



STANDARD TERMS & CONDITIONS FOR ACCEPTANCE OF PURCHASE ORDERS BY FOLDING GUARD® AND ITS AFFILIATES

- 1. APPLICABILITY.** These Standard Terms & Conditions for Acceptance of Purchase Orders hereafter, "Standard Terms") shall apply to all purchase orders or other Supply Arrangements (hereafter defined) submitted by any customer ("Buyer") of Folding Guard®, Incorporated and/or its affiliates (collectively, "FG") regardless of the form or medium of Buyer's purchase order, and regardless of whether Seller's actions are deemed to be a prior offer of Buyer's purchase order or acceptance thereof and regardless of FG's execution of any agreement or other instrument/document required by Buyer. If FG is deemed to be accepting a prior offer of Buyer, such acceptance is limited to the terms contained herein. Buyer's acceptance of any goods shipped or services provided by FG shall constitute acceptance of these Standard Terms, regardless of any conflicting terms or waiver language contained in any Buyer purchase order, general terms & conditions, or other Supply Arrangement. Any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the Standard Terms is hereby rejected, but such proposals shall not operate as a rejection of an offer by FG unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods or services, but shall be deemed a material alteration thereof, and the offer by FG shall be deemed accepted by Buyer without said additional or different terms.
- 2. ACCEPTANCE OF ORDERS.** All Buyer purchase orders shall be deemed accepted when FG issues an order acknowledgment to Buyer or when FG begins performance of the order. All orders accepted by FG shall be governed by these Standard Terms and by any additional terms and conditions which are expressly agreed upon by authorized representatives of the parties in a fully executed Supply Arrangement. Unless otherwise agreed to in a Supply Arrangement, FG shall have no obligation to accept any particular Buyer purchase order and these Standard Terms shall control.
- 3. SHIPMENT/DELIVERY DATES.** The delivery date is only an estimate of when the goods will be shipped. FG shall use reasonable efforts to meet any shipment or delivery date stated in any Buyer purchase order, but FG assumes no liability for loss or damage (including any direct, incidental, consequential or punitive damages) due to delays or failure to meet any Buyer-specified delivery date. If FG cannot meet such shipment or delivery date, it will promptly notify Buyer. Buyer will designate common carriers for the shipment of all goods (but if Buyer fails to designate a carrier, FG shall have the right to select a carrier on Buyer's behalf). To the extent a quoted price for any goods does not expressly include shipping, the cost thereof shall be paid directly by Buyer. FG reserves the right to make delivery in installments (including both advance shipments and back orders). All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delivery of an installment shall not relieve Buyer of its obligation to accept remaining deliveries. FG shall have no responsibility to ship goods to any location other than those in the United States, Canada or Mexico unless Buyer has previously secured all applicable permits and licenses for the transfer of goods.
- 4. CANCELLATION AND MODIFICATION POLICY.** Stock Products – With respect to order cancellation and modifications for Products listed by Seller as part of its "Stock Products", Buyer must give Seller notice of such modification(s) within 24 hours of order confirmation by Seller. With respect to cancelled orders for Stock Products, Buyer shall pay Seller a cancellation fee determined by Seller (but not to exceed 25% of the purchase price). Custom Products – With respect to cancellation and modification for all Custom Products, Buyer shall pay all engineering, labor and material costs used or committed by Seller at the time of cancellation or modification, or full price if Product is completed and ready for shipment.
- 5. RETURN POLICY.** Stock Products – Buyer may return Stock Products by Seller within thirty (30) days of delivery, provided that Buyer pays all shipping costs associated with such return plus a restocking fee of 25%. Any return will be for credit only. Custom Products – Custom Products will not be accepted for return
- 6. STORAGE POLICY.** All orders must be shipped within thirty (30) days of completion to avoid storage fees. A

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storage fee of \$25.00 per day per skid will be added to the final invoice if the order is not shipped or picked up before the thirty (30) day deadline expires.

7. **PRODUCT COMPATIBILITY AND CHANGES.** Although the Products may be geometrically compatible with products made by other manufacturers, the capacities set forth for Seller's Products are for usage only with other Products manufactured by Seller. Seller reserves the right to make changes to Product design, color, material and specifications at any time without notice. Seller further reserves the right to discontinue Products.

8. **TAXES/DUTIES.** Applicable sales, excise, use and other taxes, and import/export duties and other charges, are in addition to any prices quoted by FG and shall be paid by Buyer.

9. **PRICE CHANGES.** The price shall be as set forth on the Supply Arrangement and due within thirty (30) days of delivery unless otherwise specified in writing. With respect to any "open" or "blanket" purchase order of Buyer, or if any Supply Arrangement contemplates the purchase/sale of goods or services beyond a 6 month period, FG may from time-to-time (but no more than once in any 6 month period) increase the price of any particular goods or service by an amount proportional to any increase in FG's labor, utility or other verifiable costs respecting such goods or service. Additionally, in the event FG's raw material costs materially increase, FG may pass on such increases to Buyer at any time. Prices shall be adjusted to FG's prices in effect at the time of shipment.

10. **CREDIT; LATE PAYMENTS.** Any obligation of FG to extend credit to Buyer is conditional upon Buyer's timely payment of invoices, and upon the continued financial stability of Buyer. FG reserves the right to limit, cancel or revoke credit of Buyer at any time for any reason, and FG may require or demand payment or adequate assurances of performance from Buyer prior to performing any aspect of the sale of goods hereunder. Late payments on invoices shall bear interest at 1% per month or the highest rate allowed by applicable law, whichever is less. FG shall be entitled to recover its costs of collection of any past due invoice, including court costs and reasonable attorneys' fees. Buyer agrees that FG shall have the right to obtain financial information on a quarterly basis and shall be entitled to annual tax returns.

11. **WARRANTY.** FG shall provide an "industry standard" warranty on all of its goods and services. If there is no industry standard, then FG's sole warranty obligation for all goods and services that are or become defective in material or workmanship within twelve (12) months from the date of shipment or performance shall be limited to the replacement or repair of the defective goods or services free of charge. FG's warranty obligations hereunder are contingent upon the following conditions: FG is promptly notified of the defect; Buyer establishes to FG's reasonable satisfaction that any goods have been properly handled, stored, installed, maintained and operated; the goods were not materially altered; the defect did not occur after receipt of shipment; and upon FG's request, Buyer will return the defective goods or part thereof to FG. The foregoing warranty is a limited warranty, and is in lieu of all other warranties, express or implied. EXCEPT AS EXPRESSLY STATED IN THIS SECTION, FG DISCLAIMS AND DOES NOT MAKE ANY ADDITIONAL REPRESENTATIONS, WARRANTIES AND/OR INDEMNITIES OF ANY KIND (WHETHER BY IMPLICATION OR OPERATION OF LAW) WITH RESPECT TO THE GOODS, INCLUDING WITHOUT LIMITATION ANY REPRESENTATIONS, WARRANTIES AND/OR INDEMNITIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PRICE, PATENT OR ANY OTHER MATTER. THIS SECTION SURVIVES THE TERMINATION OR CANCELLATION HEREOF.

12. **REMEDIES AND LIABILITIES.** BUYER AGREES THAT FG'S LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY KIND HEREUNDER OR RELATING TO THE GOODS OR SERVICES DELIVERED BY FG SHALL BE (A) THE REPAIR OR REPLACEMENT AT FG'S OPTION OF DEFECTIVE GOODS OR SERVICES, OR (B) A REFUND OF THE PRICE ALLOCABLE TO THE DEFECTIVE GOODS OR SERVICES IF FG IS UNABLE TO EFFECTIVELY REPAIR, REPLACE OR CORRECT SUCH DEFECT IN A REASONABLE TIME AFTER USING ITS REASONABLE EFFORTS. UNDER NO

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CIRCUMSTANCES SHALL FG HAVE ANY LIABILITY WHATSOEVER FOR INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF BUSINESS OR PROFITS) OR PUNITIVE DAMAGES, NOR SHALL BUYER BE ENTITLED TO OBTAIN INJUNCTIVE RELIEF AGAINST FG FOR ANY REASON WHATSOEVER.

13. **RISK OF LOSS; TITLE.** Possession and risk of loss for all goods shall pass to Buyer upon FG's delivery of such goods to any carrier, common or otherwise. Title to such goods shall not pass until they have been fully paid for by Buyer. Buyer shall have been deemed to have accepted the goods and services as delivered within five (5) business days of delivery unless Buyer shall notify FG of any deficiency in writing.

14. **ASSIGNMENT.** Buyer shall not assign its interest in any Supply Arrangement without FG's prior written consent.

15. **INDEMNITY.** To the maximum extent allowed by law, Buyer shall reimburse, indemnify and hold FG and its employees and agents harmless from and against any claims, demands, liabilities, damages, suits, judgments, losses, costs and/or expenses (including attorneys' fees and other expenses of any litigation) suffered and paid by FG (collectively, "Losses") that relates to or arises on account of

(a) Buyer's negligence, use, improper installation, ownership, maintenance, transfer, transportation or disposal of the goods and services delivered by FG or (b) Buyer's violation or alleged violation of any federal, state, county or local law, rule or regulation.

16. **INTELLECTUAL PROPERTY.**

(a) If Buyer provides FG with any specifications for goods or services to be furnished by FG, Buyer shall reimburse, indemnify, defend and hold FG harmless from and against any Losses concerning, arising out of or relating to any claimed or actual infringement of any patent, copyright, trade secret or other intellectual property rights of any third party respecting such goods or services.

(b) Any goods or any improvement to any goods developed by FG, and any method or process of production respecting the goods or improvement thereto developed by FG, shall be the sole property of FG unless separately agreed to in writing.

(c) Buyer may use FG's trademarks only to sell new FG goods purchased by Buyer directly from FG, and for no other reason. Buyer shall not take any or fail to take any action that may dilute FG's trademarks.

(d) Except as expressly set forth herein, (i) FG shall have no obligation to sell, assign, license, or transfer intellectual property of any kind to Buyer, and (ii) Buyer shall have no right to use any intellectual property of FG without the express written consent of FG, which may be withheld in its sole discretion. FG may enforce this Section through injunction or otherwise.

17. **FORCE MAJEURE.** FG shall be temporarily excused from performance under any Supply Arrangement to the extent such non-performance is caused by acts of God, war, terrorism, riot, embargoes, fire, floods or other severe weather problems, accidents or other casualty, quarantine restrictions, factory conditions, labor disputes, governmental acts, orders or regulations, delays in transportation, shortage of transport vehicles, labor or materials or other circumstances beyond the reasonable control of FG. FG shall use all available commercially reasonable efforts to remedy the circumstances causing the non-performance, or shall take steps to work around such circumstances. Promptly after the circumstances causing the non-performance are remedied, FG shall resume performing.

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18. **TERMINATION.** Unless otherwise agreed to in a fully executed Supply Arrangement, FG may terminate any Supply Arrangement, including open or continuing purchase orders: (i) on reasonable ten day notice to Buyer, for any or no reason, or (ii) immediately, if Buyer fails to timely pay for goods delivered or services rendered, breaches any of its other obligations under any Supply Arrangement, violates or refuses to abide by or acknowledge these Standard Terms, or threatens any of the foregoing. Buyer has no right to terminate for convenience. Buyer may only terminate for FG's material breach if Seller, after written notice, fails to cure within 30 days of receipt of such notice. Any termination by Buyer must be in writing. In the event of a termination by Buyer or FG for any reason other than a material breach by FG that FG fails to cure, Buyer shall pay FG termination charges consisting of all of FG's costs and expenses incurred in connection with FG's performance (including without limitation labor, material and overhead), all costs and expenses incurred as a result of termination, any of FG's other incidental damages and FG's expectation damages. Regarding any breach by Buyer hereunder, FG reserves all rights and remedies available hereunder.
19. **MISCELLANEOUS.** Notwithstanding any Buyer purchase order or Buyer standard terms and conditions to the contrary:
- (a) Buyer shall have no right to (i) inspect FG's facilities, (ii) examine FG's books, records or other documents, or (iii) seek or obtain any information from FG deemed proprietary or confidential by FG in its sole discretion, without the express written consent of FG obtained in each instance, which consent may be withheld in FG's sole discretion.
 - (b) FG shall have no obligation to sell or otherwise transfer any raw materials, work-in-progress, tools, dies, jigs, fixtures, molds, patterns, templates, models, mock-ups, gauges, drawings, equipment/machinery or other means of production to Buyer except where the same was specifically designed, developed and/or purchased by FG solely for Buyer's account under a bona fide Supply Arrangement and has been fully paid for by Buyer.
 - (c) While FG shall reasonably maintain all tooling owned by Buyer in FG's possession, FG shall have no liability for the damage or loss of any tooling, equipment or other property unless such damage or loss arises out of the negligence of FG.
 - (d) FG shall have no obligation to comply with any agreements between Buyer and any third party unless FG is furnished a written copy of such agreement and expressly agrees to so comply in a signed writing after FG's receipt of such copy.
 - (e) FG shall not be required to obtain any property, liability or other type of insurance for its own account or for the account of Buyer or its property.
 - (f) FG Shall not be required to arbitrate any claim against Buyer or Buyer's customers or agents, or bring or defend any such claim in any particular forum.
 - (g) Buyer shall have no right to dictate personnel changes in FG's workforce, or to mandate labor union relations, affiliations or other changes to FG's workforce management or labor relation policies.
 - (h) FG shall have the right to manufacture any goods for Buyer in any of its facilities without Buyer's prior approval or consent.
 - (i) Buyer shall have no right to notice of any sale of stock or assets of FG so long as the same occurs in the ordinary course of FG's business. In addition, no sale of FG's stock or assets shall give rise to any Buyer right of termination of any Supply Arrangement with FG.

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(j) FG's alleged or actual default with respect to any particular Supply Arrangement shall have no effect on Buyer's obligation to perform under any other Supply Arrangement between Buyer and FG, nor shall Buyer have any right of setoff against FG with respect to any such other Supply Arrangements.

(k) In the event of any formal dispute resolution proceeding between the parties, the prevailing party shall be entitled to recover its reasonable attorney's fees and other expenses of dispute resolution, such as arbitrator fees, case filing fees, costs of transcription and expert witness fees.

(l) The substantive laws of the State of Illinois shall apply to all dealings and transactions between Buyer and FG.

(m) The parties agree to comply with all applicable commercial and public anti-bribery laws, including, without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

(n) Buyer hereby represents and warrants that neither Buyer, nor any persons or entities holding any legal or beneficial interest whatsoever in Buyer, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons." If the foregoing representation is untrue at any time, an event of default will be deemed to have occurred without the necessity of notice to Buyer.

20. CONFLICT OF TERMS. These Standard Terms supersede any prior purchase orders, supply agreements, nomination letters, proposals, quotations, requisitions, oral statements and/or representations, Buyer standard terms and conditions, correspondence or similar matters (collectively, "Supply Arrangements") between the parties or their representatives. Any conflict between these Standard Terms and other Supply Arrangements shall be resolved in favor of these Standard Terms. Buyer's acceptance of any goods shipped or services provided by FG shall constitute acceptance of these Standard Terms. If at any time (i) Buyer claims or asserts that these Standard Terms are not applicable to any Supply Arrangement between FG and Buyer, or (ii) a determination is made by a court, arbitration panel or other legal authority that these Standard Terms do not apply to any Supply Arrangement between the parties, FG shall have the right to immediately terminate such Supply Arrangement without liability or further obligation to Buyer. However, the failure or refusal of FG to so terminate any Supply Arrangement shall not constitute or be deemed a waiver by FG of the effectiveness or enforceability of these Standard Terms. FG reserves the right to amend these Standard terms from time to time.

21. WAIVER. Either party hereto may waive any requirement, condition or obligation to be performed by the other party, provided any such waiver is in writing and executed by the party waiving the requirement, condition or obligation and shall be specifically designated as a waiver hereunder with reference to the applicable section. A waiver by a party of any breach of any term, covenant, or condition contained herein to be performed by a party, or the delay, forbearance, indulgence or failure of a party in exercising any right hereunder on account of such breach, or the partial exercise of such right, shall not be deemed a waiver of any subsequent breach of the same term or any other term, covenant or condition hereof.

22. SEVERABILITY. If any provision of this Agreement or any related document or instrument is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be either reformed by a court of competent

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jurisdiction to reflect the intent of the parties, or deleted from the Agreement by the court, whichever course of action in the opinion of the court would best reflect the intent of the parties, taking into consideration all provisions of this Agreement. If a provision is deleted, the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by severance herefrom.

23. **WAIVER OF JURY TRIAL.** BUYER AND FG ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF THE BUYER AND FG, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY OTHER DOCUMENT PERTAINING TO ANY ORDER.

24. **VENUE.** The parties hereby agree that all actions or proceedings arising directly or indirectly, from this Agreement shall be litigated in courts having a situs within the state of Missouri, and the parties hereby consent to the jurisdiction of any local, state or federal courts that is located within the state of Missouri.

25. **STATUTE OF LIMITATIONS.** Any action resulting from any breach on the part of FG as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

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