt to meet Buyer's reasonable objections as stated in writing and delivered to Seller. Such redrawn Shop Drawings will be provided to Buyer, and Buyer shall either approve in writing or disapprove in writing the redrawn Shop Drawings by delivering such approval or disapproval to Seller within ten (10) days of Buyer's receipt of the redrawn Shop Drawings. If Buyer fails to approve the redrawn Shop Drawings within the time set forth above, Seller shall have the option to: (1) redraw the redrawn Shop Drawings at Buyer's expense, upon agreement with Buyer as to the cost and execution of a change order increasing the Contract Price by the amount of the cost; or (2) notify Buyer in writing that Seller has no further obligations to Buyer relative to the Accepted Product Order to which the Shop Drawings or the redrawn Shop Drawings relate.
- (b) If, after the parties have executed this IPA and Seller has accepted any Product Order, Buyer seeks to cancel, reschedule, or modify any Accepted Product Order in any respect, except for changes made in accordance with the terms of this IPA and the Accepted Product Order, then in that case Buyer will provide separate written notice to Seller of Buyer's proposed cancellation, rescheduling, or modification. If Buyer seeks to cancel an Accepted Product Order, Seller will attempt to salvage the materials used for the products which are the subject of the Accepted Product Order Buyer seeks to cancel if, in Seller's sole and unreviewable discretion Seller is reasonably able to salvage the materials. If, in Seller's sole and unreviewable discretion, Seller is reasonably able to salvage the

materials, then in that case Buyer shall be entitled to cancel the Accepted Product Order but will pay to Seller a restocking fee (the "Restocking Fee") equal to 25% of the Contract Price for the Accepted Product Order that is cancelled. Unless and until Buyer pays the Restocking Fee, Buyer and Seller will continue to perform as if the Accepted Product Order had not been cancelled. Upon Seller's receipt of the Restocking Fee, Buyer and Seller shall confirm in writing the cancellation of the Accepted Product Order. If Seller, in Seller's sole and unreviewable discretion, is not reasonably able to salvage the materials, then in that case Buyer shall be liable to Seller for the Contract Price of any Accepted Product Order that is cancelled, plus any incidental and consequential damages suffered by Seller by reason of the cancellation. Any rescheduling or modification of any Accepted Product Order will be strictly conditioned upon Buyer paying Seller a charge for such rescheduling or modification, pursuant to Seller's policies in effect at the time Seller receives Buyer's written notice that Buyer is seeking to reschedule or otherwise modify the Accepted Product Order.

- (d) Delivery dates are estimated and are based receipt by Seller of: (1) an order and all information necessary to permit Seller to proceed with work immediately and without interruption; (2) satisfactory assurance of compliance with the terms of payment agreed upon; and (3) such evidence as Seller may request that any required export permit or import license has been issued.
- (e) Buyer agrees to inspect the items when received in accordance with Paragraph V(d), and the provisions of Paragraph V(d) shall apply to all Accepted Product Orders.

## **V. DUTIES OF BUYER**

Buyer will not modify the plans or specifications for any Product or Products except in strict conformity with this Section V.

- (a) Should the Buyer make any changes and/or modifications to the plans or specifications after Shop Drawings have been produced by Seller and accepted by the Buyer (whether by affirmative act of the Buyer or Buyer's failure to respond within the time required in Section III(b)) and before production has begun, Buyer will pay Seller for revision time (the "Revision Charge") at the rate of \$65.00/hour, billed in quarter-hour increments rounded up to the next highest quarter hour. Buyer and Seller agree to execute a written change order increasing the Contract Price by an amount equal to the sum of the Revision Charge. Buyer will pay the total amount of such change order prior to Seller beginning production or otherwise proceeding, in any manner, in regard to the changes and/or modifications.
- (b) Should Buyer make any changes and/or modifications to the plans or specifications after any Product has been produced, Buyer will pay Seller the Revision Charge and Seller's costs applicable to production of the Product(s) already produced ("Product Costs"). Buyer and Seller agree to execute a written change order increasing the Contract Price by an amount equal to the sum of the Revision Charge and the Product Costs. Buyer will pay the total amount of such change order prior to Seller continuing production or otherwise proceeding, in any manner, with reference to the changes and/or modifications.
- (c) Should Buyer make any changes and/or modifications to the plans or specifications after special materials have been ordered by Seller, Buyer will pay Seller (in addition to any Revision Charge or Product Costs) Seller's costs applicable to the special materials. Buyer and Seller agree to execute a written change order increasing the Contract Price by an amount equal to the sum of: (1) Seller's costs incurred relative to the special materials; (2) any Revision Charge; and (3) any Product Costs. Buyer will pay the total amount of such change order prior to Seller proceeding, in any manner, in regard to the changes and/or modifications.
- (d) Buyer shall inspect the items upon arrival and shall, within seven (7) calendar days thereof, give written notice to Seller specifying any shortages or non-conforming Product. Failure to do so will constitute a waiver of non-conforming delivery and acceptance of the Product(s) and the delivery as is.
- (e) Buyer shall install and use the Product(s) in full compliance with all applicable laws, regulations, and building codes, and with all applicable Seller instructions and specifications. **Seller makes no warranty of any kind, express or implied, including the implied warranty of merchantability or the implied warranty of fitness for a particular purpose, regarding the Products, except as set forth in this IPA.**
- (f) Buyer is solely responsible for (i) determining that the product is suitable for the contemplated purpose and (ii) obtaining any required engineering services or architectural services relating to the project at Buyer's own expense.

## **VI. DUTIES OF SELLER**

Conditioned upon and subject to Buyer's compliance with all Buyer obligations under this IPA and any Accepted Product Order, Seller shall furnish to Buyer, Product(s) as specified in the Accepted Product Order or as modified in accordance with the Accepted Product Order and such Shop Drawings as required under this IPA.

## **VII. CLAIMS AND LIABILITIES**

- (a) All claims of Buyer with respect to the quantity or quality of Product(s) sold or delivered pursuant to this Agreement shall be deemed waived and forever barred unless Buyer notifies Seller of the nature of the details of the claim in writing within seven calendar days after receipt of shipment.
- (b) Seller shall not be liable to Buyer for the results of the use of Product(s) purchased, whether used singly or in combination with other materials or products, unless the Products are installed and used in full compliance with all applicable laws, regulations, and building codes and with all applicable Seller instructions and specifications.
- (c) **Seller shall have no liability for any third party claim arising out of or in any way related to the negligence or willful act or omission of Buyer or that of its employees, agents, or subcontractors. Buyer will defend, hold harmless, and indemnify Seller from any and all such claims, whether suit is filed or not, regardless of whether such claim also includes any allegation based upon Seller's intentional or negligent act or omission. Buyer will pay Seller's reasonable attorney's fees incurred in investigating, responding to, defending, and otherwise dealing with any such claim, upon demand by Seller. If Seller, in Seller's sole and unreviewable discretion, settles such claim, Buyer shall pay Seller, in addition to Seller's reasonable attorney's fees, an amount equal to the reasonable value of Seller's settlement. SELLER IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PRODUCTS, REVENUE OR DATA, WHETHER IN AN ACTION IN CONTRACT, TORT, PRODUCT LIABILITY, BY STATUTE, OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND EVEN IF THE DAMAGES OR LOSS ARE CAUSED IN WHOLE OR IN PART BY SELLER'S NEGLIGENCE. SELLER WILL NOT BE LIABLE FOR DIRECT OR INDIRECT DAMAGES CAUSED BY LATE DELIVERY, PRODUCT DEFECT, OR ANY OTHER CAUSE. SELLER HAS SET OUT PRICES FOR ITS PRODUCTS BASED ON THE ALLOCATION OF RISKS SET OUT IN THIS AGREEMENT.**
- (d) Seller liability with respect to any transaction relating to this MPA or any Accepted Product Order will not exceed that amount that Buyer has paid Seller, even if any term of this MPA or the Accepted Product Order fails of its essential purpose.

## **VIII. WARRANTY AND LIMITATION OF REMEDIES**

- (a) Seller warrants that Product(s) will be free from defects in material and workmanship and will conform to Seller's specifications. This warranty begins on delivery and continues for 90 days. If Buyer notifies Seller during the warranty period that a Product does not comply with this warranty, Seller will, at Seller's sole option, repair or replace the Product at no charge.
- (b) Seller and its direct and indirect suppliers/vendors, shall have no other or further liability by reason of the manufacture or sale of any Product sold hereunder or by reason of their use, whether on the basis of breach of warranty, strict liability, negligence or otherwise. In no event shall Seller or its direct or indirect suppliers/vendors be liable for general, special, consequential, or incidental damages relating to bodily injury, property damage, or economic loss (including without limitation damages for loss of use or loss of profits).
- (c) **BUYER ACCEPTS RESPONSIBILITY TO VERIFY THAT THE PRODUCTS BUYER ACQUIRES WILL MEET BUYER'S SPECIFIC REQUIREMENTS. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. SELLER DOES NOT WARRANT THAT PRODUCTS WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFICIENCIES, ERRORS, DEFECTS OR NONCONFORMITIES WILL BE CORRECTED. SELLER HAS NO WARRANTY OBLIGATION FOR THIRD (3<sup>RD</sup>) PARTY PRODUCTS.**
- (d) Buyer's sole remedy with respect to the Agreement, this MPA, any Agreed Product Order, or any Product is Seller's repair or replacement of Product(s) or, at Seller's option, refund of sums paid.
- (e) Buyer's right and remedies set forth herein or in any subsequent writing are limited as set forth herein, notwithstanding anything to the contrary.
- (g) Neither Buyer nor Seller may bring a claim or action arising out of or related to this MPA, any Accepted Product Order, or any Product, including any claim of fraud or misrepresentation, more than two years after the cause of action accrues.
- (h) Force Majeure Seller shall not be liable for delay or non-performance of the contract or any part thereof, resulting directly or indirectly from:
  - i. earthquakes;

- ii. epidemics;
- iii. act of any governmental authority, domestic or foreign, including but not limited to war, declared or undeclared, priorities, quarantines, embargoes, licensing controls or production or distribution restrictions;
- iv. accidents and disruptions including but not limited to fires, explosions, breakdowns of essential machinery or equipment and power shortages;
- v. transportation or storage delays, accidents or shortages;
- vi. labor difficulties including but not limited to strikes, slowdowns, lockouts, sabotage and labor shortages;
- vii. failure or delay in its source of supply;
- viii. acts or omissions of the purchaser;
- ix. failure to reach agreement as set forth below;
- x. or any cause beyond its reasonable control whether similar or dissimilar to those above mentioned. Dates of delivery shall be extended for a period equal to the time lost by reason of any cause set forth above even though such cause may occur after Seller's performance has been delayed for other causes. If any such delay, except for the cause referred to in (9) above, lasts for more than 90 days, the parties shall immediately consult with one another for the purpose of agreeing upon the basis on which Seller shall resume production at the end of the delay. If they do not agree upon a solution of the problems involved, including adjustment of the price, within 150 days from the beginning of such delay, then either party may, by written notice, cancel that portion of the order which is delayed and in such event the purchaser shall apply, all other provisions notwithstanding, whether the disrupting cause is total or partial in its effect upon the ability of Seller to perform

#### **IX. GENERAL**

- (a) No addition to or amendment, alteration, modification or waiver of all or part of this MPA shall be of any force or effect unless in writing and executed by both parties hereto.
- (b) Trade Terms: Trade terms shall where appropriate, and where not inconsistent with the provisions of this Agreement, be interpreted in accordance with the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce.
- (c) Failure to enforce any term hereunder is not a waiver of future enforcement of that or any other term.
- (d) Neither party hereto may assign this MPA or the Agreement, or the party's rights or obligations under either without the express written consent of the other except Seller may assign the Agreement to an affiliate and may use subcontractors to fulfill its obligations.
- (e) Each party shall send notices to the other at the address on the face of this MPA, until that party notifies the other in writing of a change of address for the receipt of subsequent notices.
- (f) BECAUSE OF INTERNATIONAL PATENT AND TRADEMARK LAWS, BUYER MAY NOT EXPORT PRODUCTS WITHOUT SELLER'S PRIOR WRITTEN CONSENT AND THE APPROPRIATE APPROVALS FROM THE U.S. AND FOREIGN GOVERNMENT(S).
- (g) Neither party is liable for failing to fulfill its obligations due to acts of God, civil or military authority, war, riots, strikes, fire, or other cause beyond its reasonable control, except for Buyer's obligation to pay as and when due.
- (h) Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed an acceptance thereof or waiver of any provision herein.
- (i) All claims, demands, disputes, controversies, or differences that may arise, of whatever nature or kind (including contract, tort, statutory, common law, or other claims) relating to the Agreement, this MPA, any Accepted Product Order, any Product(s) (including any claim(s) regarding the performance of any Product(s) or failure of any Product(s) to conform to any warranty or specifications), Buyer's or Seller's performance under the Agreement, including any contract, tort, statutory, or other claims, including, without limitation, disputes: (1) as to events, representations, or omissions prior to the Agreement; (2) arising out of or related in any way to the Agreement; (3) concerning or related in any way to the manufacture of any Product(s) made the subject of the Agreement; and/or (4) regarding repairs or warranty work arising after Buyer has purchased the Product(s) made the subject of the Agreement, shall be submitted to binding arbitration pursuant to the Texas General Arbitration Act. The filing of any court action (except for an action to compel compliance with this arbitration agreement, seek temporary orders pending arbitration, reduce an arbitration award to judgment or appeal such award as authorized by applicable law) shall constitute a breach of contract. The arbitration shall be administered by the American Arbitration Association under their Construction Industry Arbitration Rules in effect at the time of the initial demand for arbitration, except that the arbitrator shall have authority to award only actual direct damages as limited herein and attorney's fees, and shall not be empowered to

award consequential, indirect, exemplary, or statutory damages. The arbitrator shall be further authorized to award expenses incurred (including attorney's fees) in obtaining any court order requiring the other party to submit its claim(s) to arbitration. The arbitrator shall apply the substantive law of the State of Texas in deciding the arbitration, without regard to Texas law regarding choice of law. Any arbitration award may be confirmed by any Texas or federal court with jurisdiction to confirm the award.

- (j) THIS IPA AND ANY ACCEPTED PRODUCT ORDER HEREUNDER SHALL BE CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE STATE OF TEXAS, EXCEPT FOR ITS LAWS REGARDING CHOICE OF LAW. THE PARTIES HERETO HEREBY AGREE THAT THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS TO THIS AGREEMENT DOES NOT APPLY AND IS STRICTLY EXCLUDED. BUYER'S PERFORMANCE OF BUYER'S OBLIGATION TO PAY SHALL BE IN TRAVIS COUNTY, TEXAS. THIS MPA AND THE AGREED PRODUCT ORDER SET FORTH THE ENTIRE AGREEMENT WITH RESPECT TO THE SUBJECT MATTERS DISCUSSED. EXCLUSIVE VENUE FOR ANY PROCEEDING ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE IN TRAVIS COUNTY TEXAS. BUYER ACKNOWLEDGES THAT BUYER HAS READ AND UNDERSTANDS THE TERMS CONTAINED IN THIS MPA.

**IN WITNESS WHEREOF**, the parties executed this International Purchase Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Transcon Steel of Texas, Inc.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Customer: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_