



ATLAS *Gear* COMPANY
ATLAS *Gear* CHINA LLC

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PURCHASE ORDER TERMS AND CONDITIONS

- 1. Offer and Acceptance.** This Order is an offer to the Supplier from Atlas Gear Company or Atlas Gear China LLC (the “Purchaser”) to purchase from Supplier the goods and/or services referenced in this purchase order exclusively under these terms and conditions. This Order shall be deemed accepted by Supplier and shall constitute the entire agreement between the parties with respect to the subject matter hereof upon any of the following: (a) Supplier’s acknowledgment of the purchase order; (b) Supplier’s commencement of performance or its shipment of goods; (c) Supplier’s acceptance of any payment under this Order; or (d) Supplier’s failure to deliver written notice of rejection to Buyer within ten (10) days of receipt of this Order. Purchaser expressly rejects and shall not be bound by any provision, printed or otherwise, at variance or in addition to the terms of this Order that may appear on any quotation, acknowledgement or other form used by Supplier.
- 2. Price and Payment.** Purchaser shall not be invoiced at a price(s) higher than prices shown on the face of this Order (the “Price”). Any reduction made by Supplier in the prices of the goods or work/services covered by this Order which is instituted before delivery of the goods or commencement of work/services shall be applicable to this Order. Payment will be made in accordance with payment terms stated on face of this Order.
- 3. Taxes and Charges.** Unless otherwise stated on the face of this Order, the Price is deemed to include (a) all applicable federal, state and local taxes and (b) the charges for insurance, import duties, packaging, transportations and any other fee or expense relating to the provision of the goods or services ordered.
- 4. Quantity.** Unless otherwise specified on the face of this Order, each order of goods shall be shipped complete. Purchaser shall not be obligated to accept any shipment of goods in excess of the quantity specified in this Order. Any excess quantity will be held at Supplier's risk and expense for a reasonable time awaiting return shipping instructions from Supplier. Risk of loss and return shipping charges for any excess shall be borne by Supplier.
- 5. Delivery.** Time is of the essence for the performance of this Order. Goods delivered

after the required delivery date or prior to 10 days in advance of the required delivery shall, at Purchaser's options, not be required to be accepted by Purchaser and shall be returnable to Supplier at Supplier's sole risk and expense. Time and quantity of supply are of the essence. If the goods are not ready for delivery in time to meet Purchaser's delivery schedules, Supplier shall be responsible for additional costs of any resulting or other special transportation. All goods shall be suitably packed for shipment to prevent damage. Supplier will include a numbered packing list with each shipment, referencing the relevant Order number. All items shipped must be clearly identified with Purchaser's Order part number. For supplies that contain potentially hazardous materials, Supplier will provide all material documentation as required by law. Supplier shall comply with all applicable federal, state, provincial and local laws and regulations pertaining to product and warning labels. Title and (except as otherwise provided herein) risk of loss or damage to the goods shall pass to Purchaser when the goods are delivered to Purchaser's address specified on the face of this Order.

6. **Rejection/Revocation of Acceptance.** Payment for any goods under this Order shall not constitute acceptance thereof and Purchaser reserves the right to inspect all goods purchased hereunder at Purchaser's discretion and at Purchaser's option and to reject nonconforming goods or services or revoke acceptance of non-conforming goods or services. At Purchaser's option and at Supplier's risk and expense, Purchaser may return non-conforming goods to Supplier, require Supplier to grant a full refund or credit to Purchaser for non-conforming goods, hold nonconforming goods for disposition by Supplier or rework nonconforming goods to detect and correct nonconformities, and compensate Purchaser for all costs and expenses caused by the nonconformity. Acceptance of any part of the goods ordered hereunder shall not bind Buyer to accept future shipments or waive its right to revoke acceptance of goods previously delivered. In the event of multiple nonconforming goods or services, Supplier shall, within 48 hours from notice thereof by Purchaser, submit a written corrective action report to Purchaser. Such report shall identify the root cause of the nonconformance, identity of affected goods and services, and a corrective action plan, for Purchaser's review and approval.
7. **Changes.** Purchaser reserves the right at any time prior to the delivery date of the goods or services to make changes to the drawings, designs or specifications of the goods ordered, the method of packing and shipping, the time, place or method of delivery, the quantity of goods ordered or the work covered hereby. If any such change causes an increase or decrease in the cost of performance or the time required for performance of this Order, an equitable adjustment shall be made and this Order shall be modified in writing accordingly. Supplier shall be deemed to have waived any claim for adjustment for performance of the change if it does not provide written notice of such claim to Purchaser within 7 days from the receipt by Supplier of notification of the change.
8. **Warranty.** With respect to goods supplied under this Order, Supplier warrants that for the period of one (1) year following Purchaser's acceptance of goods, or such other time period specified on the face of this Order, that the goods (a) shall conform to the

specifications as provided on the face of this Order, (b) shall be free of any liens or encumbrances, (c) shall be of new material and good workmanship, merchantable and free from defects; and (d) shall be fit for the purposes intended. In the event Supplier breaches any warranty with respect to goods, Supplier shall promptly remove any liens and encumbrances, shall repair or replace the defective or nonconforming goods at no cost to Purchaser. In the event Supplier does not repair or replace the defective or nonconforming goods, Supplier shall refund the Price to Purchaser and thereupon shall be entitled to retain the defective or nonconforming goods.

With respect to services supplied under this Order, Supplier warrants that for a period of one (1) year following the completion of the services, or such other time period specified on the face of this Order, the services and/or any deliverable items or work product in connection with services shall (a) conform to the description of the services ordered and (b) be performed in a professional manner conforming to the highest industry standards for performance of such services. Under this warranty, Supplier shall promptly correct all defects at no cost to Purchaser.

The foregoing warranties shall run to Purchaser, its successors and assigns, and to Purchaser's customers in the event of resale or incorporation into Purchaser's products. In the event of breach of warranty, Supplier shall be entitled to all rights and remedies available at law, including but not limited to credit, replacement or repair of defective goods at Purchaser's option, costs of removal of the goods from any component, assembly or system into which the goods may have been incorporated, and reinstallation of non-defective goods, and cost of return of the goods. Supplier shall also reimburse Purchaser for any incidental and consequential damages caused by such nonconforming goods including, but not limited to costs, expenses and losses incurred by Purchaser: (a) in inspecting, sorting, repairing or replacing such goods; (b) resulting from any production interruptions; (c) conducting any recall campaigns or other corrective actions; and (d) claims for personal injury or property damage

9. Setoff. Upon notice to Supplier, Purchaser may deduct from the amount due Supplier under this Order, damages for any breach of this Order or amounts otherwise due Purchaser from Supplier or Supplier's parent, affiliates or subsidiaries, irrespective of whether deduction is related to the goods or work/services covered by this Order.

10. Termination and Breach. Purchaser may at any time and without any liability, whether or not Supplier is in breach hereof, terminate this Order in whole or in part by written notice or verbal notice confirmed in writing. If this Order is terminated without breach by Supplier, Supplier shall be entitled solely to reimbursement of direct, reasonable costs as determined by Purchaser upon receipt of a written claim by Supplier, with documentation supporting Supplier's claim. In no event shall any reimbursement to Supplier exceed the Price. If Supplier fails to provide a written claim within 30 days of the date of termination, Supplier forfeits any claim for reimbursement.

If this Order is terminated by Purchaser for Supplier's breach, including, but not limited to Supplier's delay in delivery of the goods or performance of work/services, Purchaser shall be entitled to pursue cumulatively against Supplier any or all available remedies under this Order, or at law or equity, and Supplier shall not be entitled to any reimbursement for the termination.

11. Limitation of Purchaser's Liability. IN NO EVENT, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, THE CLAIMS ASSERTED, OR THE PERSON ASSERTING SUCH CLAIMS, SHALL PURCHASER'S LIABILITY IN THE AGGREGATE FOR ALL SUCH MATTERS, EXCEED THE PRICE PAID BY PURCHASER UNDER THIS ORDER, AND SUPPLIER WAIVES ANY CLAIM TO ANY OTHER DAMAGES OR REMEDIES UNDER ANY CAUSE OF ACTION. SUPPLIER AGREES THAT PURCHASER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE, COST OF CAPITAL, FINES, PENALTIES AND THE LIKE, ENVIRONMENTAL LIABILITY AND DAMAGE, INJURY OR LOSS TO OTHER PROPERTY OR EQUIPMENT OR FOR PERSONAL INJURIES TO SUPPLIER'S EMPLOYEES OR THIRD PARTIES. CLAIMS MUST BE MADE TO PURCHASER WITHIN A PERIOD OF TWELVE (12) MONTHS FROM THE DATE OF THE OCCURRENCE OF THE EVENT GIVING RISE TO THE DAMAGE, OR THE CLAIM IS FORFEITED.

12. Assignment/Subcontracting. Supplier shall not (a) assign this Order, any interest herein or any rights hereunder; or (b) subcontract any obligation to be performed hereunder, without the prior written consent of Purchaser.

13. Intellectual Property. All intellectual property owned by Purchaser prior to this Order or developed by Purchaser independent of Supplier shall remain Purchaser's property. Nothing in this Order shall be construed as granting Supplier any rights to Purchaser's intellectual property. All intellectual property developed, made or conceived, or actually or constructively reduced to practice pursuant to this Order shall be owned by Purchaser. All intellectual property or portions thereof that are included within the definition of a "work made for hire" under the U.S. Copyright Act will be considered a "work made for hire" and Purchaser will be deemed the sole author and owner of any such works. Supplier agrees to execute whatever documents may be reasonably requested by Purchaser to evidence such ownership.

14. Non-Circumvention. If, during the Restricted Period (as defined herein), Supplier, on behalf of itself or others, directly or indirectly supplies, manufactures, distributes, offers, promotes, designs, modifies, handles or sells any Products to any Customer (as defined herein), Supplier shall pay to Purchaser a commission of 7% of the sale price of the Products sold to that Customer for the life of the program, as well as 7% of the sale price of all future Products sold to that Customer.

For purposes of this Order, the "Restricted Period" shall mean the period ending upon the latter of ten (10) years following the date hereof or five (5) years following the date of the last purchase by Purchaser or any of its affiliates from Supplier; provided, however, that in the event of a breach of this Section 14, then the Restricted Period shall be tolled and extended as long as such breach or any other breach continues. For purposes of this Order, a "Customer" shall be any

customer of Purchaser disclosed to Supplier by Purchaser or otherwise known to Supplier through Purchaser.

- 15. Special Products.** Unless otherwise provided on the face of this Order, any drawings, special dies, tools, patterns or equipment required for the manufacture of goods shall be furnished by Supplier and at no cost to Purchaser. Purchaser, at its option may reimburse Supplier for Supplier's reasonable cost for such drawings, dies, tools or patterns, and shall, as a result become the owner and entitled to possession of same upon Purchaser's request therefore. In the event of Supplier's breach, including, but not limited to Supplier's delay in delivery of the goods or performance of work/services, Purchaser shall be entitled to a full refund of any payments made to Supplier for drawings, dies, tools, patterns or equipment. Supplier waives any lien or other rights that Supplier might otherwise have on any of Purchaser's property, for work performed on or with such property, or otherwise.
- 16. Indemnification.** Supplier shall indemnify, defend and save Purchaser and Purchaser's parent, any affiliate or subsidiary of Purchaser, ("Purchaser's Affiliates") and/or their customers harmless against any loss damage, liability or claim attributable to the possession, use or transfer of the goods or the performance of services, (including without limitation, costs and attorneys; fees in connection therewith) that may be suffered by and/or be subject of a claim against Purchaser or Purchaser's Affiliates and/or their customers, including, without limitation any loss, damage, liability or claim arising from injury or death to persons or damage to property. In addition, Supplier shall indemnify, defend and save Purchaser and Purchaser's parent, any affiliate or subsidiary of Purchaser, ("Purchaser's Affiliates") and/or their customers harmless against any claim, suit, action, or proceeding which alleges that any goods or services provided by Supplier pursuant to this Order infringe any patent, trademark, copyright, trade secret or other proprietary right owned by a third party. Supplier agrees to indemnify Purchaser against any and all expenses, losses, royalties, lost profits and damages, including court cost and attorney's fees, resulting from such claim, suit, action or proceeding, including any settlement, decree or judgment entered therein. Purchaser may at its option, be represented and actively participate through its own counsel in any such claim, suit or proceeding, including any settlement, decree or judgment entered therein. Supplier's obligations pursuant to this Section shall survive the completion of performance and expiration or termination of this Order.
- 17. Insurance.** Supplier shall, prior to commencement of performance, obtain the following types of Insurance and minimum coverage amounts: (a) statutory worker's compensation coverage for the State in which this Order is to be performed; (b) employers liability with limits of not less than \$1 Million (each accident, disease- each employee, disease-policy limit); (c) commercial general liability, covering liability arising from premises, operations, independent contractors, products/completed operations, personal injury and advertising injury, and liability assumed under an insurance contract \$1 Million per occurrence, \$2 Million aggregate; (d) automobile liability, including non-owner automobile liability for both personal injury and property damage with limits of \$1 Million per occurrence, (e) professional liability coverage with limits of not less than \$1 Million

per occurrence; and (f) umbrella liability coverage with a limit per occurrence and in the aggregate of no less than \$4 Million in excess of the commercial general liability, employer's liability, automobile liability and professional liability requirements set forth herein. Upon Purchaser's request, Supplier shall name Purchaser as an additional insured under its policies. At Purchaser's request, Supplier shall provide a certificate of insurance affirming that Supplier has obtained the insurance coverage required by this paragraph.

18. Laws and Regulations. Supplier and its goods and services shall comply with applicable laws, rules, regulations orders conventions, ordinances or standards of the country of destination or which relate to the manufacture, labeling, transportation, exportation, importation, licensing, approval or certification of the suppliers, including those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety, and motor vehicle safety. Supplier shall comply with the provisions of any applicable privacy legislation in accordance to the laws of the respective country of origin. Purchaser does not give Supplier permission or consent to use any personal information obtained through this Order for any purpose other than the supply of goods and works/services to Purchaser. At Purchaser's request, Supplier shall certify in writing its compliance with any or all of the foregoing. Purchaser requires strict compliance with this provision and has the right to immediately terminate this Order if there is a breach hereof.

19. Disclosure of Information. Purchaser may disclose to Supplier certain plans, drawings, sketches, specifications, trade secrets, and know-how, as well as business, technical, or proprietary information (collectively referred to as "Information"), which either belongs to Purchaser or one of its customers. Supplier agrees, and shall require its employees to agree, that all rights in and to this Information belong to Purchaser and will not be copied, duplicated, used, sold or disclosed to others by Seller or any of its employees without Purchaser's express written permission, and that the Information will only be used in support of the Order objectives. This Information shall be treated by Supplier and its employees as confidential and shall be immediately returned to Purchaser upon Purchaser's request. This provision shall survive the termination of the Order. Supplier agrees not to assert any claim (other than a claim for patent infringement) with respect to any Information, including technical Information, which Supplier shall have disclosed or may hereinafter disclose to Purchaser in connection with the goods or services covered by this Order.

20. Force Majeure. Any delay or failure by either Purchaser or Supplier to perform the requirements of this Order shall be excused if such delay or failure of the party is as the result of an event or occurrence beyond the reasonable control of the party and without its fault or negligence, including but not limited to, acts of God, actions by the government (whether valid or invalid), or fires, floods, riots, natural disasters, wars sabotage, height embargoes, or inability to obtain power. In the event any such cause affects Supplier's performance for a period of 10 or more days, Purchaser shall have the right to terminate this Order for its convenience pursuant to Paragraph 10.

- 21. Governing Law.** This Order shall be governed and interpreted in accordance with the laws of the State of Michigan, without resort to the internal conflict of law rules of Michigan. The United Nations Convention on Contracts for the International Sale of Goods shall have no application and shall not govern this Order. Jurisdiction and venue for all disputes among the parties shall be proper in the County of Wayne, State of Michigan, or in the Federal District Court for the Eastern District of Michigan.
- 22. Remedies/Waiver.** Purchaser's remedies described herein shall be cumulative and in addition to any remedies allowed by law or equity. The failure of a party to claim a breach of any term of this Order shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term.
- 23. Entire Agreement.** This Order constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, communications and understandings of any nature whatsoever, whether oral, written or otherwise, all of which are null, void, and of no effect whatsoever. This Order may not be modified except in writing signed by a duly authorized representative of Purchaser.