



## TERMS AND CONDITIONS OF PURCHASE

1. **PACKING, MARKING AND SHIPPING** (a) All goods and materials to be shipped shall be properly packed, marked and shipped in accordance with the requirements of the common carrier transporting such goods and the terms of this purchase order and in a manner which will permit the lowest transportation rate (including rail, motor trucks, express and parcel post) consistent or in accordance with such special shipping instructions as may be issued by the purchaser whose name appears on this purchase order (herein referred to as "Buyer"). Seller shall pay for or promptly reimburse Buyer for all expenses incurred as a result of improper packing, marking or routing or Seller's failure to comply with this Paragraph. (b) Any transportation charges which are paid by Seller and to which Seller is expressly entitled to reimbursement as a separate item herein, shall be added to Seller's invoices as a separate item and the receipted freight bill shall be attached thereto. (c) Unless otherwise expressly provided herein, no charge shall be made by Seller for insurance shipping, cartage, containers, crating, packing, boxing, packaging, bundling, dunnage, sorting, drayage, storage handling transportation, freight, delivery or any other service or material. All shipments must be sent properly insured.

2. **NOTICES** Notice of shipment must be sent to Buyer as soon as goods or materials are forwarded pursuant to this purchase order, giving purchase order number, description of goods and materials, routing and shipping information and date of shipment, and if shipment is by carload, car number and identification. Goods and materials arriving without proper notices will be held until the desired information is received and all costs incidental thereto will be charged to Seller.

3. **DELIVERY** Delivery of goods or performance of services must be effected within the time stated in this purchase order, as time is of the essence, otherwise Buyer (a) may extend the time for delivery or performance or (b) may cancel this purchase order, and Buyer shall not be liable to Seller in any manner for any cost, expense or loss whatsoever occasioned by such cancellation. When the terms of delivery are F.O.B. Buyer's destination, all transportation charges (including charges for terminal switching service and all transportation taxes) on goods or material furnished under this purchase order, as well as for services in connection therewith, must be Seller's expense and in accordance with the carrier's tariffs lawfully in effect at the time the shipments are moved or the services are performed.

4. **PACKING SLIP, BILLS OF LADING, AND INVOICES** (a) Each Packing Slip, Bill of Lading and invoice shall plainly bear the number of this purchase order and the location of the mine, plant or office to which the goods, or materials hereunder are to be shipped or where services are to be performed. (b) A numbered Master Packing Slip shall accompany each shipment. This slip must show the name of Seller, the quantity and description of each item, size and grade of the goods or materials, and the purchase order number. If less than a carload is being shipped, the slip shall be included in one of the prominent packages, which shall be marked "Packing Slip Inside". In case of a carload shipment, the slip shall be enclosed in an unsealed envelope and tacked securely in a prominent place near the door on the outside of the freight car. (c) The original Bill of Lading shall be mailed to the destination to the attention of the Warehouse Manager or to such other person designated by Buyer. (d) Unless otherwise expressly provided herein, each invoice shall include: (i) Buyer's purchase order number; (ii) date and method of shipment; (iii) terms of shipment, i.e. F.O.B. point of shipment, freight allowed or F.O.B. destination; (iv) whether the shipment moved prepaid or collect; (v) car initials and numbers and routing if shipment was made by railroad; (vi) itemized quantities and description and the applicable prices of the materials shipped; (vii) discount terms and, (viii) stock number. (e) The invoice must be itemized and rendered promptly to Buyer in duplicate at the time of each shipment and all data required must be furnished. Incorrect invoices will be returned and discount and settlements will be effective from the date of the receipt of the correct invoice.

5. **PREMIUM SHIPMENTS** If because of failure of Seller to meet the shipping or delivery requirements of this purchase order Buyer finds it necessary to require shipment of any of the goods or materials covered by this purchase order by a method of transportation other than the method originally specified by Buyer herein, then Seller shall reimburse Buyer the amount, if any, by which the cost of such alternative method of transportation exceeds the cost of the method of transportation originally specified herein unless such failure is due to causes beyond the control and without the fault or negligence of Seller.

6. **SHIPPING RELEASES** Unless specific delivery or performance dates are provided in this purchase order, Seller shall not fabricate any of the goods or materials covered by this purchase order or procure any of the materials required in their fabrication, or ship any of such good or materials to Buyer or perform any work or services, except to the extent authorized in written instructions furnished to Seller by Buyer. Buyer shall have no responsibility for goods for which delivery dates or such written instructions have not been provided. Shipments of materials in excess of those authorized may be returned to Seller and Seller shall pay or reimburse Buyer for all packing, handling, sorting, and transportation expenses incurred in connection with such shipments. Buyer may, at any time from time to time, change shipping instructions or direct temporary suspension of such scheduled shipments.

7. **QUANTITY** The quantity of goods delivered or extent of services to be performed pursuant hereto shall not exceed nor be less than the quantity specified, without Buyer's permission in writing first having been obtained.

8. **INSPECTION AND ACCEPTANCE BY BUYER** All goods and/or services shall be subject to inspection and test at destination or upon completion (in the case of

services). In case any goods, materials or services are defective in material or workmanship or otherwise fail to meet the requirements of this purchase order, Buyer shall have the right to reject or to retain and correct such goods, materials or services at Buyer's option. Seller shall pay or reimburse Buyer promptly for all expenses incurred in correcting defective or non-conforming goods and/or services; such services or materials will be held at Seller's risk, or will be returned for credit at Seller's risk, at Buyer's option, and Seller shall pay Buyer for all packing, handling, sorting, storage, shipping and transportation and other expenses incurred in connection with the rejected or nonconforming goods, materials, or services. Seller agrees to permit the Buyer's inspectors to have access to the Seller's plant or works at all reasonable times for the purpose of inspecting any items which are the subject of this purchase order or work in process for production of such items. Any inspection or approval at Seller's plant or works or elsewhere during or after manufacture, prior to the final inspection at destination, shall be provisional only and shall not constitute final acceptance or be construed as a waiver of the right of inspection and of the right of approval or rejection after receipt of the goods or materials by Buyer. All items are subject to final inspection, approval and acceptance at Buyer's mine, plant or office or other places designated by Buyer in writing notwithstanding prior instructions. Such inspections shall be made within a reasonable time after delivery. Payment for any items hereunder shall not be deemed an acceptance thereof or a waiver of any rights to inspect

or test such items. Buyer reserves the right to reject and refuse acceptance of items which are not in conformity with the instructions, specifications, drawings, or dates hereof, or any of Seller's warranties (express or implied) and, at Buyer's option, to return or reject said items at Seller's expense. Seller shall not replace or correct items returned or rejected as defective or nonconforming unless so directed by Buyer in writing and the costs of any such replacement or correction shall be borne by Seller. Inspection costs for items or work found to be defective shall also be borne by Seller.

9. **QUALITY AND WARRANTIES** (a) All goods, materials and services furnished must conform strictly to specifications, drawings, samples or other descriptions furnished herein or in connection herewith; the workmanship and, where the materials to be used are not specified, the materials, must be the best of their respective kinds. (b) Seller warrants that the goods, materials and work covered by this purchase order shall conform to the specifications, drawings, samples, or other descriptions furnished or specified by Buyer, and shall be fit, suitable, and sufficient for the purpose and use intended, and shall be merchantable, of the best material (subject to subparagraph (a) above), of the best workmanship, of even kind, quality and quantity within each unit and among all units involved, and free from all defects whatsoever, and except as may be provided to the contrary on the face of this purchase order, Seller warrants that the goods, materials and work or any part thereof found defective within one (1) year after being put into use by Buyer will be replaced without charge to Buyer, such replacement being without prejudice to any other remedy of Buyer under this purchase order or otherwise. The warranties and remedies provided for in this Paragraph and Paragraph 8 (INSPECTION) shall be in addition to those implied by or available at law, including the Uniform Commercial Code, and shall exist notwithstanding the acceptance by Buyer of all or a part of the goods or services with respect to which such warranties and remedies are applicable. Seller warrants that it has good title and the right to transfer all goods and materials hereunder and that the same, and all work, labor and services furnished or performed hereunder, are free and clear of any and all liens, encumbrances or claims of any nature whatsoever, and Seller agrees to deliver to Buyer a proper release of the same or satisfactory evidence of freedom from the same, upon request of Buyer.

10. **ACCEPTANCE BY SELLER** Unless otherwise provided herein, it is understood and agreed that, until expiration of the time for acceptance by Seller or until withdrawal of this purchase order by oral or written notice from Buyer at any time prior to acceptance by Seller, the written acceptance by Seller of this purchase order or the prompt promise to ship or the commencement of any work or the performance of any services with respect to samples, shall constitute acceptance by Seller of this purchase order and of all its terms and conditions and that such acceptance is expressly limited to the terms and conditions of this purchase order notwithstanding any additional, conflicting or contrary terms and conditions contained in Seller's terms and conditions of sale, quotation acknowledgement, invoice or any other communication, it being understood that the terms and conditions of this purchase order alone shall govern the transaction herein, unless otherwise modified in accordance with Paragraph 11 hereof.

11. **MODIFICATION OF PURCHASE ORDER AND CHANGE ORDERS** This purchase order, together with any written instruction issued hereunder, contains the complete and final agreement between Buyer and Seller, and no agreement or other understanding in any way purporting to modify the terms and conditions hereof shall be binding upon the parties unless such agreement or understanding is contained in writing signed by both parties on or subsequent to the date of this purchase order. Buyer reserves the right at any time from time to time, to make changes in specifications, drawings and data herein, where the items to be furnished are to be specifically manufactured, and in methods of shipment or packaging or in the time or place of delivery. If any such change varies the cost of or time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule. Change Orders may be made only when signed by Buyer and any claims by Seller that such order will require price increases or extension of time must be made by Seller in writing within ten (10) days of receipt of the Change Order. All modifications of this purchase order must be in writing. No course of dealings hereunder shall be considered a waiver by Buyer of any rights under this purchase order.



12. **TERMINATION AT OPTION OF BUYER** (a) Performance of work under this purchase order may be terminated by Buyer at its option, in whole or in part, at any time from time to time, by the delivery, or the mailing, of a written notice of termination to Seller, Buyer having such right of termination notwithstanding the existence with respect to Seller of any of the causes or events specified in Paragraph 15 (Excusable Delays) of this purchase order. (b) After receipt of a notice of termination, Seller shall, unless otherwise directed by Buyer, (i) terminate all work under this purchase order and subcontracts relating to the performance of work terminated by the notice of termination; (ii) settle, in accordance with subparagraph (c) hereof, all lawful claims arising out of such termination of orders and subcontracts; (iii) transfer title and delivery to Buyer of (1) all completed goods or work which conforms, in quality, to the requirements of this purchase order and does not exceed, in quantity or cost, the amount authorized by Buyer for production, and (2) all reasonable quantities or work in process (but not in excess of the quantity authorized by this purchase order) which are of a type and quality suitable for producing the goods authorized by this purchase order and which cannot reasonably be used by Seller in producing goods for itself or for its other customers; (iv) take all action necessary to protect all property in Seller's possession in which Buyer has or may acquire an interest; (v) submit to Buyer promptly but no later than three (3) months from the effective date of termination (one month in the case of partial termination) its termination claims pursuant to subparagraph (c) hereof; provided, however, that in the event of failure of Seller to submit its termination claim within such period, Buyer may determine, notwithstanding the provisions of subparagraph (c) hereof, on the basis of information available to it, the amount, if any due Seller with respect to the termination, and such determination shall be final. (c) Upon termination by Buyer under this Paragraph, Buyer shall pay to Seller only the following amounts and without duplication: (i) the purchase order price for all goods, materials or services which have been completed in accordance with this purchase order and not previously paid for and delivered to Buyer; (ii) the actual, out-of-pocket, costs incurred by Seller in accordance with this purchase order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of this purchase order, including the actual cost of work in process and materials delivered to Buyer or services performed for Buyer in accordance with subparagraph (b) of this Paragraph, and including the actual costs for discharging legally enforceable liabilities which are so allocable or apportionable, and (iii) the reasonable and actual, out-of-pocket costs incurred by Seller in protecting property in its possession in which Buyer has or may acquire an interest. Payments made under this subparagraph (c), exclusive of payments under this subdivision (iii) hereof, shall in no event exceed the aggregate price specified in this purchase order, less payments otherwise made or to be made. (d) The provisions of this Paragraph shall not apply if this purchase order is terminated by Buyer for any default of Seller pursuant to Paragraph 13 hereof. (e) Notwithstanding anything contained herein to the contrary, to the extent that this purchase order and these terms and conditions apply to the manufacture or production of an item or items which are offered for sale to others and are not of a unique nature or character as specified by Buyer, Buyer shall have the option to be excused by written notice given to Seller no later than four (4) months prior to scheduled delivery to cancel this purchase order in which event Buyer shall not be liable or obligated to Seller in any manner whatsoever, including any and all of the cancellation charges herein before provided in this Paragraph, and Buyer shall be entitled to the return of any and all monies paid to Seller in connection with such purchase order. (f) Notwithstanding anything contained herein to the contrary in the event of termination by Buyer under this Paragraph 12 or under Paragraph 13, Buyer shall not be obligated or liable to Seller for any remote, contingent, special, consequential, indirect exemplary, punitive, incidental, or other damages of any kind or nature, it being understood that all rights of Seller under the circumstances set forth in this Paragraph 12 are described in full in this Paragraph 12.

13. **TERMINATION FOR DEFAULT OF SELLER** If Seller refuses or fails to make deliveries of the goods or materials or fails or refuses to perform the services called for in this purchase order within the time specified in this purchase order or in any shipping release issued to Seller, or if Seller (i) fails to perform any other provisions of this purchase order, or (ii) fails to make progress so as to endanger timely performances hereunder, and in either of the circumstances enumerated in (i) or (ii) does not cure such failure, within the cure period set forth by Buyer in written notice to Seller, Buyer, subject to the provisions of Paragraph 15 (Excusable Delays) of this purchase order, may, by the delivery, or the mailing, of a written notice of termination to Seller, terminate the performance of work under this purchase order in whole or in part, effective upon such delivery or mailing, and Buyer shall, in no manner whatsoever, be liable or responsible to Seller hereunder for any claims or liabilities whatsoever.

14. **PATENTS** Seller warrants that the goods and materials specified herein or in other goods and materials into which the goods and materials specified herein have been incorporated (and their manufacture, sale or use alone or in combination) shall not infringe any United States or foreign letters patents; and Seller agrees to indemnify and hold harmless Buyer and anyone selling or using any of Buyer's products against all liability, damages, judgment, decrees, cost and expenses of any kind or nature whatsoever which may result from or arise out of any alleged infringement or any claim thereof by any person, firm or corporation that the manufacture, use, purchase or sale of any said goods or materials therein infringe or contribute to the infringement of any such letters patent. Seller agrees, upon request of Buyer and at Seller's own expense, either to defend, or to assist in the defense of at Buyer's option, any action which may be brought against Buyer or those selling or using any of the Buyer's products by reason of any such alleged infringement, the Seller hereby agreeing to reimburse Buyer upon demand for any and all expense whatsoever to which Buyer may be put with respect thereto. It is understood that for purposes of this Paragraph 14, Paragraph 9 (Quality and Warranties), Paragraph 17 (Indemnity and Insurance), and Paragraph 24 (Compliance with Laws and Rules) the term of "Buyer" means and includes the Buyer, its successors and assigns, its corporate parent, their respective subsidiaries, any principal or principals for whom Buyer may be acting, whether or not such agency is disclosed, and any purchase from or

through it or such other companies of any of the goods, materials, or work furnished under this purchase order.

15. **EXCUSABLE DELAYS** (a) Neither Buyer nor Seller shall be liable for a failure to perform hereunder arising from (i) acts of God or of a public enemy, (ii) acts of any person engaged in riots, civil disturbances or sabotage, (iii) fires, floods, explosions, or other catastrophes, (iv) epidemics or quarantine restrictions, (v) strikes, slowdowns, lockouts, or labor stoppages or disputes of any kind, (vi) freight embargoes, (vii) unusually severe weather and (viii) other causes or events beyond the control and without the fault or negligence of Buyer or Seller in failing to perform hereunder. (b) In the event of a failure by Seller to perform hereunder arising from any of the causes or events set forth in subparagraph (a) of this Paragraph 15, Buyer shall be entitled to obtain supplies, equipment, materials, goods or services covered by this purchase order elsewhere for the duration of such failure and to reduce pro tanto, and without any liability or obligation whatsoever to Seller, the supplies, equipment, materials, goods or services ordered from Seller under this purchase order, and the quantity of same shall be reduced accordingly.

16. **REMEDIES** The individual remedies reserved in this purchase order shall be cumulative and additional to any other further remedies provided at law or in equity or in this purchase order or otherwise. No waiver of any breach of any provision of this purchase order shall constitute a waiver of any other breach of such provisions or a waiver of any breach of any other provision hereof. No waiver by Buyer shall be effective unless in writing, signed by Buyer.

17. **INDEMNITY AND INSURANCE** (a) Seller shall indemnify, defend, and save Buyer harmless from and against all claims, demands, causes of action, losses, damages, costs and expenses (including but not limited to attorneys' fees), and liabilities of any nature on account of personal injuries, including death, or property loss or damage of and to the Seller and of and to any other third party including but not limited to Seller's employees, agents, subcontractors or insurers arising out of, or in any manner connected with, the performance of this purchase order, however such injury, death, damage or loss may be caused, whether caused or alleged to be caused by the fault or negligence of Buyer, its employees, or its agents or otherwise. Buyer may, at any time or from time to time, withhold from any amounts payable to Seller under this purchase order such sum or sums as Buyer may deem necessary to protect itself against possible loss or expense arising hereunder, without limiting in any way any rights it may otherwise have at law or in equity or otherwise. (b) In the event of the performance of any work or other activity by Seller, its employees, agents or subcontractors upon the premises or lands of Buyer, in addition to the foregoing, Seller, as a condition hereof and prior to such entry, hereby releases Buyer from, and agrees to indemnify, defend and save Buyer harmless from and against any and all claims, demands, causes of action, losses, damages, costs and expenses (including but not limited to attorneys' fees), and liabilities of any nature on account of personal injuries, including death, or property loss or damage arising out of, or in any manner connected with, the performance of any work or other activity by Seller, its employees, agents or subcontractors on Buyer's premises or lands, except to the extent solely caused by the gross negligence of Buyer. (c) Seller shall maintain, and require its agents and subcontractors to maintain, insurance coverage, including but not limited to worker's compensation insurance and public liability and property damage insurance, in amounts sufficient to cover the obligations set forth above. Unless provided to the contrary elsewhere in this purchase order, Seller shall maintain public liability and property damage insurance coverage of not less than \$500,000 each occurrence for bodily injury, and \$500,000 each occurrence for property damage. Seller shall furnish Buyer, at such times as Buyer may request, with actual certificates of insurance evidencing the required levels of coverage which expressly provide that the insuring company will give thirty (30) days prior written notice to Buyer of any modification, cancellation or expiration of such insurance.

18. **RISK OF LOSS AND TITLE** Risk of loss and title to all good and materials shall pass to Buyer when Buyer takes delivery at the destination and accepts the same. Until such time, risk of loss is upon Seller.

19. **INSOLVENCY OF SELLER** If Seller shall be adjudged bankrupt or shall file a petition in bankruptcy, or for reorganization, or for an arrangement with creditors or seek any other benefits under the bankruptcy or insolvency laws of the United States or any state or shall make a general assignment for the benefit of creditors, or if a receiver shall be appointed for the Seller, then Buyer may, without prejudice and in addition to any other right or remedy, terminate this purchase order or any part thereof by notice to Seller and take possession of the work being performed pursuant hereto or any part thereof and all materials, equipment, tools and appliances therefore, and finish, or engage any other person or company to finish, such work or any part thereof by whatever means Buyer deems expedient in such case, and Buyer shall then be relieved of any duty to make payment until all of the work shall have been finished. If the cost of completion of the work, plus the amounts of the payments made to Seller in respect of the work, shall exceed the amount which would have been payable to Seller hereunder if Seller had completed the performance of the work hereunder, as required herein, then Seller shall promptly pay Buyer the difference and Buyer shall be relieved on any duty to make payment to Seller hereunder.

20. **PERMITS AND LICENSES** Unless provided to the contrary elsewhere in this purchase order, permits and licenses necessary for the performance of the work to be performed hereunder shall be secured and paid for by Seller at its own risk and expense. Seller shall comply with all provisions and conditions of any such permits and licenses.

21. **CONFIDENTIAL NATURE OF INFORMATION** All information on or in connection with this purchase order or any drawings or specifications pertaining hereto is the sole property of the Buyer, is to be treated as confidential, and shall not be disclosed in any manner to any other person, company, firm or corporation or used for any purpose other than



that contemplated by this purchase order, without the prior express written consent of Buyer, except to employees or agents or subcontractors of Seller but only to the extent necessary to allow them to perform their duties in performing the work hereunder. Seller agrees to take all reasonable measures to insure that its employees, agents, and contractors and subcontractors maintain the strict confidentiality of the foregoing information, specifications and drawings.

22. **NON-ASSIGNMENT** Seller shall not delegate in any manner to any other person the performance of any part or all of the work or the supplying of any services under this purchase order. Seller may assign monies due and to become due under this purchase order; provided, however, that Buyer shall be entitled to assert against the assignee thereof all rights, claims and defenses of every type (including without limitation rights of setoff, recoupment and counter-claims) whether arising under this purchase order or otherwise which Buyer could assert against Seller, whether prior to or subsequent to such assignment.

23. **GOVERNING LAW** All terms and conditions of this purchase order shall be governed by the laws of the State of North Carolina. The invalidity of any provision of this purchase order shall not affect the remaining provisions hereof.

24. **COMPLIANCE WITH LAWS AND RULES.** (a) Seller, its employees, agents and subcontractors shall comply with all applicable provisions of federal, state and local laws, ordinances, orders, rules and regulations, as amended (collectively, the "Laws"), and Seller warrants that all good, materials and services supplied pursuant to this purchase order will be produced or rendered in compliance with the same, including but not limited to the Federal Mine Safety and Health Act of 1977 and the Occupational Safety and Health Act of 1970 (including but not limited to the OSHA Hazard Communication Standard). Seller, its employees, agents and subcontractors shall also comply with all rules of Buyer applicable to work performed upon the premises or lands of Buyer. (b) Seller shall indemnify, defend and save harmless Buyer, its officers, directors, employees and its agents from and against any and all costs, expenses (including but not limited to attorneys' fees), claims, causes of action, liabilities, damages, fines or assessments resulting from failure to comply with any provisions of the aforesaid Laws or rules or any breach of the aforesaid warranty.