

### **Excel Metals LLC Terms and Conditions**

THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE SALE OF SELLER'S MATERIALS. SELLER'S ACCEPTANCE OF ANY ORDER IS EXPRESSLY MADE CONDITIONAL UPON BUYER'S ACCEPTANCE OF ALL TERMS AND CONDITIONS CONTAINED HEREIN AND IN SELLER'S SALES CONTRACT. SELLER EXPRESSLY OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS, WHETHER CONTAINED IN BUYER'S FORMS, CONFIRMATIONS, WEBSITES OR OTHERWISE. SELLER WILL NOT BE DEEMED TO HAVE WAIVED THESE TERMS AND CONDITIONS OF SALE IF IT FAILS TO SPECIFICALLY OBJECT TO ANY PROVISION CONTAINED IN BUYER'S FORMS, CONFIRMATIONS, WEBSITES OR OTHERWISE. BUYER'S ACCEPTANCE OF SELLER'S MATERIALS CONSTITUTES ITS ACCEPTANCE OF THESE TERMS AND CONDITIONS.

#### **1. Governing Terms**

These Terms and Conditions ("Terms and Conditions"), the Claim Policies (attached as Schedule A) and the Seller's Sales Contract (defined in Section 2 below), govern the sale of the aluminum and steel materials ("Materials") by Excel Metals LLC, and any of its divisions, subsidiaries or affiliates ("Seller"), to the purchaser of the Materials ("Buyer") and represent the complete and exclusive agreement between the parties with respect to the subject matter hereof and may not be changed, terminated or waived except by a writing signed by Seller. No other terms or conditions shall be binding on Seller. Any terms and conditions contained in any Buyer purchase order or other document, that are not consistent herewith, or contain additional or different terms, shall be deemed automatically rejected and void, unless explicitly accepted and memorialized in a separate written agreement signed by Seller.

#### **2. Acceptance of Orders**

All purchase orders are subject to these Terms and Conditions and Buyer's acceptance of Seller's Sales Contract (these terms and conditions and those of any Sales Contract or Claim Policy shall be collectively referred to as the "Sales Contract"). Seller's Sales Contract may include additional, modified, or amended terms and conditions.

Each purchase order shall be subject to Seller's final written acceptance and Seller reserves the right to reject any purchase orders in Seller's sole discretion. All orders shall also be subject to credit approval.

#### **3. Final Sales and Return Policy**

On delivery all sales are final and returns shall not be accepted by Seller, subject to the applicable Claim Policy. Upon acceptance of a purchase order by Seller pursuant to Section 2 above, such order becomes final, and Seller shall have no liability to Buyer to cancel or refund any amounts received upon such order, except as provided in the Claim Policies.

#### **4. Shipping and Delivery of Materials**

Seller shall make delivery F.O.B. Seller's shipping point unless otherwise stated in the Sales Contract or purchase order confirmation, using Seller's standard methods for packaging and shipping.

- A. All Sales Order Confirmations will have a ship date WHICH SHALL BE UNDERSTOOD TO BE IN THE FULL MONTH OF EXPECTED DELIVERY.
- B. Seller may, in its sole discretion, without liability or penalty, make incremental shipments of purchased Materials to Buyer. Each such shipment will constitute a separate sale and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- C. Unless otherwise agreed in writing, all stainless steel plate ( $\Rightarrow$ .1875" thickness) is sold and invoiced on US theoretical weight basis.
- D. If for any reason Buyer fails to accept delivery of any purchased Materials within THE DELIVERY PERIOD SPECIFIED IN THE SALES CONTRACT because Buyer has not provided appropriate instructions, documents, licenses or authorizations, Seller may either: (i) cancel the order; or (ii) risk of loss to the Materials shall pass to Buyer; and (a) the Materials shall be deemed to have been delivered and Buyer will be invoiced PROMPTLY UPON SELLER'S NOTICE OF ABILITY TO MAKE DELIVERY and (b) Seller, at its option, may store the Materials until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, transportation, storage and insurance; and (iii) Seller, at its option, may store the Materials until Buyer picks them up at a storage fee of \$0.02 per pound of product per month of part thereof.
- E. Orders are subject to a delivered quantity variance allowance of more or less than FIFTEEN (15%) of the listed quantity within any purchase order confirmation.
- F. Unless otherwise expressly agreed, delivery times shall not be regarded as binding and delays in delivery shall not entitle Buyer to claim damages.

## **5. Customer's Representations and Warranties**

Upon Seller's request, Customer will provide Seller with current financial information. Customer represents and warrants that any financial information provided to Seller will be true and correct in all material respects and shall fairly and accurately present the financial condition of the customer as of the date of such financial statements. Customer authorizes Seller to review and evaluate Customer's credit background from time to time.

## **6. Security Interest, Title and Risk of Loss**

Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in and to the Materials, wherever located, and whether presently existing or thereafter arising or acquired from time to time, and in all replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision shall constitute a purchase money security interest under the Uniform Commercial Code as adopted by the state of New York.

Title, risk of loss or damage and all other incidences of ownership, subject to Buyer's security interest, pass to Buyer upon due tender of Materials for delivery at Seller's point of shipment. All claims for loss and filing of such claims for loss and damage are the responsibility of the Buyer. If Materials are delivered via Buyer's choice of a common carrier, title and risk of loss passes to Buyer once Materials are tendered for delivery to Buyer's common carrier at Seller's shipping point.

## **7. Amendment**

Seller may amend or modify these Terms and Conditions at any time by posting such amendment on Seller's website.

## **8. Material Prices, Taxes, Etc.**

All prices are as set forth in the applicable Sales Contract and are exclusive of all sales, use and excise taxes, and any other similar taxes, tariffs, customs duties, import and export duties, fees and charges of any kind imposed by any governmental authority, which shall exclusively be the responsibility of Buyer unless otherwise agreed and specifically outlined in Seller's Sales Contract. If Seller's costs in making any delivery shall increase by reason of

any increase in or any new taxes, duties, charges, levies or other charges imposed by any governmental authority, domestic or foreign, or by reason of any increase in freight rates, insurance costs, selling or Material costs, or for any other reason, Seller shall have the right to increase the price payable under the applicable Sales Contract in respect of such delivery by the amount of such increase in Seller's costs, and Buyer shall pay such increase, as though it had been a part of the Sales Contract.

## **9. Payment Terms**

Time for Customer's Payment of the Purchase Price for the Products shall be of the essence. Payment shall be made in US Dollars, or in other currencies as may be mutually agreed, in accordance with the terms set forth in the Sales Contract. Failure by Buyer to make full payment by the due date set forth in the Sales Contract shall constitute a default. All sums past due and owing to the Seller shall bear interest at 1.5% per month or the maximum rate permitted by applicable law from the invoice date until paid in full. Legal fees and any collection action shall be for Buyer's account.

## **10. Credit**

Buyer hereby represents and warrants that it is solvent and agrees that such representation and warranty shall be deemed repeated upon each delivery under any Sales Contract. Any credit terms extended to Buyer are only applicable provided that Buyer has and continues to comply with these Terms and Conditions. If Buyer fails to comply with any term of a Sales Contract with Seller, Buyer defaults on any payment owed to Seller, or if in Seller's opinion Buyer's credit standing has materially changed, then, in addition to all rights and remedies, Seller may proceed with any of the following actions: (1) cancel the Sales Contract in whole or in part; (2) accelerate the balance of the payments required to be made by Buyer; (3) reclaim all Material or any part thereof delivered to Buyer by Seller; (4) defer all or any shipments or deliveries until such defaults are cured or until such time as Seller sees fit; (5) place any or all of the Material in storage at Buyer's expense and withdraw the same or portions thereof from time to time for resale or otherwise; and/or (6) offer the Material or portions thereof for resale, Seller having the right to buy the Material at such resale, at one or more public or private sales without prior notice to Buyer (which notice is expressly waived hereby by Buyer) and recover from Buyer the amount by which the contract price exceeds the net amounts received by Seller upon any such resale together with all incidental damages occasioned by the default of Buyer including without limitation attorneys' fees and expenses. Any property of Buyer held at any time in Seller's (including any parent, subsidiary, or affiliate of Seller) possession, either as principal or agent, shall to the extent permitted under applicable law, be deemed held as security for, and may at Seller's option be set off against, any and all of Buyer's obligations to Seller or any parent, subsidiary, affiliate of Seller. In the event of any dispute, Seller's acceptance of any payment less than the full amount of any invoice and interest and other charges shall not constitute a waiver of Seller's right to collect the balance (notwithstanding any endorsement on any check or other instrument) and shall not be deemed an accord and satisfaction.

## **11. Inspection and Rejection of Nonconforming, Damaged or Defective Materials**

Seller warrants the Materials sold to Buyer will conform to the specification outlined in the Seller's Sales Contract. Buyer is responsible for reviewing and understanding the Material specifications provided by Seller and explicitly agrees and acknowledges that the suitability of any Materials purchased are Buyer's responsibility. Buyer is further responsible for proper protection of Materials in Buyer's transit and storage. This Section 10 is not transferrable and extends only to Buyer, subject to the specific terms and conditions of the applicable Seller's Claim Policy, each of which are incorporated herein by this reference and attached as **Schedule A** to these Terms and Conditions. In the event of any discrepancy between the terms and conditions of the Claim Policies for Stainless Steel Flat Rolled and Long Materials, Aluminum Flat Rolled Materials, or Electro-Coated Steel Flat Rolled Materials and these Terms and Conditions, the terms and conditions of the applicable Claim Policy shall control.

Buyer shall inspect the delivered Materials and make a claim for any nonconforming, damaged, or defective Materials within thirty (30) days of delivery of such Materials by Seller. All claims for damaged or defective Materials are subject to the terms and conditions set forth in the applicable Claim Policy, attached as **Schedule A**.

Buyer will be deemed to have accepted the delivered Materials unless it notifies Seller in writing of any nonconforming, defective or damaged Materials during the thirty (30) day inspection period, and complies with the applicable Claim Policy procedures or additional documentation as reasonably required by Seller. For purposes of these Terms and Conditions, "Nonconforming Materials" shall mean only: (1) Materials that do not conform to the Sales Contract, (2) Materials that are incorrectly labeled; (3) materially defective Materials governed by applicable Claim Policies, or (4) Materials that are damaged upon delivery governed by applicable Claim Policies. Satisfactory delivery shall be deemed made if no claims are reported pursuant to this Section 10 within the inspection period.

Seller shall review any timely claim submitted, and in Seller's sole discretion, Seller may take the following actions for any claims accepted pursuant to the applicable Claim Policy: (1) replace such Nonconforming Materials with conforming Materials within a reasonable amount of time, (2) upon receipt of return of the Materials at Buyer's risk of loss, credit or refund the price paid by Buyer for such Nonconforming Materials, or (3) request the Nonconforming Materials be retained by Buyer as scrap pursuant to the terms of the Claim Policies. Failure to notify Seller of any potential claim for Non-Conforming Materials within the thirty (30) day inspection period will be taken to constitute a waiver of any such claim that could, but for this clause, have been made against the Seller.

In addition to these general terms and conditions, the applicable Claim Policies for specific products (Stainless Steel Flat Rolled and Long Materials, Aluminum Flat Rolled Materials, or Electro-Coated Steel Flat Rolled Materials), attached as **Schedule A** are incorporated herein.

**NOTICE:** No debit memo shall be deducted from Seller's invoices or charges until after a return or claim has been entered, reviewed, accepted and an Excel Metals Credit Memo has been issued. Buyer's debit deductions prior to the issuance of an Excel Metals Credit Memo shall constitute a breach of the Sales Contract and Buyer shall be responsible for immediate payment of the subject invoice in full and shall also be liable for any damages resulting from such breach.

THIS SECTION SETS FORTH BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR NONCONFORMING MATERIALS AND FOR ANY BREACH OF THE SALES CONTRACT. TO THE EXTENT PERMITTED BY LAW, ANY FURTHER CLAIMS AND REMEDIES OF BUYER OTHER THAN EXPLICITLY PROVIDED FOR IN THE TERMS AND CONDITIONS, SALES CONTRACT OR CLAIM POLICY, IRRESPECTIVE OF WHICH NATURE, AMOUNT OR LEGAL BASIS, ARE HEREBY EXPRESSLY WAIVED AND EXCLUDED, IN PARTICULAR, WITHOUT LIMITATION, CLAIMS UNDER THE UNIFORM COMMERCIAL CODE OR THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

## **12. Disclaimer of Warranty**

EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THESE TERMS, SELLER SPECIFICALLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE MATERIALS, WHETHER EXPRESS OR IMPLIED INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, COURSE OF PERFORMANCE, TRADE USAGE OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY OTHER REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF.

## **13. Limitation of Liability And Indemnity**

SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONTINGENT, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THE SALES CONTRACT, WARRANTY OR ANY PART THEREOF, OR FROM THE MATERIALS SOLD, WHETHER OR

NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY SELLER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (BREACH OF CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY.

IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SALES CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE MATERIALS ON WHICH SUCH LIABILITY IS BASED. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SALES CONTRACT OR MATERIALS MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

BUYER ASSUMES ALL OTHER LIABILITY FOR ANY LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE USE OF THE MATERIALS, EITHER ALONE OR IN COMBINATION WITH OTHER PRODUCTS.

Buyer shall protect, defend and indemnify seller, and its directors, officers and members, from and against all claims, losses, damages, costs, judgments, expense and liabilities of any kind (including attorneys' fees), whether for personal injury or property damage, arising out of or in connection with Buyer's sale, marketing, distribution or use of the Material being sold by Seller to Buyer hereunder, whether in the present form or as processed or combined.

#### **14. Confidential Information**

All non-public, confidential or proprietary information of Seller, whether disclosed or accessed in oral, written, or electronic form, and whether or not marked, designated or otherwise identified as "confidential" in connection with the Sales Contract, including the terms and conditions set forth therein, is confidential, solely for the use of performing the Sales Contract and may not be disclosed or copied unless authorized in advance by Seller in writing. At any time, Buyer shall promptly return all documents and other materials received from Seller, upon request. This Section does not apply to information that is: (a) already in the public domain; (b) known to Buyer at the time of disclosure and not through a breach of any confidentiality obligation owed to Seller by any party; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party not owing any confidentiality obligation to Seller.

#### **15. Waiver**

No waiver by Seller is effective unless explicitly set forth in a signed writing. No failure to exercise, or delay in exercising, any right, remedy, or privilege arising from the Sales Contract operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, or privilege.

#### **16. Force Majeure**

Seller shall not be liable to Buyer or deemed to have defaulted or breached any Sales Contract to the extent its performance, in whole or in part, is hindered, delayed or prevented by acts or circumstances beyond Seller's reasonable control including without limitation, strikes, work stoppages or disputes, fires, floods, earthquakes, explosions, epidemics, power outages, telecommunication breakdowns, war (declared or undeclared), terrorism, riots, loss or destruction of Material, non-availability or delays of transportation, embargoes, accidents, delay or failure of Seller's suppliers to make delivery of Material, shortages of Material or labor, restrictions imposed by any

governmental authority (including but not limited to adverse trade actions; imposition of tariffs and/or quotas; anti-dumping actions; and actions taken for reasons of national security), domestic or foreign, or any other cause beyond Seller's control whether or not foreseeable or capable of mitigation by Seller. In such circumstances, Seller's obligations hereunder shall be suspended for so long as any such circumstances continue, and Buyer agrees to extend, for a corresponding period, any letters of credit or trade acceptance opened by Buyer in respect to such delivery, provided, however, that if any delivery hereunder shall be so prevented for more than ninety (90) days, either Seller or Buyer shall have the right to cancel the Sales Contract, but only with respect to such delivery or applicable portion thereof, by written notice to the other. Seller may allocate inventory among its customers in a reasonable manner, and shall not be required to purchase goods from other suppliers in order to make deliveries to Buyer.

## **17. Relationship of the Parties**

The relationship of the parties is that of independent contractors without any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship.

## **18. Beneficiaries, Assignment**

The Sales Contract is for the sole benefit of Buyer and Seller and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever thereunder. Buyer may not assign any of its rights or delegate any of its obligations under the Sales Contract without the prior written consent of Seller, and no approved assignment or delegation shall relieve Buyer of its obligations hereunder.

## **19. Dispute Resolution, Governing Law**

All matters arising out of or relating to the Sales Contract are governed by and construed in accordance with the laws of the State of New York, without regard to conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods shall not apply. In the event of a breach by Buyer of any of the terms and conditions herein or of the Sales Contract, including timely payment of Materials invoices, resulting in collection efforts or legal action by Seller, Buyer shall be entitled to recover its actual costs incurred in connection with any such collection efforts including but not limited to, reasonable attorneys' fees and costs.

Any controversy or claim arising out of or relating to the Sales Contract or the breach thereof, shall be exclusively settled by arbitration in New York, New York, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) sitting in any such controversy shall have no power to alter or modify any express provisions of the Sales Contract or to render any award which by its terms effects any such alteration, or modification. Proceedings to stay or compel arbitration, to vacate or confirm an award, or otherwise relating to or affecting arbitration, and proceedings in a court of law in connection with this Sales Contract, shall be conducted exclusively in a state or federal courts located in New York, New York. Buyer and Seller each hereby consent to the exclusive jurisdiction of the state or federal courts located in New York, New York for any such matters.

## **20. Notices**

All claims, notices, demands, waivers and other communications hereunder shall be in writing sent to the addresses set forth in the Sales Contract or any other address that has been designated in writing, via personal delivery or overnight courier with proof of delivery in both instances, unless otherwise expressly agreed by the parties in writing.

## **21. Severability**

If any provision of the Sales Contract or these Terms and Conditions is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of the Terms and Conditions or invalidate or render unenforceable such provision in any other jurisdiction.

## SCHEDULE A

### **Aluminum Flat Rolled Materials Claim Policy**

This document sets forth the policy and procedures for handling material defects claims for Excel Metals LLC's aluminum flat rolled Materials. This Claim Policy is incorporated into the general Excel Metals Terms and Conditions, which shall also apply to all claims. All Materials are subject to Aluminum Association Standards and Tolerances unless otherwise agreed in writing. Excel Metals supplies standard commercial quality flat rolled products pursuant to Aluminum Association standards from Excel Metals warehouses or directly from the mills. Excel Metals must be notified at the time the purchase order is submitted of any special end-user requirements, and agreement for any such requirements must be approved by Excel Metals and Buyer mutually in writing.

**NOTICE:** No debit memo shall be deducted from Excel Metals' invoices or charges until after a return or claim has been entered, reviewed, accepted and an Excel Metals Credit Memo has been issued. Buyer's debit deductions prior to the issuance of an Excel Metals Credit Memo shall constitute a breach of the Sales Contract and Buyer shall be responsible for immediate payment of the subject invoice in full and shall also be liable for any damages resulting from such breach.

#### **1. REJECTION NOTICE**

In the event of Buyer's timely rejection of any Excel Metals aluminum flat rolled Materials, the following must be provided by Buyer: (1) sample and/or photograph or video, at Seller's sole option that clearly displays the defect; (2) copy of the coil, sheet, plate, skid or bundle number, heat number, size, weight, description of claim, rejected weight information; (3) Excel Metals Sales Contract number corresponding to the claimed Material; (4) accurate description of the defect with specific location within the coil (head middle, tail end, edges, top or bottom). Third party processor charges associated with claims resulting from material defects shall not be reimbursed by Excel Metals.

Shape defect for coil: Samples are generally not required. Buyer shall provide a photo of the Material on the processing line and specific measurement of the raw material – height of the wave and distance between centers.

Shape defect on sheet and plate as purchased from Excel Metals: Buyer shall provide a photo demonstrating the deviation from Aluminum Association Standards.

Materials deviating from Aluminum Association standards: Buyer shall provide a photo demonstrating the deviation from Aluminum Association tolerances.

**NOTICE:** A formal claim as outlined above is to be submitted to Buyer's Excel Metals account representative in writing so that the product team can properly review and process the claim.

#### **2. MATERIAL REJECTION CRITERIA**

If Buyer timely rejects any Excel Metals aluminum flat rolled Materials, the following criteria must be met: (1) Material minimum yield is 95% based on the net weight of the coil; (2) for defects visible at the top of a coil, Buyer may run up to 20% of the coil weight to evaluate the degree and persistence of the defect; (3) if the defect is non-flatness, such as waviness or change in shape, then the deviation of the side edge shall be measured and recorded. Photos showing an excessive deviation as captured by a ruler or tape measure shall be required for submission of non-flatness claims; (4) if the sheets cut from a coil that show significant waviness or change in shape do not lie flat, then a report to be issued by the coil operator showing what and how many adjustments were made to the cut to length/ leveling line to obtain flat sheets shall be required; and (5) for defects visible at the bottom of a coil, Buyer shall process any coil weighing 1,000 pounds or less and set aside defective Material in excess of the 95% minimum product yield for Excel Metals inspection or photographing.

**NOTICE:** All rejected Material must be properly identified with Buyer's purchase order number and Sales Contract number, invoice number, grade, dimensions, lot number/pack number and the original package weight.



## SCHEDULE A

### 3. CLAIM PROCESS

Following Excel Metals receipt of Buyer's notification of rejection for material defects meeting the format and criteria set forth in Sections 1 and 2 above, Excel Metals shall review the claim and complete applicable inspections, which may include consultation with the originating mill, production and inspection records. Buyer shall retain the sample of the defective material in each case, until resolution of the claim, which will be required for Excel Metals processing of any claims if so requested. In the event of a dispute concerning the claim, a complete on-site inspection may be performed at Seller's option.

For any claim accepted by Excel Metals, at its sole discretion Excel Metals shall take one of the following actions: (i) credit or refund the price for the materially defective Materials upon receipt of the returned Materials or (ii) request Buyer to retain the materially defective Materials and issue Buyer a credit based upon the invoice price less scrap value (scrap value will be calculated upon the claim acceptance date of the claim using the daily rate found on [metalprices.com](http://metalprices.com) with respect to scrap settlements).

**NOTICE:** No claim shall be reviewed or accepted by Excel Metals for Material that has already been processed when it exceeds the limits specified in Section 2 above.

#### Criteria for Material Rejection:

- No claim shall be reviewed or accepted by Excel Metals if the above procedures are not followed.
- Third-party claims shall not be reviewed or accepted by Excel Metals. Excel Metals shall not be liable for any damage or losses resulting from re-delivery to or processing by third parties.
- All claims must be filed within thirty (30) days of the date of delivery, with the exception of externally visible damage of any kind, which must be reported immediately upon receipt of the Materials at Buyer's facility, or will otherwise be deemed waived.
- All aluminum flat rolled Materials that Excel Metals has agreed in writing to accept for return pursuant to this Claims Policy, must be properly identified, tagged, secured and protected for standard shipping and handling.

## SCHEDULE A

### **Excel Metals LLC Stainless Flat Rolled And Long And Electro-Coated Steel Coil Materials Claim Policy**

This document sets forth the policy and procedures for handling material defect claims for Excel Metals LLC ("Excel Metals") stainless steel flat rolled, long and Electro-Coated Steel Materials. This Claim Policy is incorporated into the general Excel Metals Terms and Conditions, which shall also apply to all claims. All Materials are subject to ASTM standards, unless otherwise agreed in writing. Excel Metals must be notified at the time the purchase order is submitted of any special end-user requirements, and agreement for any such requirements must be approved by Excel Metals and Buyer mutually in writing.

**NOTICE:** No debit memo shall be deducted from Excel Metals' invoices or charges until after a return or claim has been entered, reviewed, accepted and an Excel Metals Credit Memo has been issued. Buyer's debit deductions prior to the issuance of an Excel Metals Credit Memo shall constitute a breach of the Sales Contract and Buyer shall be responsible for immediate payment of the subject invoice in full and shall also be liable for any damages resulting from such breach.

#### **1. REJECTION NOTICE**

In the event of Buyer's timely rejection of any Excel Metals stainless steel flat rolled, long and or Electro Coated Steel Materials, the following must be provided by Buyer: (1) sample and/or photograph, or video, at Seller's option that clearly displays the defect; (2) copy of the coil, sheet, plate or long product skid or bundle number, or heat number, size, weight, description of claimed, rejected weight information; (3) Excel Metals Sales Contract number corresponding to the claimed Material; and (4) accurate description of the defect with specific location within the coil, sheet, or plate (head middle, tail end, edges, top or bottom side). Third party processor charges associated with claims resulting from material defects shall not be reimbursed by Excel Metals.

Shape defect for coil: Samples are generally not required. Buyer shall provide a photo and definitive measurement of the raw material – height of the wave and distance between centers.

Shape defect on sheet and plate as purchased from Excel Metals: Buyer shall provide a photo demonstrating the deviation from ASTM Standards.

Materials deviating ASTM standards: Buyer shall provide a photo demonstrating the deviation from allowable tolerance.

**NOTICE:** A formal claim as outlined above is to be submitted to Buyer's Excel Metals account representative in writing so that the product team can properly review and process the claim.

#### **2. MATERIAL REJECTION CRITERIA**

If Buyer timely rejects any Excel Metals stainless steel flat rolled, long or Electro-Coated Steel Materials, the following criteria must be met: (1) Material minimum yield is 95% based on the net weight of the material provided; (2) for defects visible at the top of a coil, Buyer may run up to 10% of the coil weight to evaluate the degree and persistence of the defect, if the defect diminishes at the 10% point, Buyer may run an additional 5% of the coil weight. If the defect persists, the balance of the coil, along with the metal processed must be set aside for Excel Metals inspection; or (3) if a defect appears at the bottom of the coil, Buyer may process any coil weighing 1,000 pounds or less and set aside the defective material in excess of the 95% minimum product yield for Excel Metals inspection.

**NOTICE:** All rejected Material must be properly identified with Buyer's purchase order number and Sales Contract number, invoice number, grade, dimensions, lot number/pack number and the original package weight.

#### **3. CLAIM PROCESS**

Following Excel Metals receipt of Buyer's notification of rejection for material defects meeting the format and criteria set forth in Sections 1 and 2 above, Excel Metals shall review the claim and complete applicable inspections,

## SCHEDULE A

which may include consultation with the originating mill, production and inspection records. Buyer shall retain the sample of the defective material in each case until the resolution of the claim, which will be required for Excel Metals processing of any claims if so requested. In the event of a dispute concerning the claim, a complete on-site inspection shall be performed.

For any claim accepted by Excel Metals, at its sole discretion Excel Metals shall take one of the following actions: (i) credit or refund the price for the materially defective Materials upon receipt of the returned Materials or (ii) request Buyer to retain the materially defective Materials and issue Buyer a credit based upon the invoice price less scrap value as calculated upon the claim acceptance date using American Metal Market prices with respect to scrap settlements on the immediately preceding Monday.

**NOTICE:** No claim shall be reviewed or accepted by Excel Metals for Material that has already been processed when it exceeds the limits specified in Section 2 above.

### Criteria for Material Rejection:

- No claim shall be reviewed or accepted by Excel Metals if the above procedures are not followed.
- Third-party claims shall not be reviewed or accepted by Excel Metals. Excel Metals shall not be liable for any damage or losses resulting from re-delivery to or processing by third parties.
- All claims must be filed within thirty (30) days of the date of delivery, with the exception of externally visible damage of any kind, which must be reported immediately upon receipt of the Materials at Buyer's facility, or will otherwise be deemed waived.
- All steel flat rolled and long Materials that Excel Metals has agreed in writing to accept for return pursuant to this Claims Policy, must be properly identified, tagged, secured, and protected for standard shipping and handling.