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## STANDARD TERMS & CONDITIONS OF PURCHASE

### 1. DEFINITIONS

- 1.1. The terms and conditions appearing in or made available through any purchase order or other similar document provided by Buyer (as defined below) relating to the purchase of goods or services by Buyer from Seller (as defined below), as supplemented by the terms and conditions appearing herein (collectively, this "Agreement"), shall constitute the complete agreement between the parties, and such terms and conditions supersede any prior or contemporaneous agreements or communications between the parties whether oral or written.
- 1.2. This Agreement applies to all purchases of goods and services by any supplier, ("Seller") to any entity or affiliate entity of the family of Abrasive Technology companies, including without limitation: Abrasive Technology, Inc., Abrasive Technology N.A., Inc., Abrasive Technology Ltd., Abrasive Technology Asia Pacific Pte Ltd., Abrasive Technology Aerospace, Inc., Abrasive Technology Europe, S.A., and/or Abrasive Technology Mexico LLC (hereinafter referred to collectively or individually as "Buyer" and as specifically noted on this Agreement with Seller).
- 2.1. Seller's commencement of work on the merchandise subject to this Agreement or shipment of such merchandise, or any other manifestation of Seller's assent to the terms and conditions contained herein whichever occurs first shall be deemed an effective mode of acceptance of this Agreement.
- 2.2. Any acceptance of this Agreement by Seller is limited to acceptance of the express terms contained on the face and back hereof.
- 2.3. Buyer, Buyer's customer, and regulatory authorities shall have right-of-entry into Seller's facility or that of their sub-contractors, access to quality records, quality system documentation, and the right to verify product and conduct audits.
- 2.4. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this Agreement in Seller's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this Agreement unless such variances are in the terms of the description, quantity, price or delivery schedule of the merchandise, but shall be deemed a material alteration thereof, and this Agreement shall be deemed accepted by Seller without said or additional or different terms.
- 2.5. If this Agreement shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained on the face and back hereof.
- 2.6. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this Agreement shall be deemed material and are objected to and rejected, but this Agreement shall not operate as a rejection of Seller's offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the goods.

### 2. USE OF ELECTRONIC TRANSMISSIONS

- 3.1. Buyer and seller agree that the use of electronic transmission, including, but not limited to, e-mail or other transmissions via the Internet or World Wide Web, in entering into and in exercising their rights and performing their obligations under this Agreement is in the best interests of all of the parties and shall be permissible, notwithstanding any requirement of the Uniform Commercial Code or any other applicable law that might otherwise be considered unsatisfied as a result of the utilization of such media. Buyer and Seller therefore agree that the Uniform Electronic Transactions Act, as promulgated by the National Conference of Commissions on Uniform State Laws, shall be applicable to the construction of these Rules and any Transactions hereunder, whether or not such Act shall have been adopted in any jurisdiction. By way of illustration and not of limitation, Buyer and each Seller agree to the following:
  - 3.1.1. Any document (including this Agreement) transmitted by electronic transmission shall be treated in all respects as an original signed document;
  - 3.1.2. The signature (including electronic signatures) of any party shall be considered for these purposes as an original signature;
  - 3.1.3. Any such electronic transmission shall be considered to have the same binding legal effect as an original document; and

3.1.4. Neither Buyer nor Seller shall raise the use of electronic transmission as a defense to this Agreement or in matters relating to any transaction pursuant to this Agreement, and Buyer and Seller each waive such defense.

3.2. Buyer and Seller further agree that facsimile signatures by the parties shall be binding to the same extent as original signatures.

#### **4. TITLE AND RISK OF LOSS**

4.1. Unless otherwise expressly agreed on the face of this Agreement, Seller shall bear the risk of loss and damage to all goods to be supplied hereunder until final acceptance by Buyer.

4.2. Buyer shall have equitable title to all such goods with respect to which Buyer shall have made any partial or progress payments.

#### **5. TERMINATION FOR CONVENIENCE**

5.1. Buyer reserves the right to terminate this Agreement or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease work.

5.2. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination.

5.3. Any applicable invoices resulting from termination must be received within thirty (30) days after receipt of the Notice of Termination.

5.4. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which seller could reasonably have avoided.

#### **6. TERMINATION FOR CAUSE**

6.1. Buyer may also terminate this Agreement 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 Agreement.

6.2. Late deliveries, deliveries of products which are defective or which do not conform to this Agreement, and failure to provide Buyer, upon request, of reasonable assurance of future performance shall all be causes allowing Buyer to terminate this Agreement for cause.

6.3. In the event of a 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 which gave rise to the termination.

#### **7. PROPRIETARY INFORMATION – CONFIDENTIALITY**

7.1. Merchandise to be furnished to Buyer's patterns, specification, designs, or drawings shall not be furnished to or quoted to any other person or concern. Such patterns, specifications, and drawings shall be confidential, shall remain Buyer's property and shall be returned to Buyer immediately upon request.

7.2. Seller shall not, except with the prior written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish to Buyer the goods or services herein ordered, or use any trademarks or trade names of Buyer in Seller's advertising or promotional materials. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this and any other Agreement, shall not be required to make further payments, except for conforming goods delivered or conforming services rendered prior to cancellation, and shall have the remedies of injunctive relief and/or damages as well as any other remedies provided by law.

#### **8. WARRANTY**

8.1. Seller expressly warrants that all merchandise furnished hereunder shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship.

8.2. Seller warrants that all such merchandise will conform to any statements made on the containers or labels, or advertisements for such merchandise, and that any merchandise will be adequately contained, packaged, armed and labeled.

8.3. In the event that Buyer has previously purchased merchandise of the same description from Seller, Seller agrees that the merchandise to be delivered hereunder shall be identical in all respects to the merchandise previously ordered.

8.4. Seller warrants that all merchandise furnished hereunder will be merchantable and will be safe and appropriate for the purpose for which merchandise of that kind is normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the merchandise, Seller warrants that such merchandise will be fit for such particular purpose.

8.5. Seller warrants that merchandise furnished will conform in all respects to samples.

8.6. Inspection, test, acceptance or use of the merchandise furnished hereunder shall not affect Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use.

8.7. Seller's warranty shall run to Buyer, its successors, assigns and customers, and users of products sold by Buyer.

8.8. Seller agrees to replace, or correct defects of, any merchandise not conforming to the foregoing warranty promptly without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so.

8.9. In the event of failure of Seller to correct defects in or replace nonconforming merchandise promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such merchandise and charge Seller for the cost incurred by Buyer in doing so.

#### **9. PRICE WARRANTY**

9.1. Seller warrants that the prices for the merchandise sold to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities.

9.2. In the event Seller reduces its price for such merchandise during the term of this Agreement, Seller agrees to reduce the prices hereof correspondingly.

9.3. Seller warrants that prices shown on this Agreement shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to drayage, shipping, packaging, labeling, customs duties, taxes, storage insurance, boxing and crating.

9.4. Payment terms date from receipt of material purchased or date of receipt of invoice, whichever is later.

#### **10. FORCE MAJEURE**

10.1. In the event of discontinuance of Buyer's business in whole or in part by reason of fire, flood, tempest, earthquake, war, act of God, embargo, or other cause beyond Buyer's control, Buyer may at its option, cancel any undelivered portion of this Agreement or delay delivery or acceptance occasioned by said causes. Seller shall hold such merchandise at the direction of Buyer and shall deliver it when the cause affecting the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the merchandise or delaying performance of this Agreement at Buyer's request.

#### **11. INTELLECTUAL PROPERTY**

11.1. Seller shall defend, indemnify and hold harmless Buyer and its customers against all claims (including, but not limited to, attorney's fees) arising out of, or resulting from infringement of a trademark, patent, design, or other intellectual property of any third party. In the event that any claim is made against Buyer with respect to same, or in the event the merchandise is misbranded or bears actionable descriptive matter, Buyer shall have the right, in addition to all other rights given by law, to cancel this and any other Agreement with Seller and to return for full credit merchandise already delivered.

#### **12. INSURANCE**

12.1. If the accomplishment of this Agreement requires or contemplates the performance of services or labor by Seller's employees, or persons under contract to Seller, 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 Buyer.

12.2. Seller shall maintain all necessary insurance coverages, including public liability and Workman's Compensation insurance covering Seller's employees or persons under contract to Seller.

12.3. Seller shall defend, indemnify and hold harmless Buyer from any and all claims or liabilities arising out of the work covered by this paragraph including all claims or liabilities arising out of the use of Seller's tools, equipment or other facilities.

#### **13. INDEMNIFICATION**

13.1. Seller shall defend, indemnify and hold harmless Buyer against all damages, claims or liabilities and expenses (including attorney's fees) arising out of, or resulting in any way from, any defect in the merchandise purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

#### **14. CHANGES**

14.1. 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.

14.2. If any such changes cause an increase in the cost, or the time required for performance and equitable adjustment shall be made and this Agreement shall be modified in writing accordingly.

14.3. Seller agrees to accept any such changes subject to this paragraph.

#### **15. INSPECTION**

15.1. Buyer shall be under no duty to inspect merchandise purchased hereunder before its use in manufacture and/or resale, and the processing, manufacture or resale shall not constitute an acceptance of the merchandise or a waiver of any claim.

15.2. Complaints or notice of defects in merchandise will be considered timely if made within thirty (30) days after discovery by Buyer of such defects.

15.3. Buyer reserves the absolute right to reject and refuse acceptance of merchandise which is not in accordance with Buyer's instructions, specifications, drawings and data or not in accordance with Seller's warranty (expressed or implied) and to return same to Seller at Seller's expense. Payment for any merchandise hereunder shall not be deemed an acceptance thereof.

#### **16. SAFETY REQUIREMENTS**

16.1. All materials, equipment, and supplies provided to Buyer must comply fully with all safety requirements as set forth by Ohio law. If any item(s) on this Agreement is a hazardous chemical, as defined under 29 CFR 1910.1200, Seller must provide Buyer with a copy of the Material Safety Data Sheet for each item shipped.

## **17. ENTIRE AGREEMENT**

- 17.1. This Agreement, and any documents referred to on the face hereof, constitutes the entire agreement between the parties.
- 17.2. No course of performance, course of dealing, or usage of trade shall be applicable unless expressly incorporated in this Agreement.

## **18. ASSIGNMENTS**

- 18.1. This Agreement and any right hereunder is not assignable without the written consent of Buyer nor shall Buyer be under any obligation to recognize any assignment of monies payable hereunder, nor of any rights in the merchandise ordered hereunder to any assignee without like consent.

## **19. SETOFF**

- 19.1. All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other Agreement with Buyer.

## **20. SHIPMENT**

- 20.1. Buyer reserves the right to designate the carrier and routing with respect to all goods to be delivered hereunder.
- 20.2. All goods shall be forwarded in accordance with Buyer's instructions or, in the absence of such instructions by the route generating the lowest transportation charge.
- 20.3. When usual terms of tariffs, involving carriage via water, do not include insurance, shipments must be forwarded properly insured.
- 20.4. When the terms of purchase include the cost of delivery to Buyer's works, or require shipment with freight prepaid, the shipping rates charged to Buyer shall be the lowest available rates, taking into account all available discounts.
- 20.5. If Seller ships via a carrier not approved by Buyer, this Agreement will be automatically converted to a prepaid contract; and Buyer shall have no obligation to reimburse Seller for the freight charges paid by Seller to such unapproved carrier.
- 20.6. If in order to comply with Buyer's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this Agreement, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Buyer.
- 20.7. Buyer shall advise Seller and the carrier (if any) in writing, otherwise than by a qualified signature on any delivery note, of any loss or damage within the following time limits:
- 20.7.1. partial loss, damage, or non-delivery of any separate part of a consignment shall be advised at earliest possible moment and in any event within fourteen (14) days of the date of delivery of the consignment or part consignment.
- 20.7.2 non-delivery of whole consignments shall be advised at earliest possible moment and in any event within fourteen (14) days of notice of dispatch
- 20.7.3 Seller shall make good free of charge to Buyer any loss of or damage to or defect in the goods where notice is given by buyer in compliance with this condition provided that Buyer shall not in any event claim damage in respect of loss of profits.

## **21. IMPORT REQUIREMENTS**

- 21.1. Upon Buyer's request, Seller shall provide Buyer with an appropriate certification stating the country of origin for goods, sufficient to satisfy the requirements of the customs authorities of the country of receipt, and any applicable export licensing regulations, including those of the United States.
- 21.2. Seller shall mark every product (or the product's container if there is no room on the product itself) with the country of origin. Seller shall, in marking the products, comply with the requirements of the customs authorities of the country of receipt.
- 21.3. If any goods are imported, Seller shall when possible allow Buyer to be the importer of record. If Buyer is not the importer of record and Seller obtains duty drawback rights to the goods, Seller shall, upon Buyer's request, provide Buyer with documents required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to Buyer.

## **22. WAIVER**

- 22.1. 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 waive any other terms, conditions, or privileges, whether of the same or similar type.

## **23. DELIVERY**

- 23.1. Any delivery made more than three (3) days after the date specified shall be deemed late.
- 23.2. If any part of the merchandise delivered by Seller is delivered late, or otherwise does not comply with the terms and conditions hereof as to quality or otherwise, Buyer may either:
- 23.2.1 reject and return all or any part of the merchandise ordered hereunder for full credit, including freight or
- 23.2.2 at Buyer's option, utilize all or any part of said merchandise, holding Seller liable for all damages resulting from Seller's failure to comply.



- 23.3. Delivery shall not be made earlier than seven (7) days prior to the requested delivery date unless specified by Buyer.
- 23.4. Buyer reserves the right to accept or reject partial shipments.
- 23.5. All shipments shall be routed per routing instructions on the face hereof or at the request of Buyer's Traffic Department.
- 23.6. If specific routing is indicated and not complied with, all extra cartage will be charged against Seller.
- 23.7. In the event Seller does not follow SHIP TO instructions on the face hereof, which results in merchandise arriving at incorrect locations, material will be reshipped at Seller's expense.
- 23.8. In the event of an embargo, Seller shall contact Buyer's Compliance Department immediately for instructions.

**24. COMPLIANCE WITH LAWS**

- 24.1. Seller, in performing the work required by this Agreement, agrees to comply with the nondiscrimination provisions of Executive Orders 11246, 11141, 11625, 12138, 11758 and 11701, and any subsequent amendments thereof and to comply with the Rules and Regulations issued thereunder; and agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin, handicap or veteran status.
- 24.2. Seller represents that by acceptance of this Agreement it has and will continue during the performance of this Agreement to comply with the provisions of all Federal, State, local, and foreign laws and regulations from which liability may accrue to Buyer from any violation thereof. Supplier shall comply with all export and import laws of all countries involved in the sale of goods under this Agreement. Supplier assumes all responsibility for shipments of goods requiring any government import clearance. Buyer may terminate this Agreement in whole or in part, if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the goods.
- 24.3. Seller represents and warrants that Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement.

**25. LIMITATION ON BUYER'S LIABILITY – STATUE OF LIMITATIONS**

- 25.1. In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages.
- 25.2. Buyer's liability on any claim of any kind for any loss or damage 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 merchandise or a unit thereof which gives rise to the claim.
- 25.3. Buyer shall not be liable for penalties of any description.
- 25.4. Any action resulting from any breach on the part of Buyer as to the merchandise delivered hereunder must be commenced within one (1) year after the cause of actions has accrued.

**26. GOVERNING LAW/FORUM**

- 26.1. Notwithstanding the place where this Agreement may be executed or performed, this Agreement shall be deemed to be made under the laws of the State of Ohio, and the construction, validity and performance of this Agreement shall be governed in all respects by the laws of the State of Ohio, including without limitation its Uniform Commercial Code, and the laws of the United States of America, without regard to any principles of conflict of laws and specifically excluding the terms of the United Nations Convention on the International Sale of Goods. Any controversy or claim arising out of or relating to this Agreement, as well as any other dispute between the parties, shall be exclusively brought in a state court sitting in Delaware County, Ohio, USA or a federal court sitting in Franklin County, Ohio, USA. Each party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Notwithstanding the foregoing or anything to the contrary contained herein, Seller acknowledges that a breach by Seller of this Agreement may cause Buyer irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, Buyer will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court in the United States, Canada, or any other jurisdiction, in addition to any other remedy to which Buyer may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.
- 26.2. The Parties hereby confirm their express agreement that this Agreement and all documents directly or indirectly related thereto shall be drawn up in English. LES PARTIES RECONNAISSENT LEUR VOLANTE EXPRESSE QUE LA PRESENTE CONVENTION AINSI QUE TOUS LES DOCUMENTS QUI S'Y RATTACHENT DIRECTEMENT OU INDIRECTEMENT SOIENT REDIGES EN LANGUE ANGLAISE.