

Superior Graphite Terms and Conditions of Purchases

1. **ENTIRE AGREEMENT** – This order, including the terms and conditions on the face and reverse side hereof, contains the complete and final agreement between Purchaser and Seller. Reference to Seller's bids or proposals on this order shall not affect the terms and conditions hereof, unless specifically provided to the contrary herein, and no other agreement, quotation or order acknowledgement in any way modifying any of said terms and conditions will be binding upon Purchaser unless made in writing, and signed by Purchaser's authorized representative.

2. **TERMINATION/CANCELLATION** – Purchaser reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work or deliveries hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work or deliveries. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed or deliveries made prior to the notice of termination, plus actual direct costs only resulting from the termination. Seller shall not be paid for any work done or deliveries made after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which could reasonably have been avoided.

3. **TERMINATION FOR CAUSE** – Purchaser may also terminate this order or any part hereof for cause in the event of any default by Seller, or if Seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Purchaser upon request of reasonable assurances of future performance shall all be causes allowing Purchaser to terminate this order for cause. In the event of termination for cause, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for any and all damages sustained by reason of the default that gave rise to the termination.

4. **PROPRIETARY INFORMATION – CONFIDENTIALITY – ADVERTISING** - Seller shall consider all information furnished by Purchaser to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this contract, unless Seller obtains prior written permission from Purchaser to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Purchaser in connection with this order. Seller shall not advertise or publish the fact that the Purchaser has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Purchaser's prior written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Purchaser shall be deemed secret or confidential and Seller shall have no rights against Purchaser with respect thereto except such rights as may exist under patent laws.

5. **WARRANTY** – In addition to all other warranties expressed or implied in law, Seller warrants that the items delivered hereunder will conform to all applicable specifications, drawings, samples, symbols or other descriptions furnished by Purchaser and will be merchantable, of good material and workmanship and free from defects for a minimum period of one (1) year after acceptance. In case any such item shall be defective or otherwise not in conformity herewith, Seller shall at Purchaser's option and in addition all other remedies of Purchaser, either credit Purchaser for any such nonconformity or defect, or at Seller's expense, replace, repair or correct any such article. Seller agrees to make all corrections to the satisfaction of Purchaser. Should Purchaser elect to accept items which

do not conform to all specifications or other descriptions, payment shall be made at an equitable reduction in price. This warranty shall survive acceptance and run to Purchaser, its successors, assigns, customers and users of its products.

6. **REMEDIES RESERVED** – In addition, Purchaser shall be entitled to exercise all of its remedies available under applicable law, including rejection, revocation of acceptance, cover and/or consequential damages for Seller's breach of any express or implied warranty or for Seller's breach of contract or breach of any other obligation to Purchaser.
7. **PRICE** –
 - (a) Prices for goods ordered include all charges for Seller's boxing, packing and crating and for the transportation to F.O.B. point.
 - (b) If no price is stated on this order, Seller will invoice Purchaser at Seller's lowest prevailing market price.
8. **PAYMENT** - Seller's right to payment shall be contingent upon Purchaser's approval and acceptance of supplies delivered or services rendered. Payment of the stipulated price shall not be evidence of Purchaser's final acceptance of such supplies or services. Discount terms and payment of invoices will be based upon the date specified on this order for delivery of supplies or services or the actual delivery date of such supplies or services, whichever is later. If no discount is offered, payment of invoices will be made in accordance with the terms specified on the front of this order.
9. **FORCE MAJEURE** – Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Purchaser and shall deliver them when the cause affecting the delay has been removed. Purchaser shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement at Purchaser's request. Causes beyond Purchaser's control shall include, without limitation, government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.
10. **PATENTS** – Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Purchaser or its agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder, and Seller further agrees to indemnify Purchaser, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by, and actively participate through, its own counsel in any such suit or proceeding if it so desires, and all costs of such representation shall be paid by Seller.
11. **INSURANCE** – In the event that Seller's objections hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Purchaser's property, or property of Purchaser's customers, Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Purchaser. Seller agrees to obtain and maintain at its sole cost all necessary insurance including but not limited to Commercial General Liability (including Premises Operations and Products/Completed Operations) including X'C'U hazards as required by nature of products or services, for limits of no less than \$1,000,000 per occurrence for Bodily Injury and Property Damage and \$2,000,000 annual aggregate. The Commercial General Liability policy will designate the Purchaser,

its agents, subsidiaries, affiliates and assigns as an Additional Insured. Statutory Workers Compensation shall be maintained responding to the domicile where services are being performed, including Employers Liability at no less than statutory limits. Commercial Auto Liability insurance for no less than \$1,000,000 per accident. Higher limits of insurance as well as broader coverage terms may be required at the sole discretion of Purchaser upon written notice to Seller. Seller and Seller's Commercial General Liability and Workers Compensation policies/carriers will provide a written Waiver of Subrogation in favor of Purchaser. Seller will provide a Certificate of Insurance evidencing the coverage required upon demand by Purchaser.

12. **ASSIGNMENT AND SUBCONTRACTORS** – Seller shall not assign the accounts receivable or subcontract the order or any right or obligation thereunder, without the prior written consent of Purchaser. Purchase of parts and materials normally purchased by Seller or required by this order shall not be construed as an assignment or subcontract.
13. **COMPLIANCE WITH LAWS** – Seller represents that the goods called for in this order have been produced in accordance with and complying with the requirements of the Fair Labor Standards Act, OSHA, EPA, and other applicable federal and state laws and regulations, including, but not limited to, Executive Order 11246, as amended and its implementing Regulations, Section 60-1.4 (a) of the Regulations of the Secretary of Labor, Title 41 CFR, Chapter 60, Parts 1-60, Affirmative Action clauses of the Rehabilitation Act of 1973 at 41 CFR Section 60-741.1 and the Vietnam Era Veterans' Readjustment Act of 1974, at 41 CFR Section 60-2050.4, as amended.
14. **INDEMNIFICATION** - Seller agrees to indemnify and hold harmless Purchaser, its agents or employees, subsidiaries, affiliates and assigns from and against any and all losses, damages, costs, claims, lawsuits, whether groundless or not, judgments, settlements and expenses including without limitation attorney's fees and court costs, arising or alleging to have arisen out of injury to any persons or animals, death or damage to any property whether owned, leased or used by Purchaser or others, including without limitation, loss of services occurring or arising out of or in connection with the work/product herein contemplated, whether or not occurring or arising out of the concurrent acts or omissions of the Purchaser, its agents or employees, subsidiaries, affiliates and assigns in connection with the work herein contemplated; provided however, this provision shall not be construed so as to have effect of indemnifying and holding harmless Purchaser, its agents or employees, subsidiaries, affiliates and assigns from and against such losses, damages, costs, claims, lawsuits, judgments, settlements, and expenses which shall solely arise out of acts or omissions of Purchaser in connection with the work/product herein contemplated.
15. **CHANGES** – Purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.
16. **INSPECTION/TESTING** – Purchaser shall have the right to inspect such goods and to reject any or all of said goods which are in Purchaser's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and in addition to Purchaser's other rights. Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Purchaser receives goods whose defects or

nonconformity is not apparent on examination, Purchaser reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way Seller from the obligation of testing, inspection and quality control.

6. **SHIPMENT** – If, in the order to comply with Purchaser’s required delivery date, it becomes necessary for Seller to ship by more expensive means than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused solely by Purchaser.
7. **PACKING SLIP** – An itemized packaging slip bearing Purchaser’s order number as shown herein must accompany each delivery; and each container must be marked to show this purchase order number. The Purchaser’s authorized representative’s count will be accepted as conclusive on shipments not accompanied by a packing slip.
8. **WAIVER** – Purchaser’s failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Purchaser’s waiver of any breach hereunder shall not thereafter constitute a waiver of any other terms, conditions, rights, privileges, or breaches, whether of the same or similar type.
9. **DELIVERY** – Seller and Purchaser agree that time is of the essence on this contract, and if delivery of items or rendering of services is not completed by the time promised or specified, Purchaser reserves the right without liability in addition to its other rights and remedies to terminate this contract by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any expense or loss incurred by reason of such substitution.
10. **LIMITATION ON PURCHASER’S LIABILITY – STATUTE OF LIMITATIONS** – In no event shall Purchaser be liable for profits whether realized or anticipated or for incidental or consequential damages. Purchaser’s liability on any claim of any kind for any loss or damages arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.
11. **PRODUCT INFORMATION** - Where applicable, Seller must furnish product MSDS sheets, product specification and technical information, along with spare parts list, drawings, maintenance manuals, and operation manuals with or before shipment of order.