

SHOWA DENKO CARBON SALES, INC.
GENERAL TERMS & CONDITIONS
OF SALE & DELIVERY

(March 2018)

1. **GENERAL.** These terms and conditions ("Terms & Conditions") shall apply to all sales of goods by Showa Denko Carbon Sales, Inc. and its related companies ("Seller") and the purchaser of the goods ("Buyer").
 2. **QUOTATIONS; OFFER AND ACCEPTANCE.** Quotations must be accepted by Buyer within the validity date on the quotation. All quotations by Seller are subject to change or withdrawal without prior notice to Buyer, unless otherwise specifically stated in the quotation. Seller shall have no obligation to sell or deliver goods covered by Seller's quotation unless and until Seller issues an order acknowledgement of acceptance or upon the shipment of goods. Seller's acknowledgment constitutes Seller's offer to sell solely in accordance with the exact terms hereof and supersedes all previous written and oral quotations, representations and/or agreements. Offer and acceptance are expressly limited to the exact terms hereof. ANY CONFLICTING OR ADDITIONAL TERMS AND CONDITIONS SUPPLIED BY BUYER ARE HEREBY EXPRESSLY OBJECTED TO AND REJECTED. SELLER IS UNWILLING TO PROCEED WITH THIS TRANSACTION WITHOUT THE ASSENT OF BUYER TO THESE TERMS AND CONDITIONS.
 3. **SELLER'S RIGHT TO ADJUST PRICE.** The price may be adjusted to the extent that Seller's cost of the goods sold and/or local market conditions change as a result of (1) any administrative regulations enacted in pursuance of federal, state or municipal legislation; (2) change in costs of labor, raw materials, or overhead; (3) new or modified taxes or other charges imposed by governmental authority upon the production or sale of the goods or of materials used in their manufacture; (4) change of existing freight rates; or (5) a change in the open market price reflecting the supply/demand balance. If Buyer is unwilling to accept price adjustment provided by Seller, Buyer shall have the right to purchase such goods in the open market, and any quantities so purchased shall be deducted from this contract.
 4. **TAXES.** Buyer shall pay to Seller or, at Seller's election, to the appropriate taxing authorities all taxes imposed upon Seller as a result of the production, sale and transportation of the goods, except taxes imposed upon, or measured by, net income.
 5. **DELIVERY PERIOD.** The delivery period set forth in an acknowledgment or quotation or any other document of the Seller is approximate. Exceeding the specified delivery period shall not entitle Buyer to compensation nor to suspend or cancel any portion of these Terms and Conditions. Time shall not be deemed of the essence.
 6. **MODIFICATION.** No modification of the Terms and Conditions shall be binding on Seller unless same are specifically approved in writing by an authorized representative of the Seller. No course of dealing or usage of trade shall be relevant to supplement or explain any terms used in these Terms and Conditions.
 7. **QUANTITY; QUALITY; VARIATION IN DELIVERY.** Quantities set forth in any quotation are subject to availability at time of Seller's acknowledgement and acceptance of Buyer's order. Seller reserves the right to allocate production and delivery of goods among its customers if it is unable to fill all orders according to the quantities set forth in any quotation. A variation within ten percent (10%) of the total specified quantity (more or less) shall be deemed in compliance with these Terms and Conditions. Quotations are based on Acceptable Quality Levels ("AQL") commensurate with normal processing. If particular AQL values are required, Buyer shall submit them with its original request. Seller shall supply articles of its regular standard quality and within its standard tolerances as to dimensions. Shorter length than standard may also be included in each shipment.
 8. **PAYMENT.** Payment in full of the agreed prices shall be made by Buyer within thirty (30) days of the invoice date. Any invoice not paid when due shall be subject to a late charge at the rate of one and one-half percent (1 1/2%) per month. Buyer shall indemnify and hold Seller harmless from and against all costs, including, without limitation, attorneys' fees, incurred by Seller to collect the amounts owned by Buyer.
 9. **REJECTION OF GOODS.** All rejection(s) of goods delivered by Seller shall be submitted to Seller in writing within thirty (30) days of Buyer's receipt of said goods.
 10. **LIMITED WARRANTY.** Upon payment in full of all invoices, Seller warrants that its goods shall be free from defect in workmanship; provided, however, that Buyer shall give written notice of any claim within thirty (30) days after receipt of the goods to invoke this warranty. Buyer's exclusive remedy for a breach of Seller's warranty is the replacement of the goods. SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. REPLACEMENT OF THE GOODS SHALL CONSTITUTE THE SOLE RECOURSE OF BUYER AGAINST SELLER FOR ANY CLAIM ARISING FROM THE GOODS PROVIDED BY SELLER, WHETHER THE CLAIM IS MADE IN TORT OR IN CONTRACT, INCLUDING, WITHOUT LIMITATION, CLAIMS BASED ON WARRANTY, NEGLIGENCE, DESIGN, STRICT LIABILITY, DECEIT, FRAUD, MISREPRESENTATION OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF REVENUE, AND LOSS OF USE OF EQUIPMENT, LOST PRODUCTION TIME, DOWN-TIME OR CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES.
 11. **CLAIM VALIDATION.** In order to validate the reasonable justification of any warranty claim made by Buyer, Buyer must submit to Seller product performance data, including the previous three months' electric arc furnace ("EAF") operational parameters, previous three months' electrode consumption and the electrode identification numbers involved in the claim. Buyer will grant access to Seller's Technical Service Group to observe EAF operation. Seller agrees to keep such performance data provided by Buyer confidential and will use such information solely for the purpose of assessing Buyer's claim. The performance data will be returned to Buyer or destroyed (as requested by Buyer) after Buyer and Seller reach an agreement concerning the claim.
 12. **FORCE MAJEURE.** Seller shall not be liable for failure to perform or for delay in performance due to circumstances beyond Seller's reasonable control, including, without limitation, war, danger of war, Acts of God, adverse weather conditions, natural disasters, riots or civil unrest, acts of terrorism, labor disputes, strikes, lockouts, fire, epidemics, government acts, embargoes, blockades, accidents, fire, flood or other casualty, and shortage of raw materials, fuel, energy or transportation services. In the event of the foregoing, Seller shall be entitled to suspend or cancel its obligations under these Terms and Conditions without any further obligation. If Seller does not cancel, the prices set forth herein shall be subject to appropriate adjustment by Seller. Furthermore, in such circumstance, Seller may allocate production and deliveries of goods among customers in any reasonable manner it determines.
 13. **CANCELLATION. As to Buyer.** Buyer may cancel its order, or any part thereof, upon ten (10) days written notice. Upon cancellation by Buyer, Buyer shall be responsible for the contract price of all goods that have been completed and all goods in the production process. Termination charges on government contracts and subcontracts will be determined in compliance with applicable laws and regulations.
- CANCELLATION. As to Seller.** In addition to the occurrence of a Force Majeure event, Seller may cancel the order (i) if Buyer's payments are in default hereunder or any other contract with Seller, (ii) if Buyer breaches any other material provision of these Terms and Conditions, or (iii) if substantial changes occur in the availability or cost to Seller of labor, raw materials or components, energy or transportation.
14. **GOVERNING LAW AND DISPUTES.** All matters relating to the interpretation and effect of these Terms and Conditions and any authorized changes, modifications or amendments thereto shall be governed by the laws of the State of South Carolina. Any disputes arising under these Terms and Conditions shall be adjudicated in the United States District Court for the District of South Carolina or the South Carolina Court of Common Pleas.
 15. **WAIVER.** The waiver by Seller of any term, provision or condition hereof or any breach thereof shall not constitute a waiver of any other term, provision or condition hereof or any breach thereof nor shall such waiver be deemed a waiver of a subsequent breach of the same term or condition.
 16. **NON-DISCRIMINATION.** In accordance with Executive Order 11246, as amended (30 F. R. 12319), Seller agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Seller will take affirmative action to ensure that Equal Employment Opportunity is implemented in employment upgrading, promotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation

selection or training, including apprenticeship. All other applicant provisions of the Rules and Regulations of the Office of Federal Contract Compliance are hereby incorporated by reference.

17. LIFTING PLUGS. Buyer hereby acknowledges that graphite nipples provided by Seller are not intended or designed to be used as lifting plugs, and any misuse of graphite nipples may result in serious bodily injury.

18. LIMITATION OF LIABILITY. **Seller shall not be liable, and Buyer waives all claims against Seller, for incidental, special, punitive or consequential damages, lost profits or commercial losses, whether or not based upon Seller's negligence or breach of warranty (except title) or strict liability in tort or any other cause of action.** Seller will not be liable to Buyer for any loss, damage, or injury to persons or property resulting from the handling, storage, transportation, resale, or use of its products in manufacturing processes, or in combination with other substances, or otherwise. In no event, will Seller's liability under these Terms and Conditions or in connection with the sale of goods by Seller exceed the lesser of the cost of repair or the price of the specific goods as to which the claim is made. The foregoing shall constitute the exclusive remedy of Buyer and the exclusive liability of Seller.