



## TERMS AND CONDITIONS

1. **ENFORCEABLE CONTRACT:** These Terms and Conditions are agreed to by and between The General Metals Powder Co., LLC dba GMP Friction Products (“GMP”) and the party (“Customer”) as may be specified in the quotation provided by GMP (the “Quotation”) or as may have delivered a purchase order to GMP, and relate to all sales of products from GMP to Customer from time to time thereafter. These Terms and Conditions and any other terms set forth in GMP’s Quotation (collectively referred to herein as the “Contract”) shall constitute the entire agreement between GMP and Customer. Customer’s assent to the Terms and Conditions set forth herein shall be conclusively presumed from Customer’s acceptance of the Quotation or presentation to GMP of a purchase order. This Contract constitutes the entire agreement between the parties and all prior and contemporaneous negotiations, understandings, and agreements, whether oral or written, are merged herein and the rights and obligations of the parties shall be as set forth as follows, regardless of any terms contained on any writing originated from Customer, including without limitation Customer’s purchase order. GMP rejects any of Customer’s inconsistent or additional terms. GMP’s failure to further object to provisions contained in Customer’s form or other communications shall not be deemed an acceptance thereof. Where there may be a conflict between these Terms and Conditions and the Quotation, the Quotation shall control.

2. **PRICE AND PAYMENT:** Prices do not include sales, use, excise or any similar tax. Any tax or other government charge upon the production, sale, shipment or use of the product which GMP is required to pay or collect from Customer shall be paid by Customer to GMP unless Customer furnishes GMP with a tax exemption certificate acceptable to the applicable taxing authority. Customer shall be responsible for obtaining any necessary governmental clearances, including import and foreign exchange licenses, which may be required by any government other than the United States. Prices are F.O.B. GMP’s plant of manufacture, unless otherwise specified. Prices are shown herein and are subject to change without notice. Purchase prices are stated in United States Dollars and payment shall be in United States Currency. GMP reserves the right to modify or withdraw credit terms (if any) at any time without notice and to require guarantees, security or payment in advance of the amount of credit involved.

3. **DELIVERY AND INSPECTION:** Unless otherwise agreed, all products delivered to Customer will be packed for transportation in accordance with GMP’s standard packing procedures for such product(s). Any dates set out in the Quotation are approximate only, unless otherwise expressly stated in writing, and the time of delivery shall not be of the essence. GMP may provide reasonable notice of when the product(s) are available for delivery. GMP shall have the right to make delivery or complete performance of any order prior to the time set forth in the Quotation. Customer shall immediately inspect GMP’s product upon delivery at Customer’s location. No inspection shall be permitted at GMP’s location, so as to ensure the non-disclosure of information concerning confidential work, processes, and methods of manufacture conducted in GMP’s plant.

4. **TITLE AND RISK:** The risk in the products shall pass to Customer upon completion at GMP’s location and transfer to common carrier. Title to the goods shall not pass to Customer until GMP has received payment in full (in cash or cleared funds) for the products, and any other products or services that GMP has supplied to Customer in respect of which payment has become due.

5. **EXPRESS WARRANTY:** All products sold hereunder are warranted to be free from defects in material and workmanship at the time of delivery, subject to the limitations contained herein. This express warranty is in lieu of and excludes all other warranties, express or implied, and is given to Customer exclusively, and to no others. Defective products may be returned by customer to GMP after inspection by GMP, or upon authority from GMP without inspection, after receiving return shipping instructions from GMP. Packaging of returned merchandise shall conform to the same methods employed by GMP in shipping to Customer. Credit will not be allowed for returned Products damaged beyond the original defects, which damage was occasioned by carelessness of Customer or third parties, or improper packaging for return. The sole remedy for products so inspected or so returned and found by GMP to be defective will be replaced or repaired without charge, but GMP shall not be liable for deficiencies and/or damage which are the result, among other things, of objects implemented by Customer, wear and tear, faulty assembly/faulty putting into service by Customer or by third parties, faulty or negligent handling, damage during shipment, unsuitable or undue utilization, excessive operational load, disregarding of GMP utilization or instruction manuals, unsuitable operational resources, modifications and/or repairs not approved by GMP, repairs etc. effected by Customer or third parties, excessive storage time and other circumstances lying within Customer's sphere of influence including implementing material, instructions given by Customer, etc. The liability of GMP to Customer is expressly limited to the replacement or repair of defective products. Every claim on account of defective material or workmanship or for any other cause shall be deemed waived by Customer unless made in writing to GMP within sixty (60) days from the date of the receipt of the product to which such claim relates. Replacement of defective materials, when so agreed to by GMP, shall be made on a separate order issued by Customer who undertakes to supply an adequate number of steel discs/core/carriers/etc. or other integral parts if and as required to permit replacement. **CUSTOMER HEREBY WAIVES ANY AND ALL EXPRESS WARRANTIES NOT WRITTEN HEREIN AND ANY IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND THE IMPLIED WARRANTY OF MERCHANTABILITY, AND ANY REMEDIES NOT OTHERWISE STATED HEREIN.**

6. **REMEDY FOR CUSTOMER BREACH:** As used herein, a "custom-made product" shall mean a product (including materials used therein) that (a) GMP has designed, crafted, or begun to design, craft, or acquire materials for, and (b) either (i) is designed to specifications for a particular customer or (ii) is not suitable for a broader market. Whereas GMP may have no alternative use for a custom-made product, the parties agree that Customer shall have no right to cancel an order for any custom-made product, seek to return a custom-made product, or obtain a refund. Customer shall owe the full purchase price for a custom-made product, even if such a product is not ultimately shipped. If a customer cancels an order for a product that is not a custom-made product, then GMP may attempt in its sole discretion to resell such product, and if such product is re-sold, then Customer shall owe GMP the difference between the Customer's agreed sale price and the later sale price, plus costs of the re-sale transaction. If GMP shall have not sold such a product within sixty (60) days of Customer's cancelation, then Customer shall owe the full purchase price, and GMP shall have no duty to account to Customer for the proceeds of a later sale, irrespective of the perceived prospects for a later sale. Upon cancelation, Customer disclaims all rights to claim title to a product, whether custom-made or otherwise. If Customer shall fail to timely pay all sums due to GMP, then Customer shall reimburse GMP for all of its reasonable attorney's fees and costs incurred in and leading up to such action, including appeals and defense of any counterclaims or other claims. Any sums not paid by Customer when due shall accrue interest at a rate of one and one-half percent (1.5%) per month.

7. **INDEMNITY:** Customer hereby indemnifies GMP and its affiliates and subsidiaries, (including their respective agents, directors, employees, officers, shareholders, subcontractors, attorneys, successors and assigns) against all liabilities, claims, losses and damages of any nature, including, but not limited to, all

expenses (including legal fees), costs, and judgments for property damage or injury to or death of any person and any other direct, indirect, incidental, consequential, economic or statutory civil damages, any of which arise out of or are in any way related to the provision of the products or other services pursuant to this Contract. This indemnity shall specifically include (but not be limited by) the use, operation, repair, maintenance, or disposition of products provided under the Contract, whether or not arising from breach of contract, strict liability or tort (including negligence, gross negligence, reckless and more culpable conduct), provided that nothing in this Section shall require Customer to indemnify GMP for claims or liabilities arising from the willful misconduct of GMP. Customer shall carry and maintain such insurance in full force and effect and in types and amounts as would be carried by prudent companies engaged in Customer's industry. Such policies of insurance shall be primary with respect to the indemnities of Customer set forth in this Contract, and shall contain waivers of subrogation of the insurers in favor of the GMP indemnitees listed above. Customer will provide GMP with certificates of insurance as may be requested by GMP from time to time.

8. **MATERIALS AND EQUIPMENT:** Any equipment (including jigs, dies, tools and accessories for manufacture) which GMP constructs or acquires from Customer, notwithstanding any charge therefore, are to be and remain GMP's property and in GMP's possession and control. When for two consecutive years no orders are received for products to be made from such equipment, the equipment may be treated as obsolete and destroyed by GMP without notice or obligation to Customer. GMP shall have no responsibility or liability for loss or damage to any materials or equipment owned or furnished by Customer for any cause beyond GMP's reasonable control.

9. **LIMITATION OF LIABILITY:** GMP shall under no circumstances whatsoever be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this Contract. GMP's total liability to Customer arising under or in connection with this Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed one hundred and twenty percent (120%) of the total sums actually and timely paid by Customer in connection with such products. This limitation of liability is in addition to, and not a replacement of, the limitation set forth in Section 5 ("Express Warranty") hereof.

10. **DELAY:** GMP will not be liable in any way in respect of late delivery, howsoever caused, or for any delay in performance due to causes beyond GMP's reasonable control including, without limitation, embargoes, blockages, seizures or freeze of assets, epidemic or pandemic, delays or refusals to grant export or import licenses or the suspension or revocation thereof, or any other acts or omissions of government, fires, floods, severe weather, or any other acts of God, quarantines, labor strikes or lockouts, riots, insurrection, civil disobedience or acts of criminals or terrorists, war, material shortages or delays in delivery by third parties and, in the event of such delay the date of delivery shall be extended for a period of time as may be reasonably necessary to compensate for any such delay. The parties acknowledge that the payment of money is not an action for which such force majeure events shall hinder performance, Customer shall not have a right to delay or suspend performance due to such causes of force majeure. Customer shall be bound to accept the products when available.

11. **GOVERNMENTAL AUTHORIZATIONS:** Unless specified otherwise in the Quotation, Customer shall be the importer or exporter of record and, at Customer's sole cost and expense, shall be responsible for timely obtaining any required governmental authorization such as an import license, export license, exchange permit or any other required governmental authorization.

12. **AUTHORITY:** Anyone signing for Customer represents that she or he is employed by Customer in the capacity indicated and is unequivocally authorized to bind Customer to this Contract.

13. **GOVERNING LAW AND JURISDICTION:** This dispute shall be governed by the laws of the State of Ohio, irrespective of the principles of the conflicts of laws. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Contract shall be initiated only in state or federal courts located in Summit County, Ohio. The parties consent to such jurisdiction and waive any argument that another forum would be more convenient.

**Effective June 26, 2020**