

CLOYES GEAR AND PRODUCTS
TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS: The term "Purchaser" means Cloyes Gear and Products, Inc., and the term "Seller" means the individual, firm or corporation identified as the seller or supplier of any products or goods being purchased by Purchaser under these terms and conditions of purchase, including, without limitation, any purchase order or other order issued by Purchaser ("Order") on which these terms or conditions may be printed or incorporated by reference.

2. CONTRACT: Unless expressly superseded by another writing executed by Purchaser and Seller, and except for any information contained in a properly authorized and issued Order, these terms and conditions are the exclusive terms and conditions that will govern the fulfillment of any such Order. No terms stated by Seller in accepting or acknowledging any Order or offer shall be binding upon Purchaser unless accepted by it in writing. Any proposal for additional or different terms to any offer of Purchaser in Seller's acceptance or acknowledgment hereof is objected to, rejected and shall not be binding on Purchaser, and if for any reason an offer of Purchaser shall be deemed an acceptance of an offer made by Seller, such acceptance is expressly conditioned upon Seller's assent to the terms contained herein. Purchaser will proceed with this transaction only if Seller assents to the terms contained in an Order. Purchaser's failure in any instance to insist on performance of any of the provisions of an Order or to exercise any right or privilege shall not thereafter waive the future performance or exercise of such term, condition, right or privilege or any other terms, conditions, rights or privileges, whether of the same or similar type. Seller may not assign an Order without Purchaser's prior written consent. Time is of the essence in respect of any Order.

3. QUANTITY: The quantity of goods delivered shall not be greater than the amount specified on the front of an Order unless an additional amount is first ordered by Purchaser in writing on its "Purchase Order Change" form. Purchaser may return excess quantities to Seller at Seller's risk and expense.

4. SHIPMENT: A notice of shipment shall be sent to Purchaser at the time of shipment that shall state the number of the Order, the kind and amount of goods, and the route by which the shipment is being made. All goods shall be suitably packed, marked and shipped in accordance with shipping instructions specified herein and the requirements of common carriers in a manner to secure the lowest transportation cost. No charges shall be made for packing, boxing, cartage or storage, unless authorized by Purchaser in writing. Seller shall properly mark each package or container with Purchaser's order and part numbers, address and, when multiple packages or containers comprise a single shipment, shall consecutively number each package or container. Seller shall be liable for any difference in freight charges arising from its failure to (a) follow the shipping instructions specified herein or (b) properly describe the shipment. Purchaser and Seller shall assist each other in obtaining documents and other information necessary for the prosecution of claims against carriers.

5. INVOICE: Invoices must show the name of the plant to which the goods were delivered or shipped. Any applicable sales, use, duty, excise or other similar tax or charge, for which Purchaser has not furnished, or agreed to furnish, an exemption certificate to Seller must be stated separately on the invoice.

6. PRICE WARRANTY: Seller warrants that the prices for the goods delivered or sold are not less favorable than those currently extended to any other customer of Seller for the same or similar goods in similar quantities. If Seller reduces its price for such goods prior to final delivery of the goods to Purchaser, Seller shall reduce the price or prices in any applicable Order in a corresponding manner.

7. RESPONSIBILITY; DELIVERY: Seller shall be responsible for any and all loss or damage to the goods until delivered to Purchaser at the F.O.B. point specified on the face of an Order or, if no such F.O.B. point is specified, until delivered to Purchaser's plant. Shipment(s) shall be made at the time(s) specified on the front of an Order or in any supplementary schedules furnished by Purchaser to Seller or as otherwise directed by Purchaser; if no time is specified, shipment(s) shall be made within a reasonable time.

If delivery is not timely made, Purchaser may, without liability and in addition to its other rights and remedies, direct Seller to make expedited routings of goods, in which case the difference in cost between any such expedited routings and the order routing costs shall be paid by Seller. If at any time Seller has reason to believe that deliveries will not be made as scheduled, it shall immediately give Purchaser written notice setting forth the estimated length and cause or causes of the anticipated delay.

8. INSPECTION: All goods are subject to Purchaser's right of inspection and rejection within a reasonable time after arrival at the ultimate destination. Payment for delivered goods shall not constitute acceptance thereof, and all payments against documents shall be made with a reservation of rights by Purchaser for defects, including, without limitation, defects apparent on the face thereof. When goods are made to specifications, drawings, plans, instructions, samples or other requirements furnished by Purchaser, or prepared by Seller specifically for Purchaser, Purchaser may inspect such goods at Seller's plant and/or any other place of manufacture, during and after production, without waiving its right subsequently to reject or revoke acceptance of such goods for undiscovered or latent defects. Seller, at its expense, shall furnish, or cause to be furnished, facilities and assistance reasonably necessary to ensure the safety and convenience of each such inspection.

If upon inspection any goods are found by Purchaser to be unsatisfactory, defective or of inferior quality or workmanship or otherwise fail to meet the warranties provided in an Order, Purchaser may, in addition to any other legal or equitable rights, reject or refuse to accept such goods and may return such goods to Seller at Seller's risk and expense.

9. WARRANTIES; REMEDIES; INDEMNITY: Seller expressly represents and warrants that it has good and marketable title to the goods and that such goods will: (a) conform to any and all specifications, drawings, plans, instructions, samples, or other requirements, whether express or implied; furnished by Seller or Purchaser, including, without limitation, any supplement(s) referred to on the front of an Order; (b) be fit and sufficient for the purpose(s) for which they were manufactured and sold, and if Seller knows or has reason to know of any other particular purpose for which Purchaser intends to use such goods, the goods will be fit for that particular purpose; (c) be new, unless specifically identified as used, and merchantable; (d) be good material and workmanship and free from defects, whether latent or patent; and (e) be free and clear of all liens and encumbrances. The foregoing warranties shall survive Purchaser's inspection acceptance and use of the goods, Seller hereby extends any and all warranties received from its suppliers to Purchaser, and Seller agrees to enforce such warranties on Purchaser's behalf.

Seller agrees promptly to correct defects in any goods not conforming to the foregoing warranties or to replace such goods, without expense to Purchaser when so notified, provided Purchaser elects to do so. In the event of Seller's failure to correct or replace such defective or nonconforming goods, Purchaser may, after reasonable notice to Seller, make such correction or replacement at Seller's expense.

The foregoing warranties and remedies shall be in addition to any warranties and remedies of additional scope made or provided by Seller to Purchaser or provided by law. In addition to the foregoing, Seller shall indemnify and hold Purchaser harmless from and against any and all loss, cost, damage, claim, liability and expense (including, without limitation, court costs and attorneys' fees) arising out of or relating to or resulting in any way from defects, whether latent or patent, in the goods sold to

Purchaser hereunder, including, without limitation, actual or alleged improper construction or design, a breach of any warranty, whether express or implied, a failure to observe or perform any covenant, or any act or omission of Seller, its officers, directors, agents, employees, or subcontractors.

10. COMPLIANCE: Seller shall comply with all federal, state and local laws, regulations or orders applicable to the purchase, manufacture, processing and delivery of the goods. Seller shall certify in the following or substantially equivalent words appearing on the invoice or other appropriate document: "We hereby certify that the goods covered by this invoice were produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, including Sections 6, 7 and 12 thereof, and of the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof, or any further amendments." The Equal Employment Opportunity Clause in Sec. 202 of Executive Order 11246, as amended, relative to equal employment opportunity, and implementing rules and regulations of the Secretary of Labor, together with Section 52.222-26(b) of the Federal Acquisition Regulations (48 C.F.R. 52.222-26(b)) are incorporated herein by specific reference. Seller shall indemnify and hold Purchaser harmless from and against any loss Purchaser may sustain by reason of Seller's failure to comply with any such laws, regulations, ordinances or rules.

Seller will maintain such public liability insurance, including, without limitation, products liability insurance, and other insurance as will adequately protect Purchaser against such damages, claims, liabilities, losses, costs and expenses (including, without limitation, court costs and attorneys' fees). Seller agrees to submit certificates of insurance evidencing its insurance coverages when requested by Purchaser.

11. CANCELLATION: Purchaser may at its option cancel any unshipped goods. If an Order covers standard stock items, Purchaser's only obligation shall be to pay for goods shipped prior to the cancellation. If an Order covers goods manufactured or fabricated to Purchaser's specifications or specifications prepared by Seller for Purchaser, upon receipt of such notice of cancellation, Seller shall terminate, or shall cause to be terminated, all performance hereunder except as otherwise directed by Purchaser. Unless Seller is in default under an Order, Purchaser shall pay to Seller: (a) the costs incurred by Seller in connection with an Order prior to the date of cancellation; (b) six per cent (6%) of the foregoing costs in lieu of profit; and (c) such other costs, including cancellation charges under subcontracts, as Purchaser may approve; provided, however, that in no event shall the total cancellation payment exceed the total price of an Order. Upon such payment, title to any materials or uncompleted goods shall pass to Purchaser.

12. EXTRA COMPENSATION: Before proceeding with any work or shipping any goods upon or for which it may have a possible claim for extra compensation above the price specified or referenced on an Order, Seller shall submit to Purchaser a detailed statement of such items, together with the prices thereof. If Purchaser desires to have the work done or the goods furnished at the prices so stated, Purchaser will issue written instructions to Seller. Claims for compensation above the prices specified in an Order shall be allowed by Purchaser only upon presentation of such written instruction.

13. TERMINATION FOR DEFAULT: Purchaser may terminate an Order, without liability, in whole or in part, upon any of the following events of default; (a) Seller's failure to provide goods that conform to the warranties provided herein or by law; (b) Seller's failure to make timely delivery; (c) Seller's failure to comply with any other terms or conditions of an Order, including, without limitation, the terms and conditions set forth in Section 14 below; or (d) Seller's insolvency, the filing of a voluntary petition in bankruptcy, the filing of an involuntary petition to have Seller adjudicated bankrupt or the appointment of a receiver or trustee for Seller (provided such filing or appointment is not vacated within 30 days from the date thereof) or the execution by Seller of an assignment for the benefit of creditors.

In the event of any such termination, Purchaser, without prejudice to any other legal or equitable rights or remedies available to it, shall have the following rights: (a) to refuse to accept delivery of any and all goods covered by any such Order and to return such goods to Seller at Seller's risk and expense, including, without limitation, warehouse or other storage costs and extra-handling costs; (b) to return to Seller, at its risk and expense, any and all goods already accepted and to recover from Seller all payments made for such returned goods; (c) to recover any payments to Seller for undelivered or returned goods; and (d) to purchase goods elsewhere, and to charge Seller with any resultant losses, including, without limitation, consequential and incidental damages.

14. PATENTS; TRADEMARKS; COPYRIGHTS: Seller warrants that the goods and the sale or use of such goods will not infringe or contribute to the infringement of or violate any United States or foreign patents, copyrights, trademarks or trade secrets. Seller shall indemnify and hold harmless Purchaser, its directors, officers, employees, successors, assigns, customers and users of its products, from and against any loss, cost, damage, claim, liability or expense (including, without limitation, punitive damages, profits, court costs and attorneys' fees) arising out of or relating to or resulting in any way from any actual or alleged infringement or violation of any such patent, copyright, trademark or trade secret or any actual or alleged unfair competition in connection therewith. The foregoing sentence shall be applicable whether or not Purchaser furnished, or participated in preparing, the specifications of the infringing goods. Purchaser reserves the right to control or actively participate in, or monitor, through its own counsel, at Seller's expense, any such patent infringement or other action brought against it.

15. TOOLS AND MATERIALS OWNED BY PURCHASER: Seller shall keep in good condition, be responsible for and protect against loss of or damage to materials, tools, dies, molds and other articles, if any, owned by Purchaser (including such item made or provided by Seller at Purchaser's cost) that are in the possession or control of Seller. Seller shall not use such items except for the performance of work thereunder or as authorized by Purchaser in writing. All such items shall be plainly marked or otherwise adequately identified by Seller as property of Purchaser and shall be safely stored separately and apart from Seller's property. Unless otherwise directed by Purchaser, upon completion of deliveries made on an Order or upon cancellation or termination of an Order for any reason, Seller shall return all such items to Purchaser at Purchaser's direction and expense. In addition, Purchaser shall have the right to take possession of any such items, including, without limitation, the right of entry for such purpose.

16. CONFIDENTIALITY: Seller agrees that all specifications, drawings, plans, instructions, samples and any other information furnished by Purchaser to Seller, or prepared by Seller specifically for Purchaser (including any and all modifications by Seller to information originally furnish by Purchaser) in connection with an Order is confidential information of Purchaser. Seller agrees not to (a) disclose any such information to any other persons, or (b) use such information for any purpose other than in connection with fulfilling an Order. Without Purchaser's prior written permission, Seller shall not advertise or publish the fact that Purchaser has contracted to purchase goods from Seller, disclose information relating to an Order, nor use the name of Purchaser, or any of its customers, in advertising or other publication. The obligations of Seller under this Section and Sections 8, 12, and 13 shall survive the cancellation or termination of an Order.

17. GOVERNING LAW: The rights of the parties and the effect of every provision of this agreement shall be subject to and construed in accordance with the laws of the State of Ohio, without regard to conflict of laws principles. The parties agree that any action arising out of any Order or in connection with the goods covered hereby shall be brought in the federal, state or local court located in, or otherwise having jurisdiction over, Cuyahoga County, Ohio, and the parties hereby consent to personal jurisdiction in such courts and waive any objection based on jurisdiction or venue of any such action. Purchaser and Seller agree that the United Nations Convention on International Sales of Goods shall have no force or effect on any Order or transactions between Purchaser and Seller.