

## Terms and Conditions

This transaction is subject to the following terms and conditions:

- 1. Interpretations and Acceptance.** This Purchase Order, together with any written instructions issued by Buyer hereunder, sets forth the entire agreement between seller and buyer. No Purchase Order or other document or agreement, written or oral, varying or extending the terms and conditions herein set forth, shall be binding upon buyer unless in writing signed by a duly authorized officer of Buyer. If this document is construed as an offer, Seller's acceptance is limited to the terms set forth herein, which terms shall prevail insofar as the same may conflict with any document of Seller. If this document is construed as an acceptance, it is conditional on assent by Seller to all of the terms and conditions set forth herein. This is not a firm offer. Any objections by seller to the terms and conditions set forth herein must be received by Buyer from Seller within ten (10) days of the date hereof. No course of prior dealings between Buyer and Seller has been considered in negotiating these terms and conditions and no of prior dealings shall be relevant to supplement or explain any of its terms. Any written acknowledgments of this Purchase Order or commencement of performance pursuant to such Purchase Order by Seller shall constitute acceptance by Seller of all these terms and conditions. Any of the terms and conditions of Seller's quotation or acknowledgment which are in any way in conflict with, inconsistent with, or in addition to these terms and conditions shall not be binding on Buyer and shall not be considered applicable to this purchase, unless expressly agreed to in writing by Buyer.
- 2. Price.** Seller's price shall not be higher than last quoted or charged to Buyer unless otherwise agreed to in writing by Buyer. If there is any change in such price this Purchase Order is subject to cancellation by Buyer on written notice to Seller and Buyer shall not be liable for any cancellation charges or expenses that may be due to Seller.
- 3. Delivery.** Buyer's production schedules are based upon the agreement that materials will be delivered to it by the date specified on the face of this Purchase Order. Time of delivery is therefore of the essence. If delivery is not actually made within the time stated on this Purchase order, Buyer reserves the right to cancel all or any part of this order or to purchase elsewhere and (except for delays in shipment caused by strike, flood, fire, earthquake, or other cause beyond Seller's control) to charge Seller with any loss incurred as a result of late delivery or failure to deliver. Buyer reserves the right to cancel all or any unshipped part of this Purchase Order in the event of strike, flood, fire, earthquake, or any casualty whatsoever, whether of a similar or different kind, directly or indirectly affecting Buyer's business.
- 4. Inspection and Rejection.** Notwithstanding any prior payment, goods are subject to inspection by Buyer at Buyer's premises unless otherwise agreed to in writing by Buyer. Seller acknowledges that volume of Buyer's business and delivery schedules for purchased goods is of such an extent that Buyer may not be able to perform the above inspection immediately upon receipt of the goods. Seller agrees therefore that Buyer's right to inspect the goods shall extend for a six month period, commencing upon such goods at Buyer's premises.
- 5. Warranty.** Seller warrants that the goods covered by this Purchase Order will be of merchantable quality, free from defect in material and workmanship, shall conform strictly to the specifications, drawings, or samples specified or furnished, and shall be as described on the front of this Purchase Order. This warranty and the remedies provided herein shall be in addition to those implied by or available at law, shall exist notwithstanding acceptance by Buyer of all or a part of the goods covered by this Purchase Order, and shall survive any inspection, acceptance or payment by Buyer. Seller also warrants that the goods covered by this Purchase Order comply with all applicable Federal, State and other laws.
- 6. Quantity.** Shipments must equal exact amounts ordered hereunder unless agreed to by Buyer in writing.
- 7. Buyer's Property.** All material, equipment, devices, documents or information, including but not limited to special tools, furnished or specifically paid for by Buyer shall be the property of the Buyer, shall be subject to removal at any time without additional cost upon demand by the Buyer, shall be used only in filling orders from the Buyer, shall be kept separate from other materials or tools, and shall be clearly identified as the property of the Buyer. The Seller assumes all liability for loss or damage, with the exception of normal wear and tear, and agrees to supply detailed statements of inventory at monthly intervals or as otherwise agreed upon.
- 8. Patent Infringement.** Seller shall defend and hold Buyer, its agents, customers, partners, subcontractors, contract vendees, and joint ventures harmless from and against any and all claims, law suits, proceedings, liabilities, loss, damages and costs, which indemnification shall include, but not be limited to the legal defense of Buyer, its agents, customers, partners, subcontractors, contract vendees, and joint ventures, at its sole expense, with counsel reasonably satisfactory to Buyer, arising out of or in connection with an alleged or actual infringement of any United States or foreign patent with respect to the use or sale of the goods purchased hereunder.
- 9. Assignment.** Seller shall not delegate any duties, nor assign any rights or claims under this Purchase Order, or for breach thereof, without prior written consent of Buyer, and any such attempted delegation or assignment shall be void. All claims for moneys due or to become due from Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this or any of Buyer's Purchase Orders with Seller, whether such setoff or counterclaim arose before or after any such assignment by Seller.
- 10. Confidential Information.** Seller agrees that all communications, information, technical data, material, specifications or drawings, whether oral or written, given to Seller by Buyer in connection with this Purchase Order is confidential and proprietary, and Seller agrees not to disclose such communications, information, technical data, material, specifications or drawings to any person, agent, employee, contractor, subcontractor, or third party not expressly authorized by Buyer to receive such communications, information, technical data or materials, or to use same for any purpose other than to furnish the goods specified herein, without the prior written permission of Buyer, and then to use or disclose same only to the extent specifically authorized by Buyer in said written permission. Seller shall, upon Buyer's request or completion of this Purchase Order, return all such communications, information, technical data, material, specifications or drawings within 5 days to Buyer.
- 11. Taxes.** Except as may be otherwise provided in this Purchase Order, the price set forth hereon includes all applicable Federal, State and local taxes in effect on the date of this Purchase Order for the sale, delivery, use of the goods purchased hereunder and for the collection of which Seller is or may be responsible to any Government authority. In the event of new taxes or increased rates or the repeal of taxes or the reductions of rates, the contract price shall be adjusted accordingly.
- 12. Changes.** Buyer shall have the right to make, from time to time, changes with respect to the goods purchased hereunder as to packing, testing, destinations, specifications, designs, and delivery schedules (postponements only). Seller shall immediately notify Buyer of any increases or decreases in costs caused by such changes and an equitable adjustment in prices or other terms hereof shall be agreed upon and this Purchase Order modified in writing accordingly.
- 13. Bankruptcy.** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or a receiver, Buyer shall be entitled to cancel any unfulfilled part of this Purchased Order without any liability whatsoever.
- 14. Arbitration.** Any controversy or claim arising out of or relating to the sale contemplated hereby or the performance or breach thereof shall be settled at Buyer's sole option, in accordance with the rules then obtaining of the American Arbitration Association in the city of White Plains, State of New York. Seller agrees to pay all expenses and costs, including legal fees, incurred by Buyer in enforcing any remedies available to Buyer under this Purchase Order or applicable law.
- 15. Waiver.** Buyer's failure to insist upon strict performance of any term or condition hereunder shall not be deemed to be a waiver of Buyer's rights or remedies, or a waiver by Buyer of any subsequent default by Seller in the performance of or compliance with any of these terms and conditions of sale. The invalidity or unenforceability of any one or more of the terms, conditions, phrases or sentences shall be construed not to affect the validity or enforceability of the remaining portions of this Purchase Order.
- 16.** The vendor shall allow Metallized Carbon Corporation, our customer and regulatory authorities right of access to your facilities and Quality records as necessary for verification activities. Such verification does not relieve the vendor of responsibility for supplying conforming material or the liability of supplying nonconforming material.