



## **TERMS & CONDITIONS OF SALE**

### **1. General:**

The Terms and Conditions on this page shall, unless otherwise specifically agreed to between Buyer (Customer) and Seller (EGC Enterprises, Inc. or EGC) in writing, be the Terms and Conditions governing any purchase and sales contract entered into between the Buyer and Seller. Clerical errors are subject to correction. No modification of, addition to, or waiver of any of the Terms and Conditions hereof will be effective unless agreed to in writing by Seller.

### **2. Minimum invoice charge:**

**Each invoice / shipment must meet a minimum charge of \$ 250.00 (not including partial tooling charges, certifications or expedite charges). Minimum per line charge of \$100.00 also applies to cover machine set up costs.**

### **3. Certification definitions and OTHER charges:**

#### **Certificate of Compliance / Conformity;**

- A.** A general statement notifying the Buyer that the subject parts have been manufactured, inspected, and packaged in accordance with purchase order specifications. A general statement of compliance including customer specifications which may include one or all of the following items:
  - a. Lot Number
  - b. Heat Number (if applicable)
  - c. Material description
  - d. Purchase Order Number
  - e. Part Number(s)
- B.** General Certificate of Compliance available at no additional cost. Certificate of Compliance requests that require additional information set forth at time of order and may require an additional charge in accordance.
- C.** A complete, independent, and documented physical inspection process to verify that prescribed manufacturing methods, and material selection have produced a product in accordance with purchase order specifications, engineering drawings and other applicable design documents.
- D.** Charges for initial Production Part Approval Process (PPAP) and/or First Article Inspection Report (FAIR) to be determined on a per order basis as agreed upon between Seller and Buyer at time of order acceptance.
- E.** Chemical and/or physical tests conducted by 3<sup>rd</sup> party authorized laboratory facilities as required by customer specifications.
- F.** Charge for 3<sup>rd</sup> party laboratory reports - As determined by tests required.



#### **4. Expedite Charges:**

Occasionally a customer will require delivery sooner than the quoted standard delivery. These requests are handled on a case by case basis and normally involve an expedite fee to cover costs associated with meeting the request.

#### **5. Acceptance:**

- A.** All orders are accepted in accordance with the Terms and Conditions set forth herein.
- B.** Prices and lead times quoted are expressly limited to, and expressly made conditional on, Buyer's acceptance of these Standard Terms and Conditions for Customers. If after prices and lead times have been quoted Buyer advances new terms that differ from those set forth in this Agreement and that cause or may cause increases in costs of labor or materials to Seller, then the prices and lead times quoted are subject to change. Additionally, all prices are based on the quantities quoted and any change in the quantities may also affect the price.
- C.** For all purchase orders received by Seller, whether received by telephone, fax, email, customer portal, or US Mail, the customer acknowledgement will act as the official document of acceptance of your purchase order. All information typed or printed on the acknowledgement will be assumed to be correct. This information will override any previous correspondence in writing or by phone. If a discrepancy is found, you will have five (5) days from the date of the acknowledgement to bring it to the attention of Seller. Once we have been notified, and if a change is necessary, you will receive a corrected acknowledgement from Seller.
- D.** Following acceptance by Seller, orders are not subject to cancellation except upon approval by Seller and shall be subject to cancellation charges as determined by Seller.

#### **6. Credit Conditions:**

Credit shipments on an open account basis will be made to approved Buyers who maintain a good credit rating with Seller. Buyers whose credit has not been approved by Seller will be required to complete a credit application for open account consideration. Shipment of products to unapproved Buyers will be either Cash In Advance, C.O.D. or Credit Card. Orders originating from international buyers may require payment in full by wire transfer or credit card prior to shipment at the discretion of Seller.

#### **7. Credit Terms:**

Seller offers Pay in Advance, and C.O.D. shipments. Seller accepts VISA, Master Card, Discover, and American Express Credit Cards, and Net30 day credit accounts. With Net30 days credit accounts, invoices are payable within 30 days of invoice date. All prices are F.O.B. EXWORKS, Factory, Chardon, OH, USA, in US dollars only. Credit accounts with invoices 30 days beyond date due are subject to credit hold with production and shipping stopped until payment is received. Accounts with invoices 60 days beyond due date will have their terms changed to C.O.D. All unpaid accounts after 60 days are subject to finance charges at the rate of 1-1/2% per month and may be subject to legal collection proceedings. Where not specified, Seller reserves the right to select means of shipment, consistent with least cost and commensurate service.



Each installment, shipment or delivery shall constitute a separate sale, subject to the usual Net 30-day terms, and the failure of Seller to make any shipment or delivery shall not vitiate this contract as to others. In case any item shall not be accepted and/or paid for in accordance herewith, then Seller may, without prejudice to other lawful remedy, defer further shipments until settlement is made, terminate this contract or treat such failure as a breach of the entire contract. If, in the judgment of Seller, the financial responsibility of purchaser shall at any time become impaired, Seller may decline to make further shipments against this contract and/or any other contract in force with purchaser except upon receipt of satisfactory security for payment or of cash before shipment. Failure of Seller to exercise any right under this contract shall not be deemed a waiver thereof.

Buyer agrees that any credit balance issued will be applied to purchases from Seller within one (1) year of its issuance. If not applied by the Buyer within one (1) year of issuance, any balance remaining will be subject to cancellation and Seller shall have no further liability. No Cash Payments shall be made for unapplied credits. Reasonable attempts will be made to notify Buyer of all open credits prior to cancellation.

#### **8. Cancellations:**

Should the Buyer decide, for whatever reason, to cancel an acknowledged order that has not been shipped, Seller reserves the right to approve or deny the cancellation request based on the circumstances presented. In the cases where Seller approves the cancellation request, the following criteria will be applied for disposition of the order:

- A. If the product in question is determined to be stock product, such determination to be made solely by Seller, the Buyer will be assessed a penalty equal to 10% of the dollar amount of the order plus all other related costs and processing fees. Such penalty shall be immediately due and payable upon order cancellation. Any and all prepayments made to Seller will be applied toward such penalty and costs.
- B. If the product in question is determined to be standard product, such determination to be made solely by Seller, the Buyer will be assessed a penalty equal to 15% of the dollar amount of the order plus all other related costs and processing fees. Such penalty shall be immediately due and payable upon order cancellation. Any and all prepayments made to Seller will be applied toward such penalty and costs.
- C. If the product in question is determined to be customer order, custom product or modified stock product, such determination to be made solely by Seller, Buyer will reimburse Seller for all costs incurred as of the date of cancellation with respect to such product, including but not limited to engineering, design and development costs, material costs, freight costs, manufacturing labor and overhead costs, inventory costs, processing fees plus all other costs related to the cancelled order. Such penalty shall be immediately due and payable upon order cancellation. Any and all prepayment made to Seller will be applied toward such reimbursements of costs.

#### **9. Delivery, Title and Risk of Loss:**

Delivery dates are approximate and are based upon prompt receipt of all necessary information from the Buyer. Unless otherwise specified by Seller, delivery will be made and title will pass F.O.B. point of shipment to Buyer.



Buyer assumes all risks and liability for results of use by purchaser of material delivered under this contract, including use by purchaser of such material in combination with other substances.

**10. Excusable Delays:**

Seller will notify Buyer of any material delay and will specify the revised delivery date as soon as possible. Seller shall not be responsible or liable for any default or delay or failures in delivery due to causes beyond its control such as, but not limited to, strikes, differences with workmen, scarcity of labor, fires, floods, storms, accidents, breakage of machinery, scarcity of materials or fuel, transportation difficulties, any contingency beyond its reasonable control, affecting or interfering with the manufacture, supply, delivery or shipment by itself or by manufacturers or suppliers with whom it may contract to cover this sale governmental regulations or orders, perils of navigation, acts of public enemies, mobs or rioters, or acts of God. Any delivery or shipment delayed or not made due to any such contingency may be postponed or canceled at Seller's option.

**11. Order Changes:**

Buyer shall have the right, by giving written notice to Seller, to make changes in the quantity, drawings, designs, or specifications for the articles to be manufactured. Upon receipt of any such notice, Seller shall notify Buyer as promptly as possible of changes in the price of, or the time required for performance of the order, and an equitable adjustment determined solely by Seller shall be made in the contract price or delivery schedule, or both, prior to incorporation said changes into the manufactured article.

**12. Pricing:**

All prices herein stated are based on foreign and domestic taxes and governmental charges and regulations and also on United States import tariff rates, classification and valuation prevailing at the date of this contract; in the event any changes in the foregoing should impose a duty, tax or charge and/or increase or diminish the amount of duty, taxes and/or charges now payable in respect of the material covered hereby, the amount of any such new or increased duty, taxes, or charges shall be added to the prices herein provided and shall be paid by purchaser, but purchaser shall receive the benefit of any diminution thereof.

Prices, discounts, delivery and designs are subject to change without notice. The price of any article scheduled for shipment on a date beyond a period of one year from the date of receipt of Buyer's order, is subject to a price increase by Seller, unless otherwise agreed to in writing. Prices include standard packaging only, unless otherwise specified.

**13. Patent Indemnity:**

To the extent that items delivered hereunder are manufactured pursuant to detailed designs furnished by the Buyer, Buyer agrees to indemnify Seller and hold Seller harmless from all legal expenses which may be incurred as well as all damages and costs which may be finally assessed against Seller in any action of infringement of any United States Letters Patent by such items delivered hereunder. Seller agrees promptly to inform the Buyer of any claim for liability made against Seller with respect to such items and Seller agrees to cooperate with Buyer in every way reasonably available to facilitate the defense against such claim.



#### **14. Patent Rights:**

To the extent that Seller develops a new process while designing a new product on behalf of Buyer, the rights to the new process and/or product including patent rights shall remain with Seller.

#### **15. Buyer's Property:**

Occasionally customers' will request Seller to use customer owned tooling. Seller will consider on a case by case basis, considering the individual circumstances of each request. In cases where an agreement is reached, Seller maintains customer owned tooling to ensure it is not lost or damaged, and remains in production ready condition at all times. Seller will not be responsible for repair or replacement of customer owned tooling that becomes unusable or out of specification through normal use. Seller will make customer owned tooling available for inspection, and/or return said tooling immediately upon customers' request.

Occasionally Seller receives component parts from customers' to be modified or assembled to our graphite components and returned as a finished assembly. Seller will use care and diligence in the handling and storage of these components while they are in our possession. The customer is responsible for ensuring the components sent are conforming parts and the quantity is sufficient to accomplish the work intended. Any special handling requirements and hazardous material considerations must be clearly communicated to Seller prior to receiving the components, and labeling instructions to such conditions clearly available to receiving personnel on the shipping containers prior to opening. Seller will notify the customer in the event damaged goods are received. Seller will not replace any property which is damaged or destroyed or reimburse the customer for any damage to or loss of such property. At the completion or termination of the Purchase Order, customer property will be delivered or disposed of as per customer direction.

#### **16. Restocking Charges:**

Stock products as defined in the cancellations and penalties paragraph, which have not been used or modified, may be returned for a restocking charge, at Seller's discretion. All freight charges related to returned products shall be in addition to the noted restocking charges and shall be the Buyer's responsibility. Special Order, custom product and modified stock products are NOT subject to return under any circumstances. **Please note:** All returns must be accompanied by an RMA (Return Material Authorization), obtained from Seller. The **RMA** number must be **CLEARLY** visible on the outside of the shipping container, or the shipment will be refused and returned to the Buyer at the Buyer's expense.

#### **17. Returns:**

No product shall be returned without the proper documentation, issued by Seller. All returned material must be accompanied by an RMA, clearly visible on the outside of the shipping container. All unauthorized returns, and returns without an RMA number, will be refused and returned to the Buyer at the Buyer's expense. All returns must be shipped freight prepaid.

If returned goods are confirmed to be nonconforming, Buyer will choose corrective action, as the specified remedy in the warranty provisions. Seller and Buyer will agree on the timing to execute said remedy.



### **18. Tool Policy:**

Seller maintains ownership of tooling and fixtures manufactured by Seller to protect the proprietary nature of specific design elements in our tools. To accomplish this in a fair and equitable manner, Seller charges only a “partial tooling charge” to the Buyer. This charge covers the cost of material and labor only to create the tool or fixture. Seller is responsible for all future costs of repair and maintenance of tools and fixtures throughout the life of these tools. In many cases these future costs exceed the initial cost to create the tools. Seller is responsible to maintain these tools and fixtures in production ready status. Occasionally, if an order for parts is received while the tool or fixture is in repair, a slightly longer lead time may be required to complete the tool repair.

### **19. Warranty:**

Seller warrants that at the time of shipment, the products manufactured by Seller and sold hereunder, will be free from defects in material and workmanship and will be in conformity with the applicable written specifications. If it appears that within **six (6) months** of shipment from Seller’s plant, the products sold hereunder do not meet the warranty specified above, and the Buyer gives written notice to Seller thereof within thirty (30) days of Buyer’s discovery of such non-compliance, then after Seller has examined and tested the allegedly non-complying product and found said to be, in fact, defective within the above warranty period, Seller will at its option, either (A) furnish a replacement for but will not install, any product or components thereof which prove to be not in compliance with the aforesaid warranty, or, (B) issue a credit for the purchase price of any product or components thereof which prove to be not in compliance with the aforesaid warranty. Seller’s liability in all circumstances shall not exceed the dollar amount of the related shipment. No product claimed by the purchaser to be defective within the above warranty will be accepted for return for replacement or credit without the written authorization, RMA from Seller, which authorization must be given in advance of Buyer’s return of said product, and the RMA number must be clearly visible on the outside of the shipping container.

**THE FOREGOING WARRANTY IS IN LIEU OF ALL WARRANTIES EXPRESS OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES INCLUDING WITHOUT LIMITATION WARRANTIES IMPLIED UNDER LAW SUCH AS BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. SELLER WILL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES RESULTING FROM ITS BREACH OF THE FOREGOING WARRANTY.**

Seller will not be liable for any loss, damage, or expense directly or indirectly arising from the use of the products either separately or in combination with any other equipment or material or from any other cause. The foregoing warranty does not extend to any product manufactured by Seller which has been subjected to misuse by Buyer, neglect, accident, or improper installation; nor does the said warranty extend to or apply to any unit which has been repaired or altered by persons not expressly approved in writing by Seller.

Components manufactured by any supplier other than Seller, which are sold hereunder, shall bear only that warranty made by the manufacturer of those components; but in no event shall such a warranty be more extensive in any manner than Seller’s product warranty errors, defects, or omissions in the design of any product sold hereunder irrespective of whether such errors, defects, or omissions in design result from acts or omissions



of Seller or of Buyer or of some other third party. For products damaged in transit, claims must be filed with the common carrier. All such claims should be filed immediately upon receipt of goods.

**20. Jurisdiction:**

This contract is to be construed and the respective rights of purchaser and Seller are to be determined according to the laws of the State of Ohio. This document constitutes the full understanding between the parties hereto with reference to the subject matter hereof and no statements or agreements, oral or written, made prior to or at the signing hereof, shall vary or modify the written terms hereof; and neither party shall claim any amendment, modification or release from any provision hereof by mutual agreement unless such agreement is in writing signed by the other party and specifically stating it is an amendment to this contract.