1. ACCEPTANCE/CONTRACT FORMATION. These terms and conditions (“T&Cs”) shall apply to any contract of sale for Seller’s materials to Buyer. Seller reserves the right, without all terms of any contract between Buyer and Seller shall give Seller, in addition to all other available remedies, the right to deduct any undelivered quantities of goods from the total quantity to be furnished under this or any other contract between Buyer and Seller. Buyer shall be liable for all such goods or services. In event of Buyer’s nonpayment of any debt, obligation or liability now or hereafter incurred or owing by Buyer to Seller, Seller shall have all rights of, and all remedies available to, an unsecured creditor under applicable laws, and all rights and remedies to inspect and advise Seller are expressly objected to and shall not be deemed accepted by Seller unless Seller’s acceptance is in writing and specifically refers to each additional or conflicting term.

2. DELIVERY/FORCE MAJEURE. All shipping and delivery dates are approximate. Seller shall not be responsible for any nonperformance, failure, interruption or delay in manufacture or delivery that may be caused by sabotage, fire, flood, explosion, labor dispute, strike, lockout, riot, insurrection, war, terrorist act, government order, or priorities granted by request of or for the benefit, directly or indirectly, of any governmental body, authority or agency, shortage of raw materials or supplies, act of God, insufficient capacity, or any other cause beyond Seller’s control. In the event of any such prohibition, failure, interruption or delay, Seller may, at its sole option, extend delivery time or cancel the order, in whole or in part. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LABOR RESULTING FROM ANY DELIVERY FAILURE OR DELAY.

3. COMPLIANCE WITH LAWS/EXPORT CONTROL/ANTI-CORRUPTION. (a) Seller intends to comply with laws or regulations applicable to the performance by Seller of each order, provided, however, that Seller’s sole and exclusive remedy and at Seller’s option, replace or, without replacement, render credit for any goods sold to Buyer which, if properly selected, stored, processed and used by Buyer shall prove defective within one (1) year from the date of shipment. Seller’s goods shall be deemed defective only to the extent they materially deviate from the physical and mechanical properties of applicable specifications, as accepted by Seller, and Seller’s standard manufacturing and commercial tolerances, variations and practices. Seller shall, as Buyer’s sole and exclusive remedy and at Seller’s option, reprocess or render credit for any Services performed by Seller which do not conform to Buyer’s specifications, but Buyer shall have no right to cancel or reject any order. In no event shall Seller be liable for any services that are not shown to be defective at any time or amend the terms thereof, without penalty or liability, as required with respect to any export or import license or approval that Seller, in its discretion, determines may be required. Buyer agrees to comply with all such applicable laws, regulations and orders, and acknowledges that it shall not directly or indirectly cause, assist, or encourage any marketing or export of such material or merchandise that is subject to export or transmission is restricted or prohibited. (b) Buyer represents, warrants and covenants that it has not paid, offered or agreed to pay, authorized the giving of, or caused to be paid, directly or indirectly, money or anything of value to any foreign official (as defined in the U.S. Foreign Corrupt Practices Act, as amended) in connection with the sale or purchase of any materials to any country.

4. WARRANTY / CLAIMS / LIMITATIONS OF LIABILITY. (a) Seller shall, as Buyer’s sole and exclusive remedy and at Seller’s option, replace or, without replacement, render credit for any goods sold to Buyer which, if properly selected, stored, processed and used by Buyer shall prove defective within one (1) year from the date of shipment. Seller’s goods shall be deemed defective only to the extent they materially deviate from the physical and mechanical properties of applicable specifications, as accepted by Seller, and Seller’s standard manufacturing and commercial tolerances, variations and practices. Seller shall, as Buyer’s sole and exclusive remedy and at Seller’s option, reprocess or render credit for any Services performed by Seller which do not conform to Buyer’s specifications, but Buyer shall have no right to cancel or reject any order. In no event shall Seller be liable for any services that are not shown to be defective at any time or amend the terms thereof, without penalty or liability, as required with respect to any export or import license or approval that Seller, in its discretion, determines may be required. Buyer agrees to comply with all such applicable laws, regulations and orders, and acknowledges that it shall not directly or indirectly cause, assist, or encourage any marketing or export of such material or merchandise that is subject to export or transmission is restricted or prohibited. (b) Buyer represents, warrants and covenants that it has not paid, offered or agreed to pay, authorized the giving of, or caused to be paid, directly or indirectly, money or anything of value to any foreign official (as defined in the U.S. Foreign Corrupt Practices Act, as amended) in connection with the sale or purchase of any materials to any country.

5. PRICES / FREIGHT. Prices for extras (including applicable surcharges), freight and transportation charges are subject to change, without notice, to reflect rates in effect at shipment date. Unless otherwise agreed, freight will be charged to original manufacturer or processing point. 

6. TITLE / SECURITY INTEREST. Buyer’s failure to make any payment due hereunder, or any attempt by Buyer to resell any of Seller’s goods that are the subject of any order or contract with Seller, shall result in the immediate assignment to Seller of all property rights and interest in all goods provided to Buyer by Seller or upon which Seller performs services for Buyer, to secure payment by Seller for all such goods or services. In event of Buyer’s nonpayment of any debt, obligation or liability now or hereafter incurred or owing by Buyer to Seller, Seller shall have all rights of, and all remedies available to, an unsecured creditor under applicable laws, and all rights and remedies to inspect and advise Seller are expressly objected to and shall not be deemed accepted by Buyer unless Seller’s acceptance is in writing and specifically refers to each additional or conflicting term.

7. TAXES. Any excise, levies or taxes, including GST and VAT where applicable, that Seller is required to pay or collect under any existing law (including, without limitation, any foreign law), shall be paid by Seller, net of any value added or similar taxes recoverable by Buyer, except upon terms, satisfactory to Seller, that protect and indemnify Seller against all loss.

8. DELIVERY / RISK OF LOSS. Unless otherwise specifically stated on a document of sale agreed to in writing by Seller, delivery shall occur and risk of loss shall pass to Buyer upon delivery of the goods or services for point of shipment. Transportation shall be at Buyer’s sole risk and expense, and any claim for loss or damage in transit shall be against the carrier only.

9. CANCELLATION / CHANGE ORDER REQUESTS. An order cannot be modified or cancelled by Buyer without Seller’s written consent. In no event shall any order be modified or cancelled for any portion thereof already processed, manufactured or in process of manufacture, or any orders for which Buyer disbursement has occurred at SELLER’S sole option, satisfactory to Seller, that protect and indemnify Seller against all loss.

10. QUANTITY. Unless otherwise specified in Seller’s sales documents, Seller may deliver commercially reasonable overages or underages of weight, length, size and/or quantity. Any reasonable variation shall constitute compliance with Buyer’s order and the unit price will continue to apply. If this order is for Buyer’s requirements, Buyer shall provide information sufficient to confirm with the relevant situation.

11. PAYMENT TERMS. Unless otherwise specifically stated on a document of sale agreed to in writing by Seller, terms of payment for each order without setoff shall be net cash (U.S. Dollars) in thirty (30) days from invoice date. Restrictive endorsements on Buyer’s checks will not reduce Buyer’s obligations to Seller. At Seller’s discretion, the unpaid portion of amounts due to Seller shall bear interest at the rate of 1% per month or the maximum legal rate if less.

12. ADVERSE ASSURANCE. Seller may, at any time, suspend performance of any order or require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller’s sole opinion, Buyer’s financial condition or other grounds for insecurity warrant such action.

13. ASSIGNMENT. Buyer shall not assign any order or any interest therein without Seller’s written consent. Any such actual or attempted assignment without Seller’s written consent shall entitle Seller to cancel such order upon notice to Buyer.

14. INTELLECTUAL PROPERTY / INDENMIFICATION. Nothing herein shall be construed to grant Buyer any right or license to use any of Seller’s intellectual property. Buyer shall indemnify, hold harmless and defend Seller against any liability for patent, trademark, trade name, trade secret or copyright infringement arising out of the preparation, manufacture, processing or sale of any material or performance of services in accordance with Buyer’s order, specifications or instructions.

15. TOOLING. Unless otherwise expressly agreed, all tools, dies, fixtures, jigs, gauges, and related drawings and designs supplied by a party shall be and remain that party’s property. Seller retains all ownership of tooling for any materials to any country.

16. GOVERNMENT CONTRACT TERMS / MANDATORY FLOW DOWNS. If Buyer’s order is for a U.S. government contract, and Seller’s or goods’s services are to be used in the performance of said contract, Buyer shall notify Seller in writing at time of order of only those mandatory flow down clauses of applicable U.S. government procurement regulations required by federal statute or regulation to be included in U.S. government subcontracts, and such clauses shall be incorporated herein by reference if accepted by Seller at order acceptance.

17. RIGHT OF ACCESS. Buyer may visit Seller’s premises only upon terms set by Seller. No visit shall be allowed without Seller’s receipt of a written request by Buyer at least one month prior to such a visit. Any such visit may be made only to verify proper execution of Buyer’s order, as determined in Seller’s discretion. Buyer shall have no right to remove or review any information or files without Seller’s prior written consent.

18. MERGER CLAUSE / ENTIRE AGREEMENT / MODIFICATIONS. These T&Cs and sales documentation constitute the entire contract between Seller and Buyer. To the extent that any terms in the sales documents and these T&Cs conflict, the terms on the front of Seller’s sales documents shall control and prevail, followed by these T&Cs. No modification hereof shall be of any significance unless in writing and signed by authorized officers of Seller. Buyer waives any right to revoke any order or cancellation is received by Seller, of any of the terms or conditions hereof shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed. If any portion of these T&Cs is declared to be unenforceable by a court of competent jurisdiction, all other portions shall be considered to be valid and enforceable to the extent they are reasonably severable.

19. GOVERNING LAW / JURISDICTION. These T&Cs and accompanying sales documentation shall be governed by and construed in accordance with the laws of Texas, without application of conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods is explicitly excluded. Any claim, dispute or controversy arising from or relating to any contract for Seller’s goods or services, directly or indirectly, may be brought only in state and federal courts located in Texas, and the parties hereto consent to be subject to the jurisdiction of such courts.