



SALES TERMS AND CONDITIONS

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

A. Seller's Quotation or Sales Order Acknowledgement Cover Sheet is attached.

B. Seller's Business Related Terms and Conditions.

1. All transactions are made entirely in U.S. currency. Terms are net 30 days unless otherwise specified and are subject to a 1.5% monthly past due charge payable by Buyer to Seller. Buyer will be invoiced at the respective prices in effect on the dates that the Goods are shipped, plus applicable taxes as stated herein. Stenographical and clerical errors are subject to correction.

2. Seller reserves the right to ship and invoice 10% more or less than the quantity of Goods specified in this Agreement.

3. All taxes, currently effective or to be effective, levied by the Federal, State, or local governmental agency, or any other taxing authority, upon the Goods quoted shall be the responsibility of Buyer and shall be added to the price of Buyer.

4. Telephone orders of the Goods must be confirmed within 24 hours by Buyer or Seller shall not be held liable for execution of the order.

5. No Goods are to be returned to Seller without Seller's written consent.

6. Seller shall not be held liable for any loss or damage of the Goods upon delivery to the first carrier. Any loss or increased costs resulting from Buyer's change in quantity, specified deliveries, design or specification relating to the Goods will be at Buyer's expense.

7. Claims arising from non-delivery, condition, use or inability to use the Goods or otherwise shall not be greater than the purchase price paid by Buyer to Seller in good funds. No claims shall be made by either party for special, consequential or indirect damages or losses. Failure of Buyer to give written notice of the claim within thirty (30) days of the receipt of any Goods shall constitute a waiver by Buyer of all claims with respect to such Goods.

C. Seller's Legal Terms and Conditions.

1. **ACCEPTANCE.** Any terms and conditions originating with or furnished by Buyer are superseded by this Agreement and shall not be part of the contract between Buyer and Seller unless specifically accepted in a writing signed by a duly authorized official of Seller. Acknowledgement of the receipt of any order, including signing and returning to Buyer its acknowledgement copy, if any, shall not constitute acceptance by Seller of any additional or

different terms and conditions, nor shall Seller's commencement of effort, in itself, be construed as acceptance of an order containing additional or different terms and conditions. Seller shall have no liability to Seller until and unless the orders are accepted in writing by Seller. Oral statements of sales representations do not constitute an agreement and are not part of this Agreement.

2. DELIVERY. All shipments, risk of loss and quotations relating to the Goods are F.O.B. St. Marys, Pennsylvania, USA unless otherwise specified. In no event shall Seller be held liable for any damages or expenses caused by delays in delivery of the Goods. The parties agree that delivery dates are approximate. Seller's prices are exclusive of the cost of shipping or delivery unless otherwise agreed upon in writing. The method and route of shipment shall be at the discretion of the Seller. All shipments shall be at Buyer's risk and shall be insured, if at all, solely at Buyer's expense. Seller reserves the right to make delivery in installments and all such installments when separately invoiced shall be paid for when due, without regard to the date of subsequent deliveries. All costs associated with handling, care and custody of the Goods shall be borne by Buyer. The acceptance of the Goods by Buyer shall constitute a waiver of all claims for delay.

Seller shall not be liable for delay in delivery or failure to manufacture due to causes beyond its reasonable control including, but not limited to, delays or failures due, in whole or in part, to acts of God, acts of Buyer, acts of civil or military authority, fire, strike, floods, acts of terrorism, insurrection, epidemics, quarantine, war, riot, transportation delays, acts of a public enemy, inability to obtain necessary labor, materials or manufacturing facilities, or other causes similar to those enumerated. In the event of any such delay or failure, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. In case delivery or performance is impossible as a result of the above mentioned circumstances, Seller is released from its obligation to supply the ordered Goods to Buyer.

3. LIMITED WARRANTY. Seller warrants that the Goods sold hereunder shall be of standard quality and tolerances as to dimensions at the time of delivery.

The express warranty in this Section is in lieu of and excludes all other warranties, whether express or implied, arising by operation of law, course of dealing, usage, trade, or otherwise including, without limitation, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, with these and all other such warranties being hereby expressly disclaimed and excluded by Seller and waived by Buyer.

Written notice for breach of warranty shall have been given to Seller prior to the acceptance of the Goods or it shall be waived. In the event of a breach by Seller of the above express warranties, the liability of the Seller for such breach shall be limited to the repair or replacement of the defective goods. Seller shall have no other obligation or liability of any kind.

4. CONFIDENTIALITY. Other than in the performance of obligations pursuant to this Agreement, neither party nor its agents, employees, or subcontractors shall use or disclose to any person or entity any confidential information of the other party (whether written, oral, electronic, or in other form) that is obtained or otherwise prepared or discovered pursuant to this Agreement, through access to the other party's assets or property, or while on the other party's premises. The provisions of this Section relating to the use and disclosure of information do not apply to information that is rightfully known by the receiving party prior to the disclosure; is rightfully obtained by the party from a third party; is or becomes available to the public; or, is disclosed by a party with the prior written approval of the other party.

5. PROPERTY RIGHTS. Except where otherwise expressly agreed, all patterns, tools, jigs and fixtures, drawings, designs, software and other materials and data developed, fabricated or otherwise required in the performance of this Agreement shall be and remain Seller's property and in Seller's possession and control. Seller retains title to the Goods until Buyer has satisfied

all obligations under this Agreement including, but not limited to, full payment for the Goods. Buyer shall not use Seller's tradenames, trademarks or copyrights without Seller's prior written consent.

6. NON-WAIVER BY SELLER. Waiver by Seller of any breach of this Agreement shall not be construed as a waiver of any other breach. Any failure at any time of Seller to enforce any provision of this Agreement shall not constitute a waiver of such provisions or prejudice Seller's right to enforce such provisions at any time. Should any provision of this Agreement become void or not enforceable, or all other provisions shall remain valid and enforceable.

7. ASSIGNMENT. Neither this Agreement nor any part of this Agreement can be assigned by Buyer to a third party without the express prior written consent of Seller. Buyer shall not assign, subcontract, or otherwise transfer this Agreement, in whole or in part, without the prior written consent of Seller, and any such assignment, subcontract, or transfer without Seller's prior written consent shall be void.

8. AMENDMENTS. Changes or amendments, in whole or in part, of this Agreement can be made only with Seller's prior written consent and upon terms that will permit an equitable adjustment to be made in both the price and schedule of the Goods to be delivered.

9. TERMINATION. Termination of this Agreement, in whole or in part, can be made only with Seller's written consent and upon terms that will afford Seller an equitable profit.

10. GOVERNING LAW; LIMITATION ON ACTIONS. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania. Buyer agrees that it may bring action against Seller only in the applicable courts of western Pennsylvania and, for purposes of a suit against Buyer, submits itself to the jurisdiction of such courts. No actions arising out of the sale of Goods covered by this Agreement, other than an action by Seller to recover the purchase price of such Goods, may be brought by either party more than one (1) year after the cause of action accrues.

11. 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.