

# A. FINKL & SONS – TERMS AND CONDITIONS OF SALE

## 1. GENERAL:

All orders are subject to acceptance by A. Finkl & Sons Co. (Seller) at its office in Chicago, Illinois, and are subject to these Terms and Conditions of Sale. All material shall be furnished subject to Seller's standard practices, tolerances and variations. Seller reserves the privilege of shipping overages or shortages of weight, length, size and/or quantity in accordance with such of Seller's standard practices as may be applicable to the material.

## 2. QUOTATIONS AND PRICES:

Except in the case of custom forgings individually estimated and not priced from a schedule, prices are subject to change without notice, and orders calling for future delivery will be billed according to the price in effect at the time of delivery. Written quotations automatically expire 5 calendar days from the date issued and are subject to termination by notice within that period.

## 3. CREDIT APPROVAL:

Shipments, deliveries and performance of work shall at all times be subject to the approval of Seller's Credit Department and Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security satisfactory to Seller's Credit Department.

## 4. TERMS OF PAYMENT:

Subject to the provisions of CREDIT APPROVAL above, terms of payment are shown on the other side hereof and shall be effective from date of invoice. A charge of 1-1/2% per month, or the maximum amount permitted by law, whichever is less, will be added to invoices not paid within sixty days.

## 5. TAXES:

Prices on the material specified herein are exclusive of all city, state and federal taxes under any existing or future law upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered hereby, including taxes upon or measured by the receipts from the sales thereof. Any and all such taxes shall be for the account of Buyer, who shall promptly pay the amount thereof. Seller may add such tax or taxes to the invoices as a separate charge to be paid by Buyer.

## 6. WARRANTY, LIMITED LIABILITY:

SELLER MAKES NO EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, EXCEPT (i) THE EXPRESS WARRANTY SET FORTH IN THE IMMEDIATELY FOLLOWING SENTENCE AND (ii) THE EXPRESS WRITTEN WARRANTY ON ANY HOT FORGING DIE BLOCKS OR MOLD DIE STEEL SOLD HEREUNDER. Seller warrants that material which proves defective due to workmanship or material under normal use within six months from the date of delivery will at Seller's option be either replaced free of charge (exclusive of any dismantling or erection costs) or reimbursed at invoice price. All material must have Seller's approval in writing in order to be returned. This warranty extends to Buyer alone, and not to Buyer's transferees, customers or assigns.

Seller shall in no event be liable on any claim for any loss or damage in an amount in excess of the purchase price of material purchased hereunder and found to be defective. IN NO EVENT, WHETHER IN CONTRACT, TORT, NEGLIGENCE, WARRANTY, OR OTHERWISE, SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, PRODUCT LIABILITY, LOSS OF USE OF THE MATERIAL OR ANY ASSOCIATED EQUIPMENT, COST OF LABOR, COST OF SUBSTITUTE MATERIAL, DOWN TIME COST, CLAIMS OF CUSTOMERS OF BUYER FOR SUCH DAMAGES OR LOSS, OR ANY OTHER COMMERCIAL LOSS OF ANY KIND.

## 7. DELAY, DELIVERY, PREVENTION OF PERFORMANCE:

Seller will not be liable for any delay in performance or in the delivery or shipment of material, or for any damage suffered by Buyer by reason of such delay, when such delay is, directly or indirectly, caused by, or in any manner arises from, acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, accidents, quarantine restrictions, factory conditions, strikes, differences with workmen, delays in transportation, fuel, labor, materials, or

supplies, or any other cause (whether or not similar in nature to any of those previously specified) beyond its control. All orders are accepted with the understanding that they are subject to Seller's ability to obtain the necessary raw materials, and all orders as well as shipments applicable thereto, are subject to Seller's current factory schedules, government priorities, and other governmental regulations, orders, directives and restrictions that may be in effect from time to time.

Delivery is made at Seller's plant and thereafter the material is at Buyer's risk. The material will be forwarded by a carrier who shall be deemed Buyer's agent.

If transportation charges from point of origin of the shipment to a designated point and any applicable tax thereon are included in the prices herein named or heretofore quoted by Seller:

- (a) any increase in such transportation charge and/or any applicable tax thereon shall be for the account of the Buyer;
- (b) except as otherwise stated in Seller's quotation, Seller shall not be responsible for switching, spotting, handling, storage, demurrage or any other transportation or accessorial service, nor for any charges incurred therefor, unless such charges are included in the applicable tariff freight rate from shipping point to the designated point.

#### **8. PATENTS:**

Buyer shall indemnify and hold harmless Seller, its successors and assigns against and from any and all damages, claims, and judgments for damages and costs which may be rendered in any suit alleging infringement of any United States or foreign patent or trademark by the material supplied by Seller hereunder and made in accordance with any design and/or specification furnished by Buyer to Seller, and Buyer shall, if Seller desires, defend Seller at Buyer's expense in any such suits for alleged infringement.

#### **9. CANCELLATION:**

Orders cannot be canceled, or modified, or held up by Buyer after steel is melted or in process except with Seller's written consent and subject to conditions then to be agreed upon which shall include protection of Seller against all loss.

#### **10. RENEGOTIATION:**

Seller assumes only such liability with respect to renegotiation of contracts or subcontracts to which it is a party as may lawfully be imposed upon Seller under the provisions of any Renegotiation Act applicable to this order.

#### **11. WAIVER, AMENDMENT, ALTERATION OR MODIFICATION:**

No waiver, amendment, alteration or modification of these terms and conditions or the provisions of the other side hereof, or on Seller's acknowledgment, shall be binding on Seller unless in writing and signed by an executive officer or by a Manager of Sales of Seller.

#### **12. GOVERNING LAW:**

This quotation and any contract resulting there from and the performance of the parties there under shall be construed in accordance with and governed by the internal laws of the State of Illinois.

NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS IN YOUR PURCHASE ORDER, YOUR ORDER IS ACCEPTED ONLY ON THE EXPRESS CONDITION THAT YOU ASSENT TO THE TERMS AND CONDITIONS PRINTED ABOVE, AND UNLESS YOU NOTIFY A. FINKL & SONS CO. TO THE CONTRARY IN WRITING WITHIN TEN DAYS OF RECEIPT OF FINKL'S ACKNOWLEDGMENT, YOU SHALL BE DEEMED TO HAVE ASSENTED TO THE FACT THAT THE TERMS AND CONDITIONS ABOVE AND IN FINKL'S ACKNOWLEDGMENT CONSTITUTE THE ENTIRE AND SOLE AGREEMENT BETWEEN YOU AND A. FINKL & SONS CO. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED IN YOUR PURCHASE ORDER OR OTHERWISE ARE HEREBY OBJECTED TO AND ARE REJECTED AND NOT A PART OF OUR AGREEMENT.