

## **TERMS AND CONDITIONS OF SALE**

### **I. General**

The Terms and Conditions (the "Terms") apply to the sale by B & D Thread Rolling, Inc. (the "Company") of products (the "Products"). The Terms are an integral part of the quotation prepared and delivered to you ("Customer") by the Company. The quotation constitutes an offer on the part of the Company to sell the goods as described in the quotation. Our offer is expressly conditioned upon Customer's assent to all of the terms and conditions in the Terms and the quotation. In the event that Customer's acceptance or any purchase order conflicts with, varies or supplements the Terms, the Company hereby objects to such provisions and the Terms will govern, and the Customer's conflicting, varying or supplemental provisions are rejected and will be null and void. Unless prior written agreement is reached, it will be understood that the Company's Products will be sold to Customer in accordance with the Terms.

### **II. Warranty**

The Company warrants that the Products manufactured by it and delivered to Customer will follow good manufacturing practices in the industry as set forth by the American National Standard Institute and will be free of substantial defects for a period of twelve months from the date of delivery. Customer must promptly report any failure to conform to this warranty in writing to the Company within the twelve month period. If the Company receives timely notice it will either repair or replace any defective Products. Customer must store, install and maintain such Products in accordance with good industry practices and any specific recommendations of the Company. The Company will not be liable for any repairs, replacements, or adjustments to the Products or any costs of labor performed by Customer or others without the Company's prior written approval. If Customer claims that any Products are defective or fail to meet the Product specifications, Customer must return these Products to Company for evaluation and testing. The failure to return Products claimed to be defective voids this warranty. The effects of corrosion, erosion and normal wear and tear are specifically excluded.

EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION II, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES MADE BY THE COMPANY, THE PRODUCTS ARE PROVIDED STRICTLY "AS IS," AND THE COMPANY MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY THE COMPANY AND ARE EXCLUDED BY THE PARTIES.

Correction by the Company of nonconformities, in the manner and for the period of time provided, will constitute fulfillment of all liabilities of the Company for nonconformities, whether a claim is based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such Products. Customer must not use the Products which are claimed to be defective. Any such use of the Products will be at Customer's sole risk and liability.

Company will use commercially reasonable efforts to ensure that shipments of Products meet the quantities specified in Customer's order. Product quantities may vary because of processing variances, however, and a shipment of Products by Company to Customer that are within ten percent (plus or minus) of the quantity ordered will meet the quantity specifications of Customer's order unless otherwise specifically agreed by Company.

### **III. Limitation of Liability**

THE TOTAL LIABILITY OF THE COMPANY WITH RESPECT TO THIS CONTRACT OR THE PRODUCTS, WHETHER BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE PURCHASE PRICE OF THE DEFECTIVE PRODUCTS PAID BY CUSTOMER UPON WHICH SUCH LIABILITY IS BASED.

### **IV. Limitations on Damages**

IN NO EVENT WILL THE COMPANY BE LIABLE TO CUSTOMER, ANY SUCCESSORS IN INTEREST OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS CONTRACT OR ANY DEFECT IN, OR FAILURE OF, OR MALFUNCTION OF THE PRODUCTS, WHETHER BASED UPON LOSS OF USE, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE AND REGARDLESS OF WHETHER THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **V. Survival of Limitations**

THE FOREGOING LIMITATIONS OF LIABILITY WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDIES SPECIFIED IN THE TERMS.