

AMARILLO GEAR COMPANY LLC**TERMS AND CONDITIONS OF PURCHASE**

1. **ACCEPTANCE; AGREEMENT.** The purchase order, including these Terms and Conditions of Purchase (these "Terms") is an offer by Amarillo Gear Company LLC ("Buyer") to purchase the goods ("Goods") and/or services ("Services") described in the purchase order from the person or entity to whom the purchase order is addressed ("Seller"). These Terms are the only terms and conditions which govern the purchase of Goods and Services by Buyer and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. These Terms represent the final and complete understanding of the parties and may be amended or cancelled only by written agreement signed by both parties. These Terms expressly limit acceptance to these provisions. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the provisions of these Terms is hereby deemed material and objected to and rejected. No terms of any document or form submitted by Seller shall be effective to alter or add to the provisions contained in these Terms. Unless otherwise stated herein, Seller's acknowledgment of Buyer's order, shipment of Goods or commencement of any work or performance of any Services shall constitute acceptance by Seller of these Terms.
2. **DELIVERY.** Time is of the essence with respect to the delivery of Goods and the performance of Services. If the delivery of the Goods and/or the performance of the Services is not commenced by the specified starting date or completed within the specified time, Buyer may, in addition to any other rights or remedies it may have, terminate the order, without liability, for any Goods not yet shipped or Services not yet provided and purchase substitute goods or services and charge Seller for any extra costs. If, in order to comply with delivery date specified on the front hereof, Seller must ship by a more expensive way than specified herein, Seller shall pay any increased costs.
3. **RISK OF LOSS.** Seller shall assume and pay for any loss or damage to the Goods ordered by Buyer from any cause whatsoever until the Goods are delivered to Buyer at the Seller's designated delivery location.
4. **WARRANTIES.** Seller warrants that the Goods or Services purchased hereunder will be (a) in full conformity with the specifications, drawings, descriptions and/or samples furnished or specified by Buyer, (b) free from defects in material, workmanship and design, (c) of good merchantable quality and fit and sufficient for the purposes intended, (d) free and clear of all liens, Claims, security interests or other encumbrances, (e) free of claims of infringement or misappropriation of any third party's intellectual property rights; and (f) produced or provided in compliance with and meet all requirements and standards of all applicable federal, state, and local laws and regulations. All warranties shall survive any inspection, testing, delivery, acceptance or payment or failure to inspect, test or discover any defect or other nonconformance shall relieve Seller of any of its obligations under these Terms or impair any rights or remedies of Buyer. **NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY FOR DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.**
5. **INSPECTION.** All Goods are subject to inspection by authorized representative(s) of Buyer and/or Buyer's customers at all reasonable times and places, including during production. No Goods shall be considered accepted prior to inspection by Buyer at Buyer's place of business. Buyer reserves the right to reject or to revoke acceptance of Goods which fail to meet any requirement of Buyer's order, notwithstanding any payment or any prior inspection or test.
6. **INDEMNIFICATION.** Seller, shall indemnify, hold harmless and defend Buyer, its affiliates and their respective successors and assigns, against all lawsuits, damages, losses, costs, expenses, claims, liabilities, judgments, settlements, fines, settlements or penalties, including all attorney's fees and litigation costs, whether direct, indirect, incidental, consequential, or otherwise (collectively, "Claims") for: (i) personal injury, property damage, or other damage, arising out of, relating to, or in connection with, the Goods or Services; (ii) Seller's actual or alleged negligence, act or omission or failure to comply with all these Terms or any other agreement between Buyer and Seller, (iii) any Recall; (iv) actual or alleged infringement or misappropriation of any intellectual property or proprietary right; and (v) Seller's breach of these Terms or any of the warranties expressed herein or any warranties implied by law. Seller shall not enter into any settlement without Buyer's prior written consent. This indemnification is in addition to the warranty obligations of Seller.
7. **INTELLECTUAL PROPERTY.** Seller warrants that the manufacture, sale and use of the Goods will not infringe any patent, copyright, trademark, trade secret or other proprietary right. Seller shall indemnify Buyer in accordance with Section 6. If all or any portion of the Goods are held to constitute an infringement of a patent and/or their use is enjoined for any reason, Seller shall promptly, and at its own expense, either procure for Buyer the right to continue using such Goods royalty-free or replace such Goods to Buyer's satisfaction with non-infringing goods of equal quality and performance.
8. **INSURANCE.**
 - a. Seller shall obtain and at all times during which this Agreement is in effect maintain at its cost the following insurance with insurers having a current A.M. Best rating of "A- VIII" or better: (1) primary comprehensive or commercial general liability insurance with limits of at least \$1 million per occurrence and \$2 million annual aggregate combined single limit for bodily injury and property damage, including coverage for: (i) Products and Completed Operations liability; (ii) Blanket Contractual liability; and (iii) Cross Liability endorsement or Severability of Interest clause;
 - b. Insurance required shall: (1) be endorsed to insure Buyer, its officers, directors, employees, representatives and agents as additional insureds on an ISO form CG 20 26 07 04, Additional Insured - Designated Person or Organization or the equivalent, (2) be endorsed to waive any rights of subrogation against Buyer; (3) provide contractual liability coverage to Seller for its indemnity obligations assumed under this Agreement, although any failure to comply will not affect the validity or enforceability of such indemnity obligations; and (4) be endorsed to provide that such insurance is primary to and non-contributory with any other insurance obtained by, for or on behalf Buyer notwithstanding any "other insurance" provision contained within such policies.
- c. Seller shall provide written notice to Buyer no less than 30 days prior to the effective date of cancellation or material reduction of any required insurance coverage, including any modification affecting any policy's compliance with these Terms.
- d. Prior hereto and at any time upon request, Seller shall provide certificates of insurance to Buyer along with copies of the additional insured, waiver of subrogation and primary / non-contributory endorsements and other documentation as may be required by Buyer demonstrate the insurance coverages required herein. Seller's delivery of products as described in these Terms constitutes a specific representation that all insurance coverages required herein are in place and effective for the period of supply. Seller specifically recognizes and acknowledges that its compliance with the insurance provisions described herein is material to Buyer's decision to enter into an order. Seller specifically recognizes and acknowledges that the insurance required in this Agreement does not limit Seller's responsibility in the event of a loss.
9. **CHANGES.** Buyer shall have the right at any time to make changes in drawings, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the performance, a mutually agreed upon equitable adjustment shall be made therein. Seller agrees to accept any such changes subject to this section.
10. **SET OFFS.** Buyer has the right to set off against any amounts due Seller hereunder from any amounts owed to Buyer by Seller arising from this or any other transaction.
11. **RECALL.** In the event that Buyer determines, in Buyer's sole discretion, that any defect, nonconformance or deficiency in any of the Goods requires a field campaign, recall or similar action ("Recall"), to repair, replace or remediate any Goods or any of Buyer's products in which Goods are incorporated, Seller shall be liable to Buyer and its customers for all costs and expenses with regard to the foregoing including, without limitation, attorneys' fees and court costs.
12. **FORCE MAJEURE.** Buyer shall not be liable for failure to take delivery of the Goods or to allow performance of the Services if such failure or inability is due to causes beyond Buyer's reasonable control.
13. **TERMINATION FOR CAUSE.** Buyer may terminate its order without liability, in whole or in part, at any time, if (i) Seller fails to deliver the Goods or to perform the Services by the specified time or any extension thereof authorized by Buyer in writing; (ii) a petition initiating a proceeding under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Seller; (iii) Seller executes an assignment for benefit or creditors; (iv) a receiver is appointed for Seller or any substantial part of its assets; or (v) Buyer shall have any reasonable ground for insecurity with respect to Seller's ability to perform and Seller in unable to provide Buyer with adequate assurance of its ability to perform within ten days after written request therefore by Buyer. Buyer's right under this section to terminate its order is not an exclusive remedy. Buyer shall be entitled to all other rights and remedies it may either at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.
14. **TERMINATION FOR CONVENIENCE OF BUYER.** Buyer may terminate its order at its convenience at any time by written notice to Seller. For specially prepared products which are unique to Buyer's order, any partially completed work or raw materials whose full costs are included in the cancellation charges shall be identified in writing and held by Seller for disposition in accordance with Buyer's written instructions.
15. **TOOLING.** Any tooling provided by or specifically paid for by Buyer shall be and remain the sole property of Buyer. Seller shall be responsible for maintenance of the tooling while in its possession and shall return tooling to Buyer immediately upon demand. Seller waives any lien rights or other rights to retain tooling and acknowledges that its obligation to return tooling upon demand is unconditional.
16. **AUDIT.** Buyer and its designees shall have the right to audit and inspect Seller and Seller's suppliers to determine Seller's and its supplier's compliance with the order and these Terms.
17. **NOTICES.** Any and all notices or other communications required or desired to be given in connection with this order will be given in writing and will be deemed effective upon personal delivery, on the third day after mailing if sent by certified mail, postage prepaid, return receipt requested, or one business day after deposit if sent by a nationally recognized courier service which maintains evidence of the time, place and receipt of delivery, and in each case if addressed as set forth in the order (or such other addresses a party may designate in writing from time to time), plus Seller shall dispatch a copy to The Marmon Group LLC, 181 West Madison Street, 26th Floor, Chicago, Illinois 60602, Attn: General Counsel.
18. **BUYER INFORMATION.** BUYER MAKES NO WARRANTY WITH RESPECT TO INFORMATION PROVIDED BY BUYER TO SELLER. ANY IMPLIED WARRANTIES THAT MAY EXIST WITH RESPECT TO ANY INFORMATION PROVIDED BY BUYER, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED. Seller acknowledges and agrees that any sales forecasts, quantity purchase estimates or similar projections received from Buyer are not purchase commitments of Buyer, but rather represent estimates for planning purposes only. Buyer shall have no obligation to purchase or otherwise compensate Seller for any of Seller's finished products, or unfinished raw materials, not covered by a purchase order issued by Buyer.
19. **WAIVER.** All waivers by Buyer shall be in writing. Failure of Buyer at any time to require Seller's performance of any obligation hereunder shall not affect Buyer's right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.
20. **MISCELLANEOUS.** Seller shall not assign Buyer's order or any monies due or to become due from Buyer hereunder without Buyer's prior written consent. These Terms shall be construed in accordance with the laws of Texas, without regard to any rules on conflicts of laws. Provisions which by their nature should survive will remain in force after any termination or expiration. The section headings contained herein are not part of these Terms and are included solely for the convenience of the parties.