

SCHUNK GRAPHITE TECHNOLOGY, LLC TERMS AND CONDITION OF PURCHASE

Acceptance and Governing Provisions: This order is not an acceptance of any offer to sell but is an Offer to Purchase which may be accepted only by execution of the acknowledgement copy hereof by Seller and return of such copy to Schunk Graphite Technology, LLC ("Buyer") within ten (10) days from the date of this order set forth on the reverse side hereof. Upon acceptance, this order shall constitute the entire agreement between the parties (except for any additional warranties given by Seller) superceding any and all previous or contemporaneous communications and negotiations. Acceptance of this Offer to Purchase is expressly conditioned upon Seller's assent to these Terms and Conditions. Any attempt by Seller to vary in any manner the exact terms and conditions herein in any acceptance, acknowledgment, confirmation or otherwise containing additional, inconsistent or different terms and conditions is hereby expressly objected to and rejected. Unless specifically agreed to in writing by Buyer, no additional or different term or provision (except additional warranties given by Seller) of any quotation, acknowledgment, invoice or other form supplied by Seller shall become part of the contract notwithstanding Buyer's failure to specifically object to such term or provision.

Governing Law and Forum: The agreement of sale resulting from Seller's acceptance of this order shall be construed and interpreted in accordance with the internal laws of the State of Wisconsin. Any controversy or claim arising out of or relating to this agreement of sale, the acceptance of it and any alleged breach thereof shall be considered to be a controversy or claim arising out of a contract made in the State of Wisconsin and shall be governed by the laws thereof. The proper forum for deciding any disputes shall be the Circuit Court of Waukesha County, State of Wisconsin.

Price, Delivery and Charges: Delivery must be made in the quantities and within the times (which is of the essence), at the prices, and in accordance with the shipping and routing instructions specified by Buyer, except that Buyer shall receive the benefit of any price reductions by Seller made effective after receipt of this order but before delivery. Failure of Seller to comply with such requirements shall entitle Buyer, in addition to any other rights or remedies, to cancel this order and be relieved of all liability for any undelivered portion. Any failure by Buyer to exercise its remedies with respect to any delivery shall not be deemed to constitute a waiver with respect to subsequent deliveries. Seller shall not unreasonably anticipate delivery by purchasing materials or manufacturing quantities in excess of what is reasonably required to meet Buyer's delivery schedule. Items received in advance of Buyer's delivery schedule may, at Buyer's option, be returned at Seller's expense or be accepted and payment withheld until the scheduled delivery date. Seller warrants that the price charged for goods or services covered by this order is the lowest price charged by Seller to buyers of a class similar to Buyer, under conditions similar to those contained in this order. Buyer will not be liable for any packing, cartage, shipping or other charges or any tax duties, customs or other assessments in connection with this purchase or delivery except such as are expressly set forth in the order. The period of any cash discount offered by Seller will begin at the time the goods or invoices are received (whichever is later) and not from the date appearing on the invoice.

Invoices: A separate invoice shall be rendered for each shipment made on an order. All invoices, shipping memoranda, and bills of lading shall be dated and mailed on the day of actual shipment of the goods. All invoices shall be mailed to Buyer at its main office: W146 N9300 Held Drive, Menomonee Falls, WI 53051-1643.

Freight and Shipping: All orders are shipped in accordance with instructions given by the Buyer. Buyer will identify any damage to the items and notify Seller of such damage.

Packaging; Delivery Documentation: Unless otherwise instructed by Buyer, Seller shall use best commercial packaging practices. Every package, bill of lading, shipping memorandum and invoice must be marked with Buyer's purchase order number.

Inspection: All goods purchased hereunder shall be subject to inspection and testing by Buyer at any reasonable time and from time to time before, during or after manufacture and delivery. Notwithstanding any payment that may be made, no goods shall be deemed to be accepted until Buyer has had a reasonable opportunity to inspect them. If any inspection or test is to be made on the premises of Seller, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. Buyer's inspection shall not constitute a waiver of, or limit or impair or be used as a defense to, the right of subsequent rejection by reason of any undiscovered or latent defect.

Warranty: In addition to any warranties provided by law, Seller warrants that the goods provided in accordance with the terms hereof shall conform in all respects to Buyer's specifications and shall be free from defects in material and workmanship for a period of eighteen (18) months from the date of delivery to Buyer or twelve (12) months from the date Buyer delivers such goods to one of its customers, whichever occurs first.

Except for goods supplied in accordance with Buyer's design, Seller also warrants that this sale or use of goods will not infringe or contribute to infringement of any patent, copyright or trademark in the United States

or elsewhere. The foregoing warranties shall survive inspection, delivery, use and payment and shall run in favor of Buyer, its successors and assigns and its customers whether direct or indirect.

Tooling, Etc.: All tools, gauges, dies, molds, engravings, plates, electros, fixtures and patterns furnished by Buyer or which Buyer authorizes in writing the Seller to acquire for work on this order shall remain the property of Buyer. Such property shall be identified and marked as Buyer's property and shall be held by Seller at Seller's risk and maintained by Seller at its expense in good repair and suitable operating condition to do the work. Such property may be removed from Seller's plant at any time by Buyer without additional liability to Seller. Seller shall insure such property against damage or loss.

Proprietary Information: Any knowledge or information concerning Seller's products, methods or manufacturing processes which Seller may disclose to Buyer incident to the provision of the goods covered by this order shall, unless otherwise specifically agreed in writing, be deemed to have been disclosed as a part of the consideration for this order, and Seller agrees not to assert any claim against Buyer by reason of Buyer's use or alleged use thereof.

Remedies: In addition to all rights and remedies provided by law, if any goods ordered hereunder shall be found to be unsatisfactory, defective or inferior in quality or not to conform to Buyer's specifications or any other requirements hereof (including but not limited to Seller's warranties), Buyer may, at its option, retain such goods at an adjusted price, hold such goods at Seller's risk and expense pending Seller's specific instructions, or return them to Seller for replacement, credit or refund, as Buyer shall direct. Buyer shall be reimbursed by Seller for all costs and expenses incurred in connection with the storage, handling, packing, replacing, installing, and/or transporting of any such defective or otherwise nonconforming goods; and Seller shall assume all risk of loss or damage in transit to goods returned by Buyer pursuant hereto.

Hazardous Material: Seller must include Material Safety Data Sheets (MSDS) and hazardous warning labels with each hazardous item. Hazardous materials include any material defined as such under each country's governing standards regarding hazardous materials.

Indemnification by Seller: Seller shall indemnify Buyer, its successors, assigns and customers (whether direct or indirect), against any and all losses, damages and expenses (including attorneys' fees and other costs of defending any action) which they, or any of them, may sustain or incur as a result of Seller's performance of this order or as a result of any claim of negligence, breach of warranty, strict liability in tort or based on any other theory of law in connection with the goods furnished hereunder or as a result of any claim that the goods or services furnished by Seller fail to conform to or comply with any federal, state, or local laws, regulations or standards. Except for goods ordered in accordance with Buyer's design or specifications, Seller shall indemnify Buyer, its successors, assigns and customers (whether direct or indirect), against any and all losses, damages and expenses (including attorneys' fees and other costs of defending any infringement action), which they or any of them may sustain or incur in any action alleging that the sale or use of the goods ordered hereunder infringe or contribute to the infringement of any patent, copyright or trademark in the United States or elsewhere.

Compliance with Law: Seller shall comply with all applicable federal, state and local laws, rules and regulations, and all executive orders, in connection with its performance of this order.

Fair Labor Standards/Nondiscrimination: Seller hereby certifies that all goods furnished hereunder have been produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended, and or regulations and orders of the Administrator of the Wage and Hour Division, and in accordance with all applicable state and federal laws and regulations governing general conditions for labor employed in the production of such goods.

Insurance: Seller shall maintain insurance coverage as required by applicable law or as reasonably requested by Buyer providing appropriate protection for its liabilities hereunder. Such insurance coverage shall include, at a minimum, products liability coverage in an amount not less than \$5 million, on an occurrence basis, with a deductible of not more than \$200,000. Seller shall furnish Buyer a certificate evidencing such insurance coverage annually or within ten days of any request for such certificate by Buyer.

Assignment: Seller shall not assign or subcontract the work done hereunder without the written consent of Buyer; but this provision shall not restrict Seller in the procurement of component parts or materials.

Changes: No modification of this order may be made except by means of a formal written change order issued by Buyer. Buyer reserves the right to modify this order (including without limitation the specifications, quantities and delivery dates) and any difference in the price or time for performance resulting therefrom shall be equitably adjusted. Buyer may, at its option, terminate this order if agreement on an equitable adjustment cannot be reached. Claims for equitable adjustment must be asserted by Seller within ten (10) days of receipt of Buyer's change order.

Cancellation/Termination by Buyer: Buyer shall have the right to cancel or terminate this order for its convenience and/or without cause and Buyer's liability for cancellation or termination of this order for its convenience and/or without cause shall be limited to Seller's actual cost for work and materials applicable solely to this order which shall have been expended when notice of cancellation/termination shall be received by Seller. In addition, Buyer, may at its option, cancel or terminate this order without liability to Seller (except for conforming shipments previously accepted by Buyer) in the event Seller shall cease to

exist or become insolvent or the subject of bankruptcy or insolvency proceedings or shall commit a breach in the performance of any part of its obligation hereunder.

Limitation of Liability: Buyer shall not be liable to Seller for any incidental, consequential, special or punitive damages. In no event shall Buyer be liable for damages which exceed the purchase price of the products ordered hereunder.

Entire Agreement: The parties agree that there are no understandings, agreements or representations, express or implied, not specified in these Terms and Conditions, and that this instrument contains the entire agreement between Seller and Buyer, and that, consequently, no course of prior dealings, and no usage of trade shall be relevant to supplement or explain any of the terms used in these Terms and Conditions.

Outside Contractor: All contractors (Sellers) doing work at the Buyer's site are required to carry their own insurance, including worker compensation insurance. Upon request, the contractor will provide the Buyer with evidence of this insurance.

The following instructions apply to all shipments being sent to Schunk Graphite Technology (here after referred to as SGT). All charges for shipments that do not follow these instructions will be charged back to the shipper.

Any questions can be addressed to;

Jeff Heilgendorf 262-250-4812 Jeff.heilgendorf@schunkgraphite.com

Domestic Shipping Instructions

- 1 **Shipments 0-150 lbs. must be shipped via UPS charged to SGT's account number; 579897. Any deviations from this instruction must be approved, by Jeff Heilgendorf, in writing, prior to shipment.**
- 2 Shipment originating in Wisconsin are to be shipped collect using Sutton Transport or Rock Transfer and Storage.
- 3 All shipments 150 lbs. and larger ship via common carrier (Listed in order of preference); Roadway, USF Holland, Dayton Freight. All Bills of Lading are to be third party billed to;
 - Schunk Graphite Technology
 - c/o CTL Acct#000081006
 - PO Box 6239
 - Nashua, NH 03063

International Shipping Instructions

Germany

- 1 Any shipment larger than 250 lbs. **must** be shipped sea freight via Reilly International/Cargo Partner GmbH, without exception. Contact;
 - Mrs. Tanja Geiberger/Mr. Willi Heisse
 - Cargo Partner GmbH
 - Obenhauptstrasse 7
 - D-22335 Hamburg
 - Phone; 49 40 851 59110 fax; 49 40 851 59132
- 2 Any shipment 0-250 lbs. must be consolidated into one shipment and sent air freight via Reilly International/Cargo Partner GmbH, Contact;
 - Mr. Bernd Rehberg
 - Cargo Partner GmbH
 - Cargo City Sued Geb555d
 - D-60549 Frankfurt/Main Flughafen
 - Phone; 49 69 680 91267 fax; 49 69 680 91269
- 3 **Shipments 0-100 lbs. that can not be consolidated with any other shipments must be shipped via UPS and charged to SGT's account number; - 579897. Any deviations from this instruction must be approved, by Jeff Heilgendorf, in writing prior to shipment.**
- 4 Sea freight via Reilly International/Cargo Partner GmbH is the default method of shipment for any item 250

- lbs and above. All vendors shipping sea freight must have a total shipment weight of 250 lbs or more. U.S. Customs prevents the consolidation of many vendors into one sea shipment.
- 5 For a list of Reilly International contacts in other countries please contact Jeff Heilgendorf at SGT.
 - 6 Any deviation from these instructions, and or any instructions given on the purchase order, must have written justification prior to shipment.
 - 7 **SGT will only pay one pick up charge to your facility, please plan accordingly. (This applies to both air and sea freight.)**

Austria

Same instructions apply. Air contact:

Mr. Ralf Reischuetz
Cargo Partner GmbH
Bldg.263/4
A-1300 Vienna Airport
Tel; 43 1 7007 32824 Fax; 43 1 7007 33438

Ocean contact:

Mr. Markus Noester/Mr. Christoph Reider
Cargo Partner AG
Frachtzentrum
Flughafenstr. 1
A-4063 Hoersching
Tel;43 5 9888 14425 Fax;43 5 9888 14440

Mexico

All shipments are to be ground, using CH Robinson for trucking and as the broker.

China

Same instructions apply, contact Jeff Heilgendorf at SGT for contact information

SGT reserves the right to amend these instructions at its discretion and without prior notice.