

PURCHASE TERMS AND CONDITIONS

1. **Acceptance.** Seller's written acknowledgment of this order, commencement of work on the goods or services specified herein, or shipment of such goods, whichever first occurs, shall constitute Seller's acceptance of this order. Acceptance of this order is expressly limited to the terms contained on both sides hereof. Any proposal by Seller for additional or different terms, or any attempt by Seller to vary in any degree any of the terms of this order in Seller's acceptance, is hereby objected to and rejected, but such proposals shall not operate as a rejection by Seller of the offer made in this order unless such variances are in the specification, quantity, price or delivery schedule for the goods or services, but shall be deemed a material alteration thereof, and this order shall be deemed accepted by Seller without said additional or different terms. If this order shall be deemed an acceptance by Keystone Powdered Metal Company (hereinafter "Keystone" or "Buyer") of a prior offer by Seller, such acceptance is expressly limited to the terms contained on both sides hereof. Additional or different terms in Seller's prior offer or any attempt by Seller to vary in any degree any of the terms of this order shall be deemed material and are objected to and rejected, but this order shall not operate as a rejection of Seller's prior offer unless such offer contains variances in the specification, quantity, price, or delivery schedule for the goods or services.
2. **Price.** This order must not be filled at a higher price over Seller's last quotation to Buyer without written authorization from Buyer. All prices shall be fixed. No price shall be quoted, computed or stated as any type of cost plus or time and materials price unless separately negotiated. In the event that lower prices are quoted by Seller for materials or workmanship of the same or similar character to those herein ordered, such lower quotation shall apply to the undelivered balance of this order.
If at any time prior to the delivery of the goods, Buyer is given the opportunity to purchase all or a portion of the goods, or similar items of like quality, at a bona fide, competitive price which is less than the price to be charged by Seller hereunder, Buyer shall so notify Seller. Should Seller fail to meet such lower price within 30 days following the date of Buyer's notice, Buyer may, at its option, purchase from the other source at the lower price, in which event Buyer and Seller shall be relieved of their obligations hereunder in respect of that portion of the goods or similar goods so purchased from the other source.
3. **Change.** Buyer may, by writing, at any time modify this order or make changes in (a) drawings, specifications, samples or description of materials; (b) shipping schedules and/or points of delivery set forth herein or contained in release schedules; (c) quantity and (d) packing instructions. Any such change will be subject to an equitable adjustment in the purchase price and/or time of performance set forth in this order, provided that Seller notifies Buyer of a claim for adjustment within ten (10) days after receipt of such notice of change, and such adjustment, if any, will constitute Seller's sole remedy on account of such change. No change shall be made in this order by Seller without prior written consent from Buyer.
4. **Delivery.** (a) Seller shall pack, mark and load the goods as required by this order and the transporting carrier, and ship the goods in accordance with Buyer's instructions, or, in the absence of Buyer's instructions, in a manner which will permit the lowest transportation rate to apply. Seller shall reimburse Buyer for all expenses incurred due to improper packing, marking, loading or routing.
 - (b) Time is of the essence of this order, and if delivery of goods is not completed by the time promised, Buyer reserves the right without liability to Seller to terminate this order by notice effective when sent by Buyer as to stated items not yet shipped and to purchase substitute items elsewhere and charge Seller with any loss incurred.
 - (c) Delivery shall not be complete until goods have been actually delivered to and accepted by Buyer, notwithstanding any agreement to pay freight, express, parcel post or other transportation charges. The risk of loss or damage in transit shall be upon Seller.
 - (d) Shipments in greater or lesser quantity than ordered may be returned at Seller's expense unless written authorization is issued by Buyer. Goods which are delivered in advance of schedule are delivered at risk of Seller and may, at Buyer's option, be returned at Seller's expense for proper delivery and/or have payment therefore withheld by Buyer until the date that goods are actually scheduled for delivery. Buyer reserves the right to charge Seller with any and all costs associated with the unauthorized early delivery of goods (storage, rental, etc.)
5. **Delay.** Seller shall, in the event of a delay or threat of delay, due to any cause, in the production or delivery of the goods hereunder, immediately notify Buyer and shall include all relevant information with respect to such delay or threatened delay. Seller shall be liable for any damages resulting from failure to make delivery within the time called for by this order or by any written instructions of Buyer, except where such delay in delivery shall be due to causes beyond the reasonable control of Seller. If Seller for any reason cannot comply with Buyer's delivery schedule, Buyer, in addition to any other rights or remedies available to it by law or under these terms and conditions, may terminate this order or cancel any shipments thereunder without further liability to Seller.
6. **Inspection.** Keystone and its customers shall have the right to inspect and test all goods during the period of manufacture and at all other times, at any place where the goods may be located, including at Seller's or its subcontractor's sites. Keystone reserves the right to reject and refuse acceptance of goods which are not in accordance with the instructions, specifications, drawings and data or Seller's warranties, express or implied. Goods so rejected may be returned to Seller at its expense for, full credit or refund at Buyer's option and, in addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods.
Acceptance or rejection of the goods shall be made as promptly as practicable after delivery, except as otherwise provided in this order. However, failure to inspect and accept or reject the goods shall not relieve Seller from responsibility for compliance with order requirements nor impose liability on Buyer. In the event Buyer receives goods with defects or nonconformities that are not apparent on inspection, Buyer reserves the right to require the replacement, as well as payment of any damages.
7. **Termination.** The following definitions apply to this paragraph: (i) "Completed work" means all items completed in accordance herewith for which Seller has not received payments as of the date of termination; (ii) "Material" means all goods, supplies and services required to be furnished by Seller to complete the items ordered hereunder; (iii) "Terminated work" means all items ordered hereunder upon which work has not commenced as of the date of termination; and (iv) "Work in progress" means all items upon which work has commenced, but not completed as of the date of termination.
 - (a) Buyer may terminate this order, in whole or in part, at any time upon written notice to Seller. Upon receipt of such notice, unless otherwise directed by Buyer, Seller shall (i) stop work under the order to the extent specified, (ii) terminate all orders with third parties and subcontracts to the extent they relate to Terminated work, and (iii) place no further orders for Materials except, at Buyer's election, to complete Work in progress and/or non-Terminated work, if any.
 - (b) Upon termination and subject to Buyer's direction and approval, Seller shall (i) settle all claims with subcontractors and suppliers and (ii) use its best effort to sell any Material relating to the Terminated work or in Seller's or Buyer's discretion, retain this Material.
 - (c) Not later than 90 days after termination, Seller shall submit a terminate claim (herein the "Claim") to Buyer in the form prescribed by Buyer setting forth the proposed amount due Seller as a consequence of the termination. If Seller fails to submit a Claim within such time, Buyer may independently determine the amount due Seller, if any, and such determination shall be final. Buyer's liability for Completed work, Material, Terminated work and Work in progress shall be limited to those items incurred by Seller to satisfy order delivery dates within 90 days of the date of termination. Seller's Claim shall include only costs actually incurred by Seller prior to notification of termination and in anticipation of performing the ordered work to the extent such costs relate to preparation of finished goods due for delivery within 90 days of the termination notice. Such Claim shall be reduced by (i) all payments made to Seller on account of the order, (ii) any claim which Buyer may have against Seller, and (iii) the agreed upon price of proceeds of sale of any Materials applicable to the Terminated work and the sum equal to the cost to Seller of all Materials retained by Seller (the Claim as reduced by the foregoing shall be called the "Termination Payment"). The parties recognize that Seller may purchase raw materials or components, and perform work thereon when no binding order has been issued by Buyer. Therefore, unless otherwise agreed to in writing, Buyer shall not be liable for any work in progress, raw materials, components or any expenses or damages beyond those necessary to satisfy previously issued orders and/or releases of Buyer. In no event shall Buyer's obligations to Seller as a consequence of termination exceed the aggregate purchase price of the items as stated on the face hereof or the Termination Payment, whichever is less, and upon payment thereof, Buyer shall have no further obligation to Seller of any kind.
 - (d) All determinations required hereby shall be made by generally accepted accounting principles. Seller shall make its premises available to Buyer at any time after termination and prior to settlement for the purpose of inspection by Buyer of Seller's inventory, Work in progress, books, records, documents and other evidence bearing on the Termination Payment.
 - (e) Buyer may immediately terminate this order in whole or in part without any liability under item 8(c) of this order or otherwise if Seller (i) fails to comply with any provision of this order and does not cure such failure within 10 days after the receipt of notice from Buyer specifying such failure, or (ii) becomes insolvent.
8. **Invoice and Payment.** Seller shall issue a separate invoice, in duplicate, for each shipment, which shall be accompanied by a bill of lading or express receipt. Discount period and net payment period will be determined from the date of receipt of goods or a correct copy of the invoice, whichever is later. Payment of invoice shall not constitute acceptance of the goods and shall be subject to appropriate adjustment for failure of Seller to meet the requirements of this order.
9. **Indemnification and Insurance.** Seller shall protect, defend, and hold harmless and indemnify Buyer and Buyer's successors, assigns, agents and customers (including Buyer's distributors and dealers) from and against any and all claims, actions, liabilities, damages, losses, costs and expenses (including attorneys' fees) arising out of any (1) actual or alleged infringements of any patent, trademark or copyright by reason of the manufacture, use or sale of any goods or the providing of any services hereunder, or any unfair competition involving such goods or services; (2) actual or alleged death of or injury to any person, damage to property, or any other damage or loss by whomsoever suffered, including Buyer, resulting or claimed to result in whole or in part from any actual or alleged (a) defect in such goods, whether latent or patent, including actual or alleged improper construction or design of such goods or the failure of such goods to comply with the specification or with any express or implied warranties of Seller, or (b) negligence or defective workmanship in the providing of such services or the failure of such services to comply with the specification or with any express or implied warranties of Seller; (3) actual or alleged violation by such goods or services, or their manufacture, possession, providing, use, or sale of any law, statute or ordinance or any government administrative order, rule or regulation; or (4) breach by Seller of the terms and conditions of this order. Seller's obligations hereunder shall not be affected or limited in any way by Buyer's extension of express or implied warranties to its customers except to the extent that any such warranties of Buyer [expressly extend beyond the scope of Seller's warranties, express or implied, to Buyer.]
Seller shall maintain such public liability insurance, including product liability, completed operations contractors liability and protective liability, automobile liability insurance (including non-owned automobile liability) and Workmen's Compensation, and employer's liability insurance as will adequately protect Buyer against such damages, liabilities, claims, losses and expenses (including attorney's fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Buyer.
10. **Independent Contractor.** In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Buyer's property, or property of Buyer's customers, Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of Buyer.
11. **Warranty.** Seller expressly warrants that all goods or services covered by this order will conform to the specifications, drawings, samples, or descriptions furnished to or by Buyer, and will be merchantable, of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Buyer's intended use and expressly warrants that all goods covered by this order which have been selected, designed, manufactured, or assembled by Seller, based upon Buyer's stated use, will be fit and sufficient for the particular purposes intended by Buyer. Buyer's inspection, acceptance and payment for the goods shall not constitute a waiver by it of any warranties.
12. **Ingredients Disclosure and Special Warnings and Instructions.** If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients in the goods purchased hereunder; (b) the amount of one or more ingredients; and (c) information concerning any changes in or additions to such ingredients. Prior to and with the shipment of the goods purchased hereunder, Seller agrees to furnish to Buyer sufficient warning and notice in writing (including appropriate labels on goods, containers and packing) of any hazardous material which is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, and their respective employees of how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the goods, containers and packing shipped to Buyer.
13. **Setoff.** Buyer shall have the right to deduct or setoff all or any monies due or to become due arising out of this or any other transaction(s) with Seller and/or its affiliates by reason of any counterclaim Buyer may have against Seller and/or its affiliates.
14. **Force Majeure.** Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) days. During the period of such delay or failure to perform by Seller, Buyer, at its option, may purchase goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the goods from other sources in quantities and at times requested by Buyer and at the price set forth in this order. If requested by Buyer, Seller shall, within ten (10) days of such request, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance that the delay will cease within thirty (30) days, Buyer may immediately cancel the order without liability.
15. **Compliance with Laws.** By Seller acceptance of this order, Seller represents and warrants that it possesses all necessary permits and qualifications to perform the work under this order. Seller shall provide Buyer with such information, verification, etc. in respect of Seller performance of work under this order as Buyer requests. Seller further warrants that all goods supplied hereunder will have been produced in compliance with and Seller agrees to be bound by all applicable federal, state and local laws, orders, rules and regulations. Seller shall deliver its goods according to recognized technical regulations under applicable federal, state or local laws, ordinances, rules and regulations.
16. **Buyer's Property.** Title to all property furnished to Seller by Buyer or paid for by Buyer shall remain with Buyer. Seller shall not alter or use such property for any purpose, other than that specified by Buyer, or for any other person without the prior written consent of Buyer. Seller shall keep adequate records which shall be made available to Buyer upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound industrial practice, all at Seller's expense. Seller shall inspect the property before using, and if not accepted advise Buyer promptly. Unless otherwise agreed to by Buyer, Seller shall insure Buyer's interest in such property against loss or damage by reason of fire, theft, weather or natural disasters (including extended coverage), riot or civil commotion. In the event that Buyer's property becomes lost or damaged to any extent for any other cause while in Seller's possession, Seller agrees to indemnify Buyer or replace such property, at Seller's expense, in accordance with Buyer's request. At the completion or termination of the goods or services requested by Buyer in this order, for which Buyer's property was required, such property shall be returned or disposed of as Buyer may direct. Seller agrees to make such property available to Buyer at Buyer's request, in the manner requested by Buyer, including preparation, packaging and shipping as directed. Expenses for preparation for shipment will be for Seller's account and shipment shall be made F.O.B. Seller's plant.
17. **Confidentiality.** All specifications, documents, and prototype articles delivered by Buyer to Seller in connection with the performance of this order are the property of Buyer, and are disclosed in confidence upon the condition that they are not to be reproduced, copied, disclosed to others or used for any purpose other than in connection with this order without the prior written consent of Buyer. Such specifications, documents and articles are to be returned to Buyer promptly upon its written request. Such request may be made at any time during or after completion of Seller's performance. The obligations under this paragraph will survive the cancellation, termination or completion of this order.
18. **Applicable Law.** The validity, interpretation and performance of this order and any dispute connected herewith shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, United States of America, without regard to its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
19. **Arbitration.** Any controversy or claim arising out of or relating to the order, or the breach thereof, shall be settled by arbitration held at Pittsburgh, Pennsylvania, in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.
20. **Hazardous Materials.** Seller shall provide written notice to Buyer upon receipt of an order if the goods furnished in connection therewith are subject to the laws or regulations relating to hazardous or toxic substances; or when disposed of, to regulations governing hazardous waste, or to any other environmental or safety or health regulations. Seller shall furnish all appropriate shipping certifications and any notices, forms or other information required to be supplied to a purchaser or user of hazardous or toxic substances pursuant to applicable laws or regulations, and instructions for shipping, safety, handling, exposure and disposal in a form sufficiently clear for use by Buyer's nontechnical personnel and sufficiently specific to identify all action which the user must take concerning the material.
21. **Miscellaneous.** (a) This order, and any document(s) of Buyer referred to in this order, constitute the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this order shall be binding unless hereafter made in writing and signed by Buyer and no modification shall be effected by the acknowledgment or acceptance of the order or shipping instruction forms containing terms or conditions at variance with or in addition to those set forth herein.
 - (b) Seller shall not subcontract any of the work to be performed under this order or assign this order without the prior written consent of Buyer. Buyer's consent to any assignment or subcontract will not relieve Seller of complete responsibility for the work, in accordance with the terms and conditions of this order, or confer any rights against Buyer upon any subcontractor.
 - (c) No waiver by either Seller or Buyer with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing signed by the party to be bound.
 - (d) When requested by Buyer, Seller will submit written periodic progress reports covering the period and containing the information specified by Buyer.

Equal Opportunity in Employment. Vendor shall comply with the provisions of Executive Order 11246 dated September 24, 1965, as amended by Executive Order 11375 dated October 13, 1967, which provides in part that Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin; and, that Vendor 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; and selection for training including apprenticeship. All other applicable provisions of the Rules and Regulations of the Office of Federal Contract Compliance are herein incorporated by reference including the affirmative action clauses regarding disabled veterans, and veterans of the Vietnam Era in 41 C.F.R. Section 60-250.4 and regarding Handicapped Workers in 41 C.F.R. Section 60-741.4.