Montana Advanced Composites

MONTANA ADVANCED COMPOSITES
STANDARD TERMS AND CONDITIONS OF SALE

1. ENTIRE AGREEMENT– CUSTOMER's Credit Application, MONTANA ADVANCED COMPOSITES's Acknowledgment, Shipping Documents and Purchase Orders together with the terms and conditions set forth herein constitute the entire agreement between the parties for sale of the goods. No change, addition to, or waiver of the terms, conditions, and specifications contained herein shall be binding on MONTANA ADVANCED COMPOSITES unless approved in writing by MONTANA ADVANCED COMPOSITES's authorized representative.

2. INCONSISTENCIES – If there is any inconsistency between the terms described in (a) CUSTOMER'S Credit Application; (b) MONTANA ADVANCED COMPOSITES's Acknowledgment, Shipping Documents, and Purchase Orders, and (b) the terms and conditions described in this document, this document shall be controlling and supersede any inconsistent language herein. If CUSTOMER and MONTANA ADVANCED COMPOSITES have a negotiated supply agreement the specific terms of that supply agreement will be controlling and supersede any inconsistent language herein. CUSTOMER agrees to accept any quantities shipped under this acknowledgment which does not vary by more than ten percent from the agreement amount and to pay for such quantities at the agreement price.

3. SHIPMENTS DELIVERY DATES - MONTANA ADVANCED COMPOSITES shall not be liable for damages caused by delays in shipment or delivery resulting from circumstances MONTANA ADVANCED COMPOSITES has no reason to expect, or control over.

4. TITLE AND RISK OF LOSS – Title to and risk of loss of the goods herein described shall pass to CUSTOMER upon delivery of said goods to carrier at MONTANA ADVANCED COMPOSITES's plant. Title to and risk of loss of said goods shall pass to CUSTOMER in no other way, despite agreement by MONTANA ADVANCED COMPOSITES to pay freight, express, or other transportation or insurance charges, or other facts which might imply some other arrangement regarding transfer of title or risk of loss.

5. PAYMENT AND PRICES – MONTANA ADVANCED COMPOSITES may, at its option, require full or part payment in advance before producing goods for, or delivering goods to, CUSTOMER or require CUSTOMER to obtain an irrevocable letter of credit in favor of MONTANA ADVANCED COMPOSITES from an issuer acceptable to MONTANA ADVANCED COMPOSITES. In the event MONTANA ADVANCED COMPOSITES does not require cash in advance or require a letter of credit, payment by CUSTOMER shall become due as stated on the face of this acknowledgement after receipt of MONTANA ADVANCED COMPOSITES's invoice covering shipment of the goods or any portion of the goods. Terms of payment by CUSTOMER, as hereinabove set forth, are of the essence of this agreement, and in the event of failure by CUSTOMER to make any payment when due, MONTANA ADVANCED COMPOSITES may decline to make further shipments until such default is cured. In the alternative, MONTANA ADVANCED COMPOSITES may elect to continue to make shipments despite the continuance of such default, but such election by MONTANA ADVANCED COMPOSITES shall in no way constitute a waiver of such default nor affect MONTANA ADVANCED COMPOSITES's legal remedies therefore. Prices are in U.S. Dollars and are firm. Late payments will be subject to a 1-1/2 percent finance charge per month on the unpaid balance from date due until paid in full. CUSTOMER will pay all costs associated with collection, including attorney fees.

6. TAXES, TARIFFS, DUTIES AND CLEARANCE EXPENSES – CUSTOMER assumes full responsibility, including reporting and payment of all taxes, tariffs, duties and clearance expenses, or other governmental charges arising out of, levied or based upon, or in connection with the sale or shipment of the goods herein described, including, but not limited to, state and local privilege, sales and use, or excise taxes based on gross revenue or any taxes or amounts in lieu thereof paid or payable by MONTANA ADVANCED COMPOSITES in respect to this transaction exclusive, however, of taxes paid on net income. MONTANA ADVANCED COMPOSITES's invoice may include any such taxes and any expense incurred by MONTANA ADVANCED COMPOSITES in shipping the goods to the destination specified by CUSTOMER.

7. FREIGHT AND INSURANCE – In the event MONTANA ADVANCED COMPOSITES is to pay freight, MONTANA ADVANCED COMPOSITES shall have the right initially to designate the means of transportation and routing, but in the event CUSTOMER desires a different means of transportation or routing, CUSTOMER shall pay any extra cost involved. CUSTOMER shall pay to MONTANA ADVANCED COMPOSITES any increase in freight charges or shipment of the goods imposed subsequent to the date hereof. CUSTOMER or CUSTOMER's customer shall insure the goods described herein (if sold for shipment outside the United States) on behalf of MONTANA ADVANCED COMPOSITES until arrival of such goods at the port-destination, and MONTANA ADVANCED COMPOSITES shall be named as a loss payee or the proceeds of such insurance shall be assigned to MONTANA ADVANCED COMPOSITES.

8. **LIMITATION OF WARRANTIES – Montana Advanced Composites warrants that its goods will be free from defects in material or workmanship. MONTANA ADVANCED COMPOSITES MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.**

9. **LIMITATION OF LIABILITY AND REMEDIES – Customer's remedy against MONTANA ADVANCED COMPOSITES for any alleged breach or defect is limited to repair or replacement of the purchased goods or a refund of its purchase price, as determined by MONTANA ADVANCED COMPOSITES in its sole discretion. MONTANA ADVANCED COMPOSITES shall not be liable for lost profits or any special, indirect, direct, consequential or punitive damages. Nor shall recovery of any kind against MONTANA ADVANCED COMPOSITES be greater in amount than the purchase price of the specific goods sold and causing the alleged damage. Customer assumes all risk and liability for loss, damage, or injury to persons or property of CUSTOMER or those purchasing the goods through CUSTOMER or others arising out of the use of possession of the goods herein described.**

10. CLAIMS – Within twenty (20) days after delivery of the goods to CUSTOMER and before any part of such goods (except for reasonable test and inspection quantities) has been changed from its original condition, CUSTOMER shall inform MONTANA ADVANCED COMPOSITES in writing if said goods are found defective or short in any respect. Failure to so inform MONTANA ADVANCED COMPOSITES or use of said goods (except for reasonable test and inspection quantities) shall be conclusive that MONTANA ADVANCED COMPOSITES has satisfactorily performed. Goods are only to be returned to MONTANA ADVANCED COMPOSITES with its approval. Cost of shipping defective goods not approved for return will be borne by CUSTOMER.

11. PATENT OR TRADEMEARK INFRINGMENT – If the goods herein described are to be manufactured by MONTANA ADVANCED COMPOSITES based on specifications, drawings or materials furnished by CUSTOMER, CUSTOMER agrees to indemnify and hold harmless MONTANA ADVANCED COMPOSITES, its successors and assigns, against any and all loss, damage, or injury arising out of a claim or suit for alleged infringement of any letters patent or trademark granted by the United States or any foreign government relating to the goods herein described. CUSTOMER agrees that in such event it will assume the defense of any and all such suits and pay all costs and expenses incidental thereto. Patents and Trademarks owned by MONTANA ADVANCED COMPOSITES are the exclusive property of MONTANA ADVANCED COMPOSITES and no license is granted in conjunction with this agreement.

12. CUSTOMER SUPPLIED MATERIALS: When MONTANA ADVANCED COMPOSITES is to produce goods utilizing CUSTOMER supplied materials, CUSTOMER warrants that all goods comply with the specifications agreed upon by the CUSTOMER and MONTANA ADVANCED COMPOSITES in writing. Furthermore, the CUSTOMER agrees to have materials fully available to MONTANA ADVANCED COMPOSITES 48 hours before production is scheduled to begin and a commercially reasonable allowance for startup and production yield loss is to be included.

13. TERMINATION – this agreement may be terminated under either of the following conditions:

(a) If the goods herein described are to be used in the performance of a U.S. Government contract or subcontract, and the U.S. Government terminates for convenience the prime contract in whole or in part, CUSTOMER may terminate this agreement in the same proportions, and the liability of CUSTOMER for termination allowance shall be determined in accordance with sections of the Federal Acquisition Regulations or the equivalent then applicable to termination of contracts, such termination allowance in this instance to be paid to MONTANA ADVANCED COMPOSITES within thirty (30) days of such termination by CUSTOMER.

(b) MONTANA ADVANCED COMPOSITES may terminate this agreement if CUSTOMER becomes unable or unwilling to meet its obligations as they mature, or if any proceeding under bankruptcy or insolvency laws is brought by or against

CUSTOMER, or if a receiver for CUSTOMER is appointed or applied for, or if any assignment for the benefit of creditors is made by CUSTOMER, or if CUSTOMER's financial condition reasonably leads MONTANA ADVANCED COMPOSITES to believe that CUSTOMER will be unable to pay for the goods when due, and CUSTOMER is unable or unwilling to promptly provide MONTANA ADVANCED COMPOSITES with any necessary assurances or guarantees that the goods will be paid when due.

14. FORCE MAJEURE – Neither party to this agreement shall be liable for any loss or damage of any nature whatsoever incurred or suffered as a result of any failure or delays in performance due to any cause or circumstance beyond its control, including but not by way of limitation, any failures or delays in performance caused by any strikes, lockouts, or labor disputes, fires, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, compliance with the laws of the United States of America or with the orders of policies of any governmental authority, delays in transit or delivery on the part of transportation companies or communication facilities, or failure of course of raw materials. In such event, MONTANA ADVANCED COMPOSITES may, at its option, make deliveries ratably with reference to itself and all its customers. But CUSTOMER's lack of financial ability to pay for the goods shall never excuse CUSTOMER's performance of its obligations.

15. **Governing Law, Venue and Assignments**: This Agreement and the obligations hereby imposed on NOPRLEX ADVANCED COMPOSITES and CUSTOMER be governed by the substantive laws of the State of Montana, other than its choice of law rules. Any claim relating to this Agreement must be brought in Gallatin County, Montana state court or in the U.S. District Court for the District of Montana, Butte Division. This Agreement shall not be assigned by either Party without the other party's prior written consent, which consent will not be unreasonably withheld, except that this Agreement may be assigned without such consent to the successor of either party, or to a person, firm or corporation acquiring all or substantially all of the business and assets of either.

16. **WAIVER OF A JURY TRIAL: EACH PARTY HEREBY KNOWINGLY, WILLINGLY, AND INTENTIONALLY WAIVES ITS RIGHT TO DEMAND A JURY TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT OR THE RELATIONSHIP CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.**

17. NO INDUCEMENT - MONTANA ADVANCED COMPOSITES and CUSTOMER acknowledge that there has not been and will not be any payment, gift, compensation, commitment, or other form of inducement offered or provided to anyone, other than as specifically described herein, to submit, permit, promote, accept or obtain this order.

18. COMPLIANCE WITH LAWS – The parties agree that the goods purchased pursuant to this acknowledgment shall be produced, stored, shipped, received and used without violation of any applicable foreign or domestic treaty, law, order, regulation, code or ordinance properly imposed upon the parties or this transaction.

19. RAW MATERIAL CHANGES. Unless otherwise expressly agreed in writing by MONTANA ADVANCED COMPOSITES, MONTANA ADVANCED COMPOSITES is free to change raw materials used in producing goods for CUSTOMER without notice to, or consent from, CUSTOMER, so long as the goods produced by MONTANA ADVANCED COMPOSITES conform to any agreed upon specifications.