

**SUPERIOR GRAPHITE**  
**TERMS AND CONDITIONS OF PURCHASE**

**1. Entire Agreement.** This order, including the terms and conditions on the face and reverse side hereof, contains the complete and final agreement between Buyer and Seller. This purchase order constitutes an offer by Buyer to Seller and is not binding on Buyer until accepted by Seller and Seller specifically waives its signed acceptance of this purchase order by delivery of the goods, rendering of the services, or the commencement of work on goods to be specifically manufactured for Buyer pursuant to this purchase order. Seller's acceptance of this purchase order is expressly limited to the terms and conditions of this offer. Should any of the terms and conditions of this purchase order be at variance with any of the terms and conditions of sale of Seller, it is understood and agreed that the terms and conditions of this purchase order shall prevail. 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 Buyer unless made in writing, and signed by Buyer's authorized representative.

**2. Termination/Cancellation.** Buyer 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, which shall be Seller's exclusive remedy. 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.** Buyer 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 Buyer upon request of reasonable assurances of future performance shall all be causes allowing Buyer to terminate this order for cause. In the event of termination for cause, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer 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 Buyer (whether written or oral) 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 Buyer to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Buyer in connection with this order. Seller shall not advertise or publish the fact that the Buyer has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Buyer'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 Buyer shall be deemed secret or confidential and Seller shall have no rights against Buyer 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 (including, without limitation, warranties of title, merchantability and fitness), Seller warrants that the items delivered hereunder will conform to all applicable specifications, drawings, samples, symbols or other descriptions furnished by Buyer and will be merchantable, of good material and workmanship, be fit for the intended use by Buyer, be free from defects in design, material, workmanship and title, and shall be at least equal to industry recognized standards or codes or of the best quality if no quality is specified. Goods used to correct nonconformity shall be similarly warranted. Seller further hereby warrants that on delivery, Buyer shall receive good title to the goods free and clear of all liens and encumbrances and that all goods and services, including, without limitation, the sale and use thereof, shall be free from any actual or claimed patent, copyright or trademark infringement. Seller further hereby warrants that all goods and services sold hereunder shall have been produced, sold, delivered and furnished in strict compliance with all applicable international, Federal, State and local laws and regulations. Except as otherwise provided in this purchase order, Seller's liability hereunder shall extend to all damages proximately caused by the breach of the foregoing warranties or guarantees, including, without limitation, any incidental or consequential damages. . In case any such item shall be defective or otherwise not in conformity herewith, Seller shall at Buyer's option and in addition all other remedies of Buyer, either credit Buyer 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 Buyer. Should Buyer 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 Buyer, its successors, assigns, customers and users of its products.

**6. Remedies Reserved.** In addition, Buyer 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 Buyer.

**7. Price.** Seller warrants that prices shown on this purchase order are complete, and there shall be no additional charges, including without limitation, shipping, packaging, labeling, customer duties, storage, or insurance. Prices include all customs duties and sales, use, excise and property taxes and similar charges. If no price is stated on this order, Seller will invoice Buyer at Seller's lowest prevailing market price. Seller warrants that the prices for the goods or services sold hereunder are not less favorable than those currently extended to any other customers for the same or similar goods or services in similar quantities. In the event that Seller reduces its prices during the term of this purchase order, Seller agrees to reduce the prices hereof correspondingly.

**8. Payment.** Seller's right to payment shall be contingent upon Buyer's approval and acceptance of supplies delivered or services rendered. Payment of the stipulated price shall not be evidence of Buyer'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. Seller shall be paid the prices stipulated herein for goods delivered and accepted, less applicable deductions, if any. Buyer may return quantities of goods in excess of that specified at Seller's expense and risk. For purposes of invoice payment, the effective date of the invoice shall be construed to be the date of acceptance of the goods at Buyer's location (or such other location as designated by Buyer) or the date of receipt by Buyer of Seller's correct invoice, whichever occurs later. Notwithstanding the above, payment shall not constitute an acceptance of any goods or services failing to meet applicable specifications or quality standards.

**9. Force Majeure.** Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement at Buyer's request. Causes beyond Buyer'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 Buyer 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 Buyer, 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. Buyer 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 Buyer's property, or property of Buyer'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 Buyer. 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'CU 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 Buyer, 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 Buyer 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 Buyer. Seller will provide a Certificate of Insurance evidencing the coverage required upon demand by Buyer.

**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 Buyer. 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 all applicable laws and regulations.

**14. Indemnification.** Seller agrees to indemnify and hold harmless Buyer (including any of its respective affiliates, customers, employees, officers and agents) from and against any and all liabilities, losses, damages, costs, claims, lawsuits, whether groundless or not, judgments, settlements and expenses of any kind (including without limitation consequential, incidental or indirect damages and reasonable attorney's fees, investigative fees and court costs) incurred by any of them relating to or arising or alleging to have arisen out of (i) any actual or alleged injury to any persons or animals, death or damage to any property whether owned, leased or used by Buyer 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 Buyer, its agents or employees, subsidiaries, affiliates and assigns in connection with the work herein contemplated (ii) any other negligence or willful misconduct or other wrongdoing by Seller; or (iii) any actual or alleged patent, trademark or copyright infringement or violation of other proprietary right or other litigation or threatened litigation of any kind in connection with any of the products; provided however, this provision shall not be construed so as to have effect of indemnifying and holding harmless Buyer, 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 Buyer in connection with the work/product herein contemplated. Buyer shall have the right to reasonably control the defense or settlement of any litigation actually brought or threatened against it without reducing the Buyer's rights to be indemnified by Seller. Seller's indemnification obligations hereunder shall apply without regard to whether such claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort, and shall survive delivery and acceptance of the products.

**15. Changes.** Buyer 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 and promptly implement any such changes subject to this paragraph.

**16. Inspection/Testing.** Buyer shall have the right to inspect and test such goods at all reasonable times and places (including, without limitation, the place of manufacture) and to reject any or all of said goods which are in Buyer's judgment defective or nonconforming. Final inspection and acceptance of all goods provided under this purchase order shall be made after delivery at Buyer's designated point, notwithstanding any prior payment or inspection. Buyer may, at its sole option, either give Seller a reasonable time to correct any nonconformance, or cancel the purchase order as to such goods and retain its rights to purchase substitute goods as provided by law. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and in addition to Buyer's other rights. Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity is not apparent on examination, Buyer 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.

**17. Shipment.** Seller shall suitably pack, mark and ship in accordance with instructions, if any, from Buyer, and the requirements of common carriers. If, in the order to comply with Buyer'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 Buyer.

**18. Packing Slip.** An itemized packaging slip bearing Buyer's order number as shown herein must accompany each delivery; and each container must be marked to show this purchase order number. The Buyer's authorized representative's count will be accepted as conclusive on shipments not accompanied by a packing slip.

**19. Waiver.** Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer'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.

**20. Delivery.** Seller and Buyer 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, Buyer 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. Unless otherwise specified by Buyer, all deliveries shall be made DDP (Incoterms 2010) and risk of loss and title to all conforming goods and/or services provided under this purchase order shall pass to

Buyer upon delivery, or at the time of acceptance by Buyer, whichever is later, provided, however, that in the event that the goods and/or services are subsequently rejected by Buyer for any reason, risk of loss and title shall be divested from Buyer and shall revert immediately to Seller.

**21. Limitation on Buyer's Liability/Statute of Limitations.** In no event shall Buyer be liable for profits whether realized or anticipated or for incidental or consequential damages. Buyer'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. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

**22. 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.

**23. Governing Law/Dispute Resolution.** This Agreement shall be governed by the laws of the State of New York, U.S.A., excluding its conflict of laws provisions. The parties hereby exclude application of the U.N. Convention on Contracts for the International Sale of Goods from this Agreement and any transaction between them related thereto. The parties agree to submit any and all claims, demands, disputes, controversies, differences or misunderstandings arising out of or relating to this Agreement, or the failure or refusal to perform the whole or any part hereof, to arbitration conducted in accordance with the International Arbitration Rules of the American Arbitration Association ("AAA"), except where those rules conflict with this provision, in which case this provision controls. Arbitration shall be conducted before a single arbitrator unless the amount in dispute exceeds \$250,000. If the amount in dispute exceeds \$250,000, it shall be decided by three arbitrators, one to be selected by each party and the two party appointed arbitrators to agree upon the third. Under no circumstances are the arbitrators authorized to award damages contrary to Section 16 (the limitation on liability clause) of this Agreement. The arbitration shall be held in New York, New York. Absent agreement of the parties, or an order by the arbitrator(s) based upon compelling evidence of need, there shall be no discovery in the arbitration. The arbitrators shall be authorized to award costs and attorney's fees or to allocate them between the parties. Any court with jurisdiction shall enforce this clause and enter judgment on any award.

**24. Severability.** In the event that any one or more of these terms or conditions is held invalid, illegal or unenforceable, such provision or provisions shall be severed and the remaining terms and conditions shall remain binding and effective.