

TERMS AND CONDITIONS OF SALE

"Order" refers to the price, specifications, quantities, shipment arrangements and other transaction specific terms set forth at the beginning hereof together with these Terms and Conditions of Sale (collectively, the "Terms"). "Buyer" refers to the party specified on the first page of this Order. "Seller" refers to CMBB LLC dba Chicago Metallic Bakeware. "Product(s)" refers to the Seller's product(s) specified in this Order. Seller agrees to sell to Buyer the Product(s) only pursuant to this Order and the following Terms:

1. ACCEPTANCE. This Order (including all of these Terms) represents the complete and exclusive final statement of all the terms of the entire agreement between Buyer and Seller and shall take precedence over, and supersede, any terms and conditions that appear in Buyer's order form, in any documents incorporated by reference in Buyer's order form, or any other writing of Buyer, either prior to or after this Order. Orders for Seller's Products are not binding on Seller until the order is confirmed or acknowledged in writing by Seller. No term or condition additional to, or different from, these Terms shall become part of the contract between Buyer and Seller unless explicitly agreed to in writing by an authorized officer of Seller. Failure of Seller to separately object to the provisions contained in any order or other writing of Buyer shall not be construed as a waiver of these Terms nor an acceptance of any terms and conditions of Buyer. **SELLER HEREBY OBJECTS TO, AND NOTIFIES BUYER OF ITS REJECTION OF, ANY SUCH ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS.** No sales representative, affiliate, associate, or independent agent of Seller shall have any authority to vary these Terms in any respect or to agree to any additional terms or conditions. Buyer shall be conclusively deemed to have agreed to all of these Terms unless Buyer delivers to Seller written notice of Buyer's objection to the Terms within the earlier of (i) 10 days after receipt of this Order or (ii) the date that the Product(s) are shipped pursuant hereto. Further, regardless of whether or not Buyer has given such written objection to any of these Terms, Buyer's acceptance of any Products or payment of any amount due hereunder shall be conclusively deemed acceptance of these Terms.

2. PRICES. Prices are subject to change without notice. Prices are based on the quantities specified and upon production in accordance with the shipping date(s) or schedules, if any, set forth in this Order. Any permitted changes to this Order made in accordance herewith are subject to an increase in price. Prices do not include sales taxes, excise taxes, duties, tariffs and other charges levied by federal, state or other governmental authority and Buyer must provide the appropriate certificate of exemption for state sales tax purposes. Any taxes not charged on this invoice are the responsibility of the Buyer.

3. DOMESTIC TERMS OF PAYMENT. Unless Seller has agreed to other terms in writing and set forth in this Order, all domestic sales shall be (i) F.O.B. Seller's facility in Humboldt, TN, or such other point of shipment that Seller may elect in its discretion, exclusive of all freight and insurance charges and (ii) net thirty (30) days from the date of invoice, subject to approval by Seller's credit department.

4. INTERNATIONAL TERMS OF PAYMENT. Unless Seller has agreed to other terms in writing and set forth in this Order, all international sales shall be (i) Ex Works (Incoterms 2000) Seller's facility in Humboldt, TN, or such other point of shipment that Seller may elect in its discretion, exclusive of all freight and insurance charges and (ii) paid in advance for goods and freight (cash or wire transfer).

5. LATE PAYMENT/SECURITY INTEREST. Any payment not made to Seller when due shall be subject to the service charge of one and one-half percent (1-1/2%) per month (or, if lower, the maximum amount permitted by law) on the unpaid balance until paid. Buyer shall pay Seller all costs and expenses (including reasonable attorneys' fees) incurred by Seller in collecting overdue amounts or enforcing Seller's rights hereunder. Seller reserves, and Buyer grants to Seller, a purchase money security interest in the Products to secure Buyer's payment of the purchase price and any other charges owed by Buyer, and Buyer agrees that Seller may take all actions as Seller deems advisable to evidence and perfect such security interest.

6. TITLE. Unless Seller has agreed to other terms in writing and set forth in this Order, title to the Product(s) shall pass to Buyer upon delivery to a common carrier or a licensed trucker, which shall constitute delivery to Buyer. Buyer shall be responsible for the risk of loss or damage in transit and shall pay all freight charges and procure its own insurance. Seller retains title to all tools, dies or special equipment at all times and special charges, if any, in connection with tools, dies or special equipment do not convey ownership to Buyer or the right to remove the same from Seller's factory.

7. SHIPMENTS/DELIVERY. In accordance with established trade practices, Seller reserves the right to vary the quantity of Products delivered pursuant hereto by (and Buyer hereby agrees to accept) up to five percent (5%) more or less than the quantities specified in this Order. The quantity of Products shown in Seller's final invoice(s) shall in all cases govern settlements. Claims for loss or damage to Products in transit should be made to the carrier promptly and not to Seller, which shall have no liability therefor. Buyer must notify Seller in writing of any shortages in excess of the five percent permitted variance within fifteen (15) days after receipt of shipment and Buyer must preserve the shipment intact in order that the alleged shortage may be verified. Failure to give such notice or to preserve the shipment intact shall constitute acceptance and waiver of all claims for shortages by Buyer. Seller will use commercially reasonable efforts to fill orders in a timely manner. Time shall not be deemed to be of the essence in making delivery under this agreement unless specifically agreed to in writing by Seller and set forth in this Order. Delay in delivery of any Product will not warrant cancellation of this Order or relieve Buyer of its obligation to pay for or accept such Product or any other Product ordered by Buyer. Seller shall not be liable for failure to deliver or for delay in delivery or performance due to any cause beyond Seller's reasonable control, including, but not limited to, act or omission of Buyer; act of civil, governmental or military authority; strike or other labor difficulty; riot or other civil disturbance; failure or refusal of any carrier to transport materials; delay in transportation; material shortages or unavailability of materials from suppliers; fire; casualty; theft; natural disasters; accidents; or any other commercial impracticability. Buyer's acceptance of delivery of the Products from the carrier shall constitute a waiver of any claims for delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and reasonable storage charges shall be added to the amounts due from Buyer. Any such delay due to a cause within Buyer's control shall not relieve Buyer's obligation to pay in full all amounts when originally due under this Quotation and Seller may invoice Buyer when the Products are available for delivery. Seller will have the right to stop the delivery of Products in transit and to withhold shipments or refuse delivery if Buyer fails to make any payment due Seller or otherwise breaches these Terms.

8. INTELLECTUAL PROPERTY RIGHTS. It is understood that there is no obligation on the part of Seller, its agents or employees to treat as confidential any disclosure concerning the Products covered by this Order. The validity or scope of any patent or other intellectual property right claimed by the Buyer pertaining in any way to the Products may be contested in any way whatsoever by Seller. When products are made to design or specifications furnished or approved by Buyer, Buyer agrees to indemnify and save and hold Seller harmless against any claim or demand based upon infringement of any intellectual property rights.

9. GENERAL LIMITED WARRANTY. The finish on any Product will be as described in the beginning of this Order, or, if not so described, Buyer agrees that the Products may be finished in any manner chosen by Seller. Seller warrants to Buyer that upon delivery to the carrier the Products will conform to the specifications at the beginning of this Order and will be free from material defects in workmanship and material (the "General Limited Warranty"). If any Product fails to meet the General Limited Warranty, in Seller's judgment, Seller, at Seller's option, either (i) shall replace the defective Product or (ii) shall issue a credit for any such defective Product in the amount of the original invoice

price for such Product. Seller's obligation under the General Limited Warranty is conditioned upon the following: (a) Buyer notifies Seller in writing of any alleged defect within fifteen (15) days after delivery to carrier; (b) Buyer does not use, alter or process the allegedly defective Products in any way; and (c) Buyer gives Seller's representatives full opportunity to inspect the Products and investigate the alleged defects. No refund shall be made by Seller to Purchaser until after the Seller has inspected said product and directed Purchaser to return it to seller and said product has been received by Seller and restocked. Said refund shall be limited to the purchase price less 20% stocking charges. Freight charges for shipment to Purchaser and for return to Seller shall be borne by Purchaser and shall be paid before any refund is made by Seller.

10. WARRANTY CLAIMS. Buyer must give Seller notice of a warranty claim in writing within the time periods provided above. Buyer, at Seller's request, shall return any Products that Seller determines to be defective at Buyer's expense. Any replacement Products shall be delivered to a domestic Buyer F.O.B. Seller's facility in Humboldt, TN, or such other point of shipment that Seller may elect in its discretion, exclusive of all freight and insurance charges, and shall be delivered to an international Buyer Ex Works (Incoterms 2000) Seller's facility in Humboldt, TN, or such other point of shipment that Seller may elect in its discretion, exclusive of all freight and insurance charges. Buyer shall be responsible for the risk of loss or damage in transit and shall pay all freight charges and procure its own insurance.

11. EXCLUSION OF ALL OTHER WARRANTIES. EXCEPT FOR THE GENERAL LIMITED WARRANTY, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCTS. SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, OR USAGE OF TRADE. SELLER SHALL NOT BE LIABLE FOR, AND BUYER ASSUMES ALL RISK OF, ANY STATEMENTS, REPRESENTATIONS, OR ADVICE MADE BY ANY SALES REPRESENTATIVE OR OTHER AGENT OF SELLER, OR MADE ON SELLER'S WEBSITE OR IN BROCHURES OR OTHER MARKETING MATERIALS, OR SELLER'S FAILURE TO PROVIDE ADVICE, REGARDING THE PRODUCTS OR BUYER'S USE OF THE PRODUCTS. BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECT COVERED BY THE GENERAL LIMITED WARRANTY, AS THE CASE MAY BE, SHALL BE AS SET FORTH IN PARAGRAPHS 9 AND 10 RESPECTIVELY. THIS EXCLUSIVE REMEDY SHALL NOT HAVE FAILED OF ITS ESSENTIAL PURPOSE (AS THAT TERM IS USED IN THE UNIFORM COMMERCIAL CODE). BUYER SPECIFICALLY ACKNOWLEDGES THAT SELLER'S PRICE FOR THE PRODUCTS IS BASED UPON THE LIMITATIONS OF SELLER'S WARRANTIES AND LIABILITY AS SET FORTH IN THESE TERMS.

12. LIMITATION OF LIABILITY. IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE SALE OF THE PRODUCTS TO BUYER, WHETHER IN AN ACTION ON CONTRACT OR IN TORT INCLUDING NEGLIGENCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SHALL NOT BE LIABLE FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED PRODUCT; COST OF SUBSTITUTE PRODUCTS; DOWNTIME COSTS; LOSS OF BUSINESS; INTERRUPTION OF BUSINESS; OR CLAIMS OF CUSTOMERS OF BUYER FOR SUCH DAMAGES. IN ANY EVENT, SELLER'S LIABILITY SHALL NOT EXCEED THE DIFFERENCE BETWEEN THE MARKET PRICE OF THE GOODS AT THE TIME OF BREACH BY SELLER AND THE CONTRACT PRICE; NO ALTERNATE METHOD OF MEASURING DAMAGES SHALL APPLY. THESE LIMITATIONS SHALL APPLY EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

13. CANCELLATION/TERMINATION. Buyer may not cancel this Order, in whole or in part, except with Seller's written consent and upon terms that will indemnify Seller against all loss. Seller may cancel or terminate all or any portion of this Order (i) if Buyer fails to make any payment when due hereunder; (ii) if Buyer violates any of these Terms; (iii) if Buyer's credit becomes impaired; (iv) if any Product becomes unavailable. In the event of such cancellation, Seller shall be entitled to receive reimbursement for its reasonable cancellation charges.

14. MODIFICATIONS. Buyer may not change its order or modify the quantity, ship date or any specifications for the Products without Seller's prior written consent, which Seller may withhold in its sole discretion. Any such changes or modifications shall be subject to an adjustment in the purchase price for the affected Products as determined by Seller in its sole discretion and Buyer agrees to pay costs or expenses incurred by Seller in making the changes or modifications.

15. ADDITIONAL PROVISIONS. Clerical and stenographic errors are subject to correction by Seller without notice to Buyer. This Order and these Terms will be interpreted fairly in accordance with their terms and conditions and without any strict construction in favor of either party. Any ambiguity shall not be interpreted against Seller. This Order and these Terms and all orders accepted by Seller shall be governed by the laws of the State of Ohio, U.S., without regard to choice of law principles. Buyer may not assign its Order or its rights or obligations hereunder without Seller's prior written consent; any such attempted assignment shall be void. All provisions hereof shall be binding upon the successors, legal representatives and permitted assigns of the Seller and Buyer. Seller and Buyer hereby irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts with venue and jurisdiction over Urbana, Champaign County, Ohio, in any action arising out of or relating to this Order and **WAIVE THE RIGHT TO A TRIAL BY JURY.** Any action arising under this Order must be brought within one (1) year from the date of delivery of the Products to Buyer. Buyer and Seller agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods to this Order or any other order received from Buyer. If any provision herein is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions herein shall remain in full force and effect. Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered, when sent by confirmed facsimile delivery, or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other. This Order together with these Terms is the complete and exclusive final statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products, supersedes all other agreements and understandings between the parties, either oral or written, and may not be amended or modified, and no provision of these Terms may be waived, except in writing executed by the parties.