

## **Purchase Order Terms and Conditions**

This Purchase Order ("Order") is subject to the following terms and conditions:

1. **Order/Acceptance.** The terms and conditions set forth in this Purchase Order ("Order") are the sole terms ("Terms") for the purchase of goods and services by General Kinematics Corporation ("Buyer"), and shall apply to the exclusion of any additional or different terms contained in Seller's quotation, proposal or acknowledgment, or otherwise proposed by Seller. The Order is limited to and conditional upon Seller's acceptance of these terms exclusively. Seller's acceptance of these terms shall be conclusively presumed by Seller's shipment of the goods or beginning performance of the services requested under this Order, or by Seller's return to Buyer of an acknowledgment of this Order. Any contract made for the purchase of goods or services by Buyer is conditional on Seller's assent to all of the terms stated in this Order. Buyer objects to any additional or different terms proposed by Seller.
2. **Termination.** Buyer reserves the right to cancel this Order at any time before shipment of goods or commencement of services by Seller. Buyer also reserves the right to terminate this Order and return any goods for a refund which fail to comply in every respect with these terms and conditions. With respect to service orders, Buyer shall have the right to terminate this Order upon notice to Seller for any reason, in which event Buyer's only liability to Seller shall be to pay for services completed in compliance with these terms and conditions as of the effective date of termination. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, including any proceeding for reorganization, arrangement or death settlement or compensation, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or a receiver, then Buyer shall be entitled to (a) cancel any unfilled part of this Order without any liability whatsoever upon notice to Seller and (b) withhold from any payments due from Seller an amount estimated by Buyer to be a reasonable reserve for any future claims by Buyer against Seller for defects or defective services.
3. **Shipment.** Time is of the essence in this Order. Responsibility for and risk of loss to, any goods under this Order shall pass to the Buyer upon acceptance of delivery at Buyer's facility. Shipment shall be FCA Buyer's facility or as stated on the attached PO.
4. **Inspection and Acceptance.** Receipt by Buyer of any goods, irrespective of any contrary provisions upon such receipt, shall not be deemed acceptance. Final inspection shall be on Buyer's premises. Buyer shall have the right to inspect goods being manufactured for it under this Order at Seller's premises. The exercise of such right shall not be interpreted, or construed, as evidence of Buyer's waiver of its right to final inspection at its facility as provided in this paragraph 4.
5. **Most Favored Customer.** By acceptance of this Order, Seller warrants that the prices, allowances and other terms and conditions applicable to this Order are at least as equal as any currently offered by Seller to any other customer with similar quality, quantity and delivery requirements. If more favorable prices, allowances or other terms and conditions are hereafter offered by Seller to any other customer prior to completion of deliveries or services hereunder, Seller shall immediately notify Buyer and any such prices, allowances and other terms and conditions shall apply to this Order.
6. **Payment Terms and Price.** Payment from Buyer shall be due within 30 days of the later of either receipt of all goods or receipt of an invoice by Buyer, or per any negotiated terms set forth on the face of the subject PO. Buyer shall not be penalized due to any delay in payment or due to exercise of any of its rights under this Order. The prices indicated on the Order shall be fixed and firm and not subject to escalation without the written acceptance by Buyer. All surcharges, fuel, energy, shipping and handling fees must be included in the price of products on Seller's quote.
7. **Warranty.** Seller warrants that all goods and equipment sold to Buyer will be of good quality, material and workmanship and conform to all applicable implied warranties, including the warranties of merchantability and fitness for a particular purpose, and be in conformance with all specifications and design criteria furnished by Buyer to Seller. Seller further warrants that any goods sold to Buyer shall conform to, and shall be of the same or better quality as any samples provided to Buyer and that any weights, measures, signs, legends, words or description stamped, printed or otherwise attached to the goods or containers or referring to the goods sold to Buyer shall be true and correct and comply with all applicable laws, rules and regulations.
8. **Intellectual Property.** Buyer owns all intellectual property rights in plans, specifications, drawings, schematics, working models and other documents ("Custom Material") provided to Seller by Buyer, including but not limited to copyrights, patents, trademarks and trade secrets. All Custom Material prepared by Seller for Buyer pursuant to this Purchase Order belongs exclusively to Buyer as a work for hire. To the extent that any of the items may not, by operation of law, be works for hire, Seller assigns to Buyer all ownership rights in Custom Material prepared by Seller. To the extent that any of Seller's pre-existing materials are contained in Custom Material, Seller grants to Buyer a perpetual, irrevocable, world-wide, royalty free license to use and make copies thereof and to prepare derivative works based thereon.
9. **Patent Infringement.** Seller will indemnify and hold harmless Buyer against any money damages awarded in any suit for patent infringement resulting from the sale or use of the goods and merchandise sold herein and for any attorneys' fees and costs incurred by Buyer in defense thereof. Upon Buyer's receipt of any cease and desist letters, demands, service of process or complaints, it will promptly notify Seller. Buyer will cooperate fully with Seller in defense of any claim, suit, or action. If Buyer determines that Seller has failed to undertake the defense as required by this paragraph or that representation by counsel retained by Seller would be inappropriate because of actual or potential differences in interest, Buyer may retain its own counsel and Seller will compensate Buyer for all attorneys' fees, costs, expert fees and other expenses incurred by Buyer as a result thereof.
10. **Assignment.** Seller shall not delegate any duties nor assign any right or claims under this Order without the prior written consent of Buyer.

11. **Insurance.** Seller shall procure and maintain (a) commercial general liability insurance, including products liability, completed operations and contractual liability coverage, on an occurrence basis with limits of not less \$1,000,000.00 for bodily injury or death and property damage for each occurrence; \$1,000,000.00 personal and advertising injury; \$2,000,000.00 general aggregate and \$2,000,000.00 products/completed operations aggregates, (b) automobile liability with limits of \$1,000,000 for each occurrence, (c) umbrella liability insurance with limits of not less than \$5,000,000.00 each occurrence/\$5,000,000.00 aggregate, (d) workers' compensation and employers' liability coverage with limits of \$1,000,000 for each occurrence, and (e) products liability with limits of \$1,000,000 for each occurrence. The coverages shall be with insurers having current A.M. Best's ratings of no less than A X. Seller's liability insurance shall be primary and non-contributory for any claim made against any of the additional insureds. Any insurance, self-insurance, deductible or self-insured retention maintained by Buyer or any of the other additional insureds shall be excess to Seller's insurance policy. **Seller shall deliver to Buyer a current certificate of insurance, and provide renewals of the certificate for any policies which expire during the coverage period, showing the coverage required by this paragraph 11 as well as a copy of the vendor's endorsement evidencing Buyer, its affiliates and subsidiaries, as additional insureds with a waiver of subrogation with respect to general liability.** Seller further agrees that upon notice of a claim against Buyer or any of its affiliates or subsidiaries involving goods or equipment sold to Buyer under this Order that Seller shall immediately, and without delay, notify all insureds which issued policies to the broad form vendors endorsement naming Buyer and its subsidiaries and affiliates as additional insureds of any such claim.

12. **Cumulative Remedies.** The rights and remedies of Buyer under this Order shall be cumulative in addition to any other rights and remedies provided by law.

13. **Indemnification.** Seller agrees to indemnify, hold harmless and defend Buyer and each of its shareholders, directors, officers, employees, agents, affiliates and subsidiaries, and each of their heirs, successors or assigns, from and against any claims, suits, actions, judgments, liabilities, damages, costs or expenses, including attorneys' fees and other defense costs, due to bodily injury, including death, property damage, including loss of use thereof, economic loss or otherwise arising, or allegedly arising, from (a) any defect in any product manufactured or sold by Seller to Buyer, (b) any actual or alleged failure of any product manufacturer sold by Seller to conform to the representations of the labeling thereon, or (c) the failure of such labeling to comply with any applicable federal laws or regulations, whether or not any indemnity contributed in any way thereto.

14. **Delay.** Either Buyer or Seller may terminate this Order in the event of delay beyond the reasonable control of the party terminating the Order. Termination shall be by written notice delivered to the other party.

15. **Waiver.** The validity of any provision contained herein shall not affect the validity of any other provision. Either party's failure to insist on performance of any term or condition or to exercise any right or privilege shall not waive any such term, condition, right or privilege.

16. **Incorporation.** Any specification, drawings, notes, instructions, engineering notices, technical data or supplemental Purchase Order terms and conditions referred to in this Order shall be deemed incorporated herein by reference as though fully set forth herein.

17. **Consequential Damages.** In no event shall Buyer be liable to Seller for any incidental or consequential damages, including, without limitation, lost revenue, lost profits, or loss of use or any other loss of any nature, whether based in contract, tort, negligence, strict liability, economic loss or otherwise arising from performance, or failure to perform, under this Order.

18. **Confidentiality.** Each party acknowledges that in the course of the performance by Buyer and Seller, either party may obtain the Confidential Information of the other party. "Confidential Information" includes but is not limited to, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, schematics, designs, contracts, and other proprietary information that gives the party an advantage in the marketplace and that the party protects from dissemination to the general public by reasonable measures of secrecy. Each party will, at all times, keep in confidence and trust all of the other party's Confidential Information. Each party will take reasonable steps to prevent unauthorized disclosure or use of the other party's Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Each party will not disclose Confidential Information of the other party to any person or entity other than its officers, employees, contractors, and consultants who need access to such Confidential Information in order to effectuate the intent of this Order and any contract arising therefrom and who will be bound by this provision as the agents of the party. Each party will immediately give notice to the other party of any unauthorized use or disclosure of the party's Confidential Information. Each party agrees to assist the other party to remedy such unauthorized use or disclosure of its Confidential Information.

19. **Amendments.** None of these terms and conditions may be added to, modified, superseded, or otherwise changed except by a written instrument, expressly identifying it as a modification to these terms and conditions signed by an authorized representative of each party.

20. **Governing Law.** This Order and acceptance thereof shall be a contract made in the state of Illinois and governed by the laws thereof. Any suit to enforce or arising from this agreement shall only be filed by Buyer or Seller in a state or federal court for McHenry County, Illinois.