



## GENERAL TERMS AND CONDITIONS OF SALE

SCOPE OF ACCEPTANCE: THE TERMS AND CONDITIONS HEREIN ARE THOSE OF GLOBAL TUNGSTEN & POWDERS CORP. (THE SELLER), AND MAY IN SOME INSTANCES BE IN CONFLICT WITH OR IN ADDITION TO SOME OF THE TERMS AND CONDITIONS SPECIFIED BY THE BUYER. THEREFORE, ACCEPTANCE OF BUYER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS. THE BUYER'S ACCEPTANCE OF PRODUCTS DELIVERED HEREUNDER SHALL BE DEEMED TO BE AN UNQUALIFIED ASSENT TO THE PROVISIONS OF THESE TERMS AND CONDITIONS. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATIONS FROM THE BUYER SHALL NOT CONSTITUTE A WAIVER OF THE PROVISIONS OF THE TERMS AND CONDITIONS HEREIN.

**1. DELIVERY AND RISK OF LOSS:** Unless otherwise specified herein by Seller, shipment will be made FOB Towanda, Pennsylvania with no transportation allowed. Title and risk of loss shall pass to the Buyer upon delivery to the Carrier. Delivery schedules tendered represent Seller's best estimate of when shipment can be made but are not binding on Seller. In no event shall Seller be liable for any loss or damage resulting from delays beyond its reasonable control including, but not limited to, delays caused by fire, strikes or labor disturbances, acts of God, acts of the Buyer, acts of civil or military authority, insurrection or riot, inclement weather, embargoes, inability to obtain transportation facilities, wrecks or delays in transportation, inability to obtain necessary labor, materials, or manufacturing facilities due to such causes or failure of equipment, a supplier or a subcontractor.

**2. QUANTITIES:** Purchase order requirements are subject to a variation of 10% over or under the quantity specified and performance will be considered complete on that basis. If price is stated in terms of unit quantity, the total contract price will be adjusted to conform to the quantity delivered. Seller assumes no further liability for variations.

**3. WARRANTY:** Seller warrants all goods or services manufactured or furnished by it to be free from defects in material and workmanship at the time of delivery, provided, however, that Seller's liability under such warranty shall be limited to, at Seller's option, replacing or giving credit for any goods or services which Seller's inspection shall disclose to have been defective in the form in which they were shipped by Seller before their use in further manufacture or assembly. Seller is liable under such warranty only if written notice of the defect is given to Seller within thirty (30) days after Buyer's receipt of the goods or services, and only if the adjustment procedure set forth below is followed. This warranty shall not apply to any goods or services which have been subjected to abuse or mishandling. The above represents Buyer's sole remedy under this Agreement.

ANY AND ALL OTHER WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER.

**4. ADJUSTMENT:** To ensure that adjustments may be effected as promptly as possible, the following procedure will apply:

(a) Prior to the return of goods for adjustment, it is necessary that the Buyer requests a formal Return Material Authorization (RMA). Requests should be directed to Global Tungsten & Powders Corp., Customer Care Department, at 1 Hawes St., Towanda, PA 18848. The following information shall be included in the RMA request:

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1 Hawes Street  
Towanda, PA 18848-0504  
www.globaltungsten.com  
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- (1) Buyer's order number on which the goods were received.
- (2) Quantity of goods received, sampled, rejected, and sampling plan used.
- (3) Description of goods rejected.
- (4) Reason for rejection.
- (b) If the goods are to be inspected at Buyer's plant, Seller will arrange for an inspector's visit. If goods are to be returned for inspection, then Seller will send Buyer a RMA with instructions for shipping. Buyer is obligated to comply with any applicable customs regulations and shipping requirements associated with such authorized returns. Goods returned without a RMA will be considered for adjustment only if circumstances permit and may be subjected to delay in handling or returned to Buyer at Buyer's expense. Seller will not be responsible for goods returned unless accompanied by a RMA number.
- (c) All items returned for examination and adjustment should be packed as carefully as when originally received using a package having at least the equivalent of the original packing material.
- (d) Seller will, at its option, repair, replace in kind or issue credit for defective goods. Goods not found defective will be returned to the Buyer, transportation charges collect.

**5. SPOOLS, REELS, AND CONTAINERS:** If spools, reels, or containers are charged separately on the invoice, credit will be allowed at the price billed when such items are returned to Seller in good condition, transportation paid within six months from receipt of the same by the Buyer.

**6. PATENT AND TRADEMARK INDEMNITY:** If Seller is notified promptly by the Buyer in writing and is given authority, information, and assistance for the defense (at Seller's expense) of any suit or proceeding brought against the Buyer, insofar as it is based upon an infringement of patents and trademarks by goods furnished under this order when used or sold for the purposes for which such goods are intended, Seller will defend such suit or proceeding and will satisfy a final monetary award for such infringement against the Buyer in any action insofar as the award is based on the selling price of such goods, but Seller assumes no liability consequential or otherwise, for, and Buyer agrees to hold Seller harmless against, infringement of patent claims, covering completed equipment or any assembly, circuit, combination, method or process in which any such goods may be used, or from any trademark infringements involving any marking or branding not applied by Seller or involving any marking or branding applied at the request of Buyer. In addition, Seller assumes no liability, consequential, indirect, special, incidental, or otherwise, for, and Buyer agrees to indemnify and hold Seller harmless against, any claims resulting from the production of goods to Buyer's specifications, or from the production of goods designed by Seller to meet Buyer's requirements, or arising out of the use of any equipment, materials, parts, or machinery furnished by Buyer in producing goods to Buyer's specifications. No costs or expenses under this paragraph shall in any event be incurred for the account of Seller without Seller's prior written consent.

**7. NO LICENSE BY IMPLICATION:** Seller's goods are offered for sale and are sold subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent claim with respect to which Seller can grant licenses covering completed equipment, or any assembly, circuit, combination, method, or process in which any such goods are used as components (notwithstanding the fact that such goods may have been designed for use in, or may only be useful in, such patented equipment, assembly, circuit, combination, method, or process, and that such products may have been purchased and sold for such use). Seller expressly reserves all its rights under such patent claims.

**8. TERMINATIONS:** Buyer's purchase order(s) may be terminated or suspended only upon the condition that Buyer assumes immediate liability for and makes payment to Seller for all expenses already incurred,

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commitments made by Seller, profit on the entire order(s), and selling price in effect at time of termination or suspension for all goods completed and ready for shipment. If an order is terminated or suspended before the Seller's standard minimum quantity has been shipped, Buyer shall be invoiced and pay for setup charges.

**9. PRICES:** Prices are subject to change without notice. All billings will be at prices in effect at the time of shipment. Shipment of part of an order will not bind Seller to ship the remainder of that order at the same prices. Current prices are available from Global Tungsten & Powders Corp., 1 Hawes Street, Towanda, PA 18848. The price is based on the quantity ordered on a single order.

**10. TAXES:** Unless otherwise specified herein by Seller, all prices are quoted, all orders accepted, and all billings rendered exclusive of all federal, state and local excise sales and similar taxes, customs duties, fees and similar charges. Such taxes, when applicable, will appear as separate additional items on the invoice, unless Seller receives a properly executed exemption certificate from Buyer prior to shipment.

**11. CREDIT TERMS:** Unless otherwise specified by Seller invoices are net thirty (30) days. If, in Seller's sole judgment, Buyer's financial condition becomes impaired or deteriorates or its past due balances become excessive, Seller may refuse to deliver except on COD terms, may demand immediate payment in full for all goods delivered, may revise the stated credit terms and/or may take whatever other measures it deems advisable to protect its interests

**12. TOLLING:** Orders for processing chemicals, metals, fabricated parts, assemblies, or other items using Buyer supplied material are accepted subject to the delivery of the material at the time, in the amount and in dimensions as specified by Seller, FOB Seller factory. Buyer shall furnish satisfactory material, and if it is necessary for Seller to inspect, gauge or rework such material, it shall be at the Buyer's expense. Material so provided by Buyer shall be delivered FOB Seller factory in such quantities as will permit continuous operation. Production will be started only when in Seller's sole judgment sufficient material is in Seller's possession to warrant setting up equipment. Title and risk of loss to the Buyer-supplied material shall remain with the Buyer from date of delivery to Seller's factory until delivery of the processed goods to Buyer. Buyer shall provide such insurance and proof thereof as Seller may reasonably require. Buyer shall comply will all applicable laws, customs regulations, or shipping requirements that apply to Buyer-supplied material and shall indemnify, defend and hold Seller harmless from any liability, losses, damages, penalties or claims arising from the actual or alleged violation of such laws, regulations or shipping requirements.

**13. MOLDS, TOOLS AND DIES:** If Buyer pays Seller separately for molds, tools or dies (hereinafter called tools), engineered, designed and/or specified for the production of the goods included in the order, then:

(a) Such tools shall be limited in use to the Buyer's requirements, except with the Buyer's permission.

(b) Such tools that are under Seller's control shall be kept in a reasonably good state of preservation for the useful life of such tools (in Seller's role view), or for a period of one (1) year from the date that the tools were last used in production for the Buyer, whichever period shall first expire. Upon thirty (30) days written notice to Buyer, such tools may be disposed of by Seller in any manner, unless some other disposition is mutually agreed upon in writing within thirty (30) days after the expiration of such period.

(c) Payment by Buyer of charges for such tools vests no rights, title, or interest in Buyer other than as set forth in this Section 13(a) and (b).

(d) Seller assumes no patent responsibility on such tools and Buyer agrees to hold Seller harmless against any and all claims arising from subsequent use or sale of such tools.

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**14. COMPLIANCE WITH LAWS AND CODE OF CONDUCT.** Buyer agrees to comply with all laws, regulations, customs requirements or government orders that concern this order or the goods provided hereunder and further to adhere to and act in a manner consistent with the principles set forth in Seller's Code of Conduct, available at [www.globaltungsten.com](http://www.globaltungsten.com) under "Legal." In particular, Buyer will not and will cause its affiliates not to provide or transfer any goods or information under this order that would be prohibited under any export control laws or sanctions regulations, including the Export Administration Regulations or International Traffic in Arms Regulations, unless it has obtained all necessary licenses or approvals. Buyer shall indemnify, defend and hold Seller harmless from any liability, losses, damages, penalties or claims arising from Buyer's actual or alleged failure to comply with any of the above.

**15. APPLICABLE LAW:** This order shall be construed under and governed by the laws of the Commonwealth of Pennsylvania, excluding its conflicts of law rules and excluding the U.N. Convention on Contracts for the International Sale of Goods.

**16. GENERAL:** Any assignment of rights hereunder by either party without the prior written consent of the other party shall be void. No modifications of these provisions or waiver thereof shall be binding upon Seller unless approved in writing by an authorized representative. No waiver by Seller of any default shall operate as a waiver of any other default or of the same default on a future occasion. If any provision herein shall be held invalid, the remainder shall nevertheless be deemed valid and effective.

**LIMITATION OF REMEDY:** ANY ACTION FOR BREACH MUST BE COMMENCED WITHIN ONE YEAR FROM THE DATE OF DELIVERY OR THE TIME THAT SUCH RIGHT OF ACTION HAD ACCRUED, WHICHEVER IS EARLIER. IN NO EVENT WILL SELLER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, UNDER WHATEVER THEORY, RELATING TO GOODS OR SERVICES FURNISHED UNDER THIS ORDER.

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