

## TERMS AND CONDITIONS OF SALE

In these Terms and Conditions of Sale (“Terms”), “we”, “us” and “our” mean GES Graphite, Inc., Advanced Graphite Machining USA, LLC, or any other affiliated entity as the seller (“Seller”) of products covered by these Terms. “You” and “your” refer to the buyer of the products. These general terms and conditions of sale (along with any directly associated written Seller specification or quotation) exclusively will govern the sale or licensing by Seller of all goods and services (the “Products”) furnished hereunder. Our acceptance of your order is expressly based on the condition that these present Terms exclusively apply to all transactions between Seller and You. Unless you first provide us with your written objections, your acceptance of our products is deemed to be your acceptance of these Terms. Our failure to object to your different or additional terms is not a waiver of any of these Terms. Unless we expressly agree in a signed writing, we reject any modification of these Terms, any additional terms or any other inclusion, exception, or changes hereto. An amendment to these Terms must be in writing and signed by the parties.

**1. Price:** For the sale of products by Seller, you agree to pay the prices stated in our quote, accepted purchase order, or other document signed by Seller. Shipments of products which are within 5% of the quantity ordered shall be accepted, although you only must pay for the amount actually received.

**2. Taxes and Other Charges:** Prices are exclusive of all taxes, duties, tariffs, excises or other governmental charges on products and any surety bond premiums or bank guarantee costs, except where the law otherwise provides. You are solely responsible for payment or remittance of all such taxes and costs.

**3. Delivery, Risk of Loss, and Title:** Delivery terms are those stated in our quote, accepted purchase order, or other document signed by us. If the quote, purchase order or other documents are otherwise silent, delivery shall be EXW (Ex Works). Delivery terms shall be interpreted under the current INCOTERMS as published by the International Chamber of Commerce. We agree to use our reasonable best efforts to meet the applicable delivery dates. If delivery is at our expense, we reserve the right to select the means of transportation. Legal title shall be deemed to pass and your obligation to pay shall begin when the product is considered delivered to you under applicable delivery terms even if we pay the freight or provide insurance.

**4. Inspection and Acceptance:** You shall promptly perform a visual inspection of the products upon delivery. Unless you reject in writing the products or shipments that do not conform to your order or meet applicable specifications within 30 days of your receipt of the shipment, you will be deemed to have unconditionally accepted the products. You must have a written return authorization from Seller to return any products.

**5. Payment:** You agree to pay the full price of the products sold as set forth in our quote or invoice. Payment terms are net thirty days from date of invoice, with no right of setoff unless otherwise expressly agreed to in writing by Seller.

**6. Late Payment:** If payment is past due, or if we reasonably believe your financial condition has become unsatisfactory, we may in our sole discretion suspend production of any goods, cease all shipments to you, require cash in advance, shorten your payment terms, or cancel all orders. If your account becomes delinquent, the term of payment on all outstanding invoices shall accelerate and all invoices shall become immediately due and payable. You agree to pay interest on past due invoices at the lower of the interest rate of 1.5% per month (18% per annum) or the maximum interest rate permitted by applicable law. You shall reimburse Seller for all costs incurred (including reasonable attorneys’ fees) in collecting your any due amounts from you, whether from collection efforts, legal action or other means.

## **7. Warranty:**

### **(a) Seller expressed warrants of goods:**

**(1) Specifications:** Each product we make, sell or deliver will meet our written specifications. Unless otherwise agreed in writing, product dimensions are nominal and subject to our standard tolerances. In the event of a non-conforming product, your sole remedy and Seller's sole responsibility under this paragraph 7(a)(1) is, at Seller's sole option, to repair, replace, or refund the price paid for all unaltered products that do not meet our specifications at the time of delivery.

We agree to pay shipping costs for any returned product only if we direct its return. If returned product is determined to have been in conformity with the warranty, you agree to reimburse us for all costs of shipment.

**(2) Patent:** (i) Products that we make will be delivered free of any rightful claim of infringement of any patent in force in the country where the product is made or delivered. If we breach this patent warranty, we will, at our expense and option, (i) procure for you the right to continue using the Product, (ii) replace it with a non-infringing product, (iii) modify it so it becomes non-infringing or (iv) refund its purchase price (less reasonable depreciation for any period of use). The preceding sentence states our entire liability for such infringement. This warranty shall not apply to any product manufactured to your design, or to the use of any products delivered hereunder in combination with other articles or materials or in the practice of any process.

**(b) Services:** Any technical advice or assistance we provide is given without representation or warranty and is accepted at your sole risk.

**(c) Other Limitations and Disclaimer of Warranties:** EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THE PRODUCTS, WHETHER EXPRESS OR IMPLIED (EXCEPT TITLE), INCLUDING ANY REPRESENTATION OR WARRANTY IN REGARD TO QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY AND ALL IMPLIED WARRANTIES AGAINST INFRINGEMENT OF ANY UNITED STATES OR OTHER PATENT, OR INTELLECTUAL PROPERTY ARE DISCLAIMED AND EXCLUDED. Our warranties extend only to you and entities under common ownership with you but are not transferable to other parties.

**(d) Limit of Our liability:** The prices we charge you reflect that an allocation of risk is being made. You understand and agree that without limitations on our liability, we would have to charge higher prices.

IN NO EVENT SHALL WE BE LIABLE FOR INDIRECT LOSS, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS ARISING FROM BUSINESS INTERRUPTION, LOSS OF REVENUE, PROFITS, DATA, OR ANTICIPATED SAVINGS, OR LOST OPPORTUNITY, WHETHER OR NOT CAUSED BY OR RESULTING FROM OUR NEGLIGENCE. Seller's maximum liability to you for any claim of any kind, including claims based on defects in products and under product liability regulations, to the extent permitted by applicable law, shall be the purchase price paid for the product that gave rise to the claim. We take exception to and hereby object to all hold harmless, indemnity, or other provisions, express or implied, that seek to impose liability upon us.

**8. Force Majeure:** Seller is not liable for delays or failures in performance due to events beyond Seller's reasonable control. These include, without limitation, acts of God, weather conditions, natural catastrophes, floods, epidemics, pandemics, fires, war, sabotage, accidents, labor disputes or shortages, system failures, governmental laws or actions, import or export prohibitions or limitations, and inability to obtain material, equipment or transportation upon commercially reasonable terms. In any event, we may increase the price as a result of increases in raw material, energy, transportation or labor costs that we incur before delivery of the product that make our performance commercially impractical, and you may then cancel the undelivered portion of your order. We may reduce the quantities shipped or postpone the time for delivery due to such contingencies. We may allocate our available products among you and other customers or for internal use in such manner as we, in our sole discretion, deem fit.

**9. Compliance with Laws:** Each party shall comply at all times with the applicable laws governing its activities. Any commodities, technology, technical data, or software that we provide that are exported or re-exported from the destination of delivery shall be exported only in accordance with all applicable export laws, regulations, and directives, including as applicable export control laws (collectively, the "Export Regulations").

**10. Applicable Law and Venue:** The validity, interpretation and performance hereunder shall be governed by the laws of the State of Delaware, United States of America. The United Nations Convention for the International Sale of Goods shall have no application to transactions covered by these Terms. Any dispute that we cannot mutually resolve shall be subject exclusively to, and you consent to, the jurisdiction of the competent state and federal courts in the county where the Seller is located. If any provision of these Terms is determined to be invalid, the remaining Terms shall remain in effect.