


Tool Gauge and Machine Works, Inc./ Plastic Molded Products


TERMS AND CONDITIONS OF SALE

The Terms and Conditions of Sale contained herein apply to all quotations made and sales entered into by Tool Gauge & Machine Works, Inc./Plastic Molded Products ("the Company"). Acceptance of Customer's order is made only on the express understanding and condition that insofar as the terms and conditions herein conflict with any terms and conditions of Customer's order, the terms and conditions herein shall govern unless the Company and customer negotiate on, and agree in writing to, other terms and conditions. This agreement is the entire agreement between the parties, and no course of performance or dealing or usage of trade shall supplement or modify it unless otherwise provided in writing.

1. **DURATION AND APPROVAL:** Quotations are only effective for sixty (60) days from the date of issuance of the quotation, unless waived by the Company. No order shall become a contract of sale binding the Company until acknowledged and accepted by the Company in writing.
2. **DELIVERY SCHEDULES:** Delivery schedules will be computed from the date Customer's order is approved or in the case of special items, from the date Company received complete information necessary to proceed with design and manufacture.
3. **DESIGN CHANGES:** The Company will not be bound to accept part design changes into its production unless it has given express written consent to such changes prior to any sampling of the part. The Company reserves the right to re-quote prices in the event of Customer changes in design and/or specifications prior to acceptance for production. The Customer agrees to pay company for tooling modification required by such changes at Company's then prevailing shop rate. Part design changes suggested by Company and accepted by Customer shall be incorporated into Customer's part drawings and Company shall have no responsibility as to fit or function of parts manufactured in accordance with the modified design.
4. **TAXES:** Any tax imposed by any present or future law on the sale of the articles and/or services covered hereby shall be added to the amount to be paid by Customer therefore.
5. **CANCELLATION:** Orders are not subject to cancellation, modification or deferment of shipment unless Company is paid for any losses or additional costs resulting therefrom. Any cancellation, modification or deferment of shipment must be submitted in writing to Company and will not be deemed accepted until Customer has agreed to pay for all losses and costs of Company.
6. **DELIVERY:** Company shall not be responsible for loss or damage resulting from strikes, accidents, material shortages, disasters or other causes resulting in delays beyond Company's control.
7. **WARRANTY:**
 - A) Company warrants that tooling and parts delivered hereunder shall conform to applicable specifications and designs, and will be free of defects in material or workmanship. In the event not otherwise specified by this agreement, parts will be furnished in accordance with the Products Standards of the Society of Plastic Engineers, or its successors.
 - B) The liability of company for breach of the above described warranty is limited to repair or replacement of any defective tooling or parts. Customer must comply with the conditions of paragraph 8 below or company shall have no obligation under this warranty.
 - C) EXCEPT AS SET FORTH IN THIS AGREEMENT, COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND HEREBY SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY TOOLING OR PARTS COVERED BY THIS AGREEMENT.
 - D) In no event shall Company be liable for any consequential damages, including but not limited to, lost profits alleged to have been suffered by Customer or third parties.
8. **REPAIRS AND REPLACEMENT:** Parts will be considered accepted by Customer unless written rejection, containing a complete explanation of the nature of the defect, is received by Company within thirty (30) days of shipment of the parts. Company shall have no responsibility for cost of repair or replacement or inspection of any parts by Customer, unless Company's written consent has been obtained.

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9. **SHIPPING TOLERANCES:** Company reserves the right to ship 10% under or over the Customer's specified order quantities unless other limits are specified by the Customer when requesting quotation or when placing an order for parts.
10. **POSSESSORY LIEN:** Company shall have a possessory lien against Customer tooling and/or molded parts and/or materials as security for the failure of the Customer to pay any balance due the Company for any invoiced tooling, molded parts or specially purchased materials.
11. **PAYMENT TERMS:** Parts shall be invoiced upon shipment and unless stated otherwise herein, terms are thirty (30) days net from date of invoice. Payment for tooling shall be made upon the terms stated on the reverse side hereof and if not stated, upon Company's notification to Customer of completion of said tooling. Company may withhold further shipments of parts if payment is not made pursuant to the terms hereof for prior shipment or tooling. All amounts not paid when due shall be subject to a 1 1/2% per month late charge, compounded monthly.
12. **MOLDS, TOOLS AND LIABILITY INSURANCE:**
 - A) Molds and tools will be stored by Company for Customer's exclusive use in accordance with Customer's orders. Except for normal production maintenance, Customer shall be exclusively responsible for replacement of molds and fixtures.
 - B) Customer hereby waives and agrees to hold harmless from any liability or claim, costs or judgments which might arise out of the storage of Customer's molds and tools. It shall be the sole and exclusive duty of Customer to procure and maintain such casualty or other insurance coverage as it deems necessary to protect its molds and tools and other materials while in the possession of the Company.
13. **FIRST ARTICLE ACCEPTANCE:** Written acceptance of first article parts produced from new tooling or modified tooling will be required from a responsible employee of the Customer before production will begin by the Company.
14. **SHIPPING POINTS AND RISK OF LOSS:** Tooling and/or parts are F.O.B. the Company's plant unless otherwise stated. The risk of loss of parts shall pass to Customer no later than Company's delivery of the parts to a carrier at Company's point.
15. **WAIVER:** The waiver by Company of any term or condition of this agreement in any one instance, or the acceptance of a partial, single, or delayed payment or performance of any term or condition required in this agreement shall not operate as a continuing waiver or a waiver of any subsequent breach thereof.
16. **ATTORNEYS FEES AND VENUE:** In the event that it should become necessary for either parts to commence litigation or arbitration in order to enforce it rights under the provision of the agreement, the parts substantially prevailing in such litigation or arbitration shall be awarded reasonable attorney's fees, costs and all other expenses incurred in connection with such litigation or arbitration. All sales hereunder shall be governed by the laws of the State of Washington and venue for any action brought to enforce this agreement, or for breach thereof, shall be had in Pierce County, Washington.

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