

J and L Gear and Machine Company, LLC
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Selling Terms and Conditions (2010) Rev. A

1. GENERAL. J and L Gear (hereinafter referred to as "J&L") and the Purchaser (hereinafter referred to as "Buyer") named on the Buyer's Purchase Order agree that the following terms and conditions apply to the materials, goods and/or products (hereinafter referred to as the "Goods") listed on Buyer's Purchase Order.
2. ACCEPTANCE/SOLE TERMS. This order is expressly conditioned upon Buyer's acceptance to foregoing terms. Buyer is hereby put on notice that no terms additional to or deviating from the foregoing terms shall become part of the order, unless and until letter acceptance of such additional or deviating terms, signed by an office of J&L has been issued to Buyer. Buyer's acceptance of any goods supplied by or on behalf of, J&L shall, without limitation constitute acceptance of J&L's foregoing terms. If Buyer retains possession of the Goods for a period of ten (10) days or longer after the receipt of their shipment or makes use of the Goods at any time after their receipt, Buyer shall be deemed to have **expressly assented** to J&L's foregoing terms without condition or qualification, and in so doing, **Buyer shall have confirmed its express intention to waive any conditions or qualifications on Buyer's acceptance of J&L's offer.**
3. PRICE. All prices are F.O.B. J&L's plant unless otherwise specifically set forth in the agreement between J&L and Buyer. Prices stated are subject to change without notice in the event of (i) alterations in specifications, quantities, designs, or delivery schedules: (ii) increases in the cost of fuel, power, material supplied, or labor, and/or (iii) foreign or domestic legislation enacted by any level of government, including tax legislation which increases the cost of producing, warehousing or selling the Goods purchased hereunder. No discount will be allowed unless specifically set forth in the agreement between J&L and Buyer. Buyer agrees to pay a delinquency charge of 1-1/2% per month or if such rate shall exceed the maximum rate allowed by applicable law, then a delinquency charge calculated at such maximum rate on the outstanding balance not paid when due, from the date such balances were due until payment with respect thereof is made in full. If, in J&L's opinion, the financial condition of the Buyer at any time does not justify continuance of production or shipment on the terms of payment specified. J&L may require full or partial payment in advance. Terms of payment are those appearing on J&L's invoice.
4. WARRANTY/REMEDY. J&L warrants that the Goods manufactured by it will be free from defects in material and workmanship for ninety (90) days following the date of shipment. THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE NOT EXPRESSLY HEREIN, ARE HEREBY EXCLUDED. NO AFFIRMATION OR SELLER, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THIS WARRANT CLAUSE SHALL CONSTITUTE A WARRANTY. GOODS WHICH MAY BE SOLD BY SELLER BUT WHICH ARE NOT MANUFACTURED BY J&L ARE NOT WARRANTED BY J&L, BUT ARE SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURES THEREOF. J&L's warranty does not apply to any Goods which have been subjected to misuse, mishandling, misapplication,

neglect, accident, improper installation or modification (including but not limited to use of unauthorized parts or attachments).

- a. If any of the Goods are found by J&L to be defective, such Goods will, at J&L's option, be replaced or repaired at J&L's cost or J&L will refund the purchase price or give Buyer a reasonable allowance thereof. The parties hereto expressly agree to Buyer's sole and exclusive remedy against J&L shall be for repair or replacement of the defective Goods or the refund of the purchase price or allowances thereof. Buyer hereby
 - b. agrees that this exclusive remedy shall not be deemed to have failed of its essential purpose so long as J&L is willing and able to repair or replace defective Goods in the prescribed manner or refund the purchase price or give Buyer an allowance thereof.
 - c. Any warranty claim by Buyer with reference to the Goods sold hereunder shall be deemed waived by the Buyer unless submitted in writing to J&L with the earlier of (i) thirty (30) days following the date the Buyer discovered, or by reasonable inspection should have discovered, any claimed breach of the foregoing warranty, or (ii) ninety (90) days following the date of shipment. Any cause of action for breach of the foregoing warranty shall be brought within one (1) year from the date of alleged breach was discovered or should have been discovered, whichever occurs first.
 - d. J&L's remedies relating hereto shall be cumulative and in addition to any other remedies provided herein or by law or in equity.
5. LIMITATION OF LIABILITY. J&L'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR STRICT LIABILITY) FOR ITS GOODS SHALL BE LIMITED TO REPAIRING OR REPLACING (AT J&L'S OPTION) GOODS FOUND BY J&L TO BE NON-CONFORMING, OR AT J&L'S OPTION, TO REFUNDING THE PURCHASE PRICE OF THE NON-CONFORMING GOODS. At J&L's request, Buyer will send, at Buyer's sole expense, any allegedly defective Goods to J&L's plant.
 6. DISCLAIMER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES. IN NO EVENT SHOULD J&L BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT INCLUDING WITHOUT LIMITATION BREACH OF ANY OBLIGATION IMPOSED ON J&L HEREUNDER OR IN CONNECTION HEREWITH. THE REMEDY UNDER THE WARRANTY PROVISION IS LIMITED TO REPAIR OR REPLACEMENT. Consequential damages for purposes hereof shall include without limitation loss of use, income or profit or losses sustained as the result of injury (including death) to any person or loss of or damage to property (including without limitation, property handled or processed by the use of the Goods). Buyer shall indemnify J&L against all liability cost or expense which may be sustained by J&L on account of any such loss, damage or injury.
 7. ACCEPTANCE OF GOODS, DELIVERY AND TRANSPORTATION. Upon Buyer's receipt of shipment, buyer shall immediately inspect the Goods. Unless Buyer provides J&L with written notice of any claim or shortages of or defects in the forty-eight (48) hours after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer. In the absence of shipping and packing instructions, J&L shall use its own discretion in choice of carrier and method of packing. J&L shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expenses and valuation.
 8. TITLE AND RISK OF LOSS. Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by J&L to carrier or Buyer, and any claims for losses or damage shall be made by Buyer directly to carrier.
 9. CREDIT TERMS. All orders and shipments shall at all times be subject to the approval of J&L's Accounting Department. J&L reserves the right to decline to make shipment whenever, for any

reason, there is doubt as to Buyer's financial responsibility and J&L shall not in such event be liable for breach or nonperformance of this contract in whole in or in part.

10. SECURITY INTEREST. To secure prompt payment of the purchase price for the Goods identified in the Buyer's Purchase Order, Buyer hereby grants to J&L a purchase money security interest in the Goods purchased from J&L and all proceeds thereof (hereinafter referred to as the "Collateral"). Buyer agrees to execute and deliver to J&L USS financing statements, together with any and all other documents, and shall take such other action, as may be required to perfect J&L's security interest in the Collateral.
11. COSTS OF COLLECTION. If, at any time or times, J&L incurs legal expenses or other costs or expenses in connection with: (i) any litigation, contest, suit, dispute, proceeding or action in any way relating to the Collateral, (ii) any attempt by J&L to enforce any rights of J&L against Buyer or any other person which may be obligated to J&L hereunder, or (iii) any attempt to inspect, verify, protect, preserve, restore, collect, sell, liquidate or dispose of the Collateral; then, in any such event, the expenses and costs (including without limitation attorney's fees) relating to any of the foregoing events or actions shall be payable by Buyer on demand to J&L and shall be considered additional obligations hereunder secured by the Collateral. J&L reserves the right to revoke any credit extended to Buyer at any time, because of Buyer's failure to pay for any Goods when due or for any reason deemed good and sufficient by J&L.
12. TAXES. Any sales, use or similar taxes, export charges, fees or other levies, taxes or surcharges now or hereafter imposed in connection with the production, sale, delivery, use or proceeds of the Goods specified on Buyer's Purchase Order (except for taxes on J&L's net income) shall be payable by Buyer, and if such taxes or fees are paid or are required to be paid by J&L, the amount thereof shall be added to and become part of the price payable by Buyer, unless Buyer provides J&L with a valid tax exemption certificate.
13. PACKAGING. Prices stated are based on J&L's standard packaging. J&L reserves the right of packaging the Goods in pallets, bulk, individual cartons or other method as deemed appropriate by J&L to preserve the integrity of the Goods. Packaging will be standard commercial package and acceptable to commercial carrier. Special customer packaging will be furnished only when specified and so stated on the Buyer's Purchase Order, and the cost therein shall be borne by Buyer.
14. DELAYS. Unless expressly specified to the contrary, Goods in stock will be shipped immediately, and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. J&L will not be liable for any damage, loss, fault or expense arising out of delays in shipment or other nonperformance of Buyer's Purchase Order caused by or imposed by: (a) strikes, fires, disasters, riots, acts of God, (b) acts of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental (foreign or domestic) action, (e) subcontractor or supplier delay including but not limited to failure by subcontractor or supplier to make timely delivery, or (f) any other cause of condition beyond J&L's reasonable control. In the event of any such delay or nonperformance, J&L may, at its option, and without liability, cancel all or any portion of Buyer's Purchase Order and/or extend any date upon which any performance therein is due.
15. TERMINATION, CANCELLATION, AND CHANGES. Orders cannot be terminated, cancelled or modified, or shipment deferred after acceptance of Buyer's order by J&L, except with J&L's written consent and subject to reasonable charges incurred and work executed by J&L or its suppliers. Buyer shall be obligated to accept any portion of the Goods shipped or delivered by J&L pending J&L's written approval of cancellation.

16. NO WAIVER. Forbearance or failure of J&L to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Buyer, shall not affect or impair J&L's rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of J&L's rights in case of subsequent default of Buyer.
17. SEVERABILITY. If any provision of this Agreement is unenforceable or invalid, this Agreement shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.
18. ASSIGNMENT. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and J&L provided, however, that Buyer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of J&L.
19. GOVERNING LAW. This Agreement shall be construed in accordance with and governed by the laws of SEDGWICK COUNTY, the STATE OF KANSAS without regard to its conflict of law provisions. All actions or proceedings arising directly or indirectly herefrom shall be litigated only in the courts of the STATE OF KANSAS or UNITED STATES FEDERAL COURTS located therein and the parties hereby consent to the jurisdiction and venue of such courts.
20. ENTIRE CONTRACT. Upon J&L's acceptance of Buyer's order, the terms and provision set forth herein shall constitute the entire agreement between Buyer and J&L and no statement, correspondence, sample or other terms shall modify or effect terms hereof.