

TERMS AND CONDITIONS

1. **WARRANTY** EXCEPT AS EXPRESSLY SET FORTH HERIN, POCO GRAPHITE, INC. ("Poco") EXPRESSLY DISCLAIMS AND BUYER EXPRESSLY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, including any implied warranty of *MERCHANTABILITY* under section 2.314 of the Texas Business and Commerce Code and any implied warranty of *FITNESS FOR A PARTICULAR PURPOSE* under section 2.315 of the Texas Business and Commerce Code and any other warranty pursuant to section 2.313 of the Texas Business and Commerce Code.
2. **BUYER'S LIABILITY AND OBLIGATIONS TO INDEMNIFY** Buyer acknowledges that it is familiar with the potential risks that exist in using the products, and Buyer hereby assumes all risk and liability for and agrees to indemnify and hold Poco harmless from and defend Poco against all claims, liabilities, costs and expenses arising from or connected with the possession, transportation, handling, unloading, storage, making, selling, processing or use of the product alone or in combination with other substances. Buyer's exclusive remedy and Poco's exclusive liability for damages under contract, tort, strict liability, negligence, intellectual property or otherwise, shall in no case exceed so much of the purchase price as is applicable to that portion of the particular shipment with respect to which damages are claimed. In no event shall Poco be liable for incidental, indirect or consequential damages including damages to third parties.
3. **SAFETY AND ENVIRONMENTAL** Buyer acknowledges that the products quoted hereunder may require special handling, storage, transportation, treatment or use to comply with applicable safety and environmental standards and Buyer will take all necessary action to comply therewith. Buyer further agrees to properly label the product if it is repackaged or resold and pass on all safety information and hazard warnings to its employees, purchasers, end users and their employees.
4. **MATERIAL RETURN POLICY** Any material not meeting Poco's standards may be returned for replacement providing (1) a return authorization, in writing, is obtained in advance, (2) material was not damaged in transit and/or through improper handling or use, and (3) authorization for return of material is requested within 30 days of the invoice date.
5. **WEIGHTS, ETC.** Poco's weights, tares and tests, taken at shipping point, shall govern. Claims related to quantity or quality of any shipment must be presented to Poco within ten (10) days after receipt of delivery or shall be deemed waived unless other terms are specifically agreed to.
6. **GOVERNMENTAL REGULATION** Poco's obligation to deliver product shall terminate, at its option, in the event any environmental or similar directive, order or regulation of any governmental authority (whether or not legally or validly made) imposes obligations, either (a) to close a plant in which product is manufactured or from which it is supplied, or (b) to make modifications to any plant or alterations in Poco's manufacturing processes which in Poco's judgement make further manufacture or supply economically prohibitive. If the modifications required add materially to the cost of supplying product, Poco may suspend delivery until it has reached agreement with Buyer on a revised price. If an agreement has not been made in writing within 30 days of the date of Poco's written notice to Buyer of the cost increase, then Poco may terminate its obligation to deliver product. Poco shall not be obligated to supply product from other sources nor shall it be liable for any damage, loss or injury suffered by Buyer by reason of termination.
7. **ALLOCATION** If Poco, because of shortage of supply or raw material, either of its own production, of its other sources of supply or raw material, or in the industry generally, or for any other similar reason, deems that it is unable to supply all demands by its customers, it may, without obligation to purchase products from other sources, allocate its available supply of product among its customers or itself at its sole discretion. During any such contingency, the obligations of the parties shall be suspended or proportionately abated. Upon cessation of a contingency, neither Poco or Buyer shall be obligated to make up any quantities omitted.
8. **INTELLECTUAL PROPERTY RIGHTS** Poco Graphite, Inc. shall under no circumstances be required (1) to disclose to any party (including the U.S. Government, its agencies or any other party) or to permit any such party to acquire any information concerning (a) the method of manufacture of any of the goods called for by this purchase order (b) the raw material and/or manufacturing cost of said articles, or (2) to grant to any such party any rights in or under any intellectual property (e.g., patent, trademark, copyright, trade secret, etc.), or any right to use any technical information, now or hereafter owned by Poco, or its parent company, or (3) to indemnify and/or hold harmless any such party against any expense resulting from actual or alleged infringement of any intellectual property, provided, however, that as to any issued U.S. Patent claiming the specific composition of matter of which the goods called for by this purchase order consist and/or the process by which said composition of matter is manufactured, Poco will so indemnify you to the extent of the purchase price of said goods.
9. **LABOR REGULATIONS** Poco certifies that the products hereunder have been produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards as amended, and the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.
10. **ACCEPTANCE TERMS** Buyer's issuance of a purchase order for the materials or services quoted herein or acceptance of any materials or services shall constitute assent to the terms and conditions of this document. This is the entire contract and any other terms and conditions proposed by Buyer's purchase order shall not be binding upon Poco.
11. **APPLICABLE LAW.** This Quotation is to be governed by and construed under the laws of the State of Texas.

IMPORTANT NOTICE!

Although POCO has licenses where necessary to provide the Buyer with product furnished hereunder, U.S. Law prohibits the Buyer from transferring or re-exporting this product or may require the Buyer to obtain special authorization for the transfer or re-export to the following countries:

Cuba	Syria	Iran	Iraq
Pakistan	Libya	Sudan	North Korea