

TERMS AND CONDITIONS

1. **ACCEPTANCE** – Acceptance of this purchase order is expressly limited to the terms hereof. Any terms proposed by Seller which add to, vary from, or conflict with the terms herein shall be void and the terms hereof shall govern. If this purchase order has been issued by Purchaser in response to an offer the terms of which are additional to or different from any of the provisions hereof, then the issuance of this purchase order constitutes the entire agreement between Purchaser and Seller with respect to the subject matter hereof and the subject matter of such offer.
2. **TAXES** – Seller's price shall be exclusive of any Federal, State or local Sales, Use, or Excise taxes levied upon, or measured by, the sale, the sales price, or use of goods required in the performance of this order. Seller shall list separately on its invoice any such taxes lawfully applicable to any such goods and payable by Purchaser, with respect to which Purchaser does not furnish to Seller lawful evidence of exemption.
3. **USE AND DISCLOSURE OF INFORMATION** – Seller agrees that all information heretofore or hereafter furnished or disclosed to Purchaser by Seller, in connection with the placing or filling of this order, is furnished or disclosed as a part of the consideration for this order, that such information is not, unless otherwise agreed to by Purchaser in writing to be treated as confidential or proprietary, and that Seller shall assert no claims (other than for patent infringement) by reason of the use of disclosure of such information by Purchaser, it assigns or its customers. Seller shall keep confidential all information, drawings, specifications, or data furnished by Purchaser, or prepared by Seller specifically in connection with this order. Seller shall not in any manner advertise or publish that fact that it has furnished, or contracted to furnish, Purchaser the goods, materials or services herein mentioned without prior written consent of Purchaser.
4. **EXTRA CHARGES**- No charges of any kind, including charges for boxing or cartage, will be allowed unless specifically agreed to by Purchaser in writing. Price is to cover net weight of material unless otherwise agreed.
5. **DELIVERIES, SPECIFICATIONS AND QUANTITIES** – The obligation of the Seller to meet the delivery dates, specifications and quantities, as set forth herein, is of essence for this order. Seller will not be liable for damages for delays in delivery due to causes beyond its reasonable control. If Seller, however, for any reason does not exactly comply with the quantity and delivery schedule herein, Purchaser at its option may either approve a revised delivery schedule or may terminate the order without liability to Seller on account thereof. Goods which are delivered in advance of schedule may, at Purchaser's option, either (i) be returned at Seller's expense for proper delivery, (ii) have payment therefore withheld by Purchaser until the date that goods are actually scheduled for delivery, (iii) be placed for Seller's account until delivery date specified herein, or (iv) charge Seller for any R. R. demurrage incurred.
6. **WARRANTIES AND INSPECTION** – All goods, materials and work covered by this purchase order will conform to the specifications, drawings, samples or other description furnished or specified by Purchaser, and will be merchantable, of good material and workmanship, and free from defect. Seller agrees that the foregoing warranty shall survive acceptance of and payment for the goods, material and work covered by this purchase order, and that Seller shall survive delivery and inspection of all or part of the goods and services. If any of the goods are found at any time to be defective in material and workmanship, or in any respect not in conformity with the specification heretofore furnished to Seller for the materials covered by the order and with the other requirements of the order, the Purchaser, in addition to any other rights which it may have under warranties otherwise, shall have the right to reject and return such goods at Seller's expense, such goods not to be replaced without suitable written authorization from Purchaser. All purchased items shall be subject to inspection at destination, with the right of Purchaser to reject, or to accept in part and reject in part, any items found defective in material or workmanship or otherwise failing to meet the requirement of this purchase order. Goods shall in no event be deemed accepted by the Purchaser until used, processed, stored, held or co-mingled by the Purchaser so that the same can not be returned to the Seller in the same condition in which received by the Purchaser. Payment by Purchaser shall not be deemed an acceptance of the goods.
7. **PURCHASER'S PROPERTY** – Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Seller by Purchaser or specifically paid for by Purchaser and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Purchaser. Such property shall be plainly marked or otherwise adequately identified by Seller as "Property of Refractory Specialties Inc." and shall be safely stored separate and apart from Seller's property. Seller may not substitute any property for Purchaser's property and shall not use such property except in filling Purchaser's orders. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Purchaser and shall be subject to removal at Purchaser's written request in which event Seller shall prepare such property for shipment and shall re-deliver to Purchaser in the same conditions as originally received by Seller, reasonable wear and tear expected.
8. **CHANGES** – Purchaser may at any time and from time to time make changes in (1) drawings, designs, or specifications applicable to the material or services covered by this purchase order, (2) the method of shipment or packing, and (3) the place or time of delivery, including temporary suspension of shipments. If any such changes affect the time for performance, the cost of manufacturing such supplies, or the cost of furnishing such services, Purchaser shall make an equitable adjustment in the purchase price or the delivery schedule, or both. No additional charge shall be made as a result of a change unless such change was authorized in writing by the Purchaser and such additional charge is requested by Seller in writing within ten (10) days after receipt from Purchaser of said authorization for such change.
9. **MODIFICATION OF PURCHASE ORDER AND NON-ASSIGNMENT** – This purchase order, together with any written instructions issued hereunder contains the complete and final agreement between Purchaser and Seller and no agreement or other understanding in any way purporting to modify the terms and conditions thereof shall be binding upon Purchaser unless made in writing and signed by Purchaser's authorized representative. Seller may assign moneys due and to become due under this purchase order; provided, however, that Purchaser shall be entitled to assert against the assignee thereof all rights, claims, and defenses of every type (including, without limitation, rights of setoff, recoupment, and counterclaim), which Purchaser could assert against Seller, whether acquired prior or subsequent to such assignment. Purchaser shall be entitled at all times to setoff any amount owing from Seller to Purchaser or any of its affiliated companies against any amount due or owing to Seller with respect to this order.
10. **COMPLIANCE WITH LAWS** – Seller warrants that all goods and services furnished hereunder have been produced in full compliance with all applicable laws and regulations, including the applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended and of regulations and orders of the U. S. department of Labor issued under Section 14 hereof. Seller shall also be in compliance with applicable requirement of Executive Order 11141 and 11246, as well as the Rehabilitation Act of 1973, as amended.

11. **PATENTS, ROYALTIES AND ENCUMBRANCES** – All goods and services supplied must be free from liability of royalties, patent rights and mechanic's liens or other encumbrances, and Seller hereby waives any right it may have now or in the future to any mechanic's lien or other encumbrance with respect to the goods and services supplied hereunder. Seller warrants that the goods specified in this purchase order and their sale or use alone, or in combination according to Seller's specifications or recommendations, if any, will not infringe any United States or foreign patents. Seller agrees to indemnify and hold harmless Purchaser and any one selling or using any of Purchaser's products against any judgments, decrees, costs and expenses resulting from any alleged infringement as aforesaid, and Seller further agrees that, upon request of Purchaser and at Seller's own expense, Seller will defend or assist any defense of any of Purchaser's products by reason of any such alleged infringement.
12. **TERMINATION** – In the event of any proceeding by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a Receiver or Trustee of an assignee for the benefit of creditors of the property of either party, the other party shall be entitled to cancel the contract resulting from the acceptance of this purchase order forthwith. Purchaser reserves the right to cancel all or any part of the undelivered portion of this order in the event of any default by the Seller.
13. **GENERAL** – This purchase order shall be governed by the laws of the State of Ohio.
14. **PAYMENT** – 45 days prox or special terms as negotiated.
15. **INSURANCE** – If this order covers the performance of labor for Purchaser, Seller agrees to indemnify and protect Purchaser against all liabilities, claims, or demands for injuries of damages to any person or property growing out of the performance of this contract. Seller further agrees to furnish prior to commencement of work insurance carrier's certificate showing that the Seller has adequate Workmen's Compensations. Said certificate must set forth the amount of coverage, number of policy and date of expiration, and provide that the amount will not be cancelled or decreased prior to the last ten (10) days after written notice of such cancellation or decrease has been mailed to the Purchaser. If Seller is a self-insurer, the certificate of the Department of Labor and Industry of the state in which said labor is to be performed must be furnished by such Department directly to Purchaser.
16. **REMEDIES** – The remedies herein set forth shall be cumulative and additional to any other or further remedies provided at law or in equity. No failure to insist upon strict compliance with the terms of this contract shall constitute a waiver, and no waiver of a breach of any provision of this contract shall constitute a waiver of any other breach, or of such provision.
17. **SAFETY AND HEALTH REGULATIONS** – Seller represents and certifies to Purchaser that any and all work performed, and any good delivered under this purchase order shall comply with all requirements of the Federal Occupational Safety and Health Act of 1970, as amended, and all regulations, rules, standards and order adopted pursuant to the Act, and shall comply with all requirements of any applicable health or safety statute, regulation or standard of any state or local government having jurisdiction in the location from or to which such goods are to be shipped or at which such work is to be performed pursuant to this purchase order. Seller agrees to indemnify and hold harmless Purchaser against any claims, losses, damages, fines, penalties, costs and expenses assessed against or incurred by Purchaser as a result of Seller's failure to comply with such Act, statutes or regulations, and with all rules, standards, or issued thereunder, and for the failure of the work or goods furnished under this purchase order so to comply.
18. **SUBCONTRACTING** – No subcontracting shall be made by the Seller with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work herein contracted for, without the prior written approval of the Purchaser.
19. **GOVERNMENT SUBCONTRACT PROVISIONS** – If this purchase order constitutes a subcontract of any tier under a contract with the United States Government, the following provisions set forth in the Armed Services Procurement Regulation (ASPR)(or, when appropriate, the corresponding provisions in the Federal Procurement Regulation (FPR) or other government agency Regulation) shall apply (provided that when required for sense the words "Government" or "Contracting Officer" shall mean Purchaser and the word "Contractor" shall mean Seller): ASPR 1-703.3 (a) and (b) (small business subcontracting); 1-805.3 (a) and (b) (Labor surplus area subcontracting), if applicable; 7-103..2, Changes; 7-103.13, Renegotiation; 7-104.4, Notice of Labor Termination; 12-303.1,12-605 and 12-802, Labor Requirements and Equal Opportunity; 13-702, Government Property, if applicable, 41 U. S. C. Section 10 a-d (Buy America Act); Executive Order 10582, as amended; and any other provisions, order or law that must, by law or regulation, be included in such contract or subcontract.
20. **INCOMING FREIGHT POLICY** – It is Refractory Specialties Inc. policy that incoming freight by "F. O. B. Destination, (City and State) freight prepaid and charged back by the supplier on the commodity invoice."

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