

Materion Brush Inc. – Performance Alloys (“Seller”)

TERMS AND CONDITIONS OF SALE

- 1. Exclusive Terms and Conditions of Sale.** These Terms and Conditions of Sale (the "Terms") apply to all sales of any materials, goods or products (the “Goods”) by Seller to any Buyer and are the exclusive terms and conditions of sale. All offers by Seller to sell Goods are expressly conditioned on Buyer's assent to and acceptance of these Terms. Seller's acceptance of any order is expressly conditioned on Buyer's assent to and acceptance of these Terms, including all terms that are different from or in addition to any purported terms and conditions of the order. Any additional, different or other terms and/or conditions contained in any purchase order, sale confirmation, or other document by or from Buyer or on Buyer's web site are hereby objected to and rejected by Seller. If not previously accepted in writing, Buyer accepts the Terms by accepting delivery of the Goods. In the event of any claimed conflict between these Terms and other alleged terms and conditions contained in any other document, these Terms shall control and take precedence over any other alleged terms and conditions, with any conflict to be resolved in favor of these Terms.
- 2. Entire Agreement.** These Terms, together with the quantity, price and delivery schedule for the Goods, Buyer's Credit Application, if any, and the written specifications for the Goods expressly agreed to in writing by Seller's authorized representative, if any, (collectively the “Agreement”) constitute the complete and final agreement and understanding between Seller and Buyer relating to the Goods and supersede all prior oral or written communications, agreements, understandings, representations, statements, and assurances between the parties. No oral or written statement, representation, covenant or warranty not contained in this Agreement shall be binding on Seller and no provisions of the Agreement may be modified, amended, changed or waived in any respect except in writing by an authorized representative of Seller. Buyer represents and acknowledges that Buyer is not relying upon any oral or written statement, warranty or representation of Seller, its employees, agents and/or representatives not fully set forth in the Agreement.
- 3. Cash In Advance (“CIA”).** If Seller has advised Buyer that it will only fill an order on a Cash in Advance basis, with cash held as security, Buyer will be required to deliver to Seller, in advance of any acknowledgment or acceptance of the purchase order, a cash amount equal to the order quantity multiplied by a pro forma invoice price. That price will be determined by adding together the quoted fabrication price plus actual metal market adjustments based on market pricing for the date of receipt of order. On the day the order is ready to ship, this amount may be adjusted to "current" metal market pricing to account for any +/- market fluctuations as well as any quantity changes that may have occurred. Standard shipping tolerances are +/- 10% of original order quantity, however, Buyer can choose to accept and offer payment for any quantity in excess of this range.
- 4. Shipping; Delivery; Risk of Loss.** Except as otherwise expressly agreed upon in writing between the parties: delivery of the Goods shall be FCA (Incoterms 2010) shipping point, and title and risk of loss shall pass to Buyer upon Seller's delivery of the Goods. Every commercially reasonable effort will be made to deliver the Goods in accordance with the shipping dates appearing on the sales acknowledgment. Delivery is based on the receipt by Seller of a purchase order or other communication containing the purchase order number. Seller will not be liable for damages in any event due to delays in delivery. All transportation and insurance charges relating to shipment shall be paid by Buyer, unless otherwise previously agreed to between the parties. Subject to Section 6 hereof, if Buyer refuses to accept delivery of the Goods, then Buyer shall be responsible for all transportation, insurance and storage charges relating to the shipment. If Seller has reason to doubt Buyer's financial responsibility, Seller may decline to make further deliveries, except for cash or satisfactory security. Seller reserves the right of stoppage in transit.
- 5. Force Majeure.** Seller shall not be subject to any liability or damages for delay in performance or non-performance as a result of fire, flood, ice, natural catastrophe, strike, lockout, labor shortage, labor dispute or trouble, accident, riot, act of governmental authority, act of God, act of terrorism, or other contingencies and circumstances beyond its control interfering with the production, supply, transportation, or consumption of the Goods or with the supply of any raw materials used in connection therewith, or the inability of the Seller to purchase raw materials at a commercially reasonable price, or if performance would be contrary to, or constitute a violation of, any regulation, law, or requirement of a recognized government authority, and quantities so affected may be eliminated by Seller from the Agreement without liability or damages to Seller, but the Agreement shall otherwise remain unaffected. Seller may, during any period of shortage due to any cause, prorate and allocate its supply of such materials among itself for its own consumption, its subsidiaries, affiliated companies, its accepted orders, contract customers, and its regular customers not then under contract in such a manner as may be deemed fair and reasonable by Seller. In no event shall Seller be obligated to purchase any substitute Goods in the marketplace to satisfy its obligations hereunder. Buyer's failure to pay for the Goods shall not constitute a force majeure event hereunder.
- 6. Taxes.** Buyer shall reimburse Seller for all taxes or other charges, except income and franchise taxes, which Seller may be required to pay to any government, whether foreign, national, state or local, upon the sale, production or transportation of the Goods, now in effect, or which may be imposed or increased subsequent to the effective date of this Agreement.

- 7. Limited Warranty; Limitation of Liability; Exclusive Remedy.** Seller warrants only that the Goods shall be substantially in accordance with Seller's published specifications for the Goods, if any, or to the written specifications for the Goods agreed to in writing by an authorized representative of Seller, if any. **THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND/OR NON-INFRINGEMENT, AND SELLER HEREBY EXPRESSLY DISCLAIMS ALL SUCH OTHER WARRANTIES.** Seller makes no recommendation, warranty or representation as to the suitability of the Goods for Buyer's application, use, end-product, process or combination with any other product or substance, or as to any results Buyer might obtain in Buyer's use(s) for the Goods. Seller's warranty extends only to Buyer and may not be assigned or transferred. All claims that the Goods are other than as warranted must be made in writing to Seller within 365 days of date of invoice by Seller or be barred. This warranty becomes void as to any Goods which have been repaired or altered outside of Seller's facilities in any way or have been damaged or changed because of accident, negligence, abuse or misuse. All Goods shall be subject to tolerance and variations set forth in Seller's Manufacturing Standard Tolerances, Seller's other published tolerances or, if none apply, then to tolerance and variations consistent with usual trade practices, regarding dimensions, composition, mechanical/optical properties, and surface and internal conditions, and shall also be subject to deviations from tolerance and variations consistent with testing and inspection methods. Returned Goods will not be accepted unless Seller is notified in writing and authorizes the return prior to shipment. Buyer shall inspect the Goods immediately after delivery. Buyer's exclusive remedy and Seller's sole liability hereunder shall be limited to a refund of the purchase price paid by Buyer for the Goods shown to be other than as warranted (or, in the case of Goods consisting of or containing precious metals, such purchase price less that portion of such price representing the value of precious metals contained in such Goods) or, at Seller's option, repair or replacement of the Goods shown to be other than as warranted. Seller shall not be liable beyond the exclusive remedies set forth hereunder, including for indirect, special, exemplary, punitive, incidental or consequential damages or for lost profits or injury to goodwill, whether arising out of breach of warranty, negligence, strict liability in tort or other causes. To the extent permitted by law, Seller shall not be liable for, and Buyer assumes all liability for, all personal injury and property damage connected with the handling, transportation, or further manufacture, fabrication, assembly, or processing of the Goods.
- 8. Safety Information.** Buyer acknowledges that Seller has furnished to Buyer product information which includes warnings and safety and health information concerning the Goods. Buyer represents and agrees that it will disseminate such information so as to give warning of possible hazards to persons whom Buyer can reasonably foresee may receive exposure to such hazards, including, but not limited to, Buyer's employees, agents, contractors and customers. Material Safety Data Sheets are available at <http://materion.com>.
- 9. Patent Infringement.** Buyer shall indemnify and hold Seller harmless from and against any and all liability for costs or damages awarded against Seller for infringement of any United States Patent claims covering the Goods manufactured to designs or specifications of Buyer.
- 10. Security Interest.** Buyer grants to Seller and to its successors and assigns a purchase money security interest in and to the Goods sold under this Agreement and all proceeds and products thereof, including the proceeds of any insurance related thereto (the "Collateral"). The security interest hereby created shall secure the payment of the purchase price for the Goods, together with all costs and expenses, including court costs and attorneys' fees incurred or expended in collecting the indebtedness secured hereby and in enforcing the security interest created hereby (collectively, "Indebtedness"). Buyer agrees Seller may from time to time (a) file financing statements or their equivalent in any jurisdiction relating to the Collateral without Buyer's signature thereon or to execute and file any such financing statement or equivalent in Buyer's name, all as Seller may deem appropriate to perfect and continue Seller's security interest and (b) notify any of Buyer's other secured creditors of Seller's security interest. Upon the occurrence and during the continuance of an event of default Buyer hereby appoints Seller as attorney in fact, solely as relates to the transactions contemplated herein with full power of substitution (i) to make, adjust or settle and receive payment on any insurance claims with respect to the Collateral; (ii) to endorse the name of Buyer on any instruments, documents or other evidences of the Collateral that may come into Seller's possession; (iii) to execute proofs of claim and loss; (iv) to execute endorsements, assignments or other instruments of conveyance or transfer; and (v) to perform all other acts which Seller deems appropriate to protect and preserve the Collateral and to enforce the terms of this Agreement. The agency hereunder is unconditional and shall not terminate until all of the Indebtedness is paid in full.
- 11. Cancellation by Buyer.** This Agreement may not be canceled in whole or in part without Seller's written consent. Such consent shall not be given unless Buyer pays Seller its costs and expenses (including, without limitation, engineering expense overhead, and all commitments to Seller's suppliers and subcontractors) plus profit, all as determined by Seller.
- 12. Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of Ohio. Buyer and Seller exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. All litigation concerning the Terms, the Agreement and/or the Goods shall occur only in the state and federal courts within the territory encompassed by the U.S. District Court for the Northern District of Ohio, and Buyer and Seller hereby consent to exclusive jurisdiction in such courts.

- 13. Compliance with Laws.** Buyer agrees to comply with all applicable laws, including but not limited to, the provisions of the Export Administration Regulations of the United States Department of Commerce and the International Traffic in Arms Regulations of the United States Department of State, as they currently exist and as they may be amended from time to time.
- 14. Assignment.** Neither this Agreement nor any interest created herein nor obligation arising hereunder shall be transferred or assigned by Buyer, except upon the prior written consent of Seller.
- 15. Severability.** In the event of illegality or invalidity of a provision of the Terms or the Agreement, the parties shall deem that provision stricken in its entirety; the balance of the Terms or the Agreement shall remain in full force and effect.

