

STANDARD TERMS AND CONDITIONS

FIRST IN CUT WIRE SHOT

ISO 9001: 2000 Certified

1. **GENERAL** – All sales of Pellets LLC (hereinafter called Seller) of abrasive materials are subject to the following terms and conditions.
2. **WARRANTY** – Seller warrants that the abrasive materials meet Seller's standard specifications or such other specifications as may have been expressly agreed to in writing. SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTY. BUYER ASSUMES ALL RISK AND LIABILITY RESULTING FROM USE OF THE ABRASIVE MATERIALS HEREUNDER, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS.
3. **PATENTS** – Seller certifies that the products delivered hereunder do not infringe the claims of any United States patent covering the products themselves, but does not certify against infringement by reason of the use thereof in combination with any products or in the operation of any process.
4. **FAIR LABOR STANDARDS ACT** – Seller certifies that the abrasive materials produced by Pellets LLC delivered hereunder were performed in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.
5. **LIMITATION ON CLAIMS** – No claim of any kind, whether as to products delivered or for non-delivery and whether or not based on negligence or breach of warranty, shall be greater in amount than the purchase price of the products in respect of which damages are claimed. Failure to give notice of claim within ninety (90) days from date of delivery, or the date fixed for delivery (in the case of non-delivery), shall constitute a waiver by Buyer of all claims in respect of such products. No charge or expense incident to any claims will be allowed unless approved in writing by an authorized representative of Seller. Returns shall not be made to Seller without Seller's prior written permission, and then only in the manner prescribed by Seller. The remedy hereby provided shall be the exclusive and sole remedy of Buyer, and in no event shall Seller be liable for special, indirect or consequential damages.
6. **EXCUSABLE DELAYS** – No liability shall result from delay in performance or non-performance directly or indirectly caused by circumstances beyond the control of the party affected, including but not limited to, Act of God, fire, explosion, war, flood, act of or authorized by any Government, accident, labor trouble or shortage, inability to obtain material, equipment or transportation, or any other cause or causes whatsoever beyond Seller's control. Quantities so affected may be eliminated from the agreement without liability but the agreement shall remain otherwise unaffected. Seller shall have no obligation to purchase materials to enable it to perform this agreement.
7. **TAXES AND OTHER CHARGES** – The Buyer shall reimburse the Seller for all sales or use taxes, excises or other charges which the Seller may be required to pay to any Government (National, State or Local) upon the sale, production or transportation of the abrasive materials sold hereunder.
8. **TERMINATION OR SUSPENSION** - If this agreement is suspended or terminated for any reason, Buyer will take delivery of and make payment for such abrasive materials which have been purchased or produced on the date notice of suspension or termination is received by Seller. Buyer shall be responsible for and make payment for the cost of the materials and supplies. It is further agreed that if Buyer for any reason cannot accept delivery of such materials he will make payment therefore as though delivery had been made and Seller will store such materials for Buyer's account at Buyer's expense.
9. **PAYMENT** – Payment is due at 63 Industrial Drive, North Tonawanda, New York 14120 within thirty (30) days after shipment. All invoices shall be payable in United States funds. Payments not made within thirty (30) days after shipment shall bear interest at the rate of one and a quarter percent (1 ¼ %) per month. If Buyer defaults in any payment when due, Seller retains the right to require full or partial payment in advance, or at its option, and without prejudice to any of its other rights, it may defer delivery or cancel Buyer's order. Buyer shall pay all costs incurred by Seller including attorney's fees, in the collection of any amounts Buyer owes Seller. If shipments are delayed by Buyer, payments shall become due on the date when Seller is prepared to make shipment. Unless otherwise agreed to by Seller in writing.
10. **SHIPMENT** – All shipments shall be made collect from Seller's shipping point and delivery to a carrier shall constitute delivery to Buyer. All risk of loss or damage in transit shall be borne by Buyer. Seller shall have the right to ship at one time or in lots from time to time. If more than one shipment is made, each may be separately invoiced.
11. **UNABLE TO SUPPLY** – If for any reason Seller is unable to supply the materials specified herein, Seller may distribute its available capacity among any or all purchasers, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.
12. **GOVERNMENT ACTION** – If any Government action should place or continue limitations on the price provided for in this agreement such that it would be illegal or against public or Government policy for Seller to charge, assess or receive full amount of or to increase such prices as determined by this agreement, then Seller shall have the option (1) to continue to perform under this agreement subject to such adjustment that Seller may deem necessary to comply with such Government actions, (2) to revise this agreement to Buyer's approval in order to most nearly accomplish the original intent of this agreement, or (3) to terminate performance of the affected portions of the agreement without liability for any damages.
13. **TECHNICAL ASSISTANCE** – Any technical information or assistance provided by Seller shall be gratis. SELLER MAKES NO WARRANTIES WITH RESPECT TO SUCH INFORMATION OR ASSISTANCE AND BUYER ASSUMES SOLE RESPONSIBILITY FOR RESULTS OBTAINED IN RELIANCE THEREON.
14. **INFORMATION** – Buyer acknowledges that it has received and is familiar with Seller's labeling and literature concerning the abrasive materials sold hereunder and will forward such information to its employees who have need for such information and subsequent customers, if any.
15. **TOOLING** – Title to and possession of all machinery, parts, tooling, racking, etc. required or used by Seller in the performance of this contract shall forever remain with the Seller, regardless of whether Buyer paid Seller for "special Tooling," "Partial Tooling Charge", or any other reimbursement or charge for such machinery, tooling, etc., either separately stated or included in a unit or piece price on quotation or invoice.
16. **CLERICAL ERROR** – Seller reserves the right to correct clerical errors at any time.
17. **ASSIGNMENT** – This agreement is not assignable or transferable by either party, in whole or in part, except with the prior written consent of the other party.
18. **APPLICABLE LAW** – This contract and these provisions and terms shall be governed by and construed according to the laws of the State of New York. Any suit or other action brought respecting these terms and conditions shall be brought in the Supreme Court of the State of New York in the Eighth Judicial District. Buyer hereby consents to the jurisdiction of such court and waives the right to bring any action in any other forum.
19. **WHOLE AGREEMENT** – This document contains all of the terms and conditions with respect to the sale and purchase of the abrasive materials sold hereunder. These terms and conditions supercede any of previous date and no modification thereof shall be binding on Seller unless separately contracted in writing and agreed to by a duly authorized representative of Seller. NO MODIFICATION SHALL BE EFFECTED BY THE ACKNOWLEDGMENT OR ACCEPTANCE OR PURCHASE ORDER FORMS STIPULATING DIFFERENT CONDITIONS. Unless Buyer shall notify Seller in writing to the contrary as soon as practicable after receipt of this document by Buyer, acceptance of the terms and conditions hereof by Buyer shall be indicated and, in the absence of such notification, the Buyer's acceptance of the materials shall be equivalent to Buyer's assent to the terms and conditions hereof. Waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of any default by the other which may thereafter occur.