

**FIRTH RIXSON GROUP****TERMS AND CONDITIONS OF SALE FOR U.S. BUSINESSES**

1. **DEFINITIONS.** The following terms shall have the respective meaning set forth below:

“Business Day” means any day other than a Saturday, Sunday or a day on which banks in New York, New York are authorized or obligated by applicable law to close.

“Company” means any one of Forged Metals Inc., JFB Firth Rixson, Inc., Schlosser Forge Company, Firth Rixson Inc. (also trading as “Firth Rixson Monroe”), Viking Metallurgical Corp. (also trading as “Firth Rixson Viking”), and Firth Rixson Forgings LLC.

“Contract” means the contract for sale of Goods and/or Services to Customer which is formed upon acceptance in writing by Company of Customer’s order.

“Customer” means the corporation, limited liability company, or other form of entity or person purchasing the Goods or Services from Company.

“Goods” means the subject matter of the Contract including (but not limited to) raw materials, finished or semi-finished materials or articles, machinery, parts, spares, commodities, etc. and whether one or a number of items whether or not identical or similar (including any such materials, articles, machinery, parts, spares, commodities, etc. supplied in connection with the Services).

“Services” means work and/or services or any of them to be performed by Company for Customer pursuant to the Contract.

2. **CUSTOMER’S ACCEPTANCE.** Company’s acknowledgement and acceptance of Customer’s order is made expressly conditional upon Customer’s assent to all of the terms and conditions contained herein (the “Terms”). Customer’s assent to the Terms shall be conclusively presumed from the first to occur of (i) Customer’s execution of this or any other document containing the Terms; and (ii) Customer’s acceptance of Company’s quotation for the sale or supply of Goods or Services or of delivery of any Goods ordered from Company. Unless otherwise specifically stated in a Contract, the Terms are the only ones to which the Contract is subject. Any other conditions proposed by Customer in whatever form, written or oral, are expressly waived and excluded. No amendment to, or waiver, modification or deletion of, or addition to, any of the Terms shall be deemed effective unless approved and accepted in writing by an officer of Company at its corporate office in East Hartford, Connecticut.
3. **PRICES.** Subject to potential currency adjustments, as stated below, the price payable by Customer shall be either (a) the price in effect as of the date of shipment of such Goods or actual performance of such Services, in the event a Contract quotes prices by reference to Company’s published price list, or (b) based on the cost to Company of raw materials, fuel and power, transport and labor and other applicable costs as of the earlier date of the order or quotation; *provided, however*, that Company reserves the right to increase the price payable if, as of the date of shipment, any of such costs have increased. Unless otherwise stated in the Contract, all prices are (i) net and in U.S. currency, (ii) *ex works*, and (iii) do not include any taxes payable on account of this transaction, and all such taxes now or hereafter applicable to any transaction subject to the terms hereof shall be paid by Customer. All quotations stated in a currency other than the U.S. Dollar are based on the rate of exchange published in The Wall Street Journal at the time of quotation and unless otherwise stated the price may be subject to adjustment by Company, in its sole discretion, to a price based on the exchange rate as of the date of shipment. Customer hereby expressly consents to any and all such adjustments described herein. No such adjustment shall confer a right upon either party to cancel or otherwise modify the Contract. All prices quoted by Company to Customer are confidential information of Company, and Customer shall use its best efforts to keep such information confidential.

4. **CREDIT APPROVAL; TERMS OF PAYMENT.** Shipments of Goods and performance of Services shall at all times be subject to the approval of Company's Credit Department. Company, in its sole discretion, may decline to make any shipment or decline to perform any work (a) except upon receipt of payment or security or upon other terms and conditions satisfactory to Company's Credit Department in its sole discretion, or (b) where genuine doubts arise as to Customer's financial position. Subject to credit being approved, payment of each invoice amount is due no later than 30 days from the date of such invoice (unless otherwise agreed in writing). Where Goods are sold on an ex-works basis, they shall be invoiced by the Company to the Customer immediately upon the Customer being advised in writing (by post, facsimile transmission or email) that the Goods are available for collection by the Customer, and if a period of credit has been approved by the Company, such credit period shall commence with immediate effect. In the event deliveries under a Contract are made in more than one installment, each delivery will be invoiced separately and each month's invoices will be treated as a separate account and be payable accordingly. Failure to pay for any Goods or for any delivery shall entitle Company to suspend further deliveries and/or any work under any Contract or order from Customer until payment in full is made, without prejudice to any other legal right Company may have. Where Goods are to be delivered outside the United States, payment must be made against delivery of the Goods or shipping documents, *ex works*, unless credit arrangements within the United States approved by Company have been made. Customer shall not be entitled to withhold payment of any amount due under a Contract as a result of any disputed claim under any Contract. If the full payment of each invoice is not received by Company on or before its due date, Company reserves the right to charge interest at 1.5% per month (or such lesser amount as may be required by applicable usury law) upon the outstanding amount from the date due for payment until payment is received by Company. Such interest shall accrue daily and be compounded monthly until payment thereof, whether before or after any judgment may be made with respect thereto. Company is authorized to apply toward any payment of any monies due Company hereunder any sums now or hereafter owed by Company (or any affiliate of Company) to Customer (or any affiliate of Customer).
5. **TITLE.** Upon payment in full of all amounts due and owing Company in connection with the Goods being purchased pursuant to a Contract, Company shall be deemed to have sold or otherwise transferred title in such Goods purchased hereunder to Customer.
6. **DELIVERY OF GOODS; DELAY.**
- (a) The use of customer selected freight forwarders is contingent upon that freight forwarder agreeing to and acknowledging through their signature the freight forwarder statement of work issued by the Company. The freight forwarder statement of work must be signed and given to the Company before the Company will release any cargo to that freight forwarder.
- (b) All shipments will be made in compliance with U.S. export laws and regulations including but not limited to 22 CFR 120 to 130 "the International Traffic in Arms Regulations", 15 CFR 730 to 774 "the Export Administration Regulations" and 19 CFR 1 to 199 "the U.S. Customs Regulations".
- (c) Company accepts no responsibility for damage or loss in transit. In the event the Contract provides for delivery other than at Company's site, risk will pass at the point specified in the Contract and Customer shall be prohibited from asserting a claim with respect to loss or damage in transit unless (a) Customer gives written notice to Company within ten (10) Business Days of non-delivery or within five (5) Business Days of the delivery of the Goods in any case; and (b) where the Goods are transported by an independent freight carrier, Customer complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damages in transit. All costs relating to expedited delivery, including applicable personnel overtime costs, shall be borne by Customer. Company reserves the right to under or over deliver any shipment of Goods by a margin of 5%. Any and all delivery dates given by Company constitute good faith estimates only. Company shall not be liable for any failure to meet any specific shipping or delivery date as long as Company acts in good faith. No such delay shall entitle Customer to reject future deliveries under any Contract or to repudiate any Contract.

7. **DELAYED ACCEPTANCE.** If for any reason Customer is unable to accept delivery of the Goods when they are due and ready for delivery, Company may arrange storage of the Goods at Customer's sole risk and expense and Customer shall be liable to Company for all reasonable costs related thereto. This provision is without prejudice to any other right which Company may have regarding Customer's failure to take delivery of the Goods or pay for them in accordance with the Contract.
8. **TOLERANCES AND TESTS.** Customer expressly acknowledges and agrees that it shall accept reasonable excess and deficiencies in gauges, weights, chemical composition and analysis, quantities and sizes, and that it shall not be entitled to reject any Goods or to replacement of any Goods on the ground that they are not precisely as specified. Customer shall be liable for all costs and expenses of all tests, test pieces and inspections requested or required by it. Unless requested by Customer, tests of chemical composition shall be based only on the ladle analysis which shall be final. All tests and inspections (whether or not being test of chemical composition) shall take place under Company's standard testing arrangements, and such test shall be final. All tests are subject to analytical tolerances.
9. **EXCLUSION OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 16 HEREOF, ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY TYPE AND KIND IN CONNECTION WITH THE GOODS AND SERVICES PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED IN ALL RESPECTS AND FOR ALL PURPOSES. COMPANY HAS NO LIABILITY WHATSOEVER IN CONNECTION WITH THE CONTENT, ACCURACY, MANNER OR PREPARATION OF ANY THIRD PARTY CERTIFICATION OR REPORT WITH RESPECT TO THE GOODS AND SERVICES.
10. **INDEMNITY.** Customer shall indemnify, defend and hold harmless Company and its officers, directors, employees, agents, shareholders or members (collectively, "Representatives"), successors and assigns, affiliates, and their respective Representatives, successors and assigns and affiliates against any and all liabilities, fines, penalties, fees costs and expenses, including, without limitation, reasonable attorney's fees and costs and other litigation fees, costs and expenses (collectively, "Losses"), resulting from or in connection with (i) any claim of infringement of any patent or any other intellectual property right in connection with the processing of such Goods, *provided* that such Goods comply with Customer's specifications and instructions, (ii) designs, drawings or specifications given to Company by Customer for the production of Goods for Customer; or (iii) defective materials or products supplied by Customer to Company and incorporated by Company in Goods produced for Customer; or (iv) the improper incorporation, assembly, use, processing, storage or handling of Goods by Customer.
11. **HIREWORK.** Hirework and work involving the use of Customer's materials shall be undertaken by Company only on the express understanding that Company shall not be responsible for any distortion, faults or defects which appear or develop during, or are caused by, the work, even if resulting from the negligence of Company or its employees. Subject to the availability of capacity and facilities, Company will use commercially reasonable efforts to correct any such distortion, faults or defects at Customer's sole expense and risk. Company shall not in any circumstances be liable for any Losses arising from hirework, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law. All waste material resulting from the performance of any hirework shall become the property of Company. Customer agrees to remove any such waste material promptly upon Company's request. Customer agrees that it will reimburse Company for any damage caused to any plant or machinery of Company by the material supplied by Customer to Company.
12. **NON-STANDARD ORDERS.** In the event Customer orders Goods or materials of a type, size or quality not normally produced by Company, Company shall use commercially reasonable efforts to execute the order; *provided, however*, that Company reserves the right to cancel such Contract or the uncompleted balance thereof, if, in the sole discretion of the Company, it proves impossible, impracticable or uneconomical to complete such order, and in such case, Customer will only be liable to pay for the part thereof actually delivered by Company.

13. **OWNERSHIP OF MATERIALS AND SPECIFICATIONS.** All patterns, dies, tools, drawings or equipment supplied by Customer for Company's use ("Customer Materials") shall be assumed to be in good condition, true to drawings and entirely suitable to Company's methods of production, and for the production of the Goods ordered in the quantities required. Company accepts no responsibility for the accuracy of any Customer Materials. All replacements, alterations and repairs to Customer Materials shall be paid for by Customer. Any patterns, dies, tools, drawings and equipment which are specially made by Company and separately charged to Customer shall become the property of Customer upon Company's receipt of payment therefore. Company will take reasonable care of all Customer Materials while in Company's possession but shall not be liable for any loss or damage thereto, except to the extent that the gross negligence of Company or its employees is determined to be the direct cause of such loss or damage. In such event, Company's liability shall be limited solely to the actual cost of replacement or repair. Company reserves the right to destroy or otherwise dispose of patterns, dies, tools, drawings and equipment in its possession or custody (whether or not Customer's property) from which Customer has not required Goods to be made for a period of at least 12 months in the case of patterns, and at least 3 years all other cases. The parties hereto agree that the Company shall at all times retain ownership of all methods of manufacturing the Goods hereunder, regardless of the Company's use of any specifications provided by Customer or any other Customer Materials during such manufacture.
14. **PACKING.** Customer shall be responsible for all costs of packing cases and packing materials, but where stated to be returnable, such charges will be credited in full on return to Company's works, shipping paid, in good condition, within 30 days of receipt by Customer. Company shall use commercially reasonable efforts to ensure suitability of packing but in no event shall Company be liable for damage resulting in transit due to allegedly unsuitable packing.
15. **DISPUTE RESOLUTION AND LEGAL ACTION.**
- (a) Any lawsuit brought by Customer against Company, whether based on contract, tort or any other legal theory must be commenced within one year from the date when the alleged cause of action first occurred. In the event that Company must institute a lawsuit against Customer to collect any monies that it is due hereunder or pursuant to any purchase order for Goods or Services, or if Company successfully defends against a lawsuit instituted by Customer hereunder then Customer shall be liable for Company's costs and expenses, including reasonable attorney's fees, incurred in connection therewith. Any and all disputes regarding a Contract or these Terms shall be governed by the laws of the State of New York, without reference to its conflicts of laws principles.
- (b) EACH CUSTOMER AND COMPANY HEREBY SUBMITS TO THE JURISDICTION OF THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT, WAIVES ANY CLAIM OF INCONVENIENT FORUM OR OTHER CHALLENGE TO VENUE IN SUCH COURT, AGREES NOT TO BRING ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY OTHER COURT, AND WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. IN THE EVENT THAT THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK RULES THAT IT DOES NOT HAVE JURISDICTION, THEN THE CUSTOMER AND COMPANY SHALL PROCEED IN THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY, AND ALL OTHER PROVISIONS OF THIS PARAGRAPH SHALL THEN APPLY TO THAT COURT.
- (c) Notwithstanding Section 15(a) and (b), if and only if Customer is not a resident of the United States, any unresolved controversy or claim arising out of or relating to this Agreement, except as (i) otherwise provided in this Agreement, or (ii) any such controversies or claims arising out of either party's intellectual property rights for which a provisional remedy or equitable relief is sought, shall be submitted to arbitration by one arbitrator mutually agreed upon by the parties, and if no agreement can be reached within thirty (30) days after names of potential arbitrators have been proposed by the American Arbitration Association (the

“AAA”), then by one arbitrator having reasonable experience in commercial transactions of the type provided for in this Agreement and who is chosen by the AAA. The arbitration shall take place in New York, New York, in accordance with the AAA rules then in effect, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof. There shall be limited discovery prior to the arbitration hearing as follows: (x) exchange of witness lists and copies of documentary evidence and documents relating to or arising out of the issues to be arbitrated, (y) depositions of all party witnesses and (z) such other depositions as may be allowed by the arbitrators upon a showing of good cause. Depositions shall be conducted in accordance with the Federal Rules of Civil Procedure, the arbitrator shall be required to provide in writing to the parties the basis for the award or order of such arbitrator, and a court reporter shall record all hearings, with such record constituting the official transcript of such proceedings.

**16. WARRANTY; CUSTOMER’S EXCLUSIVE REMEDY; COMPANY’S LIMIT OF LIABILITY.**

- (a) During the six month period immediately following the dispatch of the Goods from Company’s facility (the “Warranty Period”), Company warrants that it will, at Company’s option, either repair or replace, or refund the full purchase price on any Goods which are determined to be defective or otherwise not in accordance with the Contract (the “Warranty”); *provided however*, that the Warranty shall not apply (i) in the event the defect or fault is attributable to defective materials supplied to Company by third parties, or (ii) to the repair or replacement of expendable items, or (iii) for the repair or replacement caused by ordinary wear and tear consistent with the intended application of the Goods. A claim by Customer of an alleged defect or failure to comply with specifications shall not entitle the Customer to cancel or refuse delivery of, or payment for, any other order, delivery or instalment or any part of the same order, delivery or instalment. The Warranty is not transferable without Company’s express written consent. Customer’s sole and exclusive remedy and Company’s absolute limit of liability in connection with any lawsuit, claim or cause whatsoever directly or indirectly relating to or arising out of a Contract shall in all cases be strictly limited to recovery under the Warranty. As a condition precedent to Company’s obligation to be responsible for any damages hereunder, Customer shall assist Company in all respects in its attempts to determine the legitimacy and basis of any claims made by or on behalf of Customer. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY CONTRACT, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO CUSTOMER OR ANY THIRD PARTY AND ALL SUCH DAMAGES ARE HEREBY DISCLAIMED.**
- (b) The Warranty shall be void if any of the following apply: (i) Customer fails to provide written notice to Company, including sufficient details of the alleged defect, prior to the expiration of the Warranty Period; (ii) Customer fails to either (A) return the allegedly defective Goods, at Customer’s sole cost, to Company if required by Company, or (B) provide Company’s Representatives adequate opportunity to inspect the Goods and remove samples for analysis; (iii) the Goods have been subjected to any manufacturing process; (iv) Customer fails to keep, use or maintain the Goods in accordance with Company’s instructions; (v) Customer has permitted persons other than Company or Company’s authorised Representatives to effect any repair or replacement of parts, or maintenance or adjustments to the Goods; (vi) Company has not received Customer’s payment in full for the Goods; or (vii) Customer has used any spares or replacements not authorised by Company.
- (c) **THE COMPANY SHALL HAVE NO LIABILITY FOR FAILURE TO COMPLY WITH THE UNITED STATES EXPORT ADMINISTRATION REGULATIONS OR INTERNATIONAL TRAFFIC IN ARMS CONTROL REGULATIONS IF SUCH FAILURE TO COMPLY IS IN ANY WAY RESULTING FROM OR RELATED TO CUSTOMER’S (OR A THIRD PARTY PROVIDING INFORMATION AT THE REQUEST OF CUSTOMER) PROVISION OF INCOMPLETE OR INCORRECT INFORMATION WITH RESPECT TO SUCH REGULATIONS.**

- 17. MECHANIC’S LIEN, STOP NOTICES, PAYMENT BOND CLAIMS, ETC.** Company specifically reserves the right to take any and all actions it deems necessary to protect its right to payment, including, without

limitation, recording mechanic's liens, stop notices and payment bond claims, as may be available under applicable state law.

18. **FORCE MAJEURE.** If the manufacture or delivery of any Goods by Company, or the acceptance by Customer of a delivery, is delayed or prevented by circumstances beyond the reasonable control of either party, including any government legislation, fire, explosion, epidemic, accident, act of God, war, civil disturbance, storm, flood, tempest, seizure, arrest or requisition of Goods or raw materials, non-availability of power or raw materials, breakdown of plant or any other matter outside the control of that party, act of terror, riot, strike, lockout or other concerted acts of workers and/or act of government (each, a "Force Majeure Event"), the delivery of such Goods shall be postponed, and if such delivery cannot be made within a reasonable date after the due date, the Contract may be cancelled by either party. The party claiming non-performance due to a Force Majeure Event shall promptly notify the other party in writing, and provide full particulars of the Force Majeure Event and the date of first occurrence thereof. Customer shall pay Company such sum as may be equitable in respect of any work performed prior to such cancellation. Where more than one delivery is to be made under the Contract, deliveries not so cancelled will be resumed as soon as the circumstances causing the delay cease; *provided, however*, that unless Company otherwise agrees in writing, the period during which deliveries of Goods are to be made will not be extended.
19. **ASSIGNMENT AND SUBCONTRACTING.** Customer may not assign, delegate, subcontract or otherwise transfer any of its rights or obligations under any Contract without first receiving the prior written consent of Company. The provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.
20. **NOTICES.** Any notice, demand, waiver, consent, approval or other communication which is required or permitted to be given to any party hereunder shall be in writing and shall be deemed given (i) if by personal delivery, at the time delivered, (ii) if by facsimile or electronic mail, upon confirmation of transmission, (iii) if by registered mail (return receipt requested), with postage and registration fees thereon prepaid, or (iv) by an internationally recognized courier company (providing receipt of delivery), addressed to the Customer at its address set forth in the respective Contract, or to Company at the address of its corporate headquarters set forth below, or to such other address as the receiving party may notify the sending party in writing, on the (A) third day after dispatch, if delivered internationally, or (B) the second day after dispatch if delivered domestically: **JFB Firth Rixson Inc., 111 Founders Plaza, Suite 1802, East Hartford, CT 06108.**
21. **TERMINATION.** Company may, without prejudice to its rights and remedies hereunder, stop all Goods in transit and suspend further deliveries and may terminate the Contract upon providing written notice to Customer upon the occurrence of any of the following: (a) default or breach by Customer in the payment or performance of any obligation, covenant, or liability contained or referred to herein or in any other agreement or arrangement between Customer (or any affiliate of Customer) and Company (or any affiliate of Company); (b) any event which results in the acceleration of the maturity of any other indebtedness of Customer to others under any indenture, agreement or undertaking; (c) death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Customer or any guarantor surety to Customer; or (d) the financial responsibility of the Customer shall, in the sole and reasonable discretion of Company, become impaired. Upon such termination, (i) all amounts due and owing Company under each Contract with Customer shall be accelerated and shall be due and payable immediately and (ii) Company shall be relieved of all liability under this Contract and any other Contract so terminated but such termination shall be without prejudice to any claim or right Company might otherwise have against the Customer. Except in the case of a Force Majeure Event, upon written consent of Company, or as otherwise expressly provided in the Contract, Customer may not cancel any order of Goods. In the event an order is permitted to be cancelled, Customer will reimburse the Company, together where appropriate with a sum equivalent to Company's lost profit thereon, for any expenditure or costs incurred by Company in relation to the order or such part of it so cancelled.
22. **MISCELLANEOUS.** These terms and conditions, together with the applicable Contract, constitute the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior

discussions and preliminary agreements, if any. No waiver of any provision of this agreement by Company, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such provision or as a waiver of any other provision hereof. If any term of this agreement, or the application thereof to any person or circumstance, shall be invalid or unenforceable, the remainder of this agreement or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term hereof shall be valid and shall be enforced to the fullest extent permitted by applicable law.

23. Firth Rixson shall conduct all sales in compliance with 15 CFR parts 730 through 774 (the "EAR"), 22 CFR Chapter 1, Subchapter M, Parts 120 through 130 (the "ITAR") and all applicable U.S. export law, regulations and provisos. Customer is equally responsible for complying with all U.S. export law, regulations and provisos.