



## **Terms and Conditions of Sale (Domestic Sales)**

### **North America**

*AmeriTi Manufacturing, LLC; 19300 Filer Ave, Detroit, Michigan, 48234*  
*CASL Surface Technologies Corp.; 1604 10 Street, Nisku, Alberta T9E0A7*  
*Corrosion and Abrasions Solutions USA, LLC; 21430 Springbridge Drive, Houston, TX 77073*  
*Ecka Granules of America, LLC; 500 Prosperity Drive, Orangeburg, SC 29115*  
*Reading Alloys, LLC; 220 Old West Penn Ave. Robeson, PA 19551*  
*Royal Metal Powders, LLC; 457 Continental Drive, Maryville, TN 37804*  
*SCM Metal Products, LLC; 2601 Weck Dr, RTP, NC 27709*  
*Telex Metals, LLC; 105 Phyllis Ave, Croydon, PA 19021*  
*Thermal Spray Solutions, LLC; 1105 International Plaza, Chesapeake, VA 233323*

**These terms and conditions of sale apply to all sales made by or on behalf of each applicable above-listed affiliated company of Kymera International, LLC (as applicable, "Seller") for goods that are not exported outside of the country of manufacture by Seller. As set forth herein, acceptance of any sale from Seller by a purchasing party ("Buyer") is expressly conditioned upon the Buyer's acceptance of these terms and conditions.**

1. **PRICES; TAXES.** The prices and charges stated on the Invoice shall be adjusted to the goods, and other items covered by this order shall be invoiced at the prices and charges fixed by Seller at the time of and for each shipment under this order, including Taxes that became effective after the date of the Invoice. All Taxes, other than sales and use Taxes set forth on a purchase order, shall be borne by Buyer, regardless of whether or not such Taxes were effective at the time of order or if they became effective prior to performance by Seller. For purposes of these terms and conditions, "Taxes" includes all tariffs, value added taxes, levies, import or export duties, imposts, ad valorem assessments, fees, and other governmental charges of any nature (including interest, penalties or additions thereto due to non or underpayment) imposed by any national, supranational, regional or local governmental authority, whether direct or indirect, and whether or not disputed.

2. **PAYMENT.** Invoices submitted by Seller under this order are payable only in funds which are accepted at par in New York, New York. Whenever reasonable grounds for insecurity arise with respect to due performance by Buyer, Seller may demand different terms of payment from those specified on the face of this order and may demand assurance of Buyer's due performance. Any such demand may be oral or in writing and Seller may, upon making of such demand, stop production and suspend shipments hereunder, if within the period stated in such demand Buyer fails or refused to agree to such different terms of payment or fails or refuses to give adequate assurance of due performance. Seller may, at its option, treat such failure or refusal as a repudiation of the portion of this order which has not been fully performed or may resume production and may make shipment under reservation of possession or of a security interest and may demand payment against lender of documents of title.



3. DELAYS. If a specific shipping date (excluding an estimated date) is not designated on the face hereof or in a subsequent writing signed by Seller, Seller shall not be responsible for any delays in filling this order nor liable for any loss or damages resulting from such delays. If a specific shipping date is designated either on the face hereof or subsequently by Seller, Seller shall not be liable for any delays in filling this order caused by (a) accidents to machinery, indifferences with workmen, strikes, labor shortages, fires, floods, priorities required or requested by the Federal or any State government or any subdivision or agency thereof or granted for the benefit, directly or indirectly of any of them, delays in transportation or lack of transportation facilities, restrictions imposed by Federal or State legislation or rules or regulations thereunder, or (b) any cause beyond the control of Seller, including as set forth in SECTION 6 (Force Majeure) hereof.

4. EQUIPMENT. Any equipment (including jigs, dies and tools, but excluding patterns for sand castings) which Seller constructs or acquires for use exclusively in the production of goods for Buyer shall be and remain Seller's property and in Seller's possession and control, and any charges by Seller therefore shall be for the use of such equipment only. All such equipment will be used exclusively for the manufacture of goods for Buyer. When for three (3) consecutive years no orders acceptable to Seller are received from Buyer for goods to be made with any such equipment, Seller may make such use or disposition thereof as Seller desires without liability to Buyer.

5. REPRESENTATIONS AND WARRANTIES; DISCLAIMER. Seller warrants that the goods to be supplied hereunder will conform to the description on the face hereof; that it will convey good title thereto that such goods will be delivered free from any lawful security interest or other lien or encumbrance unknown to Buyer, and that for a period of six (6) months such goods will be free from defect in material and workmanship. SELLER MAKES NO WARRANTY THAT THE GOODS SHALL BE MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE; SELLER MAKES NO WARRANTY EXPRESS OR IMPLIED, EXCEPT SUCH AS IS EXPRESSLY SET FORTH HEREIN. Seller shall not be liable for any incidental or consequential damages for any breach of warranty. Buyer agrees to examine and test the materials sold hereunder promptly after receipt and before materials are used and to notify Seller within fifteen (15) calendar days after receipt of the material in writing in case the materials are found to be defective or short in any respect. Failure to so notify Seller shall constitute a waiver of all claims with respect to the material and in any event the use of the materials shall be deemed to mean that the Seller has satisfactorily performed. Seller's liability and Buyer's exclusive remedy being expressly limited to Seller's choice of (a) the repair of defective goods, (b) the replacement thereof with conforming goods at the FOB point shown on the face hereof, and (c) the repayment of the purchase price. Replacement of defective goods or repayment of the purchase price therefore will be made only upon return of the defective goods which may be returned at the cost Seller, only after inspection by Seller, and receipt by Buyer of definite shipping instructions from Seller.



6. **FORCE MAJEURE.** Seller shall not be liable for any failure to deliver or for any delay in delivering said material when any such failure or delay shall be caused directly or indirectly by fires, floods, accidents, explosions, sabotage, strikes or other disturbances (regardless of the reasonableness of the demands of labor), civil commotions, riots, invasions, wars (present or future), acts, restraints, requisitions, regulations or directions of Government, voluntary or mandatory compliance with any request of the United States Government, or any officer, department, agency or committee thereof for purposes of national defense, voluntary or mandatory compliance with any request for materials represented to be for purposes of (directly or indirectly) producing articles for national defense or completing national defense facilities, shortages of any labor, fuel, power, or raw materials, inability to obtain supplies, failures of normal sources of supplies, inability to obtain or delays or transportation facilities, any act of God or any cause (whether similar or dissimilar to the foregoing) beyond the reasonable control of Seller and/or Seller's normal sources of supply of any materials purchased for resale hereunder, affecting the production and/or delivery of any materials covered hereby shall be limited. Seller shall have the right (without liability) to prorate its available supply or its own manufacturing requirements and the requirements of all of its customers (including Buyer) in such manner as Seller deems equitable. If any such disability shall delay any shipment hereunder for more than ninety (90) days, such shipment may be cancelled (without liability) at Seller's option.

7. **PATENTS.** Buyer agrees, for the goods delivered under this order, to indemnify Seller, its successors and assigns, against all judgments, decrees and costs resulting from infringement of any United States Patent to the extent that such infringement arises from designs, specifications or instructions furnished or expressly or implicitly required by Buyer and different from the matters embraced by (a) and (b) of the preceding sentence. Neither party shall be entitled to indemnification under this clause as to any claim of infringement concerning which it does not give to the other party prompt notice in writing upon learning thereof and full opportunity, at the expense of such other party, to defend and dispose of such claim of infringement. The sale of the goods covered by this order shall not grant to Buyer any right or license of any kind under any patent owned or controlled by Seller or under which Seller is licensed, but the foregoing shall not be understood to limit in any way the right of Buyer to use and sell such goods, in the event that such goods are sold hereunder are covered by any such patent.

8. **RETURNED GOODS.** No goods may be returned without Seller's prior written authorization. If authorization is granted, goods returned within ninety (90) days from date of shipment for reasons other than our error, and in the original manufactured condition, will result in a full credit less a handling charge.

9. **FAIR LABOR STANDARDS ACT.** Seller warrants that all goods and services furnished hereunder have been produced in full compliance with all applicable laws and regulations,



including the applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended and of regulations and orders of the U.S. Department of Labor issued under section 14 thereof. Seller shall also be in compliance with applicable requirements of Executive Order 11141 and 11246, as well as the Rehabilitation Act of 1973, as amended.

10. **SUBSIDIARIES AND AFFILIATES.** This order may be performed and all rights hereunder against Buyer may be enforced by Seller or by any one or more of the legal entities subsidiary to or affiliated with Seller or in part by Seller and in part by one or more of said subsidiary or affiliated legal entity.

11. **SELLER CANCELLATION FOR IMPOSSIBILITY.** If for any reason beyond Seller's control it shall become impossible for Seller to ship in the usual manner any order received from Buyer (within sixty (60) days after the expiration of the stipulated shipping time), Seller reserves the right to cancel such order without liability to Buyer.

12. **WAIVER.** No provision hereof and no breach of any provision shall be deemed waived by reason of any previous waiver of such provision or of any breach thereof.

13. **WEIGHT.** Seller's weights when determined at shipping point shall govern and be considered accurate if within 1% of specified weights.

14. **PASSAGE OF TITLE: RISK OF LOSS INSURANCE.** Title to the goods shall pass to the Buyer and the Buyer shall assume all risks of loss or damage to the goods from all causes upon delivery of the goods to the Buyer's F.O.B. point of shipment. Buyer shall have the duty to maintain insurance on the goods against such risks from the time title passes until payment of the full purchase price hereunder.

15. **TITLE RETENTION; SECURITY INTEREST.** If this Agreement provides for installment payments, the Buyer conveys and grants to the Seller a purchase money security interest in the goods to secure the payment of the principal, interest and all obligations of the Buyer to the Seller, as set forth in this Agreement. The Buyer authorizes the Seller to sign and file appropriate financing statements.

16. **INDEMNITY.** Buyer shall release, hold harmless, indemnify and defend Seller from and against any loss, liability, claims, suits and costs caused by, arising out of, or relating to the design of goods supplied hereunder or the design of the packages or containers in which they are shipped, if such goods, packages or containers are made in compliance with Buyer's design or specification.

17. **CHOICE OF LAW; JURISDICTION.** Any controversy or claim arising out of or relating to this Order shall be governed by the laws of Delaware and shall be determined by a court of competent jurisdiction located therein.



18. SELLER ACCEPTANCE CONDITIONED UPON TERMS. By accepting the order, Buyer waives all terms contained in its quotation, acknowledgment, invoice, or other documents, including without limitation electronic mail or other written communications, which are different from or additional to those contained herein, and all such different or additional terms and conditions are hereby rejected and shall be null and void. No modification of these terms will be effective unless in writing and signed by both the Buyer and Seller. Neither course of performance, course of dealing, or usage of trade may be used to vary the terms of any agreement. If the order follows a prior offer by Buyer, the order shall not constitute an acceptance of Buyer's offer, and any acceptance of Buyer's offer is limited to the express terms in the order or in these terms.