

GENERAL TERMS OF SALE

Rev 101217

THE FOLLOWING CONSTITUTE THE TERMS AND CONDITIONS OF SALE FOR ALL PRODUCTS MANUFACTURED, DISTRIBUTED AND/OR SOLD BY **Micro Gauge, Inc.** (SELLER). **THESE TERMS AND CONDITIONS SUPERCEDE THE GENERAL TERMS OF SALE FOUND AT WWW.MUELLERINDUSTRIES.COM** FOR THE GOODS SOLD BY **Micro Gauge, Inc.** HEREUNDER. ACCEPTANCE OF SELLER'S OFFER TO SELL OR BUYER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF THE PROVISIONS STATED HEREIN. [BUYER'S ACCEPTANCE OF SELLER'S ORDER CONFIRMATION OR EACH SHIPMENT OF GOODS SHALL BE DEEMED TO BE AN ACCEPTANCE OF THE PROVISIONS HEREOF NOTWITHSTANDING ANY ACT OF SELLER, INCLUDING SHIPMENT OR ACCEPTANCE OF PAYMENTS, AND NOTWITHSTANDING ANY TERM OR CONDITION CONTAINED IN ANY FORM OF BUYER, AND ANY PROPOSAL FOR ADDITIONAL OR DIFFERENT TERMS OR ANY ATTEMPT BY BUYER TO VARY ANY OF THE PROVISIONS HEREIN IS HEREBY DEEMED A MATERIAL ALTERATION AND REJECTED. THE PROVISIONS HEREIN MAY NOT BE ADDED TO, MODIFIED, SUPERSEDED, OR ALTERED EXCEPT BY WRITTEN AGREEMENT OR MODIFICATION SIGNED BY AN OFFICER OF SELLER, NOTWITHSTANDING ANY TERMS WHICH MAY NOW OR IN THE FUTURE APPEAR ON BUYER'S FORMS OR COMMUNICATIONS, ALL OF WHICH ARE REJECTED WITHOUT FURTHER ACTION OF SELLER. NO PERSON (EXCEPT AN OFFICER OF SELLER) IS AUTHORIZED TO BIND SELLER TO ANY ORDER FOR ANY GOODS EXCEPT ACCORDING TO THE PROVISIONS HEREIN.

1. **PRICES.** All prices for SELLER's products are subject to change or withdrawal without notice. Unless otherwise stated by SELLER, prices, terms of payment and pricing policies will be those of the SELLER in effect at the time of shipment. SELLER reserves the right to make price changes within the periods of contracts, including installment contracts or blanket orders. The cost of packing and crating other than in accordance with the standards of SELLER may constitute an additional charge and may at SELLER's discretion be added to the sales price(s). SELLER also reserves the right to divide BUYER's order into separate shipments and to invoice and otherwise treat each shipment as a separate contract subject to these Terms and Conditions. All sales and shipments are subject at all times to credit approval by SELLER.

2. **TRANSPORTATION AND RISK OF LOSS.** Unless otherwise agreed in advance in writing by SELLER, delivery of products hereunder shall be F.O.B. shipping point, with transportation expenses paid by BUYER unless standard SELLER applicable freight prepayment qualifications are met and the risk of loss or damage to products in transit shall fall upon BUYER (whose responsibility it shall be to file claims with carrier at delivery to BUYER at BUYER's premises) upon delivery (a) to BUYER's designated representative, or (b) to a common carrier or other designated shipper (not including SELLER), whichever of the foregoing occurs earlier. SELLER in its discretion shall select the appropriate transportation method and routing. All orders, unless otherwise agreed in writing, are for shipment at SELLER's earliest convenience. Stated delivery dates are approximate and will be calculated from the date that SELLER has received all information necessary to permit SELLER to proceed with work immediately and without interruption. If any or all products are not delivered when ready due to the request of BUYER, SELLER reserves the right to invoice BUYER at any time thereafter and to place such products in storage with all risk of loss or damage borne by BUYER and with all expenses and costs

attributable thereto for the account of BUYER, which shall be payable by BUYER upon submission of SELLER's invoices to BUYER.

3. **DELAYS.** SELLER shall not be liable for any delays in delivery due or resulting in whole or in part from or made impossible or impractical by any cause beyond the control of SELLER including but not limited to fire, explosion, epidemics, accident, material and significant breakdown, strike or labor disputes, adverse weather conditions, loss or damage in shipment, shortage or lack of materials, fuel or power, sale or transfer of manufacturing facilities, embargo, acts of God, acts (including delay or failure to act) of any governmental authority (de jure or de facto) or any other contingency or delay or failure or cause beyond SELLER's control. If, due to any such occurrence, SELLER is unable to supply total demands for any goods specified, SELLER may, but shall not be obligated to, allocate production, inventory and deliveries (in any manner fair and reasonable to the extent that goods are not special or unique) and will notify BUYER reasonably that there will be delay or non-delivery.

4. **TAXES.** All prices are exclusive of any applicable foreign or U.S.A. federal, state or local sales, use, excise or other taxes, which SELLER may be required to pay or collect, under any existing or future law, upon or with respect to the sale, delivery, storage, processing, use or consumption of any of the products covered hereby, which shall be for the account of BUYER, who shall promptly pay the amount thereof to SELLER upon demand.

5. **PAYMENT TERMS AND SECURITY INTEREST.** Unless otherwise agreed in advance in writing by SELLER, payment terms are 1/2% 10 days, net 30 days. All payments not made within such time may be subject to a carrying charge of one percent per month on the unpaid balance or the highest rate permitted by applicable law, whichever is the lesser. Until the entire amount due hereunder is paid, SELLER reserves a security interest in all products sold, with all rights, privileges and remedies of a selling secured party in the jurisdiction to which the goods may be shipped or within which they may be kept at any time. In pursuance thereof, BUYER agrees to timely execute any documents which SELLER may request from time to time in order to give notice of, perfect or otherwise give effect to the existence of said security interest.

6. **FINANCIAL RESPONSIBILITY.** If SELLER has any reasonable doubt at any time as to BUYER's financial condition and ability to perform, SELLER, at its option, may (a) decline to make further shipments other than on a cash in advance basis or upon BUYER providing other security satisfactory to SELLER, or (b) terminate this agreement.

7. **RECEIVING AND INSPECTION.** Any claim by BUYER based upon or relating to any claimed defect or discrepancy in the products ascertainable upon visual inspection thereof, including without limitation any claim relating to size, type, quantity or shipping damage and the like, must be presented to SELLER or its representative within fifteen (15) days following the date of receipt of the product by BUYER. BUYER's receipt of any product delivered hereunder shall be an unqualified acceptance, and a waiver by BUYER of any and all such claims with respect to such product unless BUYER gives SELLER notice of claim within fifteen (15) days after such receipt. Unless otherwise agreed in advance in writing by SELLER, variations in the products as to composition, dimensions, quantity and the like shall be permissible and not cause for BUYER's rejection or revocation if within prevailing industry (United States of America) standards or within agreed upon specifications provided by BUYER. BUYER assumes all risk and liability for results.

8. TERMINATION FOR CONVENIENCE. In addition to any other rights of BUYER to terminate this agreement, BUYER may, at its option, immediately terminate all or any part of this agreement, at any time and for any reason, by giving written notice to SELLER. Upon such termination, Buyer shall pay to SELLER the following amounts without duplication; (a) the contract price for all goods or services which have been completed in accordance with this agreement and not previously paid for; and (b) the actual costs of work-in-process and raw materials incurred by SELLER in furnishing the goods or services under this agreement to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this agreement or the applicable purchase order; less, however the sum of the reasonable value or cost (whichever is higher) of any good or materials used or sold by SELLER with BUYER's written consent, and the cost of any damaged or destroyed goods or material. BUYER shall not be obligated to make payments for finished goods, work-in-process or raw materials fabricated or procured by SELLER in amounts in excess of those authorized in delivery releases nor for any undelivered goods which are SELLER's standard stock or which are readily marketable. Payments made under this section shall not exceed the aggregate price payable by BUYER for finished goods that would be produced by SELLER under delivery or release schedules outstanding at the date of termination. Except as provided in this section, BUYER shall not be liable for and shall not be required to make payment to SELLER, directly or on account of claims by SELLER's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims or past due charges from SELLER's suppliers, product development and engineering costs, facilities, and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges from termination of this agreement. Within 60 days from the effective date of termination, SELLER shall submit a comprehensive termination claim to BUYER with sufficient supporting data to permit BUYER's evaluation of same and shall thereafter promptly furnish such supplemental and supporting information as BUYER shall reasonably request.

9. TOOLING. BUYER will indemnify, defend and hold SELLER harmless from and against any liability, damage, loss or expense arising from the use or handling of any tooling supplied or designed by BUYER from which products are to be cast or manufactured by SELLER.

10. PATENT INDEMNITY. SELLER agrees to protect, indemnify and hold harmless the BUYER, its successors, assigns, customers and users of its products against any liability, loss, damage or expense whatsoever resulting from any infringement of any United States Letters Patent by any thing, number, material, design, composition, or processing of SELLER's origin or practice supplied by SELLER. With respect to any thing, number, material or design, composition, or processing, specified by BUYER and not of SELLER's origin or practice, BUYER agrees to save SELLER harmless from any liability, loss damage or expense whatsoever resulting from any infringement of any United States Letters Patent arising out of SELLER's making, using or selling the same for or to BUYER in fulfillment of its orders or contracts. SELLER and BUYER severally agree to notify the other in writing promptly of any charge of infringement made and of any suit brought in respect to such device or composition and to assume or tender to the other the full control of the defense or settlement of such suit in accordance herewith.

11. WARRANTY. Unless otherwise published or presented by SELLER, SELLER warrants that products furnished will be free from defects in workmanship and materials for a period of one (1) year from the date of receipt by BUYER of the products. SELLER warrants only to BUYER that products furnished of SELLER's own manufacture will conform to prevailing (United States of America) industry standards as to quality, inspections, composition, quantity and type. This

warranty will not apply to damage resulting from normal wear, improper installation, misuse or neglect. SELLER does not warrant any aspect of product representation, installation, modifications or manufacturing carried out by parties other than SELLER and [BUYER hereby indemnifies SELLER for any loss, cost or expense to which SELLER may be exposed as a result of any such activities by BUYER or BUYER's customers.] SELLER's sole obligation for failure to comply with this warranty will be, at its election, to repair or replace the defective product where BUYER notifies SELLER and such product, upon SELLER's request, is made available to SELLER for inspection F.O.B. SELLER's facility or point of manufacture within the specified warranty period. Except to the extent that (1) descriptions of size, quality and type, which may appear on SELLER invoices and other documents, and (2) statements of conformity of products with specification of certain industry, government, or professional organizations standards, which may appear as product information disclosures in SELLER's literature and documents, may from time to time be construed to be express warranties, **THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

12. RETURNS & EXCHANGES. Product returns or exchanges that are initiated by the BUYER and of no error, influence or request by SELLER, are to be completed within thirty (30) days of BUYER's receipt. Such returns or exchanges must be authorized in writing by SELLER, prior to the BUYER's shipment of goods and are subject to restocking and handling fees. BUYER assumes all costs for freight and transportation in the return or exchange of the product. In the case of SELLER error or request, SELLER will provide BUYER with return authorization, freight carrier specifics and instructions and will assume costs for freight and transportation in the return or exchange of the product. Products considered for return or exchange are to be unused, in original packaging and in re-sellable condition. Any return of product outside of these conditions must be authorized in writing by the SELLER.

13. LIMITATION OF LIABILITY. Under no circumstances will SELLER's liability in the aggregate to BUYER under any legal theory, including without limitation, breach of contract or warranty, or commission of any tort, including negligence and strict liability, or claims for indemnification, exceed the invoice price for the affected product. BUYER must commence any action at law or in equity against SELLER within one year after the product is delivered to BUYER. BUYER will not have any recourse against SELLER for any loss which reasonably could be prevented by cover or otherwise. Exceptions to SELLER's warranty and limitation of liability provisions or waivers of the same granted by SELLER will not constitute a precedent, default or waiver of SELLER's rights to enforce such provisions in whole or in part in the future. **SELLER WILL NOT BE LIABLE TO ANY PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER, WHETHER OR NOT FORSEEABLE AT THE TIME OF SALE AND WHETHER ANY CLAIM OR POTENTIAL CLAIM IS BASED UPON THEORIES OF CONTRACT, NEGLIGENCE, OR TORT AND INCLUDING WITHOUT LIMITATION, SELLER WILL HAVE NO LIABILITY FOR SHIPPING CHARGES, LABOR, INSTALLATION, COSTS OR ANY OTHER LOSSES OR EXPENSES RELATED TO OR ASSOCIATED WITH THE INSPECTION, REPAIR OR REPLACEMENT OF THE WARRANTED PRODUCTS.**

14. DEFAULT. BUYER will be in default if (a) BUYER fails to pay SELLER any amount when due under this agreement, (b) BUYER otherwise fails for a period of five (5) days after receiving written notice from SELLER to fulfill or perform any provisions of this agreement, (c) BUYER becomes insolvent or bankrupt, or a petition is filed voluntarily or involuntarily and not

dismissed within thirty (30) days of filing, or (d) BUYER makes a general assignment for the benefit of its creditors, or a receiver is appointed, or a substantial part of BUYER's assets are attached or seized under legal process and not released within 30 days thereafter. Upon BUYER's default, SELLER may, at its option, without prejudice to any of its other rights and remedies, and without demand for payments past due, (a) make shipments subject to receipt of cash in advance, (b) terminate this agreement and declare immediately due and payable the obligations of BUYER for goods previously shipped, notwithstanding any other provision in these terms and conditions, (c) demand reclamation, or (d) suspend any further deliveries until the default is corrected, without releasing BUYER from its obligations under this agreement. In any event, BUYER will remain liable for all loss and damage sustained by SELLER because of BUYER's default.

15. **OTHER.** (a) SELLER accepts no responsibility to BUYER or to any person claiming by or through BUYER, for compliance with any statute, governmental rule, standard or regulation made applicable to this contract by reason of BUYER's intended use of the products unless SELLER has received from BUYER prior timely written notification of such statute, rule or regulation and has accepted the same by a separate writing signed by an officer of SELLER. (b) SELLER's forbearance or failure to enforce any of these conditions as set forth herein or to exercise any right accruing from any default of BUYER shall not affect, impair or waive SELLER's right if such default continues or if any subsequent default of BUYER occurs. (c) The provisions herein constitute the entire agreement between BUYER and SELLER and no terms or conditions other than those stated herein and no agreement or understanding oral or written in any way purporting to modify these conditions shall be binding on SELLER unless hereafter made in writing and signed by an officer of SELLER. All orders are subject to acceptance at SELLER's offices. This agreement shall be construed in accordance with the laws of Tennessee and any disputes arising under these terms and conditions, and the orders to which they pertain, shall be brought exclusively in Shelby County, Tennessee and the parties irrevocably consent to the jurisdiction of such courts. **ANY DISPUTE SHALL BE DETERMINED ON AN INDIVIDUAL BASIS, SHALL BE CONSIDERED UNIQUE AS TO ITS FACTS, AND SHALL NOT BE CONSOLIDATED IN ANY ARBITRATION, LAWSUIT OR OTHER PROCEEDING WITH ANY CLAIM OR CONTROVERSY OF ANY OTHER PARTY.** (d) The provisions of this agreement shall be considered severable. In the event that any of the provisions, or portions or applications thereof, of this agreement are held to be unenforceable or invalid by any court of competent jurisdiction, all remaining portions shall remain in full force and effect in accordance with the spirit of this agreement. (e) The rights and obligations of BUYER and SELLER hereunder shall not be assigned to any third party without the prior written consent of the other party. (f) **SELLER HEREBY OBJECTS TO AND REJECTS ANY AND ALL ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER, WHETHER CONTAINED IN BUYER'S PURCHASING OR SHIPPING RELEASE FORMS OR ELSEWHERE. ALL PROPOSALS, NEGOTIATIONS, AND REPRESENTATIONS, IF ANY, MADE PRIOR AND WITH REFERENCE HERETO ARE MERGED HEREIN, AND ANY PROPOSED ADDITIONS, MODIFICATIONS, DELETIONS OR CHANGES NOT IN SEPARATE WRITINGS SIGNED BY AN OFFICER OF SELLER ARE REJECTED WITHOUT FURTHER ACTION BY SELLER.**