

HITCO CARBON COMPOSITES, INC.
Attachment B
Fixed Price Terms and Conditions for Government Contracting

- A. DEFINITIONS:** As used throughout this Attachment the following definitions apply unless otherwise specifically stated.
1. "Buyer" means **HITCO CARBON COMPOSITES, INC.**
 2. "Seller" or "Supplier" means the legal entity herein entering into This Order with Buyer;
 3. "FAR" means the Federal Acquisition Regulation (CFR Title 48, Chapter 1), 1993 issue as amended;
 4. "DFARS" means the Department of Defense FAR Supplement (CFR Title 48, Chapter 2), 1991 issue as amended;
 5. In FAR and DFARS clauses incorporated herein, unless the context of a clause requires otherwise, "Government" means Buyer, "Contracting Officer" means Buyer's Purchasing Representative or his authorized designee, "Contractor" means Seller, and the revision date of each clause shall be the same as contained in the Prime Contract; and
 6. "Prime Contract" means the Government contract or subcontract under a prime contract identified in This Order and under which This Order was issued.

- B. CERTIFICATIONS AND REPRESENTATIONS:** Before commencement of any work under This Order, Seller shall execute and return to Buyer the following Certifications and Representations:

1. Certification of Business Size and Status

2. Orders over \$10,000

Walsh-Healey Public Contracts Act Representation (Attachment B-1)

3. Orders over \$25,000

Debarred or Suspended Contractor Certification (Attachment B-2)

4. Orders over \$100,000

Disclosure of Lobbying Activities, SFLLL (Attachment B-6)
Clean Air and Water Certification (Attachment B-4)

5. Orders over \$500,000

- a. Cost Accounting Standards Notices and Certification (Attachment B-3)
- b. Special Provisions: Subcontracting Plan and Certification of Compliance (Attachment B-5)

Seller's failure to execute and return to Buyer required Certificate of Compliance shall be considered a material breach of this contract and, therefore, may result in This Order being terminated for default.

- C. ANNUAL CERTIFICATIONS:** Before commencement of any work hereunder and on an annual basis thereafter as long as the Seller is continuing its performance hereunder, the Seller shall execute and submit to the Buyer the "Supplier's Annual Certificate of Compliance" in which the Seller certifies that it is in compliance with the Executive Orders, Laws and Regulations, as amended, related to:

1. Equal Employment Opportunity;
2. Special Disabled and Vietnam Era Veterans;
3. Employment of the Handicapped;
4. Small Business Concerns, Small Disadvantaged Business Concerns, and Small Women-Owned Business Concerns;
5. Kickbacks;
6. Drug-Free Workplace;
7. Principles of Business Conduct for Government Contracting
8. National Labor Relations Act (NRLA)

Seller's failure to execute and return to Buyer said Certificate of Compliance shall be considered a material breach of this contract and, therefore, may result in This Order being terminated for default.

D. FAR AND DFARS CLAUSES and Executive Orders: The following FAR and DFARS clauses and Executive Orders, as modified herein, are incorporated by reference and made a part hereof. They have the same force and effect as if they were included in full text.

1. All Orders:

<u>FAR</u>	<u>CONTENTS</u>
52.202-1	Definitions: with clause paragraph (b) deleted.
52.203-1	Officials Not to Benefit
52.203-3	Gratuities
52.203-5	Covenant Against Contingent Fees
52.203-6	Restrictions on Subcontractor Sales to the Government
52.203-7	Anti-Kickback Procedures
52.204-2	Security Requirements: The Government may act through the Buyer with respect to this clause. The last phrase of clause paragraph (c) is modified by inserting "by the Buyer" after "directed", and the words, "but excluding any reference to the Changes clause of this Contract" as appearing in paragraph (d) are deleted. Seller acknowledges access to and compliance with the Defense Industrial Security Manual for Safeguarding Classified Information and its revisions
52.208-1	Required Source for Jewels Bearings and Related Items
52.210-5	New Material
52.210-7	Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property
52.212-8	Defense Priority and Allocation Requirements: Applies to DO and DX rated orders only
52.212-13	Stop-Work Order
52.212-15	Government Delay of Work
52.222-1	Notice to the Government of Labor Dispute
52.222-4	Contract Work Hours and Safety Standards Act--Overtime Compensation General: Include clause paragraphs (a) through (d) only; Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liability of Seller or its subcontractors under this clause.
52.222-26	Equal Opportunity
52.223-3	Hazardous Material Identification and Material Safety Data
52.224-1	Privacy Act Notification
52.224-2	Privacy Act
52.225-3	Buy American Act Supplies
52.225-11	Restrictions on Certain Foreign Purchases
52.227-10	Filing of Patent Applications--Classified Subject Matter
52.227-13	Patent Rights--Acquisition by the Government
52.229-3	Federal, State and Local Taxes
52.243-7	Notification of Changes
52.245-2	Government Property
52.245-14	Use of Government Facilities
52.245-17	Special Tooling: As modified in Paragraph J.
52.245-18	Special Test Equipment: As modified in Paragraph K.
52.249-1	Termination For Convenience of the Government (Fixed Price) Short Form
<u>DFARS</u>	<u>CONTENTS</u>
252.225-7001	Buy American Act and Balance of Payments Program
252.225-7002	Qualifying Country Sources as Subcontractors
252.225-7008	Suppliers to be Accorded Duty Free Entry
252.225-7009	Duty Free Entry--Qualifying Country End Products and Supplies
252.227-7013	Rights and Technical Data and Computer Software
252.227-7018	Restrictive Markings on Technical Data
252.227-7019	Identification of Restricted Rights Computer Software
252.227-7027	Deferred Ordering of Technical Data or Computer Software
252.227-7029	Identification of Technical Data
252.227-7030	Technical Data--Withholding of Payment
252.228-7005	Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch

Vehicles

252.231-7000 Supplemental Cost Principles

252.243-7001 Pricing of Contract Modifications

2. All Orders Over \$2,500

FAR

CONTENTS

52.222-36 Affirmative Action for Handicapped Workers

3. All Orders Over \$10,000

FAR

CONTENTS

52.222-20 Walsh-Healey Public Contracts Act
52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans
52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era

Executive Order

Executive Order 13496 Notice of Employee Rights under National Labor Relations Act (NLRA) and Federal Law

4. All Orders Over \$25,000

FAR

CONTENTS

52.203-10 Remedies for Illegal or Improper Activity
52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters: Complete and return Attachment B-2
52.209-6 Protecting the Government's Interest When Subcontracting With Contractors' Debarred, Suspended or Proposed for Debarment.
52.215.1 Examination of Records by Comptroller General: Applies if This Order is a first tier subcontract in excess of \$25,000, to provide the Comptroller all the access and rights therein specified to be applicable to first tier subcontracts.
52.215-2 Audit-Negotiation
52.215-26 Integrity of Unit Prices
52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
52.219-13 Utilization of Women-Owned Small Business
52.220-3 Utilization of Labor Surplus Area Concerns
52.223-6 Drug Free Workplace
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement
52.229-3 Federal State and Local Taxes
52.229-4 Federal State and Local Taxes (Noncompetitive Contract)
52.232-17 Interest
52.244-5 Competition in Subcontracting
52.246-2 Inspection of Supplies--Fixed-Price: "Government" means Buyer, except that the first time it appears in the first sentence of paragraph (b) and in the fourth sentence of paragraph(b) it means Buyer and Government, and the first time it appears in paragraph (k) it means Buyer or Government. The provisions of this clause for access rights to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.

DFARS

CONTENTS

252.203-7001 Special Prohibition on Employment
252.225-7012 Preference for Certain Domestic Commodities
252.225-7014 Preference for Domestic Specialty Metals (Alt1)
252.227-7031 Data Requirements

5. All Orders Over \$100,000

FAR

CONTENTS

52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
52.203-12	Limitations on Payments to Influence Certain Federal Transactions
52.223-2	Clean Air and Water
52.248-1	Value Engineering: As modified by paragraph (h) herein
52.249-2	Termination for convenience of the Government (Fixed-Price): With paragraph (c) deleted the time period in paragraph (d) changed from 1 year to 3 months; and the time period in paragraph (k) changed from 90 days to 30 days.

DFARS

CONTENTS

252.203-7000	Statutory Prohibition on Compensation to Former Department of Defense Employees
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6. All Orders Over \$500,000

FAR

CONTENTS

52.214-27	Price Reduction for Defective Cost or Pricing Data - Modifications - Sealed Bidding
52.214-28	Subcontractor Cost or Pricing Data - Modifications - Sealed Bidding
52.215-22	Price Reduction for Defective Cost or Pricing Data (See Par. F)
52.215-23	Price Reduction for Defective Cost or Pricing Data - Modifications
52.215-24	Subcontractor Cost or Pricing Data
52.215-25	Subcontractor Cost or Pricing Data - Modifications
52.219-9	Small Business and Small Disadvantaged Business Subcontracting Plan
52.220-4	Labor Surplus Area Subcontracting Program
52.230-1	Cost Accounting Standards, Notices and Certification (See Par. G)
52.244-1	Subcontracts (Fixed Price Contracts)

DFARS

CONTENTS

252.215-7000	Pricing Adjustments
252.219-7003	Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts)
252.249-7001	Notification of Substantial Impact on Employment
252.249-7002	Notification of Proposed Program Termination or Reduction

7. All Orders Over \$1,000,000

FAR

CONTENTS

52.222-24	Preaward On-Site Equal Opportunity Compliance Review
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DFARS

252.222-7999	Restrictions on the Use of Mandatory Arbitration Agreements
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E. DISPUTES: Any dispute arising between the Buyer and Seller in connection with This Order shall be resolved in accordance with the following

1. Any dispute arising under This Order which is not settled by agreement or pursuant to the following paragraphs of this clause, may be settled by appropriate legal proceedings. Notwithstanding any other provisions herein, any decision of the Contracting Officer under the Prime Contract which binds the Buyer shall also bind Seller to the extent that it relates to This Order, provided Buyer shall have notified Seller promptly of such decision, and if requested by Seller, shall have appealed the decision in accordance with the Disputes clause of the Prime Contract and taken any further action as may be required under this clause. Certification of Seller's claim by Buyer pursuant to the Prime Contract's Disputes clause shall occur only after the execution of a hold harmless agreement by Seller.
2. Any decision on appeal, or any other decision of the government under the Prime Contract which cannot be appealed under the Disputes clause of the Prime Contract, if binding on Buyer, shall also bind Seller to the extent that it relates to This Order, provided Buyer shall have promptly notified Seller of such decision and, if requested by Seller, shall

- have brought suit or filed a claim, as appropriate, against the Government. A final judgment in any such suit or final disposition of such claim shall be conclusive upon Buyer and Seller.
3. If any appeal, suit, or claim is prosecuted by Buyer under this clause, Seller shall be permitted at Seller's expense, to participate fully in such prosecution for the purpose of protecting Seller's interest. If requested by Buyer, Seller shall prosecute any appeal, suit, or claim initiated by Buyer at Seller's request. Each party shall cooperate fully in assisting the other party in such proceedings. Buyer agrees that after Seller has commenced to participate in any claim or proceeding against the Government pursuant to this clause, Buyer will not enter into a settlement agreement with the Government or take any other action which would prejudice Seller's rights in such claim or proceeding without Seller's consent.
 4. During pendency of any dispute, decision, appeal, suit, or claim covered by the clause, Seller shall proceed diligently with performance. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal, suit, or claim initiated by Buyer solely at Seller's request shall be paid by Seller; otherwise each party shall bear its allocable share of the expense. The rights and obligations of Buyer and Seller under this clause shall survive completion of, and final payment under, This Order.

F. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA: If Buyer requires Seller to execute and furnish a "Certificate of Current Cost or Pricing Data" as set forth in FAR 15.804-4, the following shall apply:

If the Contracting Officer of the Government Prime Contract determines that any price, including profit or fee, negotiated in connection with the Government's Prime Contract with Buyer, or that any cost reimbursable under such Government Prime Contractor any change or modification thereto was increased by any significant sums because Subcontractor or any of his lower-tier subcontractors furnished any data which was not accurate as submitted or any cost or pricing data which was not current, accurate and complete as required by Buyer or certified to by Subcontractor or his lower-tier subcontractors, Seller agrees to indemnify the Buyer in the amount that any cost or price is reduced to Buyer and further agrees that the price or cost of this subcontract shall be reduced accordingly and the subcontract shall be modified in writing as may be necessary to reflect such reduction. Seller will be responsible for any fines or penalties assessed against buyer as a result of such cost or pricing data.

G. APPLICATION OF COST ACCOUNTING STANDARDS CLAUSES:

NOTE: Small Business Concerns are exempt from this Par. G requirement.

1. **FAR.203-2 - Cost Accounting Standards:** This clause, as modified herein, shall apply when Seller has certified in the "Cost Accounting Standards Notices and Certifications" (Attachment B-3) to the applicability of the requirements of the Cost Account Standards board (CASB):
 - a. in paragraphs (a) (4)(ii) and (a)(5) "United States" and "Government" means Buyer.
 - b. replace paragraph (b) with the following: "If there is any reduction in the price or amount of the Buyer's Prime Contract because of application of the provisions of the Cost Accounting Standards clause to Seller or Seller's subcontractors, then the price or amount of This Order shall be correspondingly reduced (excluding any Buyer profit and G&A) and credit taken or repayment made as appropriate. Buyer's right to adjustment under this clause shall not be deemed to mature until the corresponding adjustment in Buyer's contract has become final (or accepted as final by Buyer). The amount of adjustment in This Order under this clause shall be subject to the Clauses entitled "DISPUTES" in Buyer's standard Terms and Conditions and Par. E above.
2. **FAR 52.230-3 - Disclosure and Consistency of Cost Accounting Practices:** This clause, as modified herein, shall apply when Seller has certified in the "Cost Accounting Standards Notices and Certifications" (Attachment B-3) to its claim of exemption from the requirements of the Cost Accounting Standards Board (CASB) and to its eligibility for modified coverage:
 - a. Seller shall communicate and otherwise deal directly with their Administrative Contracting Officer to the extent practicable and permissible as to all matters related to Cost Accounting Standards; and
 - b. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer respecting this clause, provided Seller shall not be required to disclose to Buyer such communications containing information that is privileged and confidential to Seller.
3. **FAR 52.230-5 - Administration of Cost Accounting Standards:** This clause, as modified herein, shall apply whenever FAR 52.230-2 or Far 52.230-3 is applicable:
 - a. in paragraph (a) the "cognizant Contracting Officer" is the government Administrative Contracting Officer having cognizance of Seller's organization;
 - b. replace paragraph (b) with the following: "If there is any reduction in the price or amount of the Prime Contract because of application of the provisions of the cost Accounting Standards clause to Seller or Seller's subcontractors, then the price or amount of This Order shall be correspondingly reduced (excluding any Buyer profit and G&A) and credit taken or repayment made as appropriate. Buyer's right to adjustment under this clause shall not be

deemed to mature until the corresponding adjustment in Buyer's contract has become final (or accepted as final by Buyer). The amount of adjustment in This Order under this clause shall be subject to the Clauses entitled DISPUTES in Buyer's standard Terms and Conditions.

H. VALUE ENGINEERING: This clause, Value Engineering, FAR 52.248-1, as modified herein, applies only if it is specifically identified on the face of This Order and This Order is over \$100,000:

1. VECPs submitted by Seller shall be submitted to Buyer's Purchasing Representative, not to the PCO or ACO;
2. Buyer's Purchasing Representative has the unilateral right to process Seller's VECP, in whole, in part, or not at all, to the Contracting Officer and this right is not subject to challenge by Seller;
3. If the decision of Buyer's Purchasing Representative is to process Seller's VECP to the PCO/ACO, Buyer will make the submission to the PCO/ACO, identifying the Seller's role and including additional information appropriate to submission

from a prime contractor, and, with respect to processing the VECP, Seller agrees to cooperate with any reasonable and necessary request of the Buyer and without expense to Buyer;

4. With respect to a submitted VECP, whatever decisions are made by the Contracting Officer which are binding on Buyer are, to the same extent, binding on Seller; and
5. Buyer and Seller shall negotiate in the light of then existing circumstances the share or reward, if any, to which Seller shall be entitled for any savings under This Order resulting from the VECP, provided; however, Buyer shall not be responsible to Seller for any cost, expense, share, reward, or contractual adjustment unless and until Buyer's receipt of same from the Government. Buyer shall not be responsible for paying Seller any amount related to concurrent, future, or collateral savings and shall have no obligations whatsoever to Seller other than responsibilities and obligations related to the quantity of items in This Order, as set forth in this clause. Seller shall have no claim against Buyer based on Buyer's failure, and Buyer has no obligation to Seller, to comply with Government record-keeping and other requirements related to future contract or other savings which are not savings under This Order. Seller is cautioned against risking expenditures for VECP effort; however, if Seller persuades Buyer in preliminary discussions that a potential VECP holds significant promise, Buyer will at Seller's request, seek to arrange discussions with the PCO in which Seller may participate.

I. BUYER AND GOVERNMENT FURNISHED PROPERTY: Title to, and the right of immediate possession of, all tooling and material furnished by Buyer to Seller shall remain in Buyer, provided, however, that title to such tooling and material which is identified as property of the Government shall remain in the Government. Buyer does not guarantee the quality or suitability of such tooling or material. If This Order specifies that the price includes jigs, dies, fixtures, tools, patterns, drawings, specifications or other special equipment and manufacturing aids used in the manufacture of the articles, such items shall become the property of Buyer or its customer immediately upon their acquisition by Seller. Such items and any similar items furnished to Seller by Buyer are hereinafter referred to as "special equipment." Special equipment shall be kept in good condition and repair and from time to time replaced by Seller without expense to Buyer, except that the cost of changes due to Buyer's change of design or specifications shall be paid by Buyer if such changes are made prior to the exhaustion of the useful life thereof. Special equipment shall not, except with the written consent of Buyer, be used in the production, manufacturing or design of any articles other than those called for by This Order. Seller shall maintain adequate property control records and shall not make any disposition of special equipment except as directed by Buyer in writing. Notwithstanding the foregoing, upon written notice to Buyer and to the extent such use will not interfere with Seller's performance of This Order or other orders from Buyer which are in effect at the time Seller enters into a direct contract with the United States Government, Seller shall have the right to use special equipment in the manufacture of end items for direct sale to the United States Government to the extent the Government has the right under its Prime Contract with Buyer to authorize such use by Seller, provided that, to the extent practicable, Seller prominently identifies such end items as being manufactured by Seller for direct sale to the United States Government. The clause, Government Property, FAR 52.245-2 shall apply.

J. SPECIAL TOOLING: The clause, Special Tooling, FAR 52.245-17, applies if This Order provides for delivery of Special Tooling, as defined in FAR 52.245-17, or if performance requires the use of such Special Tooling, the cost of which is, or is intended by Seller to be, included in the price of This Order. Such Special Tooling may be, or may become, the property of the Government; otherwise, of the Buyer. If such Special Tooling is not identified by type, kind, or number, or is not specifically described in This Order, Seller will furnish Buyer in writing, promptly after receipt of This Order, a description of the Special Tooling that Seller proposes to make or otherwise acquire and the portion of This Order price allocable thereto. Unless Buyer thereafter advises Seller in writing that the Special Tooling is to be Buyer property or unless the Schedule of This Order so provides, it will be treated in This Order as Government Special Tooling and FAR 52.245-17 will be applied as follows:

1. Communications from Seller to Contracting Officer will be through Buyer unless Buyer requests otherwise, and the Contracting Officer may also communicate to Seller through Buyer; and

2. Adjustments in the price of This Order provided for in the clause will be made only to the extent the Government acts through Buyer and correspondingly adjusts the Prime Contract.
3. Acceptability of Special Tooling will be determined by Buyer. One or more samples of each part to be manufactured from such tooling shall, if Buyer requests, be fabricated from the tooling and submitted to Buyer for tryout inspection in sufficient time to permit correction of tooling defects and to meet delivery dates in This Order. Seller's certified tryout inspection reports shall in any event be submitted to Buyer prior to acceptance of the tooling. Costs incurred by Seller in fabricating defective samples and in correcting tooling faults are included in the price of This order.
4. Payment under This Order on account of Special Tooling shall be contingent upon Seller's furnishing Buyer satisfactory evidence that the tooling:
 - a. has been fabricated according to Buyer's specifications, if any; or
 - b. is capable of producing acceptable parts.
5. Whether the tooling is or is not to become the property of Buyer or the Government, except when different arrangements are made between Seller and the Contracting Officer as to Government tooling; Seller bears risk of loss or damage to the tooling until delivered to Buyer; and at Buyer's request, Seller shall either:
 - a. deliver the tooling to Buyer F.O.B. rail car or truck at Seller's plant, protected, packed, and marked in accordance with requirements of carrier selected by Buyer; or
 - b. deliver same to Buyer at any location designated by Buyer, subject to Buyer paying Seller the transportation cost (at prevailing rates) of delivering the tooling to such location.
6. Any Special Tooling used by Seller in performance of This Order which belongs to the Government or to which the Government has the right to take title shall, at no increase in the price of This Order, be established in Seller's property accounts and be identified in accordance with FAR 45.504-4 and 45.506. Seller shall, within the price of This Order, keep any Buyer or Government Special Tooling utilized by Seller in performance of This Order in good condition and capable of producing acceptable parts. Buyer has the right to enter Seller's premises at reasonable times to inspect such tooling and Seller's control records pertaining thereto.

K. SPECIAL TEST EQUIPMENT: The clause, Special Test Equipment, Far 52.245-18 applies if This Order provides for delivery of Special Test Equipment (STE), as defined in FAR 52.245-18, or if performance requires the use of such STE, the cost of which is, or is intended by Seller to be, included in the price of This Order. Such STE may be, or may become, the property of the Government; otherwise, of the Buyer. If such STE is not identified by type, kind, or number, or is not specifically described in This Order, Seller will furnish Buyer in writing, promptly after receipt of This Order, a description of the STE that Seller proposes to make or otherwise acquire and the portion of This Order price allocable thereto. Unless Buyer thereafter advises Seller in writing that the STE is to be Buyer property or unless the Schedule of This Order so provides, it will be treated in This Order as Government STE and FAR 52.2 45-18, will be applied as follows:

1. In clause paragraph (b) "at Government expense" is deleted;
2. Communications with the Government from Seller pursuant to the FAR clause shall be through Buyer;
3. Seller shall give Buyer 45 days advance written notice of intent to fabricate or acquire STE (see Far clause paragraph (b));
4. STE furnished by the Government to Seller shall be considered to be furnished through Buyer to Seller and is subject to clause "BUYER AND GOVERNMENT FURNISHED PROPERTY", herein, instead of a Government Property clause;
5. Equitable adjustment of This Order when STE is furnished by the Government shall correspond to and be no more favorable to Seller than the related equitable adjustment in the Prime Contract is to Buyer. If the Government will not agree to an adjustment in Buyer's Prime Contract which is adequate to include an adjustment acceptable to Seller, Seller will be invited to participate in the negotiation with the Government when feasible;
6. Any STE used in the performance of This Order which belongs to the Government or to which the Government has the right to take title shall at no increase in the price of This Order, be established in Seller's property accounts and identified in accordance with FAR 45.505-4; and;
7. The Buyer or the Government shall have access at reasonable times to Seller's plant to inspect STE to which the Government holds title and Seller's records pertaining thereto.

L. PENALTY FOR FALSE STATEMENTS: Title 18, Section 1001, of the United States Code provides as follows:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

