

TERMS AND CONDITIONS

1. COMPLETE AGREEMENT:

This Order shall be binding on Seller and Philadelphia Gear (PG) when Seller signs and returns the acknowledgement copy, or when Seller otherwise indicates acceptance or commences performance of this Order, whichever occurs first. This Order is conditioned upon Seller's assent to all terms and conditions and no additional, conflicting or inconsistent terms in any communication by Seller shall become or be construed as a part of this Order unless accepted in a separate writing by PG. This Order and the specifications, drawings and documents referred to herein, constitute the parties' entire agreement and supercede all prior negotiations or proposals relating to this Order or its subject matter. Reference to Seller's quotation, bid, or proposal shall not imply acceptance of any term or condition contained therein. The following Seller documents are incorporated by reference, (i) Safety Rules for Services, (ii) Environmental Rules of Service, and (iii) Labor and Use of Premises.

2. DELIVERY SCHEDULE:

Upon receipt of this Order, Seller shall immediately notify PG if it cannot meet the delivery schedule and state the best schedule which can be met, which PG may accept or reject. Material commitments or production arrangements beyond those necessary to meet PG's delivery schedule or in excess of amounts ordered shall be made at Seller's sole risk. Advance shipments or early deliveries are subject to return at Seller's expense at PG's option. Partial shipment in conflict with the terms of this Order must be authorized in writing by PG.

3. DELAYS:

TIME OF DELIVERY IS OF THE ESSENCE FOR THIS ORDER. Seller shall promptly notify PG of any actual or anticipated delay in delivery of all quantities ordered and take all reasonable steps to avoid delay without additional cost to PG. Where delay is caused by acts of God, acts of civil or military authority, war, strikes or other similar causes beyond Seller's control and not reasonable foreseeable, PG shall have the right to: (i) terminate by written notice to Seller all or part of this Order; or (ii) extend the date of delivery for a period equal to the duration of the delay, but Seller shall not be entitled to any extra compensation for such delay. Seller shall not be excused from performance where alternate sources of materials, goods or services are available.

4. INSPECTION:

Acceptance of all materials and workmanship shall be subject to final inspection and testing by PG following delivery and/or incorporation into the final product produced by PG. Prior payment shall not constitute acceptance by PG.

5. PRICES AND PAYMENTS:

Seller's prices shall not exceed those last quoted or charged to PG and shall include all applicable state, federal and local taxes. Discount periods shall be effective from the later of receipt of the invoice, receipt of the goods or PG's requested delivery date. PG may withhold payment under this Order or any other contractual arrangement with Seller to cover any costs, damages or liability which PG has incurred or may incur for which Seller is responsible.

6. WARRANTY:

Seller warrants that all materials, goods or work furnished under this Order shall conform precisely to applicable specifications, technical standards and drawings, be suitable for their intended use, merchantable and free from defects in workmanship or materials. All or any part of the materials, goods or work found to be defective shall be replaced at no charge upon request by PG, without waiver of any other right or remedy of PG.

7. LIABILITY:

Should Seller fail to perform this Order in accordance with its terms, Seller shall be liable for all actual, consequential, liquidated and incidental damages, costs and expenses, including attorneys' fees, incurred by or assessed against PG as a result of such failure or required to enforce the terms of this Order. Such costs and expenses may specifically include administrative and rework charges where Seller fails to perform hereunder. Further, Seller shall indemnify, defend and hold harmless PG and its affiliates and their customers, and each of their employees and agents, from any cost liability or expense arising out of or relating to this agreement or Seller's goods or services.

8. PROPRIETARY MATERIAL AND CONFIDENTIAL INFORMATION:

All patterns, specifications, drawings, technical data, tools and dies or other information that relates to PG or its business, that is furnished to Seller by PG or otherwise learned by Seller in connection with its performance hereunder, shall be considered proprietary and/or confidential to PG, and shall not be used by Seller for any purpose other than completing this Order and shall not be disclosed by Seller to others and shall remain the property of PG. PG proprietary and/or confidential information does not include information that (i) is now in the public domain or subsequently enters the public domain other than as a result of an unauthorized disclosure by Seller or any of its representatives; (ii) was known by Seller prior to receipt from PG and was lawfully in Seller's possession, without any existing obligation to keep such information confidential; (iii) Seller lawfully obtains from any third party having the right to disclose such information and which Seller is not under any obligation (to PG or otherwise) to keep confidential; or (iv) Seller can prove was independently acquired or developed without the use of any PG proprietary and/or confidential information.

9. PATENTS:

Seller shall at its sole expense defend, indemnify, hold harmless from and defend PG and its customers against, any suit or proceeding brought against PG and/or its customers based on a claim that the manufacture, use or sale of any goods or services, or any part thereof, supplied under this Order

constitutes infringement of any patent, copyright, trademark, or proprietary right of others, and Seller shall pay all damages and costs awarded against PG and/or its customers. Seller shall be notified promptly in writing of the suit or proceeding and be given adequate authority, information and assistance (at Seller's expense) for the defense, subject to the right of PG and its customer to participate at their expense and to be fully advised by Seller in advance of all actions taken. If the goods or any part thereof are held to constitute infringement or the sale or use of the goods or parts is enjoined, regardless of whether the determination constitutes a final judgment, Seller shall, at its expense, either procure for PG and its customers the right to sell and use said goods or parts, or replace them with substantially equal but non infringing goods, or, if approved by PG, remove the goods and refund the purchase price plus transportation and installation costs.

The preceding paragraph shall not apply to goods, or any part thereof, manufactured to the extent of designs furnished and required by PG, nor shall it apply to claims that the sale or use of a process or use of a combination of the goods supplied by Seller with other goods infringes a patent, if such process or other goods were not supplied by Seller and Seller's supply of the goods does not constitute contributory infringement.

10. CANCELLATION:

In addition to all other remedies available, PG reserves the right to cancel all or any part of this Order if Seller cannot provide assurance of its financial ability to perform or satisfy its liabilities or Seller is or will be in default on any term or condition of this Order or any other contractual arrangement with PG. PG may also cancel this Order when required by acts of God, acts of civil or military authority, war, strikes, accidents at its plant or other causes beyond PG's control, in which case, PG shall negotiate an amount to be paid to Seller in settlement for reasonable and necessary expenses incurred directly incident to this Order as of the cancellation date, but PG shall not be liable for lost profit. If cancellation is caused by termination of a government contract, Seller shall be reimbursed in accordance with the applicable government subcontract provisions.

11. INDEPENDENT CONTRACTOR:

Seller shall act as an independent contractor, not as an agent or employee of PG, and shall defend, hold harmless and indemnify PG against any and all claims for injury or death of Seller's employees from any cause whatsoever while on or about the premises of PG or its customer. Seller shall maintain all insurance required by and expressly waives immunity from suit, under any workers' compensation law.

12. ASSIGNMENT:

Neither this Order nor any right or obligation hereunder shall be assigned or transferred without PG's prior written consent and any such assignment or transfer shall be void. In the event of any permitted assignment, Seller shall remain principally liable.

13. OCCUPATIONAL HEALTH AND SAFETY:

Seller warrants that all goods, material and equipment supplied to PG or its designee and all work performed by Seller at the premises of PG or its customer shall conform to the requirements of the Occupational Health and Safety Act of 1970, as amended, all regulations promulgated thereunder, and all state and local laws, rules and regulations relating to occupational health and safety in the jurisdiction where such items are shipped or work is performed.

14. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION:

Seller shall comply with all applicable laws, rules, regulations and executive orders relating to non-discriminatory practices because of race, color, creed, age, sex or national origin. Where applicable, the contract provisions set forth in 41 CFR 60.1-4 (Equal Opportunity), 41 CFR 60-250.4 (Affirmative Action for Disabled Vietnam Veterans and Veterans of the Vietnam Era) and 41 CFR 60-714.4 (Affirmative Action for Handicapped Workers) are incorporated by reference.

15. GOVERNMENT ORDERS:

Seller agrees to be bound by all provisions required by regulation or the prime contract to be incorporated into subcontracts on Orders relating to federal, state or local government contracts.

16. DISPUTES

Any claim or dispute relating to this Order shall be resolved by arbitration or litigation at the sole and exclusive option of PG. Arbitration proceedings shall be held in Philadelphia, Pennsylvania pursuant to the rules of American Arbitration Association. If litigation is selected by PG, Seller shall commence any action only in the Court of Common Pleas for Montgomery County, Pennsylvania. This Order and any claim or dispute hereunder shall be governed by Pennsylvania law.

17. ELECTRONIC TERMS

The parties agree that purchase orders may be issued in electronic form and hereby consent to transacting business electronically. PG may transmit purchase orders in portable document format ("PDF") as an attachment to an e-mail. In order to accept an electronic purchase order, Seller will: (i) commence performance under the order, (ii) respond with an e-mail to the PG e-mail address listed on the purchase order stating that Seller acknowledges and accepts the PG purchase order, or (iii) print out the purchase order, sign it in space provided for acknowledgement and fax a copy to the fax number indicated on the purchase order addressed to the buyer who signed the purchase order. By commencing performance under a purchase order, Seller consents and agrees: (i) to transact business with PG electronically as provided for herein; (ii) that the acknowledgement and acceptance of a purchase order by e-mail or by facsimile shall constitute a valid and binding obligation of Seller; (iii) that an e-mail acknowledgement and acceptance of a purchase order addressed to PG as provided for herein shall be deemed to have been validly signed by Seller; (iv) that if Seller deliver goods or renders service to PG in response to a purchase order issued by PG (including, without limitation a purchase order issued electronically as provided for herein) without acknowledging and accepting the purchase order as provided for herein, Seller shall be deemed to have accepted the purchase order; and (v) that

acceptance by Seller of a purchase order issued by PG (including, without limitation, a purchase order issued electronically as provided for herein) shall constitute acceptance, without modification, of each and every term included within such purchase order.