



Terms and Conditions of Sale

1. Entire Agreement – The provisions contained in this document comprise the complete terms and conditions of the final contract between Super Conductor Materials, Inc. [hereinafter referred to as SCM] and the Purchaser with respect to the products and/or services sold by SCM to the Purchaser.
 - a. Any prior oral or written representations shall be of no force and effect, unless written approval is given by SCM on the order confirmation.
 - b. Any additional terms set forth on any other document or form of the Purchaser, including purchase order forms, shall be considered to be material alterations of this contract and are expressly rejected unless written approval is given by SCM.
 - c. None of the terms or conditions contained herein may be added to, modified, superseded or otherwise altered, except in writing and signed by a duly authorized representative of SCM.
2. Confidentiality –
 - a. Because the process of information may be proprietary, and the free exchange of information may be the only route to a solution, SCM routinely enters into non-disclosure agreements to protect proprietary process information.
 - b. Purchaser agrees that all pricing, discounts and technical information that SCM provides are the confidential and proprietary information of SCM.
 - c. Purchaser also agrees to keep such information confidential and not disclose such information to any third party.
 - d. The Purchaser will use such information solely for Purchaser's internal purposes and in connection with the products supplied by SCM.
 - e. Nothing herein will restrict the use of information available to the general public.
3. Price Confidentiality – The Purchaser agrees to keep the payment terms and purchase price confidential. The Purchaser shall not disclose the purchase price to any third party without the prior written consent of SCM.
4. Guarantee – SCM warrants that at the time of delivery, the products sold to the Purchaser will comply with the applicable purchase order, drawings and other specifications by the Purchaser.
 - a. Should there be no specifications, SCM shall abide by its own specifications and will not be held responsible should there be a discrepancy after delivery.
 - b. Material may be subject to prior sale.
5. Order Status – Once the order is placed, SCM will send an Order Confirmation within three (3) business days.
 - a. Purchaser shall review this confirmation carefully, as SCM will process the order as stated in the confirmation.
 - b. Purchaser shall notify SCM with regards to any changes in a reasonable amount of time.
6. Estimated Ship Dates – All Quotations and Order Confirmations state estimated ship dates. These dates are the best SCM can provide, prior to manufacturing the order. Should there be any delay once production has started, SCM will notify the Purchaser.
 - a. Only when deemed unreasonably late, under no account will late delivery be accepted as justification for canceling an order nor shall it be justification by the Purchaser to claim for liquidated damages or otherwise, unless this has been previously negotiated and agreed to by both the Purchaser and SCM.
7. Frustration –
 - a. If an entire order, or any part of an order, becomes impossible to perform, SCM shall be entitled to a fair and reasonable proportion of the price in respect of the material used and work done up to that date.
 - b. Also for this purpose, any money previously paid by the Purchaser shall be retained by SCM and shall be applied against the Purchaser's account as a Credit.
 - c. SCM may also dispose the product as it may deem fit.
8. Changes –
 - a. Changes to purchase orders are subject to approval by SCM.



- b. The Purchaser may request changes to the design of products that have been ordered, where the products to be furnished by SCM are to be specifically manufactured for the Purchaser.
 - c. If any such change causes an increase in cost of and/or in the time required for SCM's performance hereunder, and/or if such change results in the rework, an equitable adjustment shall be made.
9. Cancellations – Orders may be canceled on the condition that the Purchaser shall be liable to, and pay, SCM for reasonable cancellation charges which shall include, among other things,
 - a. Charges for completed work allocated to the purchaser's order at the time of termination of work,
 - b. The unit selling price
 - c. All costs, direct or indirect, for work in progress
 - d. All costs resulting from the cancellation and costs allowed by law for profit.
10. Packaging –
 - a. Packaging is included in the quoted price, unless stated otherwise.
 - b. While every care is taken in the packaging process, SCM does not accept any responsibility for damage to the package or products during transit. SCM urges that all packages received as damaged be brought to the attention of the freight carrier prior to contacting SCM.
11. Inspection and Acceptance – Purchaser shall promptly inspect and accept any and all products at the time of receipt. Should there be any package damages, SCM should be contacted only after the freight carrier has been notified.
 - a. In the event that the products do not conform to any applicable specifications, the Purchaser shall promptly notify SCM of such non-conformance, within three (3) business days after Purchaser receives the product.
 - b. SCM shall have a reasonable opportunity to repair or replace the product.
 - c. Purchaser shall be deemed to have accepted any products delivered and to have waived any such non-conformance in the event such notification is not received by SCM within three (3) business days after purchaser receives the product.
 - d. In the case where damaged products are to be returned to SCM, they must be returned in their original packaging.
12. Invalid Reasons for Returns – SCM shall not be liable under its guarantee if the product has been exposed or subjected to any
 - a. Maintenance, repair, installation, handling, packaging, transportation, storage, operation or use which is improper or otherwise not in compliance with SCM's instruction or not foreseen in the associated product's specifications.
 - b. Alteration, modification, or repair by anyone other than SCM
 - c. Accident, contamination, foreign object damage, abuse, neglect, or negligence after delivery or shipment to Purchaser
 - d. Damage caused by failure of an SCM supplied product that was not under SCM's guarantee or by any other hardware or software not supplied by SCM
 - e. Use of counterfeit or replacement parts that are neither manufactured or approved by SCM for use in or with SCM's manufactured products
13. Invalid Return Consequence – If SCM reasonably determines, after analysis of the returned product, that a nonconformance does not exist, then the Purchaser will pay all expenses related to the improper return including, but not limited to, analysis and shipping charges, if any.
14. Force Majeure – Dates indicated for delivery or other performance represent SCM's best estimate.
 - a. SCM shall not be liable for any loss, damage, or consequential damages due to any delay in or failure of performance or failure to give notice of any delay due to unforeseen circumstances, including, but not limited to, fire, flood, accident, riot, war, terrorism, governmental interference, rationing, epidemic, quarantine restriction, strikes, acts of God, acts of the Purchaser, interruption of



- transportation, interruption of supplies, equipment breakdown, inability to obtain necessary labor or raw materials, whatever the reason may be for said inability or delay.
- b. The delivery schedule shall be considered extended by a period of time equal to the time lost because of any delay which is excusable under this clause.
 - c. In the event SCM is unable, wholly or partially, to perform because of any cause beyond its control, SCM may terminate this order without any further liability to the purchaser.
 - d. As used, “performance” shall include, without limitation, fabrication, shipment, delivery, assembly, installation, testing and warranty repair or replacement, as applicable.
 - e. SCM may allocate production and deliveries among SCM’s own customers.
 - f. SCM may also modify the specifications of products designed by SCM provided that the specifications will not materially degrade the performance of the product.
15. U.S. Export Restrictions – Purchaser acknowledges that each product and any related technology, including technical information supplied by SCM or contained in documents, is subject to export controls of the U.S. government.
- a. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the “EAR”), which may restrict or require licenses for the export of products from the United States and their re-export from other countries.
 - b. The Purchaser shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any product.
 - c. The Purchaser will cooperate fully with SCM in any official or unofficial audit or inspection related to applicable export or import control laws or regulations.
 - d. The Purchaser will indemnify and hold SCM harmless from, or in connection with, any violation of U.S. export laws by the Purchaser or its employees, consultants, agents, or customers including but not limited to the inability to obtain the appropriate and required licenses.
16. Material Safety Data Sheets - All information provided in Material Safety Data Sheet(s) is accurate to the best of our knowledge.
- a. However, since data, safety standards, and government regulations are subject to change, all personnel who will handle the product(s) should use this information only as a supplement to other information gathered by them and should make independent decisions of the correctness of this information to ensure proper use and protect their health and safety.
 - b. Users should ensure themselves that they have all current data relevant to their particular use and environment.
 - c. All products should be used solely by technically qualified individuals and/or those who accept full responsibility.
 - d. Because conditions, handling, environment standards, misuse of, or use of the product(s) not in conformance with the Material Safety Data Sheet or in combination with any other product or process are beyond our control, SCM makes no warranty, either expressed or implied, with respect to the completeness or ongoing accuracy of the information provided and therefore, disclaims all liability for reliance thereon.
17. Payment Terms – The price of all products is F.O.B SCM’s facility unless otherwise agreed to in writing by SCM. Payment terms will be stated on all invoices.
18. Precious Metals – Let it be noted that precious metal prices may fluctuate.
- a. Should the Purchaser request a quotation for separate fabrication and metal prices, the metal price shall be invoiced based on the agreed value as stated in the Quotation, on the date of shipment.
 - b. All invoices for precious metals shall be due within 10 days of the date of invoice, unless otherwise specified in writing.
 - c. A 3% Precious Metal Handling Fee may be applied to precious metal orders if deemed appropriate during the manufacturing stage.



19. Taxes - Super Conductor Materials, Inc. is authorized to collect sales tax from Purchasers in California, New York and New Jersey. Should the order call for a collection of sales tax, that amount will be noted on the final invoice.
 - a. Should the Purchaser claim that the order is for resale, an official Resale Certificate is required and shall be given to SCM.
 - b. Should the Purchaser claim that the order is tax exempt, an official Tax Exempt Certificate is required and shall be given to SCM.
 - c. If no certificate is provided, sales tax will be charged for all companies in New York, New Jersey and California.
20. Credit Approval –
 - a. All shipments are subject to the approval of SCM's Accounts Department.
 - i. If this approval is not obtained, SCM shall have the right to stop work at any reasonable time and withhold deliveries of any and all products and/or services.
 - ii. Should the order have been processed, SCM shall have a right to collect a portion of the selling price representing hours and material in process and any costs associated with the law.
21. Payment Methods –
 - a. SCM accepts checks, Electronic Funds Transfers (EFT), Wire Transfers (W/T), VISA and MasterCard. At this time, we do not accept American Express or Discover.
 - b. Cash on Delivery (COD) will only occur when deemed necessary by SCM only.
22. Payment Fees – The following fees may be applied with the respective payment method:
 - a. Should a credit card be declined, purchaser will be charged a 5% Finance Charge of the total invoice amount.
 - b. For all Bank Transfers, should there be a bank fee, SCM requires that the Purchaser pay those Bank Fees separately from the amount that will be transferred to SCM. Should the Bank Fee be taken out of the total due to SCM, SCM shall have the right to deem the invoice open and pursue payment.
23. Making Payments – All payments shall be made in accordance with the written terms of these Terms and Conditions of Sale. All payments shall be made in U.S. dollars and will be rendered according to the Terms stated on the final invoice.
24. Late Payment Finance Charge – In the event payments are not received on time, SCM has the right to add a 1.5% Finance Charge to all overdue invoices. This charge shall be applied to the total amount of each invoice in the appropriate time allotted for payment of each invoice.
25. Default by Purchaser – In the event the purchaser should fail to pay for any product or service in accordance with the terms of this contract, be in default at any time in respect to any of the terms of this contract, or become insolvent, SCM may elect not to make any further shipments, stop any shipments in transit, stop further performance under this contract and/or may consider the contract breached by the purchaser. In such event, SCM shall be entitled to immediate payment of any unpaid balance in full.
26. Further Late Payment Consequences – In the case where payments are not made in a timely manner, SCM may also apply the following conditions to the purchasers accounts:
 - a. Withhold performance including, but not limited to, future shipments until all delinquent amounts and late fees in any, are paid.
 - b. Repossess the products for which payment has not been made
 - c. Delivery future shipments on Cash-on-Delivery terms or on a prepaid basis
 - d. Recover all costs of collection including, without limitations, reasonable attorney's fees
 - e. Combine any of the above rights and remedies as may be permitted by applicable law.