

Shu Powders Limited
Level 54, Hopewell Centre
183 Queen's Road East
Hong Kong

CONDITIONS OF PURCHASE

THE WITHIN ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS AS WELL AS THOSE APPEARING ON THE FACE OF THE ATTACHED PURCHASE ORDER:

1. The recipient of this order is herein called "Seller". "Buyer" is **SHU POWDERS LIMITED**.

2. ENTIRE AGREEMENT - ACCEPTANCE

When accepted by Seller this order is the entire agreement of the parties. For the purposes hereof, any manifestation of agreement, however qualified, to accept the order and / or to ship the products (which term shall include, without limitation, goods, packaging, services, work and data expressly or impliedly ordered herein, or delivered hereunder, or any part thereof) shall constitute an unqualified acceptance hereof. No reference herein to Seller's quotation shall imply acceptance of any part thereof by Buyer.

By acceptance hereof, or, if acceptance has not been communicated to Buyer, by delivery of the products, Seller agrees that, subject to Buyer's right to reject partial performance hereunder, a contract containing the provisions herein set forth shall arise between the parties hereto with respect to the products. No addition or modification hereof, and no waiver or alteration of any provision hereof, shall be valid unless made in writing and executed by Buyer. Failure of Buyer to receive a written acceptance hereof within 10 days after the date hereof shall entitle Buyer, at Buyer's option, at any time prior to actual receipt of such written acceptance or of the products, to terminate this order without cost or liability.

It is a condition of this order that any provisions printed or otherwise contained in any acknowledgement hereof, inconsistent with or in addition to the terms and conditions herein stated, and any alteration in this purchase order, shall have no force or effect, and that Seller by such acknowledgement thereby agrees that any such provisions therein or any such alterations in this order shall not constitute any part of this contract of purchase of sale.

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3. CHANGES

Buyer may, by written notice, make changes to this order. Should any such change materially increase or decrease the cost of, or the time required for performance, an equitable adjustment in price and/or delivery schedule will be made. Any claims by Seller for such adjustment must be asserted in writing within fifteen days from the date the change is ordered, or within such other period of time as may be agreed upon in writing. Failure to agree on any claim for equitable adjustment under this Clause shall be a dispute and the Buyer and/or Seller may thereupon pursue any remedy which it may have in any tribunal of competent jurisdiction. Pending the resolution of any such dispute the Seller shall diligently perform this order, as changed.

4. WARRANTY

By accepting this offer, Seller warrants that:

- (i) all items delivered under this order will be
 - (a) "merchantable" is defined in Section 2-314 of the Uniform Commercial Code,
 - (b) of new and recent manufacture,
 - (c) free from defects in materials and workmanship (including damage due to unsatisfactory packaging by Seller),
 - (d) in strict accordance with Buyer's specifications, drawings and approved samples (if any),
 - (e) in compliance with the terms of this order, and
 - (f) free from defects in design and suitable for their intended purpose (to the extent some items are not manufactured pursuant to detailed designs furnished by Buyer);

- (ii) all items subject to the Occupational Safety and Health Act of 1970 and the Consumer Product Safety Act of 1972 are in conformance with the most recent standards established thereby.

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In the event of any such defect, or failure to comply with the terms of this order or such specifications, drawings and samples, Buyer at its option may require Seller either

- (1) to replace the defective item;
- (2) to correct such defect or failure wholly or in part; or
- (3) If Buyer directs either no such action or partial action of either type, to comply with any such requirement of Buyer and repay an equitable reduction in the price to Buyer forthwith. Such optional rights of Buyer shall not be construed to negate, replace, or limit, but shall be additional to, any rights of the Buyer arising at common law or by virtue of otherwise applicable laws or regulations. This warranty does not constitute a waiver of any other rights of Buyer, express or implied. This warranty shall run to Buyer, its successors, assigns, customers, and users of its products and shall survive payment, inspection, and acceptance under Clause 5 below.

5. INSPECTION AND ACCEPTANCE

- (i) All products (including raw materials, work in process and end items) shall be subject to inspection and test by Buyer or its designee at all times prior to shipment by Seller. Final inspection and acceptance shall be at Buyer's premises by Buyer. If any of the products are found at any time to be defective in material or workmanship (including products damaged because of unsatisfactory packaging by Seller), or otherwise not in strict conformity with the requirements of the order, including drawings and specifications and approved sample, if any, Buyer, in addition to any other rights which may have under warranties or otherwise, shall have the right to
 - (a) reject and return such products at Seller's expense and to receive full credit for any such rejected products,
 - (b) upon written request, require correction or replacement of any rejected products without additional cost to Buyer, or
 - (c) retain and use the products with an equitable reduction in purchase price. Rejected products returned to Seller shall not be reshipped to Buyer without prior written authorization. Seller shall bear all risks to rejected products after notice of rejection. Payment shall not be construed as constituting acceptance.

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- (ii) Seller shall provide and maintain an inspection and quality control system acceptable to Buyer for products covered by this order. Notwithstanding the rights of Buyer to inspect and test, the Seller shall perform or have performed the inspections and tests required to substantiate that the products provided under this conform to the drawings, specifications and order requirements, including, if applicable, the technical requirements for the manufacturer's part number specified herein.

Records of all inspection work by Seller shall be kept complete and available to Buyer during the performance of this order and for the duration of any applicable warranties.

Buyer's right to "cover" rejected goods – If Seller fails to make delivery or repudiates or if Buyer rightfully rejects the goods or justifiably revokes acceptance thereof, then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract, Buyer may cancel the contract and, regardless of whether it has done so, Buyer may, in addition to recovering so much of the price as has been paid, "cover" and have damages as to all goods affected whether or not they have been identified to the contract. Buyer may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of or contract to purchase goods in substitution for those due from Seller. Buyer shall recover from Seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages, but less expenses saved in consequence of Seller's breach. The foregoing shall be Buyer's exclusive remedies for any such breach by Seller.

6. INDEMNITY

Seller agrees to defend and shall indemnify and hold harmless Buyer, its agents, customers, successors, assigns and users of its products and technical data provide under this agreement against any loss, damage and liability, including costs and expenses, including attorney's fees, by reason of any and all claims and suits charging

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- (a) personal injury, property or other damage, or
 - (b) actual or alleged misappropriation or infringement of any patent, copyright, trade secret or trademark, except that Seller shall have no liability with respect to patent infringement for products as to which Buyer furnishes complete specifications, arising, in either case, out of the use or sale of the products purchased hereunder, or arising from any alleged or claimed defect in products, whether latent or patent, including allegedly improper construction and design, or from the failure of products to comply with specifications or with any express or implied warranties of Seller or arising out of the alleged violation of any statute, ordinance, administrative order, rule or regulation connected with the manufacture or sale of products.
- If an injunction is issued as a result of any such infringement, Seller agrees to refund to Buyer the amount paid to Seller hereunder.

7. REPRODUCTION RIGHTS

Seller grants to Buyer the right to reproduce, use and disclose in connection with the use, maintenance, and service of the products supplied hereunder, all reports, drawings and reproductions thereof, data and technical information delivered to Buyer.

8. APPLICABLE LAW

This order shall be governed by the laws of the State of New York, USA including the provisions of the Uniform Commercial Code as adopted in the State of New York and also Inco terms ©2010 with respect to shipping terms, but excluding the Convention for the International Sale of Goods. The courts of the State of New York shall have exclusive jurisdiction for the resolution of any disputes arising from this order.

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9. TAXES

Except as otherwise specifically agreed or required by law, Seller will pay or assume all taxes imposed upon or in connection with the sale or furnishing of the products including all federal, state or municipal excise and personal property taxes on any property in the possession of Seller until its delivery to Buyer, whether taxable to Buyer or Seller under applicable state or municipal law.

10. TERMINATION FOR CONVENIENCE

- (i) Work may be terminated under this order by Buyer in whole or in part at any time by written, telecopy, telegraphic or e-mail notice.
- (ii) If this contract is terminated for any reason other than the reasons set forth in Clause 11 below, the termination for convenience clause for fixed price contracts at 52.249-2 of the Federal Acquisition Regulation (FAR) shall be applicable, with the following modifications:
 - a) Where necessary to make the context of this clause applicable to this order, the term "Government" and equivalent phrases shall mean Buyer, the term "Contractor" shall mean Seller, the term "Contract" shall mean this order and the term "Contracting Officer" shall mean Buyer's subcontract administrator or Buyer.
 - b) Delete subparagraph (d).
 - c) Change the references to "1 year" in subparagraph (e) to "6 months".
 - d) Delete subparagraph (j).
 - e) Change the reference to "90 days" in subparagraph (l) to "45 days". In the event this is a cost reimbursement order, the termination clause at FAR 52.249-6 shall apply with the appropriate modifications in lieu of FAR 52.249-2.

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11. TERMINATION FOR DEFAULT

If the Seller shall become insolvent or make a general assignment for the benefit of creditors, or a receiver or liquidator for Seller is appointed or applied for; or if Seller admits in writing its inability to pay its debts as they become due; or if any proceeding under any applicable federal or state bankruptcy or Insolvency law is brought by or against Seller; or if, at any time, Seller defaults in performance or so fails to make progress in the work as to endanger performance hereunder; or if Seller fails to deliver the products or to perform the services within the time or at the rate specified herein; or if Seller otherwise defaults in performance hereunder; Buyer may, by written notice to Seller, terminate this order in whole or in part. However, if Seller shall be determined not to be in default, then termination by Buyer shall be deemed to be termination for convenience to which the provisions of Clause 10 above shall apply. In case of termination for default,

- (i) Seller shall continue performance of any non-terminated portion of the order and Buyer may obtain elsewhere the portions of the products or services affected by the termination, or products or services similar thereto, and charge the Seller with any cost increase caused thereby; and
- (ii) Buyer may, at its option, require Seller to transfer to Buyer all materials, work in process, completed supplies, tooling, plans and specifications, and manufacturing rights allocable to the terminated portion of the order; after such transfer Buyer shall pay Seller the fair value of such item. Buyer's rights under this Clause are in addition to and not in lieu of any other remedies available under this order or provided by law.

12. LABOR DISPUTES

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give written notice thereof to Buyer.

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13. REMEDIES / WAIVER

The remedies herein set forth shall be cumulative and additional to any other or further remedies provided in law or equity. Failure of Buyer to insist upon strict performance of any of the terms and conditions of this order, or waiver by Buyer of any provision hereof shall not constitute a waiver of any other provision hereof or a waiver of any default.

14. BILL OF LADING

Original bill of lading or comparable documents shall be delivered to Buyer at the time of shipment.

15. PACKAGES / EXTRA CHARGES

All packages must bear Buyer's order number on outside of package. Each shipment shall include a packaging slip that identifies all items shipped and the Buyer's order number. No charges of any kind, including charges for boxing, packing, or cartage, will be allowed unless specifically agreed to by Buyer in writing. Price based on weight shall be determined according to net weight of material unless otherwise agreed.

16. TRANSPORTATION

Transportation charges on products, delivered destination, must be prepaid whenever possible. No parcel post insurance charges will be allowed unless authorized by Buyer.

17. DELIVERY SCHEDULE

Time and Rate of deliveries are of the essence of this order. Goods shipped to Buyer in advance of delivery schedule may be rejected or returned to Seller at Sellers's expense.

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18. QUANTITY

It is Seller's responsibility to furnish the proper quantity called for in this order. No variations in the quantity specified herein will be accepted as compliance with this order except by prior written agreement. Buyer reserves the right to return excess shipments at Seller's expense.

19. PRICES / INVOICES / PAYMENT

Seller warrants that the prices for the articles sold to Buyer under this order are not less favorable than those currently extended to any other customer for the same or like articles in equal or less quantities. In the event Seller reduces its price for such articles during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller shall send a separate invoice for each purchase order.

Payment shall be based upon and any discount and late payment period shall begin to run from, the later of the dates

- (i) Buyer receives an acceptable invoice,
- (ii) Buyer receives acceptable products, or
- (iii) Specified by Buyer for delivery of the products. Buyer shall have the right to offset any claims or amounts due to Seller under this order or otherwise against any claims or amounts owed by Seller to Buyer by reason of this order.

20. TITLE AND RISK OF LOSS

Seller shall not reserve title or a security interest in products shipped to Buyer. Shipping terms shall have their ordinary meaning as set forth in Inco terms ©2010. Unless otherwise agreed, all shipments are to be made DAP (**insert actual address of Buyer's warehouse**) Inco terms ©2010.

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21. CONTINGENCIES

Buyer reserves the right, at its option and without liability, either to direct suspension of shipments of materials covered by this order or to cancel this order, in whole or part, at any time where such suspension or cancellation is caused by Government order or other requirements, embargoes, acts of civil or military authorities, acts of public enemy, inability to secure transportation facilities, strikes, differences with workmen, accidents at plant of Buyer, Defense Priorities and Allocations System regulations or other law, order or regulation, or other contingencies beyond control of Buyer.

22. TOXIC SUBSTANCES

Seller shall provide Buyer with a properly completed "Material Safety Data Sheet" (form OSHA-20) for all chemical and other substances delivered as part of this order which are listed in the latest version of Federal Standard No. 313 and any other chemicals or substances which have yielded evidence of acute or chronic health hazards in humans, animals or biological testing. Seller shall not use generic terms to describe the properties of the chemicals or substances, said Material Safety Data Sheet shall be provided to Buyer, attention: Safety Officer, at least three business days prior to the delivery of the chemicals, substances or goods in which the chemicals or substances are incorporated. The Material Safety Data Sheet is required to be filled out in accordance with 29 CFR 1910.1200(g)