



TERMS AND CONDITIONS OF SALE

Effective Date: November 18, 2020

1. **Applicability; Acceptance.**

- a. These terms and conditions (these "Terms") are the only terms which govern the sale of the product ("Product") by Aristech Surfaces LLC ("ASLLC") to its customer ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Product covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- b. The acknowledgment issued by ASLLC (the "Acknowledgment") and these Terms comprise the entire agreement between the parties as to the transaction contemplated in the Acknowledgment, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms and the Acknowledgment prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and does not serve to modify or amend these Terms or the Acknowledgment. Buyer's acceptance of Product, in whole or in part, or any other assent by Buyer to these Terms shall constitute an agreement to comply with these Terms.

2. **Quantity and Price; Taxes.** Buyer shall buy the Product from ASLLC at the prices and in the quantities set forth in the Acknowledgment. All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes. The prices quoted are subject to change by ASLLC without notice. Revised prices will apply to shipments made on and after the effective date of a price change.

3. **Payment Terms.** Buyer shall pay all invoiced amounts due to ASLLC as designated on the Acknowledgment. Each delivery is subject to credit arrangements or to cash receipt. If Buyer fails to make a payment, or if at any time in ASLLC's judgment Buyer's credit standing has been impaired, ASLLC may withhold delivery of Product ordered until satisfactory cash or credit arrangements have been established. Buyer shall pay interest on all late payments at 3.5% per month or the highest rate permissible under applicable law, compounded daily, whichever is less. Buyer shall reimburse ASLLC for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees and expert witnesses' fees.

4. **Delivery; Shipment.** Unless otherwise agreed to by the parties in writing, ASLLC shall deliver the Product using ASLLC's standard methods for packaging and shipping such goods. If extra shipping costs are incurred at Buyer's request, Buyer shall reimburse ASLLC for such shipping costs. Shipping quantities may vary by $\pm 10\%$ on ASLLC's custom items.

5. **Delivery Terms; Title and Risk of Loss.** Except as otherwise agreed to by the parties in writing, delivery shall be made FOB origin and title and risk of loss shall pass to Buyer upon ASLLC delivering the Product to the carrier at the shipping point.

6. **Export Laws.** All international sales of Product are conditioned upon compliance with all applicable United States export control laws, rules and regulations, as they may be amended and supplemented from time to time (each, an "Export Law" and collectively, the "Export Laws"). If any sale of Product requires a license, permit or other approval under any Export Law, ASLLC may decline to fill the order for the Product if Buyer cannot procure a required license, permit or other approval under any Export Law. Buyer shall not make any disposition of any Product by way of transshipment, re-export, diversion

or otherwise, other than in and to the ultimate end user and country of destination specified on Buyer's order or declared as the ultimate end user and country of ultimate destination on ASLLC's invoices, except as any applicable Export Laws may expressly permit. Buyer shall not distribute or resell any Product to or within any country or to any individual, government authority or other entity that is presently or at any time in the future subject to sanctions of the United States government.

- 7. Import/Customs Laws.** For international sales, Buyer shall be responsible for timely obtaining and maintaining any required import license, permit or approval necessary to import any Product into Buyer's country and any other required governmental authorization ("Import Approval") and the payment of any required fees, duties, customs charges, taxes, tariffs, levies or other charges necessary to import the Product into Buyer's country. ASLLC shall not be liable if any Import Approval is delayed, denied, revoked, restricted or not renewed, and Buyer shall not be relieved thereby of its obligations to pay ASLLC for the Product.
- 8. Compliance with Local Laws.** ASLLC is not responsible to the Buyer for compliance with any laws, regulations, standards or standards applicable to the Buyer or the delivery, use, handling, labeling, transportation or disposal of the Product in Buyer's country. Buyer warrants that it will comply with all laws, regulations, standards and requirements that are applicable to the import and use of the Product in Buyer's country.
- 9. Order Cancellations.** A custom order cannot be canceled once acknowledged by ASLLC. If Buyer cancels a stock order less than 24 hours prior to the scheduled shipping, Buyer shall pay ASLLC within 5 business days a restocking fee equal to 20% of the original purchase price.
- 10. Inspection; Rejection; Returns.** Buyer shall inspect the Product upon receipt. Buyer will be deemed to have accepted the Product unless it notifies ASLLC in writing of any nonconforming Product within 60 days after receipt of such Product and furnishes such written evidence or other documentation as required by ASLLC. If Buyer timely notifies ASLLC of any nonconforming Product, ASLLC shall, in its sole discretion, (a) replace such nonconforming Product with conforming Product, or (b) credit or refund the price for such nonconforming Product. Buyer may not return any Product that conforms to specification unless: (i) ASLLC has authorized the return in writing, (ii) the Product is unused, undamaged and has been stored properly, (iii) the Product is returned with all freight prepaid by Buyer, and (iv) Buyer pays a restocking fee of 20% of the original purchase price.
- 11. Representations and Warranties.** Buyer represents, warrants, and covenants that: (a) Buyer is solvent, that it pays its obligations as they come due, and that the fair market value of its assets exceeds its disputed and undisputed liabilities; and that (b) it is and shall continue to be in compliance with all applicable laws related to these Terms and the operation of its business and it has obtained and maintain all licenses, authorizations, approvals, consents, or permits required by applicable law.
- 12. Separate Sale.** Each Product delivery shall stand as a separate sale and irregularity of any delivery shall not invalidate an order as to the remaining installments.
- 13. Insurance.** Buyer shall, at its own expense, maintain and carry insurance in effect with financially sound and reputable insurers of the type and in such amounts as adequate for all risks in accordance with sound and prudent business practices.
- 14. Force Majeure.** ASLLC will be excused from its obligations to the extent that performance is delayed or prevented by any circumstances beyond its reasonable control, including, but not limited to, floods, wars, fires, explosions, epidemics, pandemics, sabotages, accidents, mechanical breakdowns, strikes or other labor disputes, plant shutdowns, inability to obtain materials, interference with the usual means of transporting Product, or compliance with any law, regulation, or request of any government authority (each, a "Force Majeure Event"). The occurrence of a Force Majeure Event shall act to suspend ASLLC's obligation to perform and either party may cancel its obligations to the other that are subject to the delay. However, a Force Majeure Event shall not suspend Buyer's obligations to pay for Product received.

- 15. Allocation.** If due to a Force Majeure Event or any other cause, ASLLC is unable to produce sufficient product to meet its internal needs and the requirements of its customers, ASLLC shall be permitted, without liability to Buyer, to allocate its product (including any Product) in a manner it deems to be fair and reasonable considering ASLLC's internal needs, ASLLC's regular customers, and ASLLC's other contractual obligations.
- 16. Limited Warranty.** ASLLC warrants to Buyer the following: (a) the Product will conform to ASLLC's specifications, (b) ASLLC shall convey to Buyer good title to the Product, and (c) the Product shall comply with the product-specific warranties as published by ASLLC at time of purchase, as applicable. Any claim involving product specifications is waived unless made within 60 days from the date of invoice. **EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, ASLLC MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**
- 17. Technical Advice.** Any advice given by ASLLC related to the selection or use of its products is based upon tests or data believed to be reliable. **ASLLC MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE RESULTS TO BE OBTAINED BY BUYER OR THE SUITABILITY OF ASLLC PRODUCTS FOR BUYER'S APPLICATION.** Buyer is solely responsible and assumes all risk and liability that may result from the selection or use of any product whether used singly or in combination with other products.
- 18. LIMITATION OF LIABILITY. ASLLC SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR ANTICIPATED PROFITS, REGARDLESS OF THE FORM OF ACTION. ASLLC'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION IN CONNECTION WITH THESE TERMS, WHETHER BASED IN NEGLIGENCE, STRICT LIABILITY, TORT, BREACH OF CONTRACT OR WARRANTY, IS LIMITED, AT ASLLC'S SOLE DISCRETION, TO A MAXIMUM OF THE PURCHASE PRICE OF THE PRODUCT SHIPPED OR REPLACEMENT OF PRODUCT SHIPPED NOT CONFORMING TO SPECIFICATIONS.**
- 19. Remedies.** Buyer acknowledges that any breach of these Terms will cause irreparable harm and injury to ASLLC for which money damages would be an inadequate remedy and that, in addition to remedies at law, ASLLC is entitled to equitable relief as a remedy for any breach. Buyer waives any claim or defense that ASLLC has an adequate remedy at law in any proceeding. Nothing in these Terms shall limit the equitable or available remedies at law.
- 20. Confidential Information.** Unless otherwise agreed to by the parties in writing, neither party may disclose to a third party any non-public, confidential, and proprietary information, disclosed by one party to the other party, in oral, visual, written, electronic, or other tangible or intangible form, whether or not marked, designated, or identified as "confidential," other than as required for a party to fulfill its obligations under these Terms. This nondisclosure obligation shall survive the termination, expiration, or cancellation of these Terms.
- 21. Patents and Trademarks.** Buyer shall indemnify, defend, and hold ASLLC harmless against any expense, loss, or damage resulting from alleged or actual infringement of patents, trademarks, or any other intellectual property right of a third party arising from ASLLC compliance with any designs, specifications, or other instructions of Buyer.
- 22. Amendment.** These Terms may only be amended, modified, waived, or supplemented by an agreement in writing signed by both parties.
- 23. Waiver.** No waiver by either party of any of the provisions of these Terms is effective unless explicitly stated in writing and signed by the waiving party. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from these Terms operates, or may be construed, as a waiver. No single or partial exercise of any right, remedy, power, or privilege under these Terms precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

- 24. Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under these Terms without ASLLC's prior written consent. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under these Terms.
- 25. Severability.** If any Section of these Terms is invalid, illegal, or unenforceable, that Section is severed from these Terms and the remaining Sections in these Terms remain in effect.
- 26. Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms.
- 27. Governing Law; Jurisdiction.** The laws of the Commonwealth of Kentucky (without giving effect to its conflict of law principles) govern all matters arising under and relating to the transaction governed by these Terms. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms. Any legal proceeding relating to these Terms must be instituted in the federal or state courts located in Boone County, Kentucky. Each party irrevocably submits to the exclusive jurisdiction of those courts. Nothing in these Terms precludes ASLLC from enforcing in any jurisdiction any judgment, order, or award obtained in any such court.

