



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

(Effective February 27, 2013)

1. **PURCHASER'S ACCEPTANCE OF TERMS AND CONDITIONS.** The terms and conditions set forth in this document are intended to establish standard terms and conditions of sale for all sales by FPI to the purchaser ("Purchaser") unless otherwise provided in a written agreement between FPI and Purchaser, and all such sales are made expressly conditional upon these terms and conditions. This document, together with the quotations, order acknowledgments, or invoices, specifications, and all supplements and attachments thereto issued by FPI from time to time, shall constitute the entire agreement ("Agreement") between FPI and Purchaser for each such sale. In the event of any inconsistency between these terms and conditions and the provisions on the quotation, order acknowledgment, or invoice or on any supplement attached thereto, the provisions contained on the quotation, order acknowledgment, or invoice or on such supplement shall control. Additional or different terms provided in Purchaser's purchase order, which vary in any degree from any of the terms herein, are hereby expressly objected to and rejected. No waiver, alteration, or modification of these terms and conditions shall be binding unless in writing and signed by an authorized representative of FPI, and unless so accepted, are hereby objected to and rejected. These terms and conditions of sale may be modified from time to time by FPI, by notice to Purchaser. Each such modification shall be binding upon Purchaser with respect to all purchases occurring after the date of such modification. Any conduct by Purchaser which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Purchaser of this Agreement and all of its terms and conditions.

2. **PRICES.** Unless otherwise specified, domestic orders shall be priced and shipped F.O.B. FPI's warehouse, and international orders shall be priced and shipped Ex Works FPI's warehouse. Prices are based upon FPI's understanding of Purchaser's requirements and specifications. Prices, and other terms of sale and payment, are subject to change without notice. Unless a contrary provision appears in the price schedule, quotation or order acknowledgment, prices may be withdrawn by FPI without notice at any time. Stenographic or clerical errors are subject to correction.

3. **REMITTANCES.** All accounts are payable in United States funds, free of setoff, exchange, collection, or any other charges. If the Agreement does not state payment terms, payment shall be received by FPI no later than thirty (30) days from the date of FPI's invoice. If, in the sole discretion of FPI, the financial condition of 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 shall have the right to withhold shipment of any products under this or any agreement between FPI and Purchaser. Unless otherwise specified, if payment hereunder is not made on time, FPI, in addition to all other legal, equitable and contract rights, shall be entitled to interest on such overdue payment at the rate of five percent (5%) per month compounded monthly, or the maximum rate allowed by law, whichever is less. Notwithstanding the foregoing, interest shall not be charged on any overdue payment at a rate in excess of the maximum rate permitted by law. Notwithstanding the foregoing, in no event shall the late payment charge for a month be less than Five Dollars (\$5.00). If the payment due date is a Saturday, Sunday or holiday where banks located in the State of Texas are authorized or required to be closed, Purchaser shall make such payment on the business day after such due date.



4. **ACCEPTANCE OF ORDERS; CREDIT.** All orders are subject to FPI credit department approval prior to acceptance by FPI. FPI makes no assurance or guarantee regarding any amount of credit or the continuation of such credit to Purchaser. In the event credit is provided by FPI to Purchaser, or Performance Assurance (as hereinafter defined) is required by FPI of Purchaser, Purchaser shall provide to FPI, as requested by FPI, such annual or interim reports containing Purchaser's and/or Purchaser's Performance Assurance provider's consolidated financial statements for a particular fiscal year or accounting period, as requested. In all cases, such statements shall be in accordance with generally accepted accounting principles. Notwithstanding the foregoing, if FPI determines, in its sole discretion, that the creditworthiness or future performance of Purchaser is impaired or unsatisfactory, FPI may: (a) suspend deliveries of product and/or services, (b) require prepayment by wire transfer of immediately available funds, and/or (c) require Performance Assurance. Purchaser hereby waives written notice of any such action. "Performance Assurance" means collateral in the form of either cash, letter(s) of credit, guaranty, or other security acceptable to FPI in its sole discretion. In the event Purchaser fails to timely pay FPI any payments due FPI (whether under this Agreement or pursuant to any other obligation of Purchaser to FPI) in accordance with FPI's terms, FPI may, in addition to any other remedies it may have under this Agreement, defer further shipments until such payments are made or, at its option, cancel the unshipped balance without any liability to Purchaser.

5. **TAXES; DUTIES AND OTHER CHARGES.** Unless otherwise specifically noted, the amount of any sales, use, occupancy, excise tax, or other tax (excluding federal, state or local income or franchise taxes of FPI), 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. Unless expressly agreed otherwise, Purchaser shall also pay 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.

6. **ADDITIONAL PAYMENT TERMS FOR INTERNATIONAL ORDERS.** FPI reserves the right to require payment on international orders through the medium of an irrevocable letter of credit in favor of Forged Products, Inc., 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 (a) shall be valid for a period of time sufficient to enable FPI to receive payment in full plus thirty (30) days; (b) 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 (c) 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.

7. **CANCELLATION AND SUSPENSION.** The order or Agreement is subject to cancellation or instructions to suspend or delay work or delivery only upon receipt of written notification and with FPI's consent, and upon Purchaser's 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 with FPI's consent, and Purchaser agrees to make payment for material used and work already performed. All charges or payments required under this section shall be made by Purchaser to FPI within thirty (30) days of the date of an invoice from FPI specifying such amounts due.

8. **THIRD-PARTY APPROVALS.** Purchaser hereby represents and warrants that in the event this Order requires third-party approval from Purchaser's customer or other end-user, Purchaser shall be solely responsible for obtaining all such approvals within a reasonable timeframe, to be agreed upon by FPI and Purchaser in writing. Further, in the event Purchaser is unable to obtain the necessary approvals within the agreed-upon timeframe: (a) Purchaser shall proceed with the Order and be liable for meeting all of its obligations thereunder; or (b) FPI may cancel the Order upon written notification to Purchase with no further liability thereunder.

9. **TRANSPORTATION AND DELIVERY.** All shipping terms shall have meaning set forth in the Uniform Commercial Code (the "UCC") for domestic sales or in INCOTERMS™ 2010, as published by the International Chamber of Commerce, for international sales. Transportation from this point and consular and brokers' fees, if any, shall be at Purchaser's expense. Notwithstanding any shipping term, title to any products sold and risk of loss of such products passes to Purchaser upon delivery by FPI to the carrier and products shall be deemed "delivered" at such time, and any claims for losses or damage occurring after delivery to carrier by FPI shall be made by Purchaser directly with the carrier. In the event FPI pays transportation and insurance beyond the point of shipment to the destination specified by Purchaser, all such costs should be billed to Purchaser as a separate item on the applicable invoice.

10. **PARTIAL SHIPMENTS AND PAYMENTS.** FPI reserves the right to make partial shipments from time to time, and to render invoices therefore which shall be due and payable as provided in said invoices and the Section 3 entitled "Remittances." If Purchaser becomes overdue in any such partial payment, FPI shall be entitled to suspend work and/or avail itself of other legal remedies.

11. **DELAYS.** All promises of shipment are estimated as closely as possible, and FPI shall use commercially reasonable efforts to ship within the time promised but does not guarantee to do so, and assumes no liability for not doing so. Materials stated to be in stock are subject to prior sale, as is shop space.

12. **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 shall 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.

13. **LIMITED WARRANTY.** Subject to the limitations set forth below, 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 (a) that the product was used as recommended and in accordance with approved installation and operating practices; (b) 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 (c) that written notice of such defect is delivered to FPI during such one (1) year period. The foregoing warranties shall not extend to: (i) any products which have been subjected to misuse, misapplication or neglect, damaged by accident, rendered defective by reason of improper installation, not used as recommended and in accordance with approved installation and operating practices or rendered defective by the performance of repairs or alterations outside of FPI's plant, except when performed under FPI's specific authority; (ii) any products furnished or solicited by Purchaser or acquired from others at Purchaser's request and/or Purchaser's specifications; (iii) any components not manufactured by FPI which are attached to, incorporated in or otherwise made a part of FPI's products, it being acknowledged by Purchaser that only the respective original manufacturers' warranties with respect to such components shall be offered to Purchaser to the extent permitted by such manufacturer; and (iv) defects resulting from damage due to corrosive, abrasive, or other wear not normally to be expected in the products involved. Written notice of any breach of the foregoing warranties must be provided by Purchaser to FPI during the one (1)-year warranty period. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND COMPRISE FPI'S SOLE AND ENTIRE WARRANTY OBLIGATION AND LIABILITY TO PURCHASER, ITS CUSTOMERS AND ASSIGNS IN CONNECTION WITH GOODS AND SERVICES SOLD HEREUNDER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.

14. **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 FPI's option, refund of FPI's sale price of the product. No labor, shipping, in-out cost or other expense or liability is included. 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.

15. **RETURN OF PRODUCTS.** No product of FPI's manufacture may be returned without FPI's 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.

16. **SHORTAGES AND DAMAGES IN TRANSIT.** Claims for shortages, damages, or defect of a kind discoverable on inspection must be made in writing within ten (10) 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.

17. **LIMITATION ON LIABILITY.** FPI'S TOTAL LIABILITY TO PURCHASER FOR DAMAGES FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO ANY CAUSE WHATSOEVER IN RELATION TO THIS AGREEMENT WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND/OR GROSS NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, OR OTHER CAUSE (A "CLAIM") SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR SHIPMENT WITH RESPECT TO WHICH SUCH CLAIM RELATES. NOTWITHSTANDING THE FOREGOING SENTENCE, UNDER NO CIRCUMSTANCES SHALL FPI BE LIABLE FOR ANY DAMAGES FOR LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, REVENUE OR OPPORTUNITY, CLAIMS OF THIRD PARTIES OR FOR INJURY TO PERSONS OR PROPERTY, OR FOR ANY OTHER SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND OR NATURE.

18. **INFRINGEMENT.** Purchaser shall defend, indemnify and hold harmless FPI against any damages, costs, expenses or other liabilities (including reasonable attorney's fees) arising out of, or relating to, any claim brought against FPI relating to the infringement (or alleged infringement) of any patent or any use by FPI of any secret process, trade secret, know-how, drawings, plans, specifications or other confidential or proprietary knowledge or information belonging to any third party arising from the FPI's manufacture, use or sale of any products in accordance with any information, designs, materials, specifications, drawings, plans, instructions or samples furnished by Purchaser.

19. **INDEMNIFICATION.** Purchaser shall defend, indemnify and hold harmless FPI and its affiliates, directors, officers, agents, servants, employees, successors and assigns against, and hold them harmless from and against and pay on behalf of or reimburse any and all claims, demands, actions, causes of action, suits, obligations, liabilities, losses, damages, deficiencies, expenses, judgments, settlements and compromises (whether or not arising out of third-party claims), including, without limitation: (a) costs associated with a recall of any product into which FPI's products are incorporated; (b) Purchaser's failure to specify to FPI any requirements that are required to be passed through to FPI pertaining to a product into which FPI's products are incorporated; and (c) for bodily injury, death, property damage, or economic loss, as well as any and all costs and expenses, including



interest, penalties, reasonable attorneys' fees, court costs, amounts paid in investigation, defense or settlement, and all indirect, special, incidental, consequential or punitive damages, relating to, resulting from or arising out of acts or omissions of Purchaser relating to or arising out of the use, operation, ownership or condition of any of the products purchased by Purchaser or the breach or non-performance of Purchaser's obligations under these terms and conditions.

20. **DIES, TOOLS, AND PATTERNS.** Dies, tools, and patterns required to produce the products or services sold or provided under this Agreement shall remain the property of FPI, unless such dies, tools or patterns have been furnished to FPI by Purchaser or specifically paid for in full by Purchaser ("Purchaser Tools"), in which case such Purchaser Tools shall be and remain the property of Purchaser. Preparation charges or charges for dies, tools, and patterns represent only a portion of cost and do not necessarily constitute payment in full. Unless otherwise agreed to by FPI and Purchaser in writing, payment of such charges does not give Purchaser any right, title, or interest in such dies, tools, or other products of preparation. FPI shall not be responsible for retention of dies or patterns on which no orders are received for two (2) years or more. FPI agrees to reasonably maintain to the dies, tools, and patterns required to produce the products or services sold or provided hereunder (whether Purchaser Tools or otherwise) throughout the term of this Agreement; provided however, that any extraordinary costs required to maintain such dies, tool or patterns shall be the sole responsibility of Purchaser.

21. **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, acts of government, acts of Purchaser, expropriation or confiscation of facilities; compliance with any order or request of any governmental authority, compliance with priority or allocation orders or preference ratings issued by the government, epidemics, quarantine restrictions, acts of war, acts of terrorism, rebellion or sabotage or damage resulting therefrom; embargoes or other export restrictions, wrecks or delays of transportation, inadequate transportation facilities, inability to obtain raw materials, a significant increase in the price of materials, fires, floods, explosions, unusually severe weather, 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.

22. **SECURITY INTEREST.** To secure Purchaser's obligations to FPI, FPI hereby reserves, and Purchaser hereby grants to FPI, a security interest, including any applicable purchase money security interest, in all products (and all proceeds from the sale of such products by Purchaser) sold by FPI to Purchaser. Purchaser hereby authorizes FPI to file any financing statement or other document that is, or becomes, necessary for FPI to perfect the security interest granted to it under this section entitled "Security Interest."

23. **ASSIGNMENT; BINDING EFFECT.** No assignment of Purchaser's rights hereunder may be made without the written consent of FPI. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.



24. **GOVERNING LAW.** This Agreement is to be governed by and interpreted in accordance with the substantive law of the State of Texas, without regard to conflict of laws rules thereof. 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.

25. **JURISDICTION.** FPI and Purchaser agree that any legal suit, action, or proceeding hereunder shall be brought and resolved exclusively by the State and Federal courts located in Harris County, Texas, and the courts to which an appeal therefrom may be taken; provided that any party shall have the right, to the extent permitted by applicable law, to proceed against any other party or its property in any other location to the extent necessary for the enforcing party to enforce a judgment or other court order. Each of the parties hereby consents to the jurisdiction of such courts and waives all questions of jurisdiction and venue. Legal process in any proceeding may be served on any party anywhere in the world.

26. **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 Agreement 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 Agreement.

27. **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.

28. **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, shall 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.

29. **SEVERABILITY.** In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and such illegal, invalid, or unenforceable provision shall be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability.