

## THE OILGEAR COMPANY

## Terms and Conditions

**1. ACCEPTANCE.** (a) This order is Buyer's offer to Seller and does not constitute an acceptance by Buyer of any offer to sell, quotation or proposal unless specifically stated on the face of this order. Any reference to such offer to sell, quotation or proposal is solely for the purpose of incorporating the description and specifications of the goods and services contained therein to the extent that such description and specifications do not conflict with the description on the face of this order. This order consists only of the terms contained herein and on the face of this order and any supplements, specifications or other documents expressly incorporated herein by reference. (b) By acknowledging receipt of this order (or by shipping the goods or performing the services called for by this order), Seller agrees to the terms and conditions of sale contained in this order. Any additional or different terms or conditions contained in any acknowledgement of this order by Seller shall be deemed objected to by Buyer of any such additional terms or conditions shall not constitute an acceptance of any other additional terms or conditions.

**2. PRICING.** If prices are omitted on the face of this order, Seller's price are subject to approval by the Buyer.

**3. SHIPPING.** Seller shall pay all packing and cartage costs unless otherwise shown on the face of this order. The goods shall be packed and shipped by Seller in accordance with Buyer's instructions and good commercial practice to ensure against damage from weather or transportation.

**4. PAYMENT OF DISCOUNTED INVOICES.** Buyer shall receive and Seller authorizes Buyer to take Seller's usual discounts on invoices received from Seller (a) between the 1st and the 15th of the month if paid by the 25th of the same month, (b) between the 16th and the end of the month if paid by the 10th of the following month. Payment of Seller's invoices shall be subject to subsequent adjustment for shortages and for allowance for articles rejected and expense of rework incurred by Buyer. Under no circumstances will Buyer pay interest charges resulting from late payment of Seller's invoices.

**5. CHANGES.** Buyer may at any time make changes in (a) the method of packing, (b) drawings, design or specifications and (c) quantities of articles ordered. If any such change causes and increase or decrease in the cost of performance by Seller, the Seller shall within 15 days submit a detailed costs breakdown comparing original drawings or conditions and costs with revised drawings or conditions and costs. If any such change affects delivery, Seller will so advise within 15 days outlining in detail reasons for increase or decrease in the established schedule. Any change will only be authorized by written amendment to the basic purchase order. Nothing herein shall excuse Seller from proceeding with the order as changed.

**6. TERMINATION.** Buyer may at any time terminate this order in whole or in part for its convenience upon written notice to Seller in which event Seller shall be entitled to reasonable termination charges reflecting actual direct costs resulting from termination.

**7. CANCELLATION.** (a) Time is of the essence for this order and Buyer may cancel this order, or any part thereof, without liability to Buyer, if deliveries are not made at the time and in the quantity specified, or in the event of any other breach or failure of any of the terms or conditions hereof, (b) Buyer may terminate this order in whole or in part, at any time and for any reason, without further liability, by written notice to Seller, immediately upon receipt of such notice. Seller shall, to the extent specified in the notice, stop work hereunder and take all necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Any termination claim must be submitted to Buyer within 60 days after the effective date of termination. (c) Any termination by Buyer shall be without prejudice to any claims for damages or other rights of Buyer against Seller. Buyer shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer on request all books, records and documents relating thereto.

**8. PROPRIETARY INFORMATION.** The specifications, drawings, designs, manufacturing data and other information transmitted to Seller by Buyer in connection with the performance of this purchase are the property of Buyer and are disclosed in confidence upon the condition that they are not to be reproduced or copied or used for furnishing information or equipment to others, or for any other purpose detrimental to the interest of Buyer.

**9. BUYER-FURNISHED MATERIAL.** When Buyer furnished material for this order, no scrap allowance will be allowed without Buyer's express agreement. Additional material supplied as a result of Seller's spoilage will be charged to Seller at Buyer's cost plus handling. Such charges may be deducted from any amounts due Seller. Spoiled and unused material shall be returned F.O.B. Buyer's plant, or credit allowed at prevailing market prices, at Buyer's option. Seller will promptly furnish Buyer, upon request, a detailed inventory of all materials belonging to Buyer in Seller's possession.

**10. UNAUTHORIZED REWORK.** Under no circumstances is the Seller permitted to use substitute material, to replace defective articles or to repair or rework them, by welding or otherwise without Buyer's written permission

**11. NON-ASSIGNMENT.** Assigned by Seller of this order or any part thereof without the written consent of Buyer shall be void.

**12. SPECIAL TOOLING.** (a) Designs, tools, jigs, dies, forgings, fixtures, templates, patterns and drawings (the "tools") furnished by Buyer and tools made or acquired by Seller for performance of Buyer's order, the cost of which is separately quoted or amortized in the unit price, shall remain or become the property of Buyer. Such tools shall be used exclusively for production under Buyer's orders. (b) Buyer shall not be obligated to reimburse Seller for the cost of any tools, unless specifically agreed to in writing by Buyer. (c) When charges paid by Buyer for tools do not convey title, they shall be used exclusively for production under Buyer's orders during their useful life or until otherwise disposed of by mutual agreement. Seller will supply goods made from such tools in such quantity as Buyer may, from time to time, require under this or future orders. In the event Seller is unable or fails to supply such goods, the Buyer shall have the option of purchasing such tools without delay at original market cost, so as not to endanger the manufacturing of the Buyer's products. (d) Reproducible drawings for tools to be made or acquired by Seller for performance of Buyer's order shall be submitted to Buyer for approval prior to the manufacture or acquisition of such tools. (e) Seller will maintain the tools in first-class condition and will make replacements where necessary.

Seller will not make any alterations in such tools without Buyer's specific written authorization. Upon completion or cancellation of this order, such tools shall be disposed of as Buyer shall direct. (f) Tools made or acquired by Seller for performance of Buyer's order, the cost of which is chargeable to Buyer, shall be separately identified by Seller as directed by Buyer. Payment for such tools will not be made until acceptable articles have been received and approved by Buyer and satisfactory evidence is received by Buyer that proper identification has been made.

**13. INSPECTION.** Articles ordered are subject to final inspection and approval by Buyer at its plant. Such final inspection and approval shall not be conclusive as regards latent defects, fraud or such gross mistakes as amount to fraud and shall not be deemed to affect the obligation of Seller or the rights of Buyer under the clause hereof entitled "Warranty". The furnishings by Buyer of tools or materials or its inspection of Seller's tools or work in Process shall not relieve the Seller from responsibility regarding defects in the articles or other failure to meet the requirements of this order.

**14. WARRANTY-PRODUCT.** Seller expressly warrants, in addition to all warranties which may be implied by law, that all goods and services covered by this order shall conform to the specifications, drawings, samples or other description upon which this order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect. To the extent that the goods and services are not manufactured or supplied pursuant to detailed designs furnished by Buyer, Seller also warrants that such goods and services will be free from defect in design. Inspection, test, acceptance or use of the goods furnished hereunder shall not affect Seller's obligation under this warranty, and such warranty shall survive inspection, test, acceptance and use. This warranty shall run to Buyer, its successors, assigns and customers and

the users of its products. Seller agrees to replace or correct defects in any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such non-conformity by Buyer. In the event of failure by Seller to correct defects in or replace non-conforming good or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for costs incurred by Buyer thereby. Nothing herein nor any notice given to Seller hereunder, nor Buyer's exercise of any right hereunder, nor replacement, repair or correction of defective goods or services by Seller, shall limit Buyer's right to be reimbursed for any and all damages resulting from any breach of this warranty, including without limitation consequential and indirect costs of any nature.

**15. WARRANTY-PRICE.** Seller warrants that the prices charged Buyer for the goods and services furnished pursuant to this order, which shall not be higher than shown on the front side hereof, are no higher than prices charged on orders for comparable goods and/or services placed by others for similar quantities of goods and/or services on similar conditions subsequent to the last general announced price change. In the event Seller breaches this warranty the prices of the goods and/or services shall be reduced accordingly, retroactively to the date of such breach. If at any time during the term of this agreement Buyer is able to secure a specific amount of any goods and/or services herein specified of equal quality from another party at a lower price than that herein stated, and if, after notice in writing, Seller is unwilling or unable to meet such lower price, Buyer shall have the right of purchasing such specific amount and applying it against this agreement. Seller agrees that any price reduction in the goods and/or services subsequent to placement of this order, but prior to shipment, will be applicable to this order. Unless otherwise specified on the front side hereof, the contract price includes all applicable federal, state and local taxes and any duties or other charges applicable to the goods and/or services.

**16. INDEMNITY INSURANCE.** Seller shall defend, indemnify and hold Buyer, its employees, customers, successors and assigns, harmless against all damages, liabilities, claims, demands, actions or proceedings, losses, expenses (including attorney's fees), whether valid or invalid, arising out of, or resulting in any way from actual or alleged: (a) defect in the goods or services purchased hereunder; (b) act or omission of Seller, its agents, employees or subcontractors; (c) failure thereof to comply with specifications or with the express and implied warranties of the Seller; (d) violation by the goods or services, or in their manufacture or sale, of any statute, ordinance or administrative order, rule or regulation, or (e) infringement of any patent, trademark, trade name, trade secret, or copyright, which shall have been issued or enforceable at the time of the execution of this order with respect to the goods or services, to the extent that the goods or services are not manufactured, packaged, labeled or supplied in accordance with Buyer's design. In the event of any claim, demand, action or proceeding being commenced against Buyer by reason of any of the above matters, Buyer agrees to give seller prompt notice thereof in writing. Seller shall maintain such public liability insurance (including products liability, completed operations, contractors' liability and protective liability), automobile liability insurance, (including non-owned automobile liability), and workmen's compensation and employers' liability insurance as will adequately protect Buyer against such damages, liabilities, claims, losses and expense (including attorneys fees). Seller agrees to submit certificates of insurance coverage when requested by Buyer.

**17. REMEDIES; WAIVER; MISCELLANEOUS.** No remedy herein provided shall be deemed exclusive of any other remedy allowed by law. Risk of loss of the goods shall pass to Buyer at that time they are actually delivered to its premises. No claim or right arising out of a breach of this agreement can be discharged in whole or art by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. Waiver by Buyer of a breach by Seller of any provision of this agreement; shall not be deemed a waiver of any other provision or of future compliance with all provision of this agreement, and all such provision shall remain in full force and effect. All warranties shall be construed as conditions as well as warranties. No modification of any provision of this order shall be valid or binding upon Buyer unless approved by Buyer in writing by an authorized agent. This order is a final, complete, and exclusive statement of the terms of the agreement between Buyer and Seller. In addition to any other damage or remedies provided by law, Seller shall be liable to Buyer for attorneys' fees reasonably incurred by Buyer in the enforcement and adjudication of its rights under this agreement.

**18. INTERPRETATION.** This transaction and any contract resulting from this order, shall be governed by, and construed and enforced in accordance with the internal laws of the State in which this purchase order is issued by Buyer. If any provision, clause or part, or any application thereof under certain circumstances, is held invalid, the remainder of the contract or the application of such provision, clause or part, under other circumstances shall not be affected thereby.

**19. GOVERNMENT REGULATIONS AND CONTRACTS.** Seller warrants that all goods and services provided under this order shall be in compliance to the Fair Labor Standards Act, the Occupational Safety and Health Act of 1970 and the Equal Employment Opportunity Act and its provisions. If this order is indicated for a government contract the Seller agrees to all applicable regulations and filings governing such contracts.

**20. FORCE MAJEURE.** In the event of the existence, happening, or continuance of any contingency preventing or substantially interrupting or curtailing the business of Oilgear, such as fire, accident, war (whether international or civil and without regard to whether a formal declaration thereof has been made and whether or not affecting the country of Oilgear or Seller), restraint by any government, order of any federal, state, or local agency, strike, sit down, lock out, combination of workman, shortage of labor, fuel, power, or raw materials, embargo, restriction of transportation facilities, act of God, involuntary shutdown of Oilgear's production facilities, or any other similar or dissimilar cause beyond the reasonable control of Oilgear, Oilgear shall not be under any obligation during the period of such prevention, interruption, or curtailment to accept delivery of or pay for any goods or services ordered.

**21. INTELLECTUAL PROPERTY.** Seller warrants that the goods furnished under this purchase order and the sale and ordinary use thereof will not infringe any patent, trademark, copyright, or other rights, whether in the United States or elsewhere, or constitute a misappropriation of trade secrets or breach of confidential relationship with the respect to the goods and services covered by the purchase order. Seller agrees, at its own expense, to defend any suit or action against Oilgear or against those selling or using the goods or services covered by the purchase order for such alleged infringement, misappropriation, or breach arising from the sale and ordinary use of such goods and services and to indemnify and hold harmless Oilgear from any damages, liabilities, claims, losses, and expenses (including reasonable attorneys' fees) paid or incurred by Oilgear in connection with any such suit or action whether against Oilgear or against those selling or using the goods or services covered by this purchase order; provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses, or expenses arising out of compliance by Seller with specifications furnished by Oilgear. Oilgear may be represented by and actively participate through its own counsel in any such suit or proceeding if Oilgear so desires and all expenses (including reasonable attorneys' fees) paid or incurred by Oilgear in connection with Oilgear's participation in any such suit or proceeding shall be paid by Seller.

**22. FORUM AND JURISDICTION; GOVERNING LAW.** Seller and Oilgear hereby agree that any legal action deemed necessary by either party to this purchase order shall be brought in the Circuit Court in and for Milwaukee County, Wisconsin and hereby consent to the personal jurisdiction of such court in any such action over the parties hereto. If, contrary to the provisions of this Section, Seller commences any legal action involving this purchase order or the goods provided or services rendered hereunder in any forum other than specified above, Oilgear shall be entitled to the dismissal of such action based upon the agreement of the parties contained in this Section. This agreement shall be governed and construed according to the internal laws of the State of Wisconsin without regard to conflict of laws principals and shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

**23. EXPORT/IMPORT CONTROLS**

A. Seller shall control the disclosure of and access to technical data, information and other items received under this Purchase Order in accordance with U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR). Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.

B. Information furnished to Seller under this Purchase Order may contain technical data, as defined in ITAR 120.10. Seller is advised and hereby acknowledges that such technical data, relating to export controlled items appearing on the U.S. Munitions List (USML) at ITAR Part 121, may not be exported, disclosed or transferred, as defined in ITAR 120.17, to any foreign person (whether in the United States or abroad), as defined in ITAR 120.16, without first complying with all relevant requirements of ITAR Parts 120-130 (22 CFR 120-130), including the requirement for obtaining any written export authorization from the U.S. Department of State, Office of Defense Trade Controls (DTC), or otherwise make and document the determination that an ITAR licensing exemption applies, as the case may be. A downloadable copy of the ITAR is accessible at the DTC web site at [www.pmdotc.state.gov](http://www.pmdotc.state.gov).

C. If performance under this Purchase order requires Seller to export, as defined in ITAR 120.17 temporarily import into the U.S. , as defined in ITAR 120.18, or re-export or retransfer, as defined in ITAR 120.19, defense articles, as defined in ITAR 120.6, or to export defense services, as defined in ITAR 120.9, relating to items appearing on the USML at ITAR Part 121, to a foreign person (whether in the United States or abroad), as defined in ITAR 120.16, Seller is advised and hereby acknowledges that such defense articles may not be exported, temporarily imported, re-exported or retransferred and such defense services may not be exported to a foreign person in the U.S. or abroad without complying with all relevant requirements of ITAR Parts 120-130, including the requirement to obtain any written export, temporary import or re-export or retransfer authorization from DTC, or otherwise make and document the determination that an ITAR licensing exemption applies, as the case may be.

D. Seller is further advised that if it engages in the United States in the business of either manufacturing or exporting defense articles as defined in ITAR 120.6 or defense services as defined in ITAR 120.9, then Seller is required by ITAR Part 122 to register with the U.S. Department of State, Office of Defense Trade Controls (DTC) using forms accessible at the DTC web site at [www.pmdotc.state.gov](http://www.pmdotc.state.gov). Manufacturers of defense articles who do not engage in exporting of same must nevertheless register with DTC. Registration does not by itself confer export rights or privileges, but is generally a precondition to the issuance of any license or other approval by DTC.

E. Information furnished to Seller under this Purchase Order, if not regulated by the ITAR, may contain technical data, as defined in the U.S. Department of Commerce, Bureau of Industry and Security (BIS), Export Administration Regulations (EAR) Part 772 (15 CFR 772) relating to export controlled items appearing on the Commerce Control List (CCL) at EAR Part 774 (15 CFR 774). Seller is advised and acknowledges that such technical data may not be exported out of the U.S. or to a foreign national in the U.S., as defined in EAR Part 772, without complying with all relevant requirements of EAR Parts 730-774(15 CFR 730-774), including the requirement to obtain any written export authorization from BIS, or to otherwise make and document the determination that a licensing exception applies, as the case may be. A downloadable copy of the EAR is accessible at the BIS web site at [www.bis.doc.gov](http://www.bis.doc.gov).

F. If performance under this Purchase Order requires Seller to export or re-export, as defined in EAR Part 772, commodities, technology or software as defined in EAR Part 772, that do not relate to items appearing on the USML, but do relate to items appearing on the CCL, Seller is advised and hereby acknowledges that such commodities, technology or software may not be exported out of the U.S., re-exported from one foreign country to another foreign country or to a foreign national outside the U.S. without complying with all relevant requirements of EAR Parts 730-774, including the requirement to obtain any written export authorization from BIS, or to otherwise make and document the determination that a licensing exception applies, as the case may be.

**\*\* PLEASE SHIP THE ITEMS SUBJECT TO THE FOLLOWING CONDITIONS:**

Oilgear's Standard Terms and Conditions will apply. The acceptance of this order, which unless otherwise stated is considered to be an offer to purchase, must conform in every respect to the terms or conditions on the reverse side of this document. Any additional or different terms and conditions proposed by the seller are objected to and shall not become a part of the contract for sale unless approved in writing by the buyer prior to shipment.

**EQUAL EMPLOYMENT OPPORTUNITY**

When applicable, the contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a) and Appendix A of Subpart A of 29 CFR 471. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.