

ENMARK TOOL & GAGE CO.

PURCHASE ORDER GENERAL TERMS AND CONDITIONS OF PURCHASE

(Effective Date 1/21/2013)

- 1) **ACCEPTANCE:** All Purchase Orders ("Orders") shall constitute Buyer's offer to purchase goods or services according to the terms hereof. Seller shall indicate its acceptance of the Orders only by: (i) signing and returning the attached acknowledgment to Buyer; or by (ii) commencing any work on goods covered by all Orders which is to be specially manufactured to Buyer's specifications; or by (iii) shipping any goods covered by all Orders; or by (iv) beginning the performance of any service covered by all Orders. By accepting all Orders, Seller agrees to all the terms and conditions hereof. Any purported acceptance of all Orders that proposes additional or different terms is hereby objected to, and shall not operate as a rejection of all Orders but shall be deemed a material alteration hereof and all Orders shall be deemed accepted by the Seller without said additional or different terms. By acceptance of all Orders, Seller acknowledges that the goods and services covered by all Orders are intended for the timely manufacture or processing of goods for resale.
- 2) **QUANTITIES AND PRICES:** The specific quantity ordered must not be changed without Buyer's permission in writing. Any excess delivered may be returned at Buyer's option and at Seller's risk and expense. Buyer's count shall be accepted as conclusive on all shipments not accompanied by a packing slip. All Orders must not be filled at higher prices than appears on the face hereof unless approved by Buyer in writing prior to shipment. Seller agrees and guarantees that the price charged for the goods covered by all Orders are not in excess of the prices charged to any other customer for the same type of items in similar quantities. Unless otherwise agreed to in writing, prices include charges for boxing, crating, packing, storage, and handling.
- 3) **DELIVERY:** Time is of the essence. Should Seller fail to meet delivery requirements including those set forth in the Order or special shipping instructions, Seller shall be liable for any additional damages and costs occasioned by the use of any transportation methods other than those specified. Buyer reserves the right to reject or return at Seller's risk and expense all articles or materials shipped in advance of the specified delivery date, or to accept and make payment for advance deliveries as though the material was received on the specified delivery dates.
- 4) **PACKING:** All correspondence must include the purchase order number and vendor name/identification number. Packing slips indicating contents, part number or description, purchase order number and vendor number are to be enclosed with each shipment. All returnable containers shall be invoiced by Seller and full credit rendered to Buyer upon return, at Seller's expense, in good condition and within a reasonable time. Seller covenants and warrants that the packaging of the goods ordered herein shall be adequate for the transit of the goods undamaged so long as the integrity of the container is maintained.
- 5) **CHANGES:** All Orders, when accepted, shall supersede all prior understandings, transactions, and communications whether oral or written, pertaining to the subject matter hereof. The terms and conditions appearing on this form, together with any written instructions issued hereunder, constitute the complete and final agreement between Buyer and Seller and no agreement or other understanding in any way purporting to modify the terms and conditions hereof shall be binding upon Buyer unless made in writing, dated subsequently and signed by Buyer's authorized representative. Buyer reserves the right, by written change order, to make changes to all Orders and there shall be an adjustment in the purchase price and/or the delivery schedule as is equitable and mutually agreeable to Buyer and Seller. Seller shall submit to Buyer proposed adjustments, within fifteen (15) calendar days of each change order or Buyer's determination of adjustments, if any, shall be final and binding on Seller.
- 6) **SUB-CONTRACT:** In the event that Seller employs any subcontractor to perform any services or to provide goods required by this agreement Seller shall inform such subcontractor of all obligations Seller has to Buyer hereunder and shall incorporate in its agreements with said subcontractor identical obligations running from the subcontractor in favor of Buyer. A copy of the specifications and conditions of Buyer's contract with its customer, which apply to this Sub-Contract, will be furnished to Seller upon request. All goods, supplies and/or services furnished hereunder must comply with all applicable requirements and specifications. Seller shall not employ any subcontractor without first obtaining written permission to do so from Buyer, which permission must, to be effective, conform to the requirements of paragraph 1, regarding modifications of the agreement.
- 7) **PAYMENT:** Buyer may withhold payment to such extent as may be necessary to secure Buyer from loss based on a reasonable belief that (i) the goods, supplies and/or services will not meet the contractual requirements; (ii) liens or encumbrances will be filed; or (iii) there was a breach by Seller of any contractual provision. Notwithstanding the above, if this Contract is a Sub-Contract, or if seller is aware that Buyer is acquiring the goods, supplies and/or services to be passed on or delivered to one of the Buyer's customers, then Buyer shall have no obligation to pay Seller until the Buyer and Buyer's customer are satisfied with the goods, supplies and/or services provided by Seller and until said customer shall have paid Buyer for such goods, supplies and/or services.

8) **WARRANTIES:** Seller expressly warrants to Buyer, its successors, customers and user of its product that all the articles, material and work covered by all Orders will conform to the specifications, drawings, samples or other descriptions furnished or specified by the Buyer, and will be of good material and workmanship and free from defects in material and workmanship, and Seller further warrants that they will be merchantable and fit and sufficient for the purpose intended. In case of ambiguity in specifications, drawings or other requirements of all Orders, Seller, before proceeding, must consult Buyer, whose written interpretation shall be final. The warranties provided for in this paragraph shall be in addition to those implied by or available at law and shall exist notwithstanding the acceptance by Buyer of all or part of the articles, material and work to which such warranties are applicable.

9) **INDEMNITY:** Seller agrees to defend and indemnify the Buyer, its agents or employees, and anyone selling or using any of Buyer's products, and to hold each of them forever harmless from and against all suits, administrative proceedings, claims, losses, demands, damages, judgments, liabilities, interest, attorney's fees, costs and expenses incidental thereto (including any cost of defense and attorney's fees) of any kind or nature whatsoever whether arising before or after completion of the delivery and installation of the goods covered by all Orders, and in any manner directly or indirectly caused, occasioned or contributed to or claimed to be caused or contributed to by reason of acts, omissions, faults, breach of express or implied warranty, breach of any of the provisions referenced under Paragraph 18 of all Orders or negligence, whether active or passive, of the Seller, or of anyone acting under its direction or on its behalf in connection with the goods and any services furnished by the Seller to the Buyer under all Orders. Buyer, its agents or employees, or anyone selling or using any of the goods or supplies described in this Purchase Order, shall have the right to employ counsel on their own behalf, who shall have the right to participate in the defense of any such suit, action, administrative procedure or demand and whose fee and expenses shall be paid by Seller.

10) **PATENT INDEMNITY:** Seller warrants that the sale and/or use of the goods herein ordered will not infringe or contribute to the infringement of any domestic or foreign patent and agrees to defend, indemnify and forever hold harmless, Buyer, its agents, employees, or anyone selling or using any of said goods, from and against all suits, administrative proceedings, claims, losses, demands, damages, judgments, liabilities, interest, attorney's fees, costs and expenses incidental thereto (including any cost of defense and attorney's fees) of any kind or nature whatsoever for an alleged infringement of any such patent by reason of the sale or use of said goods. Buyer and all the parties sued shall have the right to employ counsel on their own behalf, who shall have the right to participate in the defense of any such suit, action, administrative proceeding or demand and whose fee and expenses shall be paid by the Seller. No specifications or specifications with respect to any part of all Orders shall constitute a warranty, expressed or implied, against any claims for infringement of patents, copyrights or trademarks and Buyer shall not be responsible to Seller as indemnitor or otherwise for or on account of any such claim or liability.

11) **INSPECTION:** All goods shall be received subject to Buyer's rights of inspection and rejection. If rejected, materials will be held for disposition at expense and risk of the Seller. No goods returned as defective are to be replaced without a formal replacement order. Notwithstanding the foregoing if materials are defective, and supply or timing does not permit return or replacement, buyer shall have the option, following notification of Seller, to rework such goods at Seller's expense. Payment for goods on all Orders shall not constitute acceptance thereof and is without prejudice to any inspection or count by Buyer and all claims that Buyer may have against Seller. Acceptance of merchandise by Buyer after inspection shall not release or discharge Seller's liability in damages or other legal remedy for breach of promise or warranty, expressed or implied, with respect to merchandise ordered hereunder. Any payment for goods, supplies and/or services which are subsequently rejected shall be refunded by Seller immediately unless Seller corrects or replaces the rejected goods, supplies and/or services at Seller's expense within ten (10) days after receipt of notice from Buyer specifying the reason for Buyer's rejection.

12) **TERMINATION AT BUYER'S OPTION:** Buyer may terminate Orders in whole or in part at its convenience by written or telegraphic notice at any time. Seller's termination claims shall be limited to the value of goods shipped and services rendered on the date of termination. Notwithstanding the foregoing, if this Contract is a Sub-Contract, or if Seller is aware that Buyer is acquiring the goods, supplies and/or services to be passed on or delivered to one of the Buyer's customers, and Buyer's customer terminates its contract with Buyer, then Seller's termination claim shall be limited by Buyer's rights at termination under its agreement with its customer and by the amount actually recovered by Buyer from its customer in that instance. In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages, nor for damages due to negligence. Seller shall submit to Buyer a termination claim in the form specified by Buyer setting forth the amounts proposed to be due to Seller within thirty (30) days of accounting principles. In any event, Buyer shall not be liable for any termination claims submitted more than ninety (90) days from date of termination. This clause shall not apply in the event of Buyer's cancellation of any Orders pursuant to Clause 11 of these Terms and Conditions.

13) **CANCELLATION FOR DEFAULT:** If Seller fails (i) to deliver goods or to perform services at the time specified herein or any extension thereof authorized by Buyer in writing, or (ii) to comply with any other provision of all Orders, and does not cure such failure at the Seller's expense within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure, Buyer may, by written notice of default to Seller, cancel the whole or any part of the goods and services ordered without liability except for substitution for those then due from Seller and Seller shall pay Buyer any increase in cost above the Order price incurred by Buyer thereby. Provided, however, that with respect to finished, in-process or otherwise unfinished work. Buyer shall have the right to take full title to and possession of all or part of such work immediately upon notice to Seller of its intent to do so, regardless of whether or not final price terms have been agreed upon. If after notice of default under this clause, it is determined that Seller was not in default, work affected by the cancellation shall be deemed terminated pursuant to Clause 10 above and the right and obligation of the parties shall be governed by such clause.

14) **ASSIGNMENT:** Seller shall not assign any Orders nor delegate its performance hereunder without the written consent of Buyer's authorized representative.

15) **REMEDIES:** The individual remedies reserved in all Orders shall be cumulative and additional to any other further remedies provided in law or equity or in all Orders. No waiver of any breach of any provisions of all Orders shall constitute a waiver of any other breach or of such provision.

16) **BUYER'S PROPERTY:** Unless otherwise agreed in writing, all supplies, materials, tools and equipment of every description furnished or paid for by Buyer shall remain the property of Buyer. Such property shall be deemed to be personal and shall at all times be properly stored and maintained by Seller on its premises separate and apart from Seller's property or that of any third party, it shall be marked "Property of Enmark Tool & Gage Co." by Seller and shall not be used except for work performed for Buyer. Seller shall bear the risk of loss or of damage to such property and shall, at its expense, insure all such property for the replacement value thereof against loss or damage of any kind, with loss payable to Buyer. Immediately, upon Buyer's request, such property shall be properly prepared for shipment as specified by Buyer, and delivered in good condition, except for normal wear and tear, f.o.b. Seller's plant, to Buyer.

17) **CONFIDENTIAL RELATIONS:** Seller shall treat as confidential all specifications, drawings, blueprints, data and property furnished or paid for by Buyer and shall reveal the same only to its own employees to the extent necessary for the production of goods described in all Orders. Under no circumstances shall Seller use any such specifications, drawings, blueprints, data or property for any purpose other than to provide to Buyer the goods or services ordered hereunder.

18) **PROPIETARY RIGHTS:** Seller agrees that all designs and inventions made in the course of filling all Orders shall be disclosed to and become the sole property of Buyer. Seller shall execute or obtain the execution of such papers, including patent applications and assignments and shall perform all necessary acts to perfect ownership such designs and inventions in Buyer at no cost or expense to Seller. Seller waives all claims against Buyer and its customers for any liability with respect to rights, patent or otherwise, which Seller may have or obtain by reason of any use which may be made of the designs, machines and processes furnished or developed hereunder.

19) **INSURANCE:** At Buyer's request, Seller agrees to furnish certificates, in a form satisfactory to Buyer, evidencing adequate coverage for the benefit of both Seller and Buyer as to worker's compensation, occupational disease, unemployment compensation, fire and extended coverage, and public liability, including contractual liability on both owned and non-owned vehicles. Certificates shall provide for ten (10) days notice to Buyer in the event of alteration or cancellation of any policy. Seller agrees that its workmen, employees, agents, equipment, machinery or vehicles will not enter property of the Buyer and work or services will not be started in performance of all Orders until Seller obtains the required insurance described above.

20) **COMPLIANCE WITH LAW:** Seller represents that the goods covered by all Orders have been manufactured in accordance with the requirements of all applicable federal, state and local laws, rules and regulations. Seller further agrees to furnish Buyer, upon request, a certificate attesting to such compliance in such form as Buyer may require.

21) **ADVERTISING:** Seller shall not, without obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the articles herein mentioned.

22) **EQUAL OPPORTUNITY:** All Orders shall be deemed to include, to the extent applicable hereto: (a) the Equal Employment Opportunity clause referred to in Executive Order 11246 as amended, (b) all provisions of 41 CFR 60-250, as amended, pertaining to Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era where the value of goods or services furnished hereunder exceeds \$10,000, (c) all provisions of 41 CFR 60-741, as amended, pertaining to Affirmative Action for Handicapped Workers where the value of goods or service furnished hereunder exceeds \$2,500 and (d) similar applicable requirements of any state or local law.

23) **LIMITATION OF PERIOD FOR ACTION BY SELLER ON CONTRACT:** No action regardless of form, arising out of the transactions under all Purchase Orders may be brought by Seller against Buyer more than one (1) year after the cause of action has accrued. This provision shall not restrict in any way Buyer's right to bring an action against Seller arising out of the transactions under all Purchase Orders within the time periods provided by law.

24) **CHOICE OF LAW; JURISDICTION; VENUE:** The terms of all Purchase Orders shall be governed and construed in accordance with the laws of the State of Michigan. Seller agrees that any cause of action, suit or proceeding relating to, arising out of or in connection with the terms and conditions of all Purchase Orders or with the business relationship between Seller and Buyer shall be brought in the state courts located in Michigan, or in the United States District Court, if such federal court possesses subject matter jurisdiction. Seller hereby waives any objection to personal jurisdiction and venue in any proceeding before said courts.

25) **TITLES:** The titles of the paragraphs throughout all Purchase Orders are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of all Purchase Orders.

26) **ATTORNEY'S FEES:** Seller hereby agrees to pay any and all expenses, including reasonable attorney's fees and accompanying costs, made or incurred by the Buyer in attempting to enforce the provisions of all Purchase Orders.

27) **SEVERABILITY:** In the event any provision of any Purchase Order is determined by a court of competent jurisdiction to be unenforceable, then the provision shall be curtailed and limited only to the extent necessary to bring it within the requirements of law, and to the greatest extent possible, to effect the intent of the parties consistent with the remaining provisions hereof. The unenforceability of any provision of any Purchase Order shall not affect the enforceability of the remaining provisions thereof.

28) **RESTRICTED SUBSTANCES:** Suppliers **SHALL** have a process to assure that governmental and safety constraints on restricted, toxic and hazardous substances are complied with relative to purchased products and the manufacturing process. All materials used in part manufacture **SHALL** satisfy current governmental and safety constraints on restricted, toxic, and hazardous materials; as well as environmental, electrical, and electromagnetic considerations **applicable to the country of manufacture and sale.**

29) **AS A CONDITION OF THIS ORDER,** Enmark Tool & Gage Co. and their end users reserves the right to view any and all equipment that is covered by this order at your facility. This includes, but is not limited to, visitation during the build and run-off of the said equipment prior to shipment.

30) **ISO 9001:2008 or similar QMS Standard Requirements** must be applied to each item as shown on this Purchase Order.