

Allied Mineral Technical Services, LLC – Terms and Conditions of Sale

- 1. Terms and Conditions of Sale.** The term “Allied” means Allied Mineral Technical Services, LLC. The term “Customer” shall mean the individual, corporation or other legal entity that has submitted an Order to Allied. The term “Order” shall mean Customer’s expressed desire, whether oral or written, to procure Goods or Services from Allied. The term “Goods” means all of the products, materials and any tangible property to be supplied by Allied to Customer pursuant to an Order. The term “Services” means the services that Allied has agreed to perform for the Customer pursuant to an Order. The sale of Goods and/or Services that are subject of an Order related hereto will be governed by these terms (“Terms and Conditions”). All sales of Goods or Services by Allied are governed by and subject to (i) Allied’s quotation, order acknowledgement, or a separate written agreement signed by an authorized representative of Allied, as applicable, and (ii) these terms and conditions, whether or not they are specifically referenced in or incorporated by Allied’s quotation, order acknowledgement, or the separate written and signed agreement. Any irreconcilable conflict between these terms and conditions and any terms in Allied’s quotation, order acknowledgement, or the separate written and signed agreement shall be resolved in favor of the quotation, order acknowledgement, or the separate written and signed agreement. Allied’s acceptance of Customer’s purchase order or commencement of performance shall not constitute acceptance of any of Customer’s terms and conditions. TERMS ADDITIONAL TO OR DIFFERENT FROM THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO TERMS CONTAINED IN CUSTOMER’S PURCHASE ORDER OR CUSTOMER’S STANDARD TERMS AND CONDITIONS OF PURCHASE, ARE DEEMED MATERIAL AND HEREBY REJECTED UNLESS OTHERWISE ACCEPTED BY ALLIED IN WRITING.
- 2. Acceptance.** Customer’s assent to these Terms and Conditions shall be conclusively presumed from Customer’s (i) receipt of Allied’s Order acknowledgement without written objection sent to Allied within ten (10) days after receipt of the order acknowledgement, (ii) instructing Allied to begin work or to ship any of the Goods or Services after receipt of Allied’s order acknowledgement, (iii) acceptance of or payment for all or any part of the Goods or Services, or (iv) taking any other action evidencing Customer’s acceptance of the benefits of the agreement between the parties. CUSTOMER AND ALLIED AGREE THAT THESE TERMS AND CONDITIONS ARE ACCEPTED IN GOOD FAITH BY THE PARTIES AS THE CONTROLLING AND FINAL TERMS AND CONDITIONS.
- 3. Price.** All prices and payments are in U.S. Dollars. All prices are Ex Works (Seller’s facility) unless otherwise stated by Allied. The term “Ex Works” shall have the meaning defined by “Incoterms 2010” published by the International Chamber of Commerce. In cases where Customer and Allied have agreed upon Customer prepaid shipments on a delivered basis, the Customer shall pay the material and freight charges assessed by Allied at the time of shipment. In spite of any prices previously set forth on Customer’s or Allied’s documents, Allied shall set the price and charges for each shipment of Goods at the time of each shipment. The foregoing prices do not include state or federal excise, sales or use taxes (if any) and all such taxes, in effect or hereafter levied, shall be paid by Customer.
- 4. Payment.** Payment terms are net thirty (30) days from the date listed on Allied’s invoice. Invoices will accrue on invoices unpaid after the net due date at the monthly rate of 1.5% or the maximum legal contract interest rate, whichever is less. Whenever reasonable grounds for insecurity arise with respect to due payment by Customer, Allied may demand different terms of payment from those specified herein and may demand assurance of Customer’s due payment. Any such demand may be oral or written and Allied may, upon the making of such demand, stop production and suspect shipments hereunder. If, within the period stated in such demand, Customer fails or refuses to agree to such difference terms of payment or fails or refuses to give adequate assurance of due payment, Allied, may, at its option, treat such failure or refusal as a repudiation of the portion of the Order which has not been fully performed, or may resume production and may make shipment under reservation of possession or of a security interest and may demand payment against tender or documents of title.
- 5. Delays.** Allied shall use reasonable efforts to fill the relevant Order in accordance with the estimate shipping date provided by Allied. Allied shall not be responsible for any delays in filling any Order nor liable for any losses or damages resulting from such delays. Orders shall not be subject to cancellation for delay.
- 6. Force Majeure.** Allied will not be liable for delays in filling any Order or failure in the performance of any of its obligations caused by anything beyond the reasonable control of Allied or an extraordinary event, including, but not limited to, accidents, labor disputes or disruptions, strikes, terrorist acts, shortages or labor, materials, fuel or power, fires, floods, a curtailment or closure of a facility or acts of God, acts or omissions of Customer, delays in transportation or lack of transportation facilities, priorities required, requested, or granted for the benefit of the federal or any state government, restrictions imposed by federal or state legislation or regulations thereunder, or anything else similar or dissimilar to the foregoing causes.
- 7. Rescheduling, Cancellation and Termination of Order.** Customer may not reschedule, suspend or terminate any Order without the written consent of Allied. If Allied consent to a termination, reasonable termination charges computed by Allied shall be assessed in connection with such termination. Allied reserves the right to cancel any Order placed by Customer without any liability to Customer.
- 8. Shipments.** Allied may make partial shipments and invoice for each such partial shipment separately. Each partial shipment shall be deemed to be a separate sale. All added expenses caused by partial shipments will be borne by Customer. Delay in delivery of any partial shipment will not relieve Customer of its obligation to accept delivery of remaining shipments under the Terms and Conditions.
- 9. Goods for Development or Testing.** IF GOODS ARE SAMPLES OR FOR DEVELOPMENT, ALLIED MAKES NO WARRANTIES OF ANY KIND OR NATURE FOR SUCH GOODS AND ALLIED EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. ANY SUCH GOODS AND RELATED SERVICES PROVIDED HEREUNDER ARE PROVIDED “AS IS, WITH ALL FAULTS”. Notwithstanding any other provisions in these Terms and Conditions, Allied has no obligation, liability or responsibility with regard to any sample, developmental or test Goods or related Services supplied by Allied under any Order. Customer will indemnify, defend and hold Allied harmless from all claims, demands, and causes of action asserted against Allied (including reasonable attorney’s fees) including without limitation claims for personal injury, illness, death or loss or damage to physical property, resulting from or arising out of Customer’s purchase, use or sale of sample, developmental or test Goods or related Services.
- 10. Warranty, Exclusive Remedy.** Allied warrants that the Goods manufactured by Allied and supplied solely for use in commercial applications will be, at the time of shipment, conveyed with good title thereto, free from security interests, liens and encumbrances unknown to Customer. Allied also warrants to Customer that Goods manufactured by Allied and supplied solely for use in commercial applications will, at the time of shipment, conform to the agreed upon specifications for a period of six (6) months from the date of shipment (at which point this warranty will expire). Customer must make a claim for breach of warranty under this Section 10 prior to the expiration of the six-month warranty period, notwithstanding any longer statute of limitations. The foregoing warranty in this Section 10 will only apply to Goods that are properly installed, maintained and/or operated under normal conditions. Allied will have no liability whatsoever in respect of any defect arising from (i) Customer’s specifications, (ii) ordinary wear and tear, (iii) willful damage by Customer or its customers, (iv) negligence on the part of Customer or its customers, (v) abnormal working conditions at Customer’s or any of its customers’ facilities, (vi) Customer’s or any of its customers’ failure to follow Allied’s instructions (whether oral or in writing) or (vii) Customer’s or any of its customers’ misuse or alteration or repair of Goods sold hereunder without Allied’s prior written

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approval. ALLIED MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS SET FORTH IN THIS SECTION 10. ALLIED MAKES NO WARRANTY THAT GOODS SHALL BE MERCHANTABLE OR FITNESS FOR ANY PARTICULAR PURPOSE. Allied's sole liability and Customer's exclusive remedy for any tender of nonconforming Goods or breach of warranty is expressly limited to Allied's choice of (i) the repair of the nonconforming Goods, (ii) the replacement of the nonconforming Goods with conforming Goods at the applicable delivery point, or (iii) the refund of that portion of the purchase price represented by the nonconforming Goods. Any such replacement, repair or refund will be made only if Customer allows Allied a reasonable time to inspect, in place, the lining or other product produced by the Goods and to remove samples for testing and analysis, at Allied's expense. Customer will not alter or remove the lining or other product produced by the Goods until Allied has made such inspection or waived its right to do so.

11. **Limitation of Liability.** In no event will Allied will be liable to Customer or any third party for any loss of use, revenue or profit or diminution in value, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not Allied has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose. IN NO EVENT SHALL ALLIED'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO ANY ORDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO ALLIED FOR THE GOODS PURSUANT TO THE RELEVANT ORDER OR, AS TO SERVICES, FOR THE AMOUNTS PAID TO SELLER FOR SERVICES PERFORMANCED PURSUANT TO THE RELEVANT ORDER.
12. **Inspection, Acceptance or Rejection.** Inspection, acceptance or rightful rejection of Goods or Services shall be made within ten (10) days after Customer's receipt of Goods or Services.
13. **Installation.** Unless otherwise expressly agreed in a written contract executed by both parties that installation of Goods is included as part of the Services provided by Allied to Customer, Customer assumes all responsibility, risks and liabilities associated with installation of Goods, even in instances where Allied provides assistance or supervision of the same.
14. **Indemnity.** Customer shall release, hold harmless, indemnify and defend Allied, its present and future officers, directors, officials, employees, agents, subsidiaries, affiliates, successors and assigns (collectively "Indemnitees") from any liability, including without limitation liability for negligence or strict liability, claims, demands, penalties, fines, forfeitures, damages, losses, suits and costs, including attorneys' fees (collectively "Liabilities"), regardless of the basis of liability or legal principle involved, including without limitation personal injury (including death) or property damage, which any of them may suffer, incur, be responsible for or pay as a result of, caused by, arising out of or relating to (i) Customer's design, testing, purchase, use or sale of Goods or (ii) for any act or omission of Customer or its successors, assigns, agents, representative or employees. Customer expressly agrees that Customer will indemnify, defend and hold harmless the Indemnitees in connection with this Section 14 even if any or all of the Liabilities incurred, suffered, paid out or allocated to any or all of the Indemnitees is caused in whole or in part by the active or passive negligence of one or more of the Indemnitees.
15. **Credit for Returned Goods.** No credit will be allowed for Goods returned to Allied unless prior written permission has been granted by Allied. The material quantities as quoted as based on the best possible volume estimates and include overage to ensure that sufficient quantities of materials are available for completion of the Order. Quantities less than 5% remaining after completion of the Order may not be returned to Allied, If the quantity exceeds 5% after completion of the Order, then Allied, at its option, may authorize return to the Columbus, Ohio location, freight prepaid by Customer. A restocking charge of 25% to 75% will be applied, depending on the material and packaging condition. Goods that are older than their recommended shelf life may not be returned and must be disposed of properly by Customer.
16. **Assignment.** Customer may not assign or delegate any or all of its rights or obligations under these Terms and Conditions without the prior written agreement of Allied, and any attempt to do so will be ineffective.
17. **Governing Law, Jurisdiction.** All Orders will be governed by, and interpreted in accordance with, the laws of the state of Ohio, USA, excluding Ohio's rules relating to choice and conflict of laws. Any and all disputes between the parties that may arise pursuant to the Order will be heard and determined before an appropriate arbitrator, federal or state court located in Columbus, Ohio, USA. The Customer hereto acknowledges that such court has the exclusive jurisdiction to interpret and enforce the provisions herein and/or an arbitrator's judgement, and the Customer waives any and all objections that it may have as to the personal jurisdiction or venue in any of the above tribunals.
18. **Waiver and Modification.** No provision hereof and no breach of any provision shall be deemed waived by reason of any previous waiver of such provision or of any breach thereof. These Terms and Conditions may be modified only by a writing signed by both parties.
19. **Severability.** The invalidity, in whole or in part, of any provision will not affect the remainder of such provision or any other provision. If any provision or application of these Terms and Conditions is invalid or unenforceable, then a suitable and equitable provision will be substituted for sch provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of these Terms and Conditions including the invalid or unenforceable provision.
20. **Confidentiality.** All non-public, confidential or proprietary information of Allies, including but not limited to specifications, samples, patterns, designs, plan, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Allied to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Contract is confidential, solely for the use of performing this Contract and may not be disclosed or copied unless authorized in advance by Allied in writing. Upon Allied's request, Customer shall promptly return all documents and other materials received from Allied. Allied shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.
21. **Survival.** Provisions of these Terms and Conditions which by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms and Conditions including, but not limited to: Limitation of Liability, Indemnity and Confidentiality.
22. **Complete Agreement.** These Terms and Conditions and of Allied's attachments hereto and made a part hereof, constitute the entire understanding between the parties and supersede any previous oral or written understandings with respect to the subject matter hereof. The Terms and Conditions are written in English and the English language version shall be the sole document used to interpret the rights, obligations, and liabilities of the parties.