

FIRST GEAR, INC.
STANDARD PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS.

- a. "Seller": First Gear, Inc.
- b. "Buyer": The party contracting with the Seller for the purchase of the Goods.
- c. "Contract": The Seller's Terms and Conditions of Sale, any contract issued by the Seller (including any quotation or acknowledgement), and any technical or commercial specifications or terms and conditions expressly agreed to by the Seller in writing.
- d. "Goods": All or any part of the products, goods, work, equipment and services to be provided by the Seller under the Contract.

2. CONTRACT TERMS.

All quotations, offers and tenders are made subject to these Terms and Conditions, and "Acceptance" of the Contract shall be subject to these Terms and Conditions, which cannot be varied or waived except by express written agreement signed by an authorized person of the Seller. Any additional or different terms and conditions must be proposed by Buyer prior to Acceptance, as defined above, and expressly agreed to by the Seller in writing. Any additional and different terms and conditions not presented to the Seller prior to Acceptance by the Buyer and not specifically agreed to by the Seller in writing shall be deemed expressly rejected and shall not form part of the Contract.

3. PRICE.

The purchase price of any Goods shall be as stated on the most recent quote from the Seller to the Buyer. The prices quoted are good for acceptance within thirty (30) days. If accepted, Buyer accepts invoice price. Prices quoted are based on current market conditions and Seller reserves the right at any time to make changes prior to acceptance of an order and thereafter or to cancel the Quotation.

4. TOOLING.

Any equipment which Seller constructs or requires for use in the production of materials for Buyer shall be and remain Seller's property and in Seller's possession and control, and any charges therefor shall be for the use of such equipment, unless otherwise agreed in writing. Seller will use commercially reasonable efforts to handle and store carefully while in its possession any materials or equipment owned or furnished by Buyer, but Seller shall not be liable for damage or loss thereof. Tooling required for the manufacture of custom designs may be quoted separately as a one-time charge to Buyer. Charges will be invoiced upon completion of manufacturer of the tooling.

5. QUOTATION ERRORS.

Seller reserves the right upon written notice to correct any errors made in any Quotation before or after receipt of Buyer's conforming acceptance.

6. ACCEPTANCE.

No purchase order placed by Buyer shall be deemed accepted unless or until Seller issues a written acknowledgement.

7. TERMS OF PAYMENT.

Unless otherwise agreed in writing by Seller and Buyer, all invoices are payable within thirty (30) days of the invoice date. Where Goods are delivered by installments, Seller may invoice each installment separately and Buyer shall pay such invoices in accordance herewith. Should the Buyer's responsibility become unsatisfactory to the Seller, cash on delivery (C.O.D.) may be demanded by the Seller and in default of such cash payment, deliveries herein may be discontinued at the option of the Seller and a charge rendered covering the value of any finished or partially finished goods that are being manufactured on this order or contract. Seller retains all other remedies it may have as a result of Buyer's unsatisfactory financial responsibility.

8. TAXES.

Any Federal, State or Local (including, without limitation, sales, use, excise, duty, custom, manufacturing, receipts, gross income, occupation, value-added and similar taxes), shall be paid by the Buyer in addition to the quoted or invoiced prices.

9. INSPECTION.

All Goods which have been altered or damaged are not returnable except with Seller's prior written consent. To reject Goods on inspection as defective, Buyer must notify Seller in writing within ten (10) days from receipt of the Goods. Before allowing or rejecting a claim, Seller shall then have the option of reinspection at Buyer's facility or at its own. Defects that do not impair service shall not be a cause for rejection. Seller shall have the right to replace or credit within a reasonable time any Goods which in Seller's opinion do not conform to the order. No claim will be allowed for any Goods damaged by Buyer or damaged in transit. Expenses incurred in connection with claims for which Seller is not liable, will be charged to Buyer. Seller will not be responsible for any work done to correct errors unless such work is authorized by the written consent of Seller.

10. PACKING.

All prices listed provide for packing in accordance with the Seller's standard specifications. Returnable packaging is the responsibility of the Buyer and the Buyer shall pay the cost of new or replacement returnable packaging. Buyer shall be responsible to return the packaging to Seller at Buyer's expense. The Buyer is responsible for preservation, ongoing maintenance and cleanliness of returnable packaging.

11. DELIVERIES, RISK AND TITLE.

Delivery shall be FOB Seller's facility. Title and Risk of Loss shall pass to Buyer at the time of delivery of goods loaded at Seller's facility. All risks of loss or damage in transit shall be borne by Buyer. If Buyer does not specify a carrier, then Seller shall select the method of transportation. All orders are custom manufactured to Buyer's unique specifications. It is, accordingly, impractical to make and ship the exact quantity ordered. Seller, therefore, reserves the right to overship or undership orders by 10% of the quantity. Where exact quantities must be shipped, there may be a surcharge of 10% of the normal price.

12. **LIMITED WARRANTY.**
Seller warrants that all Goods manufactured by Seller meet Seller's standard specifications as furnished to the Buyer, and Seller agrees to repair, or replace without charge f.o.b. Seller's facility, or at Seller's option to allow credit for, any portion of goods which proves to be defective in material or workmanship for a period of ninety (90) days from date of shipment by Seller.
13. **LIMITATION OF LIABILITY.**
In no event shall either party be liable to the other party for any indirect, special, consequential or incidental damages.
14. **INDEMNIFICATION.**
Buyer agrees to indemnify and hold Seller, its directors, offices, employees and affidavits (the "Seller Indemnitees") harmless from and against any and all claims brought by Buyer's employees or any third-party for injuries or damage to persons or property (including reasonable attorney's fees and other costs of defense), except that Buyer shall have no duty under this Contract to indemnify and hold the Seller Indemnitees harmless against and from any claim or action for injuries or damage to persons or property or any other damage or loss to the extent it was caused or contributed to by the act or failure to act of Seller.
15. **CANCELLATION.**
Once accepted by Seller, no Orders may be cancelled by Buyer unless agreed upon by Seller in writing. In the event of any cancellation, any work-in-process or non-returnable inventory will be billed to Buyer. Buyer shall also be liable for any expenses incurred for supplies, materials, dies, tools, cutters, fixturing, and other expenses for which Seller has procured in connection with the Buyer's order. Invoices covering said costs shall be due and payable immediately upon Seller's acceptance of cancellation.
16. **FORCE MAJEURE.**
Seller shall not be liable for failure to deliver or delays in delivery or manufacture occasioned by causes beyond the reasonable control of Seller including, but not limited to, strikes, labor slowdowns, lockouts, fires, floods, riots, thefts, accidents, embargoes, import or export limitations, war or other outbreak of hostilities, terrorist activity, sabotage, riot, insurrection, civil disobedience or disturbance, acts of God, acts of the public enemy, endemics, pandemics, epidemics, unusually severe weather, inability to obtain shipping space, machinery breakdowns, delay of carriers, interruptions or failures of transportation, utilities, computers or communications, delay in obtaining or inability to obtain sufficient labor, materials, supplies or services, and any action by or law or regulation of any government, quasi-governmental or supranational body or agency. In the event of any such delay, (1) the time for performance shall be reasonably extended, (2) Seller and Buyer shall take reasonable steps to reestablish the timetable set out in the Contract, and (3) an adjustment shall be made for additional costs to Seller. If the Force Majeure event results in Contract termination, Buyer shall reimburse Seller for the applicable costs set forth in Section 13 above.
17. **ASSIGNMENT.**
Buyer may not assign its rights or obligations hereunder (whether voluntarily, involuntarily, by operation of law, transfer of majority or controlling interest or otherwise) without the prior written consent of Seller. These Terms and Conditions shall be binding upon Buyer and its successors and permitted assigns.
18. **COMPLIANCE WITH LAWS.**
Buyer agrees to comply with all applicable federal, state, local and foreign laws, statutes, ordinances, regulations, rules or orders or other requirements of any governmental, regulatory or administrative agency or authority or court or other tribunal to which Buyer may be subject as a result of the activities contemplated by these Terms and Conditions.
19. **APPLICABLE LAW.** These terms and conditions, the Contract and all agreements that arise from the Sales Quotation shall be construed and governed in accordance with the laws of the State of Indiana.
20. **JURISDICTION AND VENUE.** Buyer stipulates any dispute arising out of or relating to this Contract shall be brought in the state or federal courts in Fort Wayne, Indiana.
21. **REMEDIES OF SELLER.**
In the event of a breach of this Contract by Buyer, Seller shall be entitled to all remedies available at law not otherwise limited by this Contract and also to any reasonable attorney's fees and expenses incurred by Seller arising out of or relating to the breach.
22. **MISCELLANEOUS.** These terms and conditions constitute the entire agreement of Seller and Buyer superseding all prior agreements or understandings, written or oral, and cannot be amended except by a mutually executed writing. No representation, warranty, course of dealing, or trade usage not contained or expressly set forth herein will be binding on Seller. All clerical errors in Seller's quotations, acknowledgments and invoices are subject to correction.