

PURCHASE TERMS AND CONDITIONS

St. Marys Carbon Company, Inc. ("Buyer") offers to purchase from the party to whom these terms and conditions are executed ("Seller") the products, materials and/or services (collectively the "Goods") as set forth in Buyer's Purchase Order, subject exclusively to the following terms and conditions (such Order, terms and conditions are referred to herein collectively as this "Agreement"):

A. Buyer's Purchase Order cover sheet is attached.

B. Buyer's Business Related Terms and Conditions.

1. Seller shall send to Buyer promptly its order acknowledgement and confirmation of price(s) and delivery date(s). Buyer's Purchase Order number must appear on all correspondence including the bill of lading. Seller shall reference "SMC" PDS or drawing number on all invoices and packing slips. Packing slips and material certification shall accompany each shipment to Buyer. Seller's prices are inclusive of the cost of shipping or delivery unless otherwise agreed in writing by Buyer and Seller. Seller shall send to Buyer material safety data sheet (MSDS) with initial shipment and upon any revision.

2. This Agreement is not to be performed by Seller at a price higher than last quoted or in any way changed without the written approval of Buyer. Such price is exclusive of any taxes, tariff and duties of any kind, which either party may be required under to pay with respect to the Goods.

3. Seller shall retain all data relevant to the Purchase Order and the Goods for a minimum of ten (10) years.

4. Buyer or appropriate governmental authorities may, upon request, conduct an inspection of Seller's facility and applicable records to evaluate the ability to comply with Buyer's order requirements. Seller shall comply with Buyer's quality assurance provisions and requirements.

C. Buyer's Legal Terms and Conditions.

1. **ACCEPTANCE.** Any terms and conditions originating with or furnished by Seller are superseded by this Agreement and shall not be a part of the contract between Buyer and Seller unless specifically accepted in writing signed by a duly authorized official of Buyer. Buyer shall have no liability to Seller unless and until accepted in writing by Buyer. Oral statements of purchase representations do not constitute an agreement and are not part of this Agreement. Buyer may at any time, by written notice to Seller, make changes in the drawings, specifications, quantities, delivery schedules and shipping instructions under this Agreement. If any such change increases or decreases the direct cost of performing this Agreement or the time required for its performance, an equitable adjustment in prices and/or delivery schedules shall be agreed between the parties as soon as practicable, but in any event no later than ten (10) days prior to the delivery of the Goods to Buyer.

2. **DELIVERY.** Time is of the essence in Seller's performance of this Agreement. The Goods shall be delivered by Seller to Buyer's place of business from which the Goods were ordered, unless otherwise specified by Buyer. Shipments with the same shipment address must be combined for the lowest freight rates, unless Buyer instructs otherwise to Seller in writing.

Seller shall not send partial shipments to Buyer unless authorized in writing by Buyer. Unless otherwise agreed in writing, all shipments shall be F.O.B. Buyer's destination, and risk of loss as to such Goods shall remain with Seller until after the Goods are delivered to Buyer and all nonconformities are cured or accepted. The party bearing the risk of loss shall be responsible for providing adequate insurance on such shipments. In the absence of specific routing, Seller's shipper is required to use the least expensive method. No boxing, crating or packing charges shall be paid by Buyer.

3. INSPECTION; REJECTION AND REVOCATION OF ACCEPTANCE. After receipt of the Goods, Buyer shall have a reasonable time, but not less than 10 days, in which to inspect and accept or reject the Goods, and payment for the Goods shall not constitute acceptance. Buyer reserves the right to reject Goods not conforming to this Agreement. Unless specifically agreed otherwise, rejected Goods shall be returned to Seller for full credit or replacement, at Seller's risk and expense, including freight and transportation costs both ways. Buyer may, at its option, purchase substitute Goods in lieu of the rejected Goods, with Seller being responsible for all resulting direct excess costs including, without limitation, any increase in the price paid for the Goods and any expenses to expedite routing of the substitute Goods. Acceptance by Buyer of part of the Goods shall not bind Buyer to accept the remainder of the Goods. Acceptance of all or a part of the Goods shall not deprive Buyer of the right to revoke acceptance and return any part of the Goods or the right to make a claim for damages because of the failure of the Goods to conform to this Agreement by reason of defects or other breach of warranty or by reason of damage caused by improper packing. Buyer shall not be liable to Seller for failure to accept or pay for the Goods for causes beyond Buyer's reasonable control or for causes attributable to defective Goods or Seller's failure to comply with this Agreement. Where appropriate, Seller shall comply with Buyer's standards for purchasing Goods including, without limitation, the requirements regarding the need for Seller to: (a) notify Buyer promptly of nonconforming Goods, (b) obtain Buyer approval for nonconforming Goods disposition, (c) notify the Buyer of changes in Seller's product and/or process, changes of Seller's suppliers, and changes of Seller's manufacturing facility location and, where required, obtain written approval of Buyer.

4. THIRD PARTY CLAIMS. In the event of a claim against Buyer in which it is alleged that damage or loss was suffered by Buyer due to defects in the Goods sold by Seller to Buyer or incorporated into Buyer's product or in the event that Buyer shall reasonably determine that the cause of said damage is the result of a defect in Seller's Goods, Buyer shall notify Seller in writing and Seller shall assume defense of said claim and pay all damages assessed against Buyer. Seller will indemnify, defend and save harmless Buyer from any expense, loss or damage including attorney fees incurred by Buyer as a result of a claim brought for damages caused by a defect in Seller's Goods.

5. WARRANTIES.

- a. In addition to Seller's standard warranty on the Goods, Seller warrants, for the longer of either 12 months after Buyer's final acceptance of Goods or Seller's standard warranty period, that all Goods shall (i) strictly conform to the terms, conditions, specifications, descriptions, drawings, and data specified herein or furnished herewith; (ii) be of good design, material, and workmanship; (iii) be free from defects; and (iv) meet applicable industrial or governmental safety standards.

- b. Seller further warrants that Seller will have title to the Goods and the right to sell such Goods at the time of delivery to Buyer, and that all such Goods shall be new and unused (unless otherwise specified in the Order) at the time of delivery to Buyer.
- c. Seller shall also extend to Buyer the warranties or guaranties, if any, given to Seller by any third party manufacturer of component parts and accessories incorporated into the Goods sold hereunder. Seller agrees to use its best efforts and will cooperate with Buyer in enforcing any claims against such third party manufacturer(s) for defects that may occur.
- d. All warranties shall survive any intermediate or final inspections, delivery, acceptance, or payment by Buyer, and all such warranties shall run to Buyer, its successors, assigns, customers, and users of the Goods. No warranties shall be deemed disclaimed or excluded except in writing signed by an authorized representative of Buyer. Repairs or replacements of defective Goods shall be made by Seller, without cost to Buyer, at any time within the applicable warranty period of the Goods.

6. INTELLECTUAL PROPERTY. Seller shall indemnify and defend Buyer from and against any loss, costs, damage, or expense arising from infringement or alleged infringement of any patent of the United States or foreign letters patent by any of the Goods, and any copyright, any trademark and any other Intellectual Property right of a third party relating to the Goods. Furthermore, in the event that Buyer is enjoined in such suit or proceeding from using any of the Goods, Seller, at its option, shall promptly either (a) secure termination of the injunction and obtain for Buyer the right to use such Goods without any obligation or liability; (b) replace such Goods with non-infringing goods, all at Seller's expense and to Buyer's satisfaction; or (c) remove such Goods at Seller's expense and refund to Buyer the amount paid. The provisions of this Section shall not apply to claims, demands, suits, or injunctions directly attributable to Goods to the extent manufactured by Seller in accordance with Buyer's specific instructions, specifications, design, or drawings.

7. INDEMNIFICATION. Seller shall indemnify, defend and hold harmless Buyer from and against any loss, cost, damage, or expense including, but not limited to, reasonable attorneys' fees, suffered or incurred by Buyer, Buyer's affiliates, and/or their respective directors, officers, employees and agents and/or for which any of them may be liable to any third party, due to, arising from or in connection with, directly or indirectly:

- a. any and all claims made against Buyer by reason of injury or death to person or damage to property suffered or claimed to have been suffered by any person or entity and caused or alleged to have been caused by defective Goods or by any failure of Seller or any of Seller's subcontractors, employees, or agents to comply with this Agreement;
- b. any and all damage to Buyer's property, including property occupied or used by or in the care, custody, or control of Seller, caused or alleged to have been caused by defective Goods or by any failure of Seller or any of Seller's subcontractors, employees, or agents to comply with this Agreement; and
- c. any liabilities, claims, fines, civil and criminal penalties which arise, directly or indirectly, out of any failure of Seller to comply with this Agreement.

In no event shall Seller be required to indemnify Buyer for any injury, death, or loss to the extent caused by the gross negligence of Buyer or the failure of Buyer to comply with this Agreement.

8. INSURANCE. Seller shall maintain in force standard liability insurance of the type and in such amounts as reasonably satisfactory to Buyer and shall furnish Buyer, at any time upon request, with a certificate of insurance that shall name Buyer as an additional insured and shall provide for Buyer to receive at least 30 days' prior written notice of modification, non-renewal, cancellation or termination.

9. COMPLIANCE WITH LAWS. Seller warrants and agrees that it shall comply with all applicable laws, regulations and administrative requirements, and not take any action that would subject Buyer to any penalties under US or foreign laws, regulations or administrative requirements, with respect to the Goods.

10. BUYER'S PROPERTY; CONFIDENTIALITY; RIGHTS IN INVENTIONS. Buyer retains title to all information and materials, in whatever form or format, furnished to Seller to perform this Agreement. Such information shall be (i) treated as Buyer's confidential information and held in strict confidence, (ii) used exclusively by Seller to complete the Agreement, and (iii) returned to Buyer at its direction or within 5 days after completion, termination, or cancellation of the Agreement, along with all copies or reproductions thereof. Seller shall restrict disclosure and use of such information solely to those of its employees, representatives, agents and subsuppliers who have a need to know for purposes of completing the Agreement and shall ensure that each recipient of such information is made subject to the obligations hereunder to keep such information confidential. All property of Buyer furnished or made available to Seller for performance of work under this Agreement including, but not limited to, materials, tools, tooling, special tooling equipment, and replacements thereof, shall remain the property of Buyer.

11. NON-WAIVER; CUMULATIVE REMEDIES. Buyer's failure to insist upon strict performance of any terms and conditions hereof, failure or delay to exercise any rights or remedies provided herein or by law, failure to properly notify Seller in the event of the breach, acceptance of or payment for any Goods, or approval of design, shall not release Seller from any of the warranties or obligations hereunder and shall not be deemed a waiver of any right of Buyer to insist upon strict performance or of any of its rights or remedies as to the Goods or as to any prior or subsequent default, nor shall any purported oral modification or rescission of this Agreement by Buyer operate as a waiver of any of the terms hereof. Any right or remedy of Buyer provided herein is in addition to Buyer's other rights and remedies provided herein or by law.

12. CANCELLATION; TERMINATION OF ORDER. Buyer reserves the right to cancel any Goods under this Agreement or terminate Seller's performance under this Agreement, in whole or in part, by written notice to Seller, whereupon Seller shall terminate its performance on such date of notice and shall terminate all orders and subcontracts to the extent they relate to such performance. Buyer shall pay Seller the Agreement price of finished Goods accepted by Buyer and the equitable cost to Seller, excluding profits and losses, of work in process and raw materials relating to Buyer's Agreement, less the agreed value of any Goods used or sold by Seller with Buyer's consent.

13. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, and any action relating thereto shall be brought in the applicable Federal or state courts of western Pennsylvania.

14. SOLE AGREEMENT. This Agreement shall constitute the sole and only agreement between Seller and Buyer regarding the Goods. To the extent that specific terms in another document are inconsistent with this Agreement, the terms of this Agreement shall control.

15. ANTI-TERRORIST POLICY. Buyer agrees to comply with Executive Order Number 13224 – blocking property and prohibiting transactions with persons who commit, or support terrorism, notice of September 24, 2001 – and further agrees to include this statement in each lower-tier subcontract or purchase order issued hereunder.

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