



STANDARD TERMS AND
CONDITIONS FOR THE PURCHASE
AND SALE OF
EURAL USA INC.
PRODUCTS AND/OR SERVICES

Eural USA Inc.

4631 North Lincoln Avenue, Chicago, IL 60625, USA
TAX ID: 39-2080968 – www.euralusa.com – usa@eural.com
Mob.: +1 (312) 888.05.78 – Tel: +1 (312) 683.06.68
A Company of Eural Gnutti S.p.A. Italy Group, www.eural.com

This proposal (the "Proposal") is subject to acceptance by Buyer of these Terms and Conditions (the "Agreement") contained in this Section [2] of the Proposal. This Proposal makes null and void and otherwise replaces any previous proposal to supply Products and/or Services to Buyer. This Proposal will remain open and valid until the date which is sixty (60) days after the date stated on the front of this Proposal, after which this Proposal and any offers contained therein shall be rescinded, null and void in all respects.

Please read this Agreement - if you do not agree to any of the terms, do not order Products or Services.

1. Definitions. As used in this Agreement, the terms (a) "Seller," "Eural," "we," "us," and "our" shall mean Eural USA Inc., an Illinois corporation, and its affiliates, subsidiaries, successors and assigns; (b) "Buyer," "you", "your," and "yours" shall mean the party executing this Agreement to purchase the Products or Services and/or the party accepting delivery of Eural's Products or Services hereunder, (c) "Products" shall mean, but not be limited to, extruded and drawn rods and bars in aluminum wrought alloy and specifically any subset thereof specifically described elsewhere in this Proposal and subject to the technical specifications and drawings approved by Buyer; and (d) "Services" shall mean all design, installation, relocation, maintenance, training or other services provided by Eural in connection with the sale, use or installation of the Products. All other capitalized terms not defined herein shall have the meanings given elsewhere in the Proposal.

2. Acceptance, Merger and Integration. Buyer accepts this Agreement and agrees to pay for the Products and Services offered by Eural in this Proposal by Buyer's purchase agreement or confirmation, or by acceptance of delivery of the Products or Services hereunder. Buyer has no right to cancel or defer manufacture, shipment, delivery or installation unless agreed to in writing by Eural. **Buyer acknowledges that upon acceptance of this Proposal, Eural will begin to incur substantial costs in developing and producing the Products and Services specifically for Buyer, which would not be suitable for resale to any other Buyer in the ordinary course of Eural's business. Therefore, in the event Buyer cancels manufacture, shipment, delivery or installation, or otherwise rescinds its acceptance of this Proposal, causes an event of Force Majeur, or terminates this Agreement in violation thereof, Buyer shall be entitled to keep all sums previously paid to Buyer from Eural prior to full and complete performance, and Eural shall invoice Buyer, and Buyer agrees to pay, such amount equal to the difference between all amounts paid by Buyer to Eural in connection with this Proposal and 60% of the total amount to be paid by Buyer if this Proposal was performed in full.** Notwithstanding the manner in which Buyer accepts, Buyer's acceptance is limited exclusively to the acceptance of Eural's terms and conditions set forth in this Agreement only. Eural hereby objects to and rejects any proposal by Buyer for additional or different terms in connection with the Products or Services provided. Buyer may acknowledge this Agreement by its purchase agreement, but any and all terms, conditions and provisions contained in said purchase agreement, acknowledgment form or other communications with respect to the transaction contemplated by this Agreement, or subsequent to the date hereof, are agreed to be superfluous and without any force and effect. This Agreement, which includes all of the terms and conditions hereunder, and all exhibits, riders or limited warranties attached hereto, is intended to be the exclusive and final statement of the terms and understandings relative to the subject matter hereof, merging herein and superseding all negotiations and prior written or oral agreements between the parties as to the subject matter of the purchase of the Products or Services hereunder.

3. Payment/Purchase Orders/Invoices. All purchase orders related to this Proposal shall be made to **Eural USA Inc., 4631 North Lincoln Avenue, Chicago, IL 60625, usa@eural.com**. Payment shall be made by wire transfer of immediately available funds to such accounts as may be identified by Eural to Buyer (for full and partial shipments) as follows:

- as indicated on Eural order confirmation or invoice sent to Buyer by fax or email.

Eural will invoice as follows:

- Eural will invoice Buyer for each partial shipment, payment subject to the schedule described above;
- Eural will issue a final invoice upon final delivery of the Products.

It is agreed that with respect to Buyer's payment obligation, time is of the essence. All payment terms are expressed in U.S. dollars. Eural reserves the right to determine, at its sole discretion, the parties and extent of any credit approval, if applicable. Failure to make prompt and full payment hereunder constitutes a material breach of this Agreement and affords Eural the right to suspend its performance without liability to Buyer and cancel this Agreement and any Purchase Orders. Buyer has no right of setoff.

4. Taxes and Import Duties. The price of the Products or Services specified does not include federal taxes, state or local sales taxes, use taxes, or occupational taxes. Unless prohibited by law, Buyer is responsible for and shall pay all applicable sales, use, occupational, excise, value added or other similar taxes applicable to the manufacture, sale, price, delivery or use of the Products or Services provided by Eural, or in lieu thereof, Buyer shall provide Eural with a tax-exemption certificate acceptable to and considered valid by the applicable taxing authorities.

5. Delivery and Risk of Loss. When sales are DDP (Incoterms 2000) at the location indicated by the Buyer, risk of loss, destruction of or damage to the Products shall be Eural's until delivery of the Products to the location indicated by the Buyer. Thereafter, title shall pass to Buyer and Buyer shall be fully responsible for and assume all risk of loss, destruction of or damage to the Products. When sales are Ex Works (Incoterms 2000) at any of the locations where Eural has a stock within the USA territory, title shall pass to Buyer from the moment of starting loading the goods on vehicle. Thereafter Buyer shall be fully responsible for and assume all risk of loss, destruction of or damage to the Products. Loss or damage to the Products after risk of loss has passed to Buyer will not release or excuse Buyer from its obligations under this Agreement to Eural, including the obligation to make full payment of the purchase price. Partial shipments will be permitted upon agreement of a time schedule for such partial shipments by Buyer and Eural, and provided that (i) Eural has received a written acceptance of this Proposal, (ii) Eural has received the Down Payment (if any) and (iii) Buyer and Eural have agreed on the technical definition and system layout for Buyers order. Shipment Schedule is indicated on each Eural order confirmation sent to Buyer.

When sales are Ex Works (Incoterms 2000) any of Eural stocks located in USA territory,

6. Delays/Force Majeur. Eural shall use reasonable efforts to make prompt deliveries in a commercially reasonable manner. Delivery dates and estimates are, however, not guaranteed. Buyer has no right to delay or defer delivery or acceptance; **provided if Eural accepts Buyers request for a delay in shipment of Products, Buyer shall pay any direct costs sustained by Eural in connection with such delay, and Buyer shall still pay to Eural according to the payment schedule described herein as if the Products had in fact been shipped in conformance with the originally agreed schedule.** Neither party will be liable for any failure or delay in performance resulting directly or indirectly from causes beyond such party's reasonable control, including without limitation: product shortages, inability to obtain raw materials from usual sources of supply, transit failure or delay, strikes or other labor disputes, governmental orders or restrictions, fire, flood or other acts of nature, accident, war and other hostilities (whether declared or not), invasions, acts of foreign enemies, mobilization, requisition, embargos, rebellion, revolution, insurrection, military or usurped power and civil war, riot, government decrees or orders;



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radiation (collectively "Force Majeur"). If either party believes an event of Force Majeur has occurred which affects its performance, it shall promptly provide notice to the other party no later than 36 hours after the disrupted party discovers the event, providing complete details thereof. If a Force Majeur event has occurred and continues for a period of three (3) months, either party can terminate this Agreement and this Proposal upon thirty (30) days prior written notice, without penalty.

7. Rejection and Revocation of Acceptance. Subject to the limited warranty described below, any rejection or revocation of acceptance by Buyer due to nonconformance of the Products or Services must be made within eight (8) days of delivery and any attempted rejection or revocation of acceptance made thereafter shall be null and void unless agreed to in writing by Eural.

8. Limited Warranty and Disclaimer of All Other Warranties. (a) **EURAL WARRANTS FOR A PERIOD SET FORTH IN SECTION 8(c) COMMENCING ON THE DATE OF DELIVERY THAT THE PRODUCTS AND SERVICES (i) MEET OR EXCEED THE WRITTEN SPECIFICATIONS, AND (ii) ARE FREE OF MATERIAL DEFECTS IN DESIGN OR WORKMANSHIP. BUYER'S EXCLUSIVE REMEDY IN CONNECTION WITH THESE EXPRESS WARRANTIES AND THIS AGREEMENT IS THE REPAIR OR REPLACEMENT OF THE PRODUCTS OR SERVICES OR, AT EURAL'S OPTION, A REFUND OF THE PURCHASE PRICE, IF ANY, ACTUALLY PAID BY EURAL FOR THE NONCONFORMING PRODUCTS OR SERVICES. IN THE EVENT THAT BUYER OBTAINS A REFUND OF THE PURCHASE PRICE, BUYER SHALL FIRST SHIP THE PRODUCTS SUBJECT TO THE REFUND TO EURAL AND TRANSFER TITLE TO SAID PRODUCTS TO EURAL AS SOON AS PRACTICABLE. THIS WARRANTY COVERS LABOR AND TRAVEL EXPENSES, INCLUDING BOARD AND LODGING FOR INDISPENSIBLE MODIFICATIONS OR INTEGRATIONS TO THE PRODUCTS; HOWEVER, THIS WARRANTY DOES NOT COVER, AND BUYER WILL BE RESPONSIBLE FOR, LABOR AND TRAVEL EXPENSES, INCLUDING BOARD AND LODGING, FOR CLAIMS THAT COULD NOT BE ATTRIBUTED TO PROBLEMS ARISING FROM PRODUCTS AND/OR SERVICES PROVIDED BY EURAL. ANY BROKEN/FAULTY ITEM REPLACED UNDER THIS WARRANTY MUST BE RETURNED TO EURAL WITHIN THIRTY (30) DAYS FROM THE SHIPMENT DATE OF ANY REPLACEMENT PARTS AT THE ADDRESS PROVIDED BY EURAL AT THE TIME OF THE CLAIM HANDLING. IF SUCH REPLACED PARTS ARE NOT SO RETURNED, EURAL SHALL INVOICE, AND BUYER AGREES TO PAY, THE VALUE OF THE REPLACEMENT PART.**

(b) EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN THIS SECTION 8, EURAL MAKES NO EXPRESS OR IMPLIED WARRANTIES IN THIS AGREEMENT OR OTHERWISE. TO THE FULLEST EXTENT PERMITTED BY LAW, EURAL DISCLAIMS ALL WARRANTIES, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. EURAL EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY TO BUYER FOR ANY CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF USE, LOSS OF PROFITS, INCOME, OR REVENUE, LOSS OF TIME OR INCONVENIENCE, LOSS OR DAMAGE TO ASSOCIATED EQUIPMENT, UPTIME, COST OF SUBSTITUTED OR REPLACEMENT EQUIPMENT, LOSS TO FACILITIES, LOSS OF CAPITAL, LOSS OF SERVICES OR COST OF REPLACEMENT POWER, OR ANY OTHER INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGE ARISING OUT OF THIS AGREEMENT OR THE OPERATION, FUNCTION OR CHARACTERISTICS OF THE PRODUCTS OR SERVICES PURCHASED HEREUNDER OR OTHERWISE PROVIDED BY EURAL. IT IS EXPRESSLY UNDERSTOOD THAT THE LIMITED WARRANTY AFFORDED BUYER IS THE SOLE AND EXCLUSIVE REMEDY OF BUYER.

(c) **WARRANTY PERIOD:**
THREE (3) MONTHS FROM DATE OF DELIVERY, SUBJECT TO THE FOLLOWING.

(d) THIS WARRANTY DOES NOT COVER, AND THIS WARRANTY SHALL BE CONSIDERED NULL AND VOID, IF DAMAGE OR OTHER DEFECTS ARE CAUSED BY:

- MISUSE OF THE PRODUCTS;
- COLLISIONS OR OTHER EXTERNAL CAUSES (I.E. WATER DAMAGE, EXPOSURE TO EXTREME WEATHER, ETC.);
- REPAIRS AND/OR MODIFICATIONS WITHOUT EURAL APPROVAL;
- FAILURE TO NOTIFY EURAL OF DEFECTS OR FAULTS WITHIN 8 BUSINESS DAYS AFTER DISCOVERY THEREOF.

(e) ALL DATA INCLUDED IN PUBLICITY MATERIALS (INCLUDING WITHOUT LIMITATION CATALOGUES, VIDEOS, ADVERTISEMENTS, POSTERS, EURAL'S WEBSITE, ETC.) ARE INDICATIVE ONLY AND SUBJECT TO CHANGES AT ANY TIME WITHOUT NOTICE. EURAL'S ONLY REPRESENTATION'S WITH RESPECT TO PRODUCT AND SERVICE SPECIFICATIONS ARE THOSE CONTAINED IN THE TECHNICAL SPECIFICATIONS PROPOSED HEREUNDER, UNLESS REVISED PER MUTUAL AGREEMENT BY THE PARTIES.

9. Limitation of Liability. To the fullest extent permitted by law, the parties waive and relinquish any claims, demands, causes of action or recoveries for punitive damages, exemplary damages, or statutory damages. In no event will Eural be liable for indirect, special, incidental or consequential damages arising under this Agreement or otherwise with respect to the sale of the Products or provision of Services, including any lost revenues or profits, consequential and/or incidental damages, business interruption or damage to business reputation, regardless of the theory upon which any claim may be based, including any tort or statutory causes of action. Notwithstanding the terms of any limited warranty, and/or in the event any limited warranty provided to Buyer fails of its essential purpose, in no event will Eural's entire liability to Buyer (in tort, contract, for intellectual property infringement, or otherwise) exceed the purchase price actually paid by Buyer for the Products and/or Services subject to the contract or Agreement in dispute, or any defective or nonconforming portion thereof, whichever is the lesser amount.

10. Default. The failure of Buyer to perform any obligation hereunder, including without limitation, the breach of this Agreement, the prompt and complete payment of the purchase price for Products or Services and all other amounts due hereunder, the failure to materially perform other agreements between Buyer and Eural, or Buyer's bankruptcy, insolvency, fraud or inability to pay its debts as they mature, shall constitute a default under this Agreement and shall, in addition to any other remedies at law or in equity, afford Eural all of the remedies of a secured party under the Uniform Commercial Code of the State of Illinois. In the event of default, Eural may, in addition to pursuing any of the remedies provided by law, equity or as set forth in this Agreement, refuse to provide warranty, repair and/or maintenance Service and/or deliver Products under this or any Service or maintenance agreement relating to the Products, and may also cancel this Agreement and any pending orders without liability to Buyer. In the event of default, Eural may also, without limiting its other remedies, terminate this Agreement and apply any and all payments received hereunder or otherwise from Buyer to any damages that Eural may have as a result of the breach of this Agreement or otherwise. To the fullest extent permitted by law, all of Eural's rights and remedies under this Agreement shall be cumulative and not exclusive.

11. Waiver and Severability. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. If any term, covenant, warranty, remedy or condition of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be held or deemed invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or provision, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or provision of this Agreement shall be deemed valid and enforced to the fullest extent permitted by law.



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12. Indemnification. To the fullest extent permitted by law, Buyer shall defend, indemnify and hold Eural harmless from any and all claims, demands, subrogation claims by Buyer's insurers, causes of action, controversy, liabilities, fines, regulatory actions, seizures of Product, losses, costs, expenses (including, but not limited to attorneys' fees, expert witness expenses and litigation expenses) (hereinafter "Claim"), arising from or in connection with any Claim asserted against Eural for any damage, environmental liability, patent or intellectual property infringement caused by Buyer's misuse, modification or alteration of the Products, or any other Claim, whether in tort, contract, or otherwise, relating to this Agreement, the business relationship between the parties, the Products or Services provided hereunder, or Buyer's breach of this Agreement. Notwithstanding the foregoing, Buyer has no indemnity obligation to Eural with respect to any Claims that result solely from the negligence of Eural and this indemnity provision does not purport to indemnify Eural solely for its own negligence, but rather for the negligence or conduct, whether sole or concurrent, of Buyer. Except for Claims related to Product design or manufacturing defects which were inherent to the Product at the time of delivery to Buyer by Eural, Buyer, for itself and its insurers, expressly waives Claims against Eural arising from any applicable workers compensation or disability acts, which Buyer might or could assert against Eural or Eural's insurers in the event of the personal injury or death of Buyer's employees, representatives or servants. Without limiting the foregoing, Buyer, for itself and its insurers, also waives any liens, Claims or other rights it may have as a result of being subrogated to any rights of its employees, representatives or servants.

13. Relationship. The relationship between Eural and Buyer shall be that of independent contractors and Eural, its agents and employees, shall under no circumstances be deemed the employees, distributors, franchisees, agents or representatives of Buyer.

14. Assignment and Modification. The rights and obligations of the parties under this Agreement shall not be assignable unless consent to the assignment is in writing and signed by the parties. This Agreement shall not be modified, altered or amended in any respect except by a writing signed by the parties. Any variation, modification, or addition to the terms set forth in this Agreement shall be considered a material modification and shall not be considered part of this Agreement.

15. Governing Law & Venue. This Agreement and all claims and causes of action shall be governed by and subject to the internal laws (exclusive of the conflicts of law provisions) and decisions of the courts of the State of Illinois. The sole and exclusive venue for all claims and causes of action between the parties shall be the state court located in Cook County, Illinois or the federal court located in Chicago, Illinois.

16. Confidentiality. Except as required by law or to enforce this Agreement, you will not disclose, publish or communicate any information provided by Eural in connection with this Agreement ("Information"), including without limitation any information (a) marked as confidential to anyone other than your employees or agents who need to know the information to facilitate your business; (b) prices for Products charged to you other than your employees or agents who need to know the information to comply with this Agreement; (c) all drawings, models, instruction manuals and other documentation related to the Products and/or Services. Furthermore, Buyer agrees, unless Eural specifically authorizes in writing, Buyer must: (a) not use Information, except for the use of the Products as contemplated by this Proposal; (b) not analyze or reverse engineer Information to determine its composition; (c) not measure the properties of Information, except as reasonably necessary to use the Products as contemplated by this Proposal; (d) not disclose or make Information available to others; (e) limit access to Information to persons requiring that access to use the Products as contemplated by this Proposal, provided those persons are subject to obligations no less restrictive than those of this Agreement; (f) not file any patent, utility model or design application based upon or disclosing any of Information, or disclosing any Eural-proprietary designation for its Information; and (g) take all reasonable precautions in handling and evaluating Information, but not less strict than those precautions used to guard Buyer's own Information. BREACH HEREOF WOULD CAUSE IRREPARABLE

HARM TO EURAL FOR WHICH MONEY DAMAGES ALONE WOULD BE AN INADEQUATE REMEDY, AND ACCORDINGLY, RELIEF FOR SUCH BREACH SHALL ENTITLE EURAL TO INJUNCTIVE RELIEF (WITHOUT BOND). This Section 16 shall survive until such Information enters the public domain for reasons unreleased to Buyer's breach hereof.

17. Termination. This Agreement expires on the same date that the Warranty expires. Prior to expiration in accordance with its terms, this agreement may be terminated as follows:

- By Eural if Buyer fails to provide payments in accordance with this Agreement;
- By either party if the other party proceeds to or files for bankruptcy or liquidation (voluntarily or involuntarily), or otherwise becomes insolvent;
- By either party if the other party materially breaches this Agreement (other than breaches related to non-payment), and such breach is not cured within 15 days after the non-breaching party provides notice to the breaching party thereof.

Any termination notice must be sent at least 30 days prior to the effective date of such termination, and must be sent by registered mail, signed by a legal representative of the terminating party, and include a detailed description of the circumstances giving rise to such termination.

18. Notices. All notices, requests, consents and other communications under this Agreement will be in writing, addressed to the receiving party's address appearing on the "Contacts" page of this Proposal or to another address as that party may designate in a written notice, and will be either (i) delivered by hand; (ii) made by facsimile; (iii) sent by overnight courier; or (iv) sent by registered mail, return receipt requested, postage prepaid. All notices, requests, consents and other communications under this Agreement will be deemed to have been given (a) if by hand, at the time of the delivery thereof to the receiving party; (b) if made by facsimile, at the time that receipt thereof, as evidenced by appropriate receipts, facsimile "answer-back" print-outs, or similar documentation; (c) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service; or (d) if sent by registered mail, on the fifth business day following the day such mailing is made.

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