

**GENERAL TERMS AND CONDITIONS OF SALE OF  
FORGED PRODUCTS, INC. ("FPI")**

**Limited Warranty.** All FPI products are warranted to conform, at the time of delivery, to the contract specifications specified in FPI's quotation. FPI makes this warranty for a period of one (1) year from date of shipment, and any products found to be defective within that period will be replaced without charge, provided (1) that the product was used as recommended and in accordance with approved installation and operating practices; (2) that its failure resulted from a manufacturing defect and not from damage due to corrosive, abrasive, or other wear normally to be expected in the services involved; and (3) that written notice of such defect is delivered to FPI during such one (1) year period. THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, GUARANTEES, OR REPRESENTATIONS, EXPRESS OR IMPLIED. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

**Purchaser's Remedies.** The Purchaser's remedies with respect to any product furnished by FPI hereunder that is found not to be in conformity with the terms and conditions of the contract because of breach of contract or breach of express warranty shall be limited exclusively to the right of replacement of such defective product or, at our option, refund of our sale price of the product. No labor, shipping, in-out cost or other expense or liability is included. In no event shall FPI be liable for claims (based upon breach of contract, breach of express or implied warranty, or negligence) for any other damages, whether direct, immediate, foreseeable, incidental, consequential, or special or for any expenses incurred by reason of the use or misuse, sale or fabrication of products which do or do not conform to the terms and conditions of the contract. Purchaser's obligation to make payment on time for the balance of products delivered under the contract is not affected by any claim of Purchaser hereunder.

**Prices.** Unless otherwise specified, all prices are F.O.B. FPI's plant. Prices, and other terms of sale and payment, are subject to change without notice. Unless a contrary provision appears in this price schedule, quotation or order acknowledgment, prices may be withdrawn without notice at any time. Stenographic or clerical errors are subject to correction.

**Acceptance of Orders; Assignment.** All orders are subject to FPI credit department approval prior to acceptance by FPI. No assignment of the Purchaser's rights may be made without the written consent of FPI.

**Remittances.** All accounts are payable in United States funds, free of exchange, collection, or any other charges. If, in the sole discretion of FPI, the financial condition of the Purchaser at any time so requires, FPI retains the right to require full or partial payment in advance. If Purchaser fails to make payment when due, FPI will have the right to withhold shipment of any products under this or any contract between FPI and Purchaser.

**Partial Shipments and Payments.** FPI reserves the right to make partial shipments from time to time, and to render invoices therefor which shall be due and payable as provided in said invoices and the paragraph entitled "Remittances." If the Purchaser becomes overdue in any

such partial payment, FPI shall be entitled to suspend work and/or avail itself of other legal remedies.

**Taxes.** Unless otherwise specifically noted, the amount of any sales, use, occupancy, excise tax, or other tax, of any nature, federal, state, or local, for which FPI is legally liable, either initially or through failure of payment by Purchaser, shall be added or be in addition to the price quoted and Purchaser agrees to pay the same to FPI.

**Shortages and Damages in Transit.** Claims for shortages, damages, or defect of a kind discoverable on inspection must be made in writing within ten days after receipt of shipment, but loss of or damage to materials in transit is the responsibility of Purchaser and its carrier. All claims hereunder must be supported by documentary evidence in the form of exceptions taken on the delivery receipt. Failure to take such exceptions at time of receipt shall constitute an absolute bar to any claim.

**Delays.** All promises of shipment are estimated as closely as possible, and we will use our best efforts to ship within the time promised but do not guarantee to do so, and assume no liability for not doing so. Materials stated to be in stock are subject to prior sale, as is shop space.

**Cancellation and Suspension.** The order or contract is subject to cancellation or instructions to suspend or delay work or delivery only upon receipt of written notification and with our consent, and upon agreement to pay FPI's adjustment charge. Orders for special products (usually "price on application" items) may be changed and/or canceled only upon receipt of written instructions, and Purchaser agrees to make payment for material used and work already performed.

**Return of Material.** No product of our manufacture may be returned without our written consent. All goods returned are subject to a handling charge plus freight in both directions and charges for any required reconditioning, unless otherwise specified in writing by FPI.

**Transportation for International Orders.** The terms "F.O.B.", "F.A.S.", "C.I.F." and/or "C&F", as used herein or any attachment hereto, shall be defined in accordance with "Incoterms 2000" published by the International Chamber of Commerce. Transportation from this point and consular and brokers' fees, if any, shall be at Purchaser's expense. Title to and risk of loss of the products included in each shipment will pass to Purchaser upon delivery to the carrier at the plant. In the event FPI pays transportation and insurance beyond the point of shipment to the destination specified by Purchaser, all such costs will be billed as a separate item on the applicable invoice.

**Payment Terms for International Orders.** Payment for the products/services specified by Purchaser's order shall be made in U.S. Dollars. FPI reserves the right to require payment on international orders through the medium of an irrevocable Letter of Credit in favor of FPI, 6505 N. Houston - Rosslyn Road, Houston, TX 77091-1006, Attn: Credit Department, confirmed by a bank located in the United States acceptable to FPI. Unless otherwise agreed, such Letter of Credit shall be valid for a period of time sufficient to enable FPI to receive payment in full plus thirty (30) days; shall be for the total price of the products/services, including any applicable transportation and insurance costs, and in a form acceptable to FPI; and shall authorize partial

payments against partial deliveries. The Letter of Credit shall provide for payment(s) to FPI at sight upon presentation to the confirming bank of FPI's sight draft(s) on the confirming bank for one hundred percent (100%) of the invoice value of each delivery, accompanied by commercial invoice(s) or by shipping documents. The Letter of Credit shall permit shipment and shall permit presentation of non-negotiable copies of bills of lading provided they are accompanied by FPI's declaration that the originals have been mailed directly to the opening bank. All bank charges in connection with said Letter of Credit, including those of the confirming bank, shall be for the account of Purchaser. Other payment terms may be negotiated between FPI and Purchaser, in which case such special payment terms shall specified in writing and become a part of the sales agreement.

**United States Export Laws.** FPI's obligations are subject to the export administration and control laws and regulations of the United States. Purchaser shall comply fully with such laws and regulations in the export, resale or disposition of products. Purchaser agrees and shall cause each of its customers to agree, that it will commit no acts which directly or indirectly violate any United States export control law, regulation, treaty or other international agreement to which the United States adheres or complies or any applicable export, import or other laws of any other jurisdiction and agrees to indemnify and to hold FPI harmless from any and all liabilities or costs incurred by FPI or its affiliates for any reason arising from or connected with any such violation, incurred intentionally or unintentionally. Quotations or proposals made, and any orders accepted by FPI from a Purchaser outside the United States are with the understanding that the ultimate destination of the products is the country indicated therein. Diversion of the products to any other destination contrary to United States law is prohibited. Accordingly, if the foregoing understanding is incorrect, or if Purchaser intends to divert the products to any other destination, Purchaser shall immediately inform FPI of the correct ultimate destination.

**Duties; Taxes and Other Charges.** Unless expressly agreed otherwise, Purchaser shall pay all taxes (excluding federal, state or local income or franchise taxes of FPI) and all import/export duties, levies and impositions and all other governmental charges, assessments, fees, and any interest or penalties thereon, whether payable by FPI or Purchaser, imposed or levied on or with respect to this purchase order, the amounts payable hereunder, the product or the possession, sale, use, furnishing or ownership of the product. Purchaser shall also be responsible for obtaining and paying for any permits, licenses, or other governmental authorization(s) necessary for the exportation or importation of the products into the designated country of importation, and it shall comply with all laws and regulations thereof. If Purchaser shall fail to pay and discharge such taxes, duties and other sums when due. FPI may at its option, pay the same, in which event Purchaser shall promptly reimburse the FPI for such sums paid.

**Patents.** The Purchaser will indemnify and hold harmless FPI against and from any judgment for damages and costs which may be rendered against FPI in any suit alleging infringement of any United States patent or patent of another jurisdiction, or any other proprietary right of any third party by any product supplied by FPI under the contract and made in accordance with the design and/or specification furnished by the Purchaser to FPI.

**Indemnification.** Purchaser indemnifies FPI and holds it harmless from and against any loss, costs, damages, claims, and liabilities incurred by FPI in connection with FPI's supply hereunder, except for FPI's breach of warranty or breach of contract.

**Governing Law.** The parties hereby expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. The contract shall be governed by, construed, and enforced in accordance with the laws of the State of Texas, United States of America.

**No Waiver.** The failure of FPI to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the contract or to exercise any right thereunder shall not be construed as a waiver or relinquish of the future performance of any such term, covenant or condition or the future exercise of such rights, nor shall it be deemed to be a waiver or relinquishment of any other terms, covenant, or condition, or the exercise of any other rights under the contract.

**Dies, Tools, and Patterns.** Dies, tools, and patterns required to produce the article quoted on shall remain the property of FPI. Preparation charges or charges for dies, tools, and patterns represent only a portion of cost. Payment of such charges does not give Purchaser any right, title, or interest in such dies, tools, or other products of preparation. We will not be responsible for retention of dies or patterns on which no orders are received for two years or more.

**Force Majeure.** Any delays in or failure of performance of FPI shall not constitute default or give rise to any claims for damages if and to the extent that such delay or failure is caused by occurrences beyond the control of FPI, including, but not limited to: acts of God or the public enemy, expropriation or confiscation of facilities; compliance with any order or request of any governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom; embargoes or other export restrictions, fires, floods, explosions, accidents, breakdowns; riots or strikes or other concerted acts of workmen, whether direct or indirect; or any other causes whether or not of the same class or kind of those specifically above named which are not within the control of FPI and which, by the exercise of reasonable diligence, FPI is unable to prevent or provide against.

**Garbled Transmissions.** If any sales quote or other transaction document transmitted by facsimile is received in an ambiguous, unintelligible or garbled form, Purchaser shall promptly notify FPI in a reasonable manner. In the absence of such a notice, FPI's records of the contents of such document shall control.

**Validity and Enforceability of Faxed Documents.** The conduct of FPI and Purchaser pursuant to this Agreement, including the use of documents transmitted by facsimile to initiate and accept sales orders, shall, for legal purposes, evidence a course of dealing and a course of performance accepted by the parties. Facsimile copies of signed documents, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as original business records. Neither party shall contest the admissibility of facsimile copies of documents under the best evidence rule, or otherwise on the basis that the documents are not the original form of such documents.

**Purchaser's Acceptance of Above Conditions.** The contract shall be subject to the terms and conditions contained or referred to in FPI's price schedule, quotation or order acknowledgement, and to no others whatsoever. No waiver, alteration, or modification of the terms and conditions in this price schedule, quotation or order acknowledgement shall be binding unless in writing and signed by an authorized representative of FPI, and unless so accepted, are hereby objected to and rejected. Any conduct by Purchaser that recognizes the existence of a contract pertaining to the subject matter hereof will constitute acceptance by Purchaser of these terms and conditions.

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