

TERMS AND CONDITIONS
(Purchase Order)

1. **Time of Performance; Delivery.** Time is of the essence. Goods shall be packed and shipped per instructions and good commercial practice. U.S. Zinc assumes no obligation for goods shipped in excess of specifications or shipping schedule. If Supplier has reason to believe that deliveries will not be made as scheduled, Supplier shall immediately give written notice to U.S. Zinc stating the cause of the anticipated delay. Supplier shall be charged for loss sustained by reason of delay or failure except that beyond its reasonable control.
2. **Quality.** Supplier warrants that the goods will conform to the stated descriptions, be of merchantable quality, be fit for the use intended by U.S. Zinc, and be free from defects. If any goods are defective, at U.S. Zinc's option and without prejudice to any other rights U.S. Zinc may have, Supplier shall (a) remedy the defect or replace the defective goods at its expense or (b) reimburse U.S. Zinc for U.S. Zinc's cost to remedy or replace the defective goods.
3. **Inspection.** All goods delivered are subject to final inspection and approval at U.S. Zinc's premises. Payment by U.S. Zinc will not constitute approval. U.S. Zinc shall be the sole judge of the suitability of the goods for its use, and Supplier shall pay all transportation charges on rejected goods. Acceptance of goods shall not relieve the Supplier from liability, damage, or other legal remedy for breach of any warranty.
4. **Changes.** The quality, quantity, or nature of goods to be delivered may not change nor will charges for extras be allowed without a Change Order signed by an authorized representative of U.S. Zinc.
5. **Set-off.** U.S. Zinc, at its option, may set off any indebtedness of Supplier to U.S. Zinc against amounts owing by U.S. Zinc to Supplier hereunder.
6. **Taxes; Packaging.** No charges for taxes, transportation, packaging, or returnable containers will be allowed or paid by U.S. Zinc unless separately agreed by U.S. Zinc in writing. All sales, use, excise, or similar taxes to be paid by U.S. Zinc must be itemized separately on invoices. U.S. Zinc will furnish appropriate exemption certificates as applicable.
7. **Invoices.** Invoices shall show point and means of shipment and cash discount, if any, for early payment. Any such cash discount period begins on the date of receipt of invoice or goods, whichever is later.
8. **Risk of Loss; Insurance.** Supplier shall bear the risk of loss of the goods until delivery to U.S. Zinc's premises. Supplier shall procure and maintain such insurance as U.S. Zinc may reasonably request.
9. **Indemnity.** Supplier shall indemnify, defend, and hold harmless U.S. Zinc, its agents, employees, and representatives from and against any and all loss, damage, liability, claims, liens, demands, or causes of action of every nature whatsoever in any manner arising out of or incident to or in connection with the performance under this Agreement resulting from (a) breach of the terms of this Agreement or Supplier's warranties; (b) any negligent act or omission or willful misconduct of Supplier or its Subcontractors or their employees or representatives causing injury to or death to any person or loss or damage to the facilities, material, and equipment of any person; and (c) any claim or suit for infringement of any patent or copyright, or the misappropriation of trade secrets or other proprietary right.
10. **Trademarks.** U.S. Zinc warrants that it owns or has a license to use all trademarks that it may request be affixed to goods. Supplier shall not acquire or claim any rights in or use any of such trademarks on goods produced for itself or parties other than U.S. Zinc.
11. **Patents.** Supplier shall pay all royalties and license fees, if any, related to patented goods furnished under this Agreement.

- 12. Confidentiality.** Supplier agrees to keep confidential and not to disclose to others or use in any way to the detriment of U.S. Zinc confidential business or technical information that U.S. Zinc may disclose or deliver to Supplier in conjunction with this Agreement or that Supplier learns from being on U.S. Zinc's property to deliver the goods or to perform work.
- 13. General.** This Agreement constitutes the entire agreement between U.S. Zinc and Supplier. It supersedes any prior or contemporaneous oral or written understanding. Only a writing signed by both parties may modify this Agreement. Supplier may not assign or subcontract this Agreement or any part thereof without U.S. Zinc's prior written consent. The laws of the State of Texas shall govern this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The provisions of the "Incoterms" (published by International Chamber of Commerce) valid at the date of this Purchase Order shall apply insofar as the same are not inconsistent with the terms and conditions stated herein. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of the State of Texas sitting in Houston, Texas, and of the United States District Court for the Southern District of Texas sitting in Houston, Texas, in any action or proceeding arising out of or relating to this Purchase Order. Any delay, failure, or omission of U.S. Zinc to enforce any provision of this Agreement shall not constitute a waiver of such provision or a waiver of any default or remedy. The remedies herein reserved are cumulative and in addition to any other remedies at law or in equity. Any additional terms that are noted on the face of the Purchase Order are incorporated by reference and apply as if fully set forth herein. U.S. Zinc's failure to object to statements in any communication from Supplier shall not be deemed an acceptance of such statements or a waiver of the provisions of this Agreement. If any provision hereof is declared invalid or unenforceable, the balance of this agreement will remain in full effect, and the invalid or unenforceable clause will be automatically reformed only to the minimum extent necessary to become valid and enforceable.

US/Last Revision Date 3.19.09