

**GEAR MANUFACTURING INC (GMI)
STANDARD TERMS AND CONDITIONS OF SALE**

- 1) Quotations are open for acceptance sixty (60) days from issuance. After sixty days, prices and terms are subject to change without notice.
- 2) Acceptance of Orders. GMI acknowledgments shall operate as an acceptance by Gear Manufacturing Inc. (the "Seller") of Buyer's purchase order, but such acceptance is made expressly conditioned on assent by Buyer to the terms and conditions included in this acknowledgment (also referred to as the "Agreement"). If the terms and conditions of this acknowledgement differ in any way from the terms and conditions of Purchaser's order, this acknowledgement shall be construed as a counter-offer and shall not be effective as an acceptance of such order unless Purchaser assents to the terms and conditions contained herein, which shall constitute the entire agreement between the parties. The failure of Purchaser to object thereto in writing within ten (10) days from the date of receipt hereof shall constitute assent thereto. No additions to or modifications of any of the terms and conditions hereof shall be effective unless made in writing and signed by both parties.
- 3) Price. Buyer shall pay to Seller all fees, duties, licenses, and all sales, use, privilege, occupation, excise or other taxes (federal, state, local or foreign) which Seller is required to pay or collect in connection with furnishing goods to Buyer.
- 4) Freight. Buyer is responsible for all freight charges based on freight rates in effect at the time of shipment.
- 5) Payment. Accounts will be due and payable within thirty (30) days of invoice. Accounts not paid according to due date, which run into the succeeding month(s) will be subject to a service charge of 1% per month until paid. The 1% service charge will be added on the last day of the month following the date of invoice and monthly thereafter until the account is paid. If this account is given to a Collection Agency or an Attorney for collection, purchaser agrees to pay any and all collection costs, including reasonable attorney's fees and court costs.
- 6) Delivery. The proposed shipment or delivery date is only an estimate. In no event shall seller be liable for any damages or claims for loss of use or for any other direct or consequential damages resulting from any delay in delivery regardless of the reason(s).
- 7) Suspension of Performance. If in our judgment, reasonable doubt exists as to your financial responsibility, or if you are past due in payment of any amount owing to us, we reserve the right, without liability and without prejudice to any other remedies, to suspend performance, decline to ship, to stop any material in transit, until we receive payment of all amounts owing to us, or adequate assurance of such payment whether or not due.
- 8) Inspection. Buyer shall inspect and/or test any goods sold hereunder immediately upon receipt. The failure of Buyer to give Seller written notice of any defect, rejection or claim within ten (10) days after the receipt of the goods shall be construed as an unqualified acceptance of such goods, any course of dealing between the parties to the contrary notwithstanding.
- 9) Return shipments. Return shipments must be authorized by GMI with a return authorization number in advance. Material which has been altered, assembled or processed by the buyer is not returnable.

- 10) Title and Risk of Loss. Title to the goods shall pass to Buyer upon acceptance of the goods by Buyer. Risk of loss of the goods shall pass to Buyer upon delivery of the goods to the carrier.
- 11) Force Majeure. Seller shall not be liable for any failure to perform hereunder if such failure is caused directly or indirectly, in whole or in part, by fires, floods and other acts of God; war, terrorism, or other hostilities; strikes or other labor disputes; work stoppages; accidents and casualties; inability to procure supplies, fuel and raw materials; delays in transportation; restrictions or regulations imposed by any governmental authority; quarantine or embargo; disease, illness, outbreak or plague or any other cause beyond the Seller's control, whether of the kind enumerated or otherwise.
- 12) Cancellation. Buyer cannot terminate, cancel or modify any order, in whole or in part, except with Seller's written consent and then only upon terms and conditions which shall include protection of Seller against all loss.
- 13) Disclaimer of Warranty. The seller has made no warranty that the goods covered by this contract are merchantable or fit for any particular purpose.
- 14) Limitation of Damages, Liability. In no event shall seller be liable to buyer or any third party for lost profits, indirect, special, punitive or consequential damages, or other similar damages, whether based in contract, tort (including negligence), strict liability or otherwise. Under no circumstances shall seller's liability to buyer or any third party for any claim, loss or damage whatsoever exceed the price of the specific goods which gave rise to such claim, loss or damage. If buyer supplies the parts or raw materials for improvement by seller, seller's liability in such instance shall be limited to the fees buyer pays to seller for such improvement. In no event shall seller be liable to buyer or any third party for any loss or damage to the parts or materials furnished by buyer, unless seller's recklessness or intentional misconduct causes such damage.
- 15) Indemnification. Buyer agrees to protect, defend and indemnify Seller and its officers, directors, employees, agents, subsidiaries, affiliates, successors and assigns ("Seller's Protected Group") from and against any and all causes of action, suits, losses, liabilities, claims, demands, judgments, penalties, fines, proceedings, damages (including consequential and economic), costs and expenses (including actual attorneys' fees), whether based upon contract, tort, statutory violation, strict liability or otherwise, and whether based upon bodily injury, property damage (including intellectual property) or otherwise relating to or arising out of or in any manner connected with: (a) Buyer's breach of this Agreement; (b) any defects in the goods attributable to Buyer's acts or omissions; (c) any recall claim and/or product liability claim attributable to Buyer's acts or omissions; or (d) any other act or omission of Buyer. The foregoing shall be collectively referred to as "Claims". Buyer's duty of indemnity hereunder shall extend to the acts or omissions of Buyer, its officers, directors, employees, agents and representatives which caused, in whole or in part, any such Claims. Buyer shall, at its own expense, if requested by Seller's Protected Group, defend any and all Claims which are the subject of this duty of indemnity, and Buyer shall pay all attorneys' fees, costs and other expenses arising therefrom whether defended by Buyer or Seller. Seller agrees to provide Buyer with prompt notice following receipt of notice by Seller's Protected Group of any Claims. This indemnification provision shall survive the termination of this Agreement.

- 16) **Governing Law; Venue.** This Agreement shall be construed to be executed and performed in California, and California laws shall govern its interpretation and enforcement. All litigation arising hereunder shall be commenced and prosecuted in Orange County Circuit Court located in Santa Ana, California. The parties expressly waive all right to remove any litigation to federal court and hereby expressly consent to the exclusive jurisdiction and venue of Orange County Circuit Court.
- 17) **Waiver.** No delay or failure by either party in exercising any right under this Agreement, nor any partial or single exercise of such right, shall constitute a waiver of that right or any other right.
- 18) **Remedies.** Seller's rights and remedies shall be cumulative, and Seller, in its sole discretion, may exercise any and all rights and remedies stated in this Agreement and/or otherwise available at law or in equity.
- 19) **Severability.** All of the provisions of this Agreement are separate and severable. If any provision is held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of this Agreement.
- 20) **Successors and Assigns.** Neither party shall assign this Agreement in whole or part without the prior written consent of the other party which consent shall not be unreasonably withheld; provided, however, that either party may assign this Agreement and its rights and obligations to any successor corporation resulting from a merger, consolidation or reorganization of such party. Subject to the foregoing, all of the terms, conditions, covenants, and agreements contained herein shall inure to the benefit of, and be binding upon, any such successor corporation and any permitted assignees of the respective parties hereto. It is further understood and agreed that consent by either party to such assignment in one instance shall not constitute consent by the party to any other assignment.
- 21) **Patents.** If Seller is sued for infringement for any patent claim by reason of supplying to Buyer a product which is of Buyer's origin or design, or which product is modified by Buyer in such a manner so as to cause the alleged infringement, Buyer will defend such suit at its own expense and will hold Seller harmless against damages which are assessed and indemnify Seller for any expenses and costs which it may incur as a result of such suit.
- 22) **Trademarks and Copyrights.** Buyer shall hold harmless and indemnify Seller against any claim of violation of copyright or trademark arising out of the Buyer's stamping, molding, impressing, identification or printing of any design or wording on the products supplied to Buyer hereunder.
- 23) **Product Information.** All descriptions, specifications, suggestions and data ("Product Information") supplied in connection with this Agreement are believed by Seller to be reliable, but (i) Seller shall incur no liability by reason of inaccuracies or omissions in Product Information and (ii) any Product Information outlined in this Agreement may not be construed as permission to infringe on any patent, nor may such Product Information be regarded as a warranty of non-infringement of any patent.
- 24) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and/or subsidiaries of the parties pertaining to the same subject matter hereof. There are no warranties, representations and/or agreements between the parties in connection with the subject matter hereof except as specifically set forth or referred to herein.