

ASBURY CARBONS, INC.'S TERMS AND CONDITIONS OF SALE

1. **Order subject to acceptance** - All orders are subject to approval and acceptance in writing by Asbury Carbons Inc. including but not limited to the following divisions and affiliates: Asbury Graphite Mills, Inc.; Anthracite Industries; Asbury Graphite, Inc. of California; Southwestern Graphite; Cummings-Moore Graphite Company; Asbury Wilkinson; Graphitos Mexicanos de Asbury; Asbury Graphite and Carbons NLB.V.; Asbury Graphite Inc. of North Carolina; PEC Friction Fighters Corporation; Garmor, Inc. (hereinafter any one or more of the foregoing entities may be referred to individually and/or collectively as "AC").
2. **Payment** - Payment terms for credit-approved orders are net 30 or terms agreed upon in writing. A late payment charge of 1½% per month will be added to all outstanding balances after thirty (30) days from date of invoice. Buyer agrees to reimburse AC for all collection costs including reasonable attorney fees and court costs and NSF and bank charges which are necessary to enforce payment of invoiced amounts.
3. **Returns** - Merchandise may not be returned for credit without prior written authorization from AC. (1) Request for return materials must be made within sixty (60) days from the date of shipment. (2) Non-stock or modified items are either not returnable or subject to manufacturer's terms and conditions. (3) Material authorized for return in writing is subject to a minimum of 40% restocking charge, as well as freight both ways, and any reconditioning costs which may be necessary. (4) Material must be new and in original condition. Merchandise received which is improperly packaged and received damaged will not be credited. (5) Merchandise must be returned within thirty (30) days of issuance of RGA. (6) No RGA's will be issued against unpaid invoices.
4. **Entire Agreement/Precedence** - All products and services furnished by AC are sold on the terms and conditions stated herein. Acceptance of orders, whether oral or written, and AC's performance under any proposal or contract, is based on the expressed condition that Buyer agrees to all the terms and conditions contained herein. Acceptance of delivery by Buyer shall constitute Buyer's assent to these terms and conditions. No modifications of any of these terms shall be affected by Buyer's purchase order, shipping request or similar form containing printed terms and conditions conflicting or inconsistent with the terms herein. These terms and conditions shall take precedence over any terms and conditions contained in Buyer's purchase order. No term or condition of any purchase order additional to, or different from, the terms and conditions set forth herein, shall become part of any agreement between AC unless expressly agreed to in writing by AC.
5. **Delivery, Title, Risk of Loss and Security Interest** - Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. AC strives to meet customer requirements but cannot be held responsible for delays in shipping outside its control. No liability shall be sustained by AC by reason of not filling any order or portion thereof due to such delays. In the event of any such delay, there will be no

termination and the date of delivery shall be extended for a period equal to the time lost by reason of the delay. Unless otherwise specified by AC, delivery will be made and title will pass F.O.B. point of shipment to Buyer. However, AC maintains a security interest in its product. AC reserves the right to repossess any products for which it has not been paid. This includes products/items that have already been shipped to an end customer. AC reserves the right to require financing statements (UCC-1) to be executed by Buyer on orders exceeding \$1,000,000 USD.

6. **Inspection/Acceptance/Return** - Buyer shall be conclusively deemed to have inspected and accepted the products within ten (10) days of receipt. Any deficiency in the quality or quantity of such products must be reported within five (5) days after such deficiency is or should have been discovered during the inspection period. Buyer's claims regarding any such deficiency not discovered or discoverable during the inspection period shall be barred if not reported within the reporting period, except and to the extent that such claims are valid under AC's warranty as set forth herein. Buyer may not return any products, under warranty claim or otherwise, without first reporting to AC the reasons for such return and obtaining AC's prior approval therefore, and then observing such reasonable instructions as AC may give in authorizing any return.
7. **Taxes** - In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or delivery of any products or services furnished hereunder or Buyer shall furnish AC with a tax-exemption certificate acceptable to taxing authorities.
8. **Warranty and Disclaimer** - Buyer assumes all risk and liability for the use of AC's products, whether used singly or in combination with other products. AC warrants to Buyer that all AC products furnished by it shall, as to the time and place AC makes delivery, conform in content with AC's published specification sheet enforce on the date of acceptance of the order, (with exception of non-material variations) and shall be free from defects in workmanship or materials under normal conditions of use, for six (6) months from the date of delivery (or three (3) months in the case of replacement products). The foregoing warranty extends only to Buyer, as the original purchaser, and is in lieu of and excludes all other warranties not expressly set forth herein, whether expressed or implied by operation of law or otherwise, including but not limited to any implied warranties of merchantability or fitness for particular purpose. Any claim relating to AC's warranty must be made in detail and in writing and properly pursued. Six (6) months after AC delivers their products (or three (3) months in the case of replacement products), all of AC's warranties and other duties with respect to the quality of the products delivered shall be conclusively presumed or have been satisfied, and AC shall have no further liability with respect to such products. In case of AC's breach of warranty or any other breach of the transaction contemplated by these terms and conditions (including without limitation, any repair made or undertaken to be made under warranty), the exclusive remedies therefore shall be: (i) repair, (ii) replacement or (iii) replacement of, or credit for, the purchase price of the defective products upon the return of the

defective products. Selection among the exclusive remedies described above shall in each case be at AC's sole discretion and subject to Buyer's compliance with AC's return policies. EVERYTHING IS PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY OF ANY KIND FROM AC. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. AC HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND INCLUDING ANY WARRANTY AGAINST INFRINGEMENT (ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED).

9. **Export Classification and Responsibility** - Buyer understands and is informed that products and items produced or supplied by AC are subject to US export laws and are controlled accordingly. The items purchased by the buyer are authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) identified in the buyers order to AC. The items sold by AC to the buyer may not be resold, transferred or otherwise disposed of, to any other country or to any other person than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.
10. **End User Certification** - The buyer certifies that items or products supplied by AC are not intended for end use in any of the following applications: Any nuclear, biological or chemical weapons, or the missile systems that deliver them; for the design, development, production, testing, stockpiling or use of any weapons of mass destruction; or for any other use that the U.S. government prohibits.
11. **Restricted Party Designation** - The buyer will immediately notify AC if the Buyer is, or becomes, listed in any Restricted Parties List, or if the Buyer's import or export privileges are otherwise denied, suspended or revoked, in whole or in part, by any Government entity or agency. The buyer will immediately notify AC if an individual employed with the Buyer or a member of the Buyer's governing board or ownership group is, or becomes, listed in any Restricted Parties List.
12. **Limitation on Liability** - IN NO EVENT, WHETHER THE RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL AC BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES INCLUDING BUT NOT LIMITED TO, LOSS OF GOOD WILL, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, BUSINESS INTERRUPTIONS, WORK STOPPAGE, PERSONAL INJURY, DAMAGE TO ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS, OR CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES. IF BUYER TRANSFERS TITLE TO OR LEASES THE PRODUCTS/ITEMS SOLD HEREUNDER

TO ANY THIRD PARTY, BUYER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING AC THE PROTECTION OF THE PRECEDING SENTENCE. IF AC FURNISHES BUYER WITH ADVICE OR OTHERWISE ASSISTANCE WHICH CONCERNS ANY PRODUCTS SUPPLIED HEREUNDER OR ANY SYSTEM OR EQUIPMENT IN WHICH ANY SUCH PRODUCT MAY BE INSTALLED AND WHICH IS NOT REQUIRED PURSUANT TO THIS AGREEMENT, THE FURNISHING OF SUCH ADVICE OR ASSISTANCE WILL NOT SUBJECT AC TO ANY LIABILITY, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY SHALL AC BE LIABLE FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT OF PAID TO AC, AND THE RETURN OF THE AMOUNT PAID TO AC WHICH SHALL BE THE SOLE AND EXCLUSIVE REMEDY.

13. **Indemnification** - AC agrees to indemnify Buyer from and against losses and direct damages, including attorney's fees and court costs, arising out of any personal injury or property damage sustained by any third party as a result of the use of the products provided by AC to Buyer, but only in proportion to AC's own negligence. For the avoidance of doubt, AC's indemnity obligations expressly exclude (i) any injuries/damage to the extent that they are caused by the negligence of Buyer or any third party (other than AC's employee/agent), and (ii) any damages or costs of any and all kinds related in any way to any matter that is covered by AC's above-stated warranty (which warranty shall be the sole remedy for all such matters). AC shall have no obligation to defend Buyer against such claim or demand. Buyer must promptly give notice of any claim that may involve a right to indemnification, and AC at its sole discretion and cost shall have the option to participate in the defense of the claim and exclusive control over the settlement or defense of such claims, losses, damages, or actions. Buyer shall indemnify and hold harmless AC and its affiliates and shall pay to AC the monetary value of any losses and direct damages, including reasonable attorney's fees and court costs, arising, directly or indirectly, from or in connection with (i) Buyer's use of the products and (ii) any negligence or willful misconduct of Buyer in connection herewith.
14. **Cancellation** - All cancellations must be approved by AC. Restocking charges will be determined based on whether the product ordered is a "stock" versus "non-stock item." A minimum restocking charge of thirty percent (30%) of the net price for the entire order will apply if AC has commenced or completed production of ordered product and for all orders canceled less than 15 calendar days before Asbury acknowledged "planned ready date".
15. **Failure to "Pick Up"** - Buyers who purchase product from AC on "ex-works" or similar terms will be charged a weekly inventory fee of two percent (2.0%) of the total value of product which is not "picked up" from AC carbons facilities within 5 business days of AC notification of order "ready for pickup" status to the buyer.

16. **Force Majeure** - AC shall be relieved from performance of its respective obligations hereunder when prevented, hindered, delayed, or impeded by any cause beyond its reasonable control (other than financial or economic incapacity) such as, but not limited to acts of God, acts of public enemy, war, terrorist act, epidemic, pandemic, quarantine, natural catastrophe, insurrections, riots, strikes, labor disputes, work stoppages, fires, explosions, floods, electric power failure, late or defective delivery or shortage of materials, semi-finished or finished products necessary to make the goods catastrophic breakdown of or damage to plants, mines, quarries, equipment or facilities, interruptions in or exigencies of transportation, embargoes, orders, actions or non-actions of civil or military authorities, or governmental requirements or restrictions, which, directly or indirectly, prevent, hinder, delay, or impede, in whole or in part, AC from performing its obligations hereunder (herein referred to as Force Majeure). Nothing withstanding the foregoing, Buyer shall in any event, be liable to AC for the invoice price of all goods shipped by AC.
17. **Risk of Loss** - Delivery of products to carrier shall be delivery to Buyer and thereupon risk of loss or damage shall be Buyers. Any claim by Buyer against AC for shortage or damage occurring prior to such delivery must be made in writing within 15 days after receipt of shipment and accompanied by original transportation bill signed by carrier noting that carrier received goods from AC in the condition claimed. Any claim by Buyer for damage occurring during shipment shall be made directly against carrier, with a copy of such claim forwarded to AC.
18. **Court Terms, Legal Fees and Costs** - The terms and conditions of sale shall be construed in accordance with the laws of the state of Delaware. Any and all actions of law, suits in equity or other judicial proceedings for any breach of or enforcement of these terms and conditions of sale, or any provision hereof, shall be instituted and maintained only in the court of competent jurisdiction located in New Castle County, Delaware, the county and state where these terms and conditions have been made and entered into and each party hereby waives any right to any change of venue. If any action at law or in equity is necessary to enforce or interpret these terms and conditions of sale or if it is determined that Buyer is in breach of same, then AC shall be entitled to all attorney's fees and costs in addition to any other relief to which AC may be entitled.
19. **General** - AC shall comply with applicable federal, state and local laws and requirements as of the date of any quotation period price and, if necessary, delivery will be equitably adjusted to compensate AC for the cost of compliance with any laws or regulations. The delegation or assignment by Buyer of any or all of its duties or rights hereunder without AC's prior written consent shall be void.
20. **Legal Construction** - This order supersedes and cancels all prior communications between the parties except as specifically set forth on the face of this order. No other terms or conditions except as set forth herein, shall be binding unless made in writing and signed by the authorized representative of AC. In the event the terms or conditions

conflict with those of the Buyer, the terms or conditions of AC shall control. If any one (1) or more of the provisions contained in these Terms and Conditions of Sale shall for any reason be held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of these Terms and Conditions of Sale and the Terms and Conditions of Sale shall be construed as if the invalid, illegal or unenforceable provision had never been contained in it.

21. **Waiver** - Waiver by AC of any breach of these Terms and Conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time. No waiver shall be affected unless it is in writing and signed by a duly authorized representative of AC.
22. **Intellectual Property** - No patents, copyrights, trademarks, or other intellectual property is being sold, assigned, or otherwise transferred to Buyer. Without limiting the generality of the foregoing, AC shall retain and own all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, processes, and ideas developed, discovered or conceived by AC or its employees, including but not limited to those developed, discovered, and/or conceived in connection with the manufacture of the ordered Products. It is expressly acknowledged that no drawings, designs, specifications, or anything else provided by AC to Buyer shall be deemed to be “work made for hire” as that term is used in connection with the U.S. Copyright Act. Without limiting the generality of the foregoing, all intellectual property rights (including but not limited to copyright) in and to any and all drawings and designs provided by AC in response to a Buyer requirement or request are and shall remain owned by AC (and/or AC’s affiliate or other third party who is AC’s licensor, if applicable). AC reserves all rights and waives no claims. No license is conveyed as part of the sale or otherwise, except pursuant to the Section above entitled “Software”. For example, no license to manufacture is conveyed as part of the sale or otherwise. AC will not provide any manufacturing drawings/documents, or any other kind of drawings/documents other than mutually-agreed drawings/documents to the extent expressly agreed to between the parties in writing as being part of the contract deliverables.
23. **Audits**. No provisions purporting to give Buyer the right to examine or audit Seller’s books or records (whether related to price, cost or otherwise) shall apply unless required by applicable law or agreed upon hereafter in a written auditing agreement signed by authorized managers of the parties. Any such auditing shall among other things be subject to a mutually acceptable date, time, place, and procedures (including but not limited to safety/security procedures of the relevant location).
24. **Order-related Changes**. Any and all order-related changes requested by Buyer (whether with respect to changes in quantity, drawings, designs, specifications, material, packing, time and place of delivery, mode of transportation, or otherwise) are subject to AC’s approval in writing. If any change causes an increase in the cost of, or the time required

for, the performance of any part of the order, an equitable adjustment shall be made to the price and/or delivery schedule. Unless agreed otherwise by the parties in writing, pricing for work arising from such changes shall be at Seller's then-current applicable time and material rates/price.

25. **Bag Policy.** If Buyer elects to purchase private label bags in connection with its order, Buyer shall specify the quantity of bags it requires and shall pay for the costs of such bags prior to AC placing an order for the bags with its third party vendor. Buyer shall have the right to review and approve the final artwork to be added to the bags.