

EP Engineered Clays Corporation TERMS AND CONDITIONS FOR PURCHASE ORDERS

These Terms and Conditions will apply to all Purchase Orders (which term shall include all purchase orders and all releases against blanket purchase orders and these Terms and Conditions) issued by EP Engineered Clays Corporation or its affiliates, as Buyer, to you, as the Seller for goods or services.

1. OFFER; ACCEPTANCE: A Purchase Order is an offer by Buyer to Seller to enter into a contract for the purchase of the goods or services described therein. A Purchase Order shall be deemed to have been accepted by Seller and constitute a binding contract upon the earlier of (i) the date of Seller's signed acknowledgment of a Purchase Order, or (ii) the date Seller commences work under such Purchase Order, regardless of whether Seller ever signs or returns a copy of the Purchase Order. Buyer may revoke its offer or terminate a Purchase Order without liability to Seller or any other party at any time before Buyer receives written notice of Seller's acceptance.

2. PURCHASE ORDER AND TERMS & CONDITIONS GOVERN: A Purchase Order, including these Terms and Conditions, will be the complete and exclusive statement of the contract between Buyer and Seller with respect to all orders for those products or services described on the Purchase Order. No term, condition, warranty, representation or waiver appearing in any order or order acknowledgment, invoice or other document of Seller will govern, control or be applicable with respect to the purchase and sale of those products or services described on the Purchase Order; all such other terms, conditions, warranties, representations and waivers on any of the foregoing are hereby expressly rejected. Buyer rejects any additional or inconsistent terms in any offer, counter-offer, or other document from Seller. Seller agrees that any such additional or inconsistent terms shall have no force and effect.

It is the parties' intent that a Purchase Order, including these Terms and Conditions, shall exclusively govern the relationship of the parties with respect to its subject matter. Without limiting the generality of the foregoing, Buyer may accept conforming or nonconforming goods tendered by Seller and such action shall not modify the applicable Purchase Order, including these Terms and Conditions, regardless of whether any document from Seller states that acceptance of such goods constitutes acceptance of additional or inconsistent terms proposed by Seller.

3. BLANKET PURCHASE ORDERS: If a Purchase Order states that it is a "blanket" order or does not specify delivery dates (in either case referred to herein as a "Blanket Order"), then Seller shall procure materials and manufacture and/or assemble and ship products only as authorized by and in accordance with shipping releases issued from Buyer from time to time. The quantities shown on a Blanket Order shall only be estimates of annual requirements and shall not constitute a minimum order from Buyer unless the Purchase Order expressly so states on its face. Seller shall supply at least 150% of the annual quantities shown on a Blanket Order upon request of Buyer through shipping releases. A Purchase Order shall not obligate Buyer to purchase a particular quantity or percentage of its requirements of the subject product or service from Seller, or prohibit Buyer from purchasing the same or similar parts from other suppliers, unless the Purchase Order expressly so states on its face.

4. TIME OF THE ESSENCE: Seller agrees that time is of the essence. Seller further agrees that if Seller fails to deliver any goods or services pursuant to the schedule(s) set forth in a Purchase Order, Buyer may obtain substitute or replacement goods or services without notice to Seller and thereafter reject any late goods or services tendered by Seller, even if conforming, and/or elect to terminate the Purchase Order by written notice to Seller. Seller shall be responsible for all general, consequential, and incidental damages incurred by Buyer as a result of Seller's failure to meet delivery schedules, including, but not limited to,

the cost of obtaining goods from an alternate source and/or expedited or premium freight or transportation costs. Buyer's actions in obtaining substitute or replacement products shall not constitute an election of remedies, nor shall it in any way limit the rights and remedies of Buyer under the Purchase Order for breach by Seller.

5. PRICE: Seller shall supply goods or services indicated in a Purchase Order at the prices provided therein for the period specified in the Purchase Order, or if no period is specified, for the period for which Buyer produces the product for which Buyer uses the goods or services covered by the Purchase Order, unless earlier terminated pursuant to the provisions of the Purchase Order. Prices shown on a Purchase Order are not subject to increase unless agreed in writing by Buyer. Seller shall promptly notify Buyer of any reduction in Seller's cost of producing the goods or providing the services under a Purchase Order from Seller's cost as of the date of the Purchase Order, including the amount of cost reduction per unit. Seller certifies that the prices in a Purchase Order are not higher than the prices being charged to other customers purchasing similar goods in similar quantities at this time. If Seller's quoted prices to other customers for goods or services similar to those sold under a Purchase Order in similar quantities are reduced (whether in the form of a price reduction, close-out, rebate, allowance, or free or reduced price other goods or services), Seller agrees that the price to Buyer for goods or services covered by such Purchase Order will be reduced accordingly, and that Buyer will be billed at such reduced prices, retroactive to the first reduction to another customer. If a price is not shown on the face of a Purchase Order, the price shall be that of the last previous order given by Buyer to Seller, subject to the provisions of this section.

6. CHANGES: (a) Buyer shall have the right, by written notice, to suspend work or make changes from time to time in the goods or services to be provided by Seller under a Purchase Order, or the delivery thereof. Unless subject to subsection (b) below, if such changes cause an increase or decrease in the cost of performance of a Purchase Order, an equitable adjustment shall be negotiated promptly and in good faith by the parties, and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this section must be asserted in writing within twenty (20) days from the date of receipt by Seller of notification of the change or suspension, and shall be followed as soon as practicable with a specification of the amount claimed with supporting cost figures. Seller may not make any changes to a Purchase Order without the express written consent of Buyer.

(b) Following the occurrence of an event, circumstance or condition beyond the reasonable control of Buyer, such as acts of God, actions by any government authority, actions by a customer, strike, work slowdown or other labor unrest, fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorist attacks or sabotage, Buyer shall have the right, by written notice, to suspend work or make changes in delivery schedules for the goods or services to be provided by Seller under a Purchase Order, without liability to Seller. If the suspension or any material change in delivery schedule lasts more than 30 days, Seller may cancel the subject Purchase Order without liability by written notice to Buyer given within two (2) business days after the expiration of such 30 day period.

7. QUANTITIES: Seller shall supply goods or services indicated in a Purchase Order in the quantities provided therein for the period specified in the Purchase Order, or if no period is specified, for the period for which Buyer produces the product for which Buyer uses the goods or services covered by the Purchase Order, unless earlier terminated pursuant to the provisions of the Purchase Order. Buyer shall have no obligation to accept overshipments or undershipments. In the event of an overshipment Buyer may, at its option (i) retain goods shipped in excess of the quantities stated in a Purchase Order, at the price set forth in such Purchase Order, or (ii) return such items to Seller at Seller's expense.

8. TERMINATION: (a) A Purchase Order may be terminated by Buyer at any time without liability upon 30 days prior written notice to Seller. (b) Buyer may by written notice to Seller terminate a Purchase Order in whole or

in part at any time at Buyer's convenience. Such termination shall not constitute a default by Buyer. In such event, Seller shall (i) immediately stop all work on such Purchase Order, and (ii) upon request by Buyer, transfer title and deliver all finished goods, work in process and/or raw materials which Seller produced or acquired in connection with such Purchase Order. In the event of a termination for convenience by Buyer (but not termination after default by Seller), Seller shall be reimbursed for (i) the Purchase Order price for all finished goods or performed services which conform to the Purchase Order and are delivered to Buyer, and (ii) Seller's reasonable actual cost of work in process or raw materials which Seller produced or acquired in connection with such Purchase Order and which Seller cannot reasonably use in its operations within 90 days after the date of termination. Seller shall furnish any claim for reimbursement of costs within 30 days after termination or any such claim shall be deemed to have been waived. Buyer shall have the right to audit Seller's books and records to verify any such claim. If Buyer's audit discloses a discrepancy in Seller's claim of more than 10%, then Seller shall reimburse Buyer for all costs incurred in connection with such audit. (c) Following a default by Seller under any contractual obligation to Buyer, including, but not limited to, a failure to deliver conforming goods on time or any delivery of nonconforming goods, Buyer may by written notice to Seller terminate all Purchase Orders with Seller. Such termination shall be in addition to, not in lieu of, any and all other remedies available to Buyer in connection with such default. (d) Buyer's obligation to Seller on termination, if any, shall be limited to the express provisions of this section. Without limiting the generality of the foregoing, Buyer shall not be liable for any lost profits or incidental or consequential damages. (e) Seller's obligations under the warranty, intellectual property and confidentiality provisions of a Purchase Order, and all of Buyer's rights and remedies for any breach of a Purchase Order, shall survive any termination.

9. PACKING, SHIPPING AND MARKING: Unless otherwise provided in a Purchase Order, Seller shall package and ship products in accordance with instructions provided by Buyer. Seller will pack each shipment and shall include such information and markings as required by a Purchase Order.

10. COMPLIANCE WITH LAW: (a) Seller warrants that the goods to be furnished and/or services to be provided under any Purchase Order shall be manufactured, sold and shipped in compliance with all applicable foreign, federal, state and local laws and regulations. (b) Without limitation of the foregoing, Seller certifies that all equipment and materials delivered hereunder are in conformance with the latest OSHA requirements, comply with all applicable U.S. Department of Transportation regulations on hazardous materials, and any other pertinent federal, state or local statutes, laws, rules or regulations with respect to hazardous materials. (c) Without limitation of the foregoing, Seller also specifically certifies that in the performance of this contract, it will strictly comply with the following while they are in effect, and any successor laws, regulations or executive orders in effect from time to time:

- Federal Fair Labor Standards Act (29 USC 201 et seq.)
- Employment of the Handicapped (29 USC 793 and 20 CFR 741.01 et seq.)
- Equal Employment Opportunity (Executive Orders 11246, 11375, 11758 and 12138)
- Socially and Economically Disadvantaged Small Business Concerns (PL95-507)

(d) Without limitation of the foregoing, for any goods shipped to European destinations, Seller will comply with the "European Agreement Concerning the International Carriage of Dangerous Goods."

11. DRAWINGS AND SPECIFICATIONS: The most recent drawings and specifications provided by Buyer to Seller prior to acceptance of a Purchase Order shall be incorporated by reference into such Purchase Order. In the event of any inconsistency between any provision of such drawings or specifications and the Purchase Order (prior to such incorporation), the Purchase Order (prior to such incorporation) shall prevail.

12. INSPECTIONS; NONCONFORMING GOODS: Buyer shall have no obligation to inspect any goods supplied by Seller. If Buyer inspects any such goods and discovers any nonconforming goods, then thereafter Buyer shall be entitled to inspect each good supplied and Seller shall reimburse Buyer for all costs incurred in connection with such inspection program, including, but not limited to, the cost of sorting and warehousing nonconforming goods. Buyer, at its option and at Seller's expense, may, without prejudice to any other remedies available to Buyer, reject and return, or retain and correct, any goods that do not conform to the requirements of a Purchase Order even if the nonconformity is not discovered until the use of such goods or the manufacture of products made with such goods. Seller will reimburse Buyer for any and all costs incurred in connection with the processing of rejects and cost of rework, obtaining conforming goods from an alternate source, the rework or scrapping of any Buyer products which incorporate Seller's goods, and all costs and expenses incurred by Buyer from any of its customers which purchase Buyer products which incorporate Seller's goods, including, but not limited to, the cost of any recalls. Payment by Buyer for any goods delivered by Seller shall not constitute acceptance by Buyer thereof. Buyer's failure to inspect shall not relieve Seller of any liability or obligation. Buyer shall have the right to reject an entire lot or shipment if it discovers a piece in such lot or shipment that does not conform to the requirements of a Purchase Order. Buyer shall be entitled to work overtime in response to any nonconforming goods supplied by Seller and such overtime charges shall be included in Buyer's damages.

13. INSURANCE: (a) Seller shall, at its own cost and expense, maintain and carry general liability, product liability and property damage insurance. All insurance will be maintained in such amounts with such deductibles as are commonly carried by prudent businesses similarly situated or as is otherwise required by applicable law. (b) In the event that any property of Buyer (including, but not limited to, tooling) shall be held at Seller's place of business, Seller shall make Buyer an additional insured on such insurance policies for purposes of covering Buyer's property.

14. WARRANTIES: Seller expressly warrants that all goods and services will be manufactured, provided and transported in full and complete conformity and in compliance with all Purchase Order requirements, specifications, drawings, samples and other descriptions furnished or specified by Buyer. Seller further expressly warrants that all products will be merchantable, of good material and workmanship and free from defects. Provided only that Buyer has not supplied the design for products sold hereunder, Seller expressly warrants that the design of said products shall be free from defects. Seller further warrants that all products will be fit and sufficient for the purposes intended by Buyer. Seller represents and warrants that any goods or services supplied pursuant to a Purchase Order, and the sale by Buyer of products incorporating such goods or services, will not infringe on any present or future patent, copyright, trademark, service mark or other intellectual property right of any person or entity. Seller agrees that all statements made by it to Buyer (including, but not limited to, in any sales literature) constitute warranties upon which Buyer may rely. All warranties expressed herein are in addition to any other warranties provided at law, express or implied. Seller agrees that any and all potentially applicable implied warranties shall be available to Buyer and all warranties, whether express or implied, are transferable to a third party by Buyer. All warranties, express or implied, by Seller are valid for a period of 24 months, unless otherwise agreed in writing by Buyer.

15. REMEDIES: Buyer's remedies are cumulative and in addition to all remedies set forth herein or available at law. Buyer's remedies shall include, but not be limited to, incidental and consequential damages and the cost of any recall campaigns or other corrective actions. Buyer's resort to any particular remedy, or its forbearance in exercising any remedy available to it, shall not constitute an election or waiver of remedy.

16. INDEMNIFICATION: Seller shall defend, indemnify and hold harmless Buyer and Buyer's shareholder's and affiliates and its and their respective directors, officers, employees and agents from any and all damages, liabilities, claims, losses, suits, legal actions, investigations or any threat of same, and any costs incurred in connection therewith

(including, but not limited to, fees and expenses of lawyers and other professionals incurred in investigating or defending the same and any cost of a product recall) (collectively, “Damages”) arising out of or related to any goods or services provided under a Purchase Order or any breach of a Purchase Order. In the event of any claim subject to indemnification hereunder (a “Claim”), Buyer may, at its sole option (i) tender such Claim to Seller to defend using lawyers and other professionals acceptable to Buyer in its discretion, or (ii) defend such Claim by counsel of Buyer’s choosing and Seller shall reimburse Buyer for all costs of such defense, and in either case Seller shall indemnify and hold Buyer harmless from and against all Damages arising out of or relating to such Claim. If Buyer tenders the defense of a Claim to Seller and Seller accepts such defense, then Seller shall be conclusively deemed to have agreed that such Claim is subject to indemnification hereunder and that Seller has no claim or counterclaim against Buyer, all of which shall be deemed to have been waived. If Seller assumes the defense of a Claim and thereafter fails to vigorously defend such Claim, Buyer shall have the right at its option to assume the defense of such Claim and Seller shall remain obligated to indemnify Buyer hereunder. If Seller assumes the defense of a Claim, it will not settle or compromise such Claim without the prior written consent of Buyer.

17. INTELLECTUAL PROPERTY & CONFIDENTIALITY: (a) Any invention or intellectual property, including all drawings and/or computer files relating thereto, first made or conceived by Seller in the performance of this Purchase Order, or which is derived from or based on the use of information supplied by Buyer, shall be considered a “work made for hire” and shall be the sole property of Buyer. Seller agrees to execute such documents as Buyer deems necessary to perfect Buyer’s title to the same. (b) Seller grants to Buyer a nonexclusive, worldwide, permanent, irrevocable, fully paid and royalty free license, with an unrestricted right to sublicense others, to use any patent, copyright, trademark or service mark or other intellectual property right of Seller, including, but not limited to, any such rights related to manufacturing processes, (i) to manufacture or have manufactured products of the type covered by a Purchase Order for use in products or assemblies produced by Buyer and to sell such products or assemblies, or (ii) to incorporate products supplied by Seller into products or assemblies produced by Buyer and to sell such products or assemblies. (c) At Buyer’s request, Seller shall consult with Buyer and deliver to Buyer with all documentation, drawings and computer files regarding all information covered by the preceding sections (a) and (b). (d) Seller shall not acquire any rights in any patent, copyright, trademark, service mark or other intellectual property right of Buyer except for a nonexclusive nontransferable license to use any such intellectual property solely to produce products for Buyer pursuant to a Purchase Order. (e) All non-public information, regardless of whether identified as confidential or not, disclosed by Buyer to Seller or developed by Seller in connection with the goods and services supplied under or pursuant to a Purchase Order shall be maintained as strictly confidential by Seller. Seller agrees not to disclose any such information without the prior written consent of Buyer except as required by legal process. If Seller is required by legal process to disclose any such information, it shall immediately notify Buyer and use all available efforts to resist such disclosure or, if such resistance is unsuccessful, to obtain a protective order.

18. SAMPLES: Seller will supply a reasonable quantity of samples of any part free of charge in accordance with Buyer’s quality standard ISO-9000 and/or its applicable supplements.

19. SELLER’S PROPERTY: Buyer shall exercise reasonable care with respect to any property of Seller in the possession of Buyer (Seller’s Property). Buyer’s duty with respect to Seller’s Property shall not extend beyond the exercise of reasonable care. As long as Buyer has exercised said duty of reasonable care, Buyer shall not be responsible for any loss or damage to Seller’s Property, if the exercise of such duty would not have prevented the loss or damage. Buyer shall house and maintain Seller’s Property in the ordinary course of business, and Buyer shall not commingle Seller’s Property with that of Buyer or a third party. Buyer shall insure Seller’s Property under Buyer’s existing policies of insurance. Seller shall

mark any Seller’s Property delivered to Buyer with such identifying labels as Seller shall elect. Buyer shall have the use of Seller’s Property as the parties shall intend, and Buyer shall not be responsible for ordinary wear, tear and aging with respect to Seller’s Property. Seller may, upon reasonable notice to Buyer, remove Seller’s Property from Buyer’s premises at Seller’s sole cost expense, provided that Seller shall not enter onto Buyer’s property without invitation for this or any other purpose.

20. SALES AND USE TAXES: Seller will not charge to Buyer any sales or use taxes on any goods or services, unless required by state law. Buyer will use all goods or services for resale or in industrial processing or manufacturing or will attach them to taxable goods for sale.

21. CHOICE OF LAW & VENUE: (a) The parties agree that any Purchase Order and the contract created hereby shall be construed according to the laws of the State of Delaware. (b) Seller agrees that any action brought by Seller to enforce any Purchase Order, or with respect to the interpretation thereof, shall be brought exclusively in the state court of general jurisdiction with jurisdiction over Buyer’s principal place of doing business, and at that such court shall have exclusive venue over any such dispute, and Seller submits to the jurisdiction of such court in any action brought by Buyer.

22. MISCELLANEOUS: (a) Seller may not assign its rights or obligations hereunder without the express written consent of Buyer. A “Change of Control” of Seller (as defined below), a merger in which the Seller is not the surviving entity, or a consolidation to which the Seller is a constituent, shall constitute an attempted assignment of a Purchase Order by Seller. As used herein, a “Change of Control” shall occur if a person or group of persons acting in concert who do not as of the date of a Purchase Order directly or indirectly control more than 50% of the voting power of Seller subsequently acquires such control. Buyer may assign its rights under a Purchase Order. (b) A Purchase Order, together with these Terms and Conditions, shall constitute the entire agreement between the parties with respect to its subject matter, and shall supersede all prior and contemporaneous agreements, representations, and understandings of the parties with respect to its subject matter. Unless expressly stated in the body of a Purchase Order, these Terms and Conditions shall be a part thereof. (c) The failure of Buyer to insist upon strict adherence to any provision of a Purchase Order shall not be considered a waiver or deprive Buyer of the right thereafter to insist upon strict adherence to that term or any other term of the Purchase Order. Any waiver of any provision of a Purchase Order by Buyer must be in writing signed by an authorized officer of Buyer. (d) In any action or proceeding brought by Buyer to enforce any provision of a Purchase Order, if Buyer prevails it shall be entitled to recover the reasonable costs and expenses incurred by it in connection with that action or proceeding (including, but not limited to, attorney’s fees). (e) Neither party shall be deemed the drafter of a Purchase Order and it shall not be construed or interpreted in favor of or against either party. (f) Caption headings are for the convenience of the parties only and shall not be used to construe or interpret these Terms and Conditions. (g) If any provision of a Purchase Order shall be found by a court of competent jurisdiction to be unenforceable in any respect, then (i) the court shall revise such provision the least amount necessary in order to make it enforceable, and (ii) the enforceability of any other provision of the Purchase Order shall not be affected thereby.

END OF TERMS AND CONDITIONS

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