

**TERMS AND CONDITIONS**  
**WINZELER, INC.**

**1. Acceptance.** No terms and conditions other than the terms and conditions contained herein (the "Agreement") shall be binding upon Winzeler, Inc. dba Winzeler Gear ("WINZELER") unless accepted by it in a writing signed by WINZELER. All terms and conditions contained in any other oral or written communication which are different from or in addition to the terms and conditions herein are hereby rejected and this document is the complete and exclusive statement of the terms, save for purchase orders submitted by Buyer for the purchase of the items contemplated by this Agreement (the "Products") which are consistent with this document and which are accepted by WINZELER (a "PO").

**2. Shipment and Inspection.** Subject to any contrary terms contained in a PO which are accepted by WINZELER, in writing, all Products are shipped F.O.B. WINZELER's facility and Buyer shall be responsible for arranging for and paying the carrier. Risk of loss and title shall pass to Buyer upon delivery to Buyer's carrier. The cost of any special packing or handling required by Buyer or the nature of the Products shall be borne by Buyer. Claims for damage, shortage or errors in shipping must be reported within five (5) days following delivery to Buyer. Buyer shall have thirty (30) days from the date Buyer receives any Products to inspect such Products and services for defects and nonconformance which are not due to damage, shortage, or errors in shipping and notify WINZELER, in writing, of any defects, nonconformance, or rejection of such Products. Buyer hereby agrees that such period is a reasonable amount of time for such inspection. After such thirty (30) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the Products for any reason or to revoke acceptance. Buyer agrees that WINZELER may overship Products in any delivery in an amount not to exceed five percent (5%) of the total order quantity without penalty and with the right to bill for the entirety of such order. Absent gross negligence or willful misconduct on the part of WINZELER, expedited freight will not be the responsibility of WINZELER after full production of the Products has occurred for 90 days.

**3. Force Majeure.** Neither party shall be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, stay at home orders, pandemics, judicial action, terrorist acts, natural disasters, shortage or allocation of raw materials, and strikes and other labor problems or shortages including those associated with shipping and logistics.

**4. Molds, Dies, Tools, and Other Equipment.** Tools, dies, and other equipment furnished to WINZELER by Buyer shall be at Buyer's risk and expense. Changes in molds, dies, and tools made necessary by changes in specifications already accepted by WINZELER shall be at Buyer's expense and Buyer shall assume all risk, including any required adjustments in the price of the Products necessitated by the changes in the specifications. WINZELER agrees to maintain all molds, dies, and tools in operation during their normal productive life, with such normal productive life solely determined by WINZELER, except that WINZELER's liability to do so shall be limited to a period of one year after completion of the last order produced on the molds, dies, and tools. WINZELER shall in no way be liable for the continued existence or availability of any such molds, dies, or tools after expiration of such period. Buyer shall pay any unpaid costs of any molds, dies, or tools furnished by WINZELER upon Buyer's demand for delivery thereof. A removal fee may be charged upon removal of any tool by Buyer. WINZELER shall have a lien upon and a security interest in any of Buyer's molds, dies, tools or property in the possession of WINZELER to secure all unpaid balances due and owing from Buyer to WINZELER. If Buyer fails to remove any tooling or other property from WINZELER's facility within a reasonable period (but in no event longer than 30 days) after notice from WINZELER, WINZELER shall be entitled to assess a reasonable storage fee and/or dispose of or return such tooling or property to Buyer at Buyer's sole expense. If WINZELER has purchased any specialty or unique raw materials or components specifically to service Buyer, and has not recouped its cost for such items because of the termination of the parties' relationship or otherwise, then WINZELER may invoice Buyer for such materials or components at its cost and subject to the further payment terms set forth herein, including WINZELER's molder lien rights.

**5. Mold Storage/Removal.** WINZELER shall store molds in its possession at its facilities; Buyer shall keep the molds insured against any loss or damage while such molds are in WINZELER's possession. Buyer will name WINZELER as the loss payee, and will be responsible for any self-insurance retention or deductible. WINZELER shall be responsible for any damage to the molds caused by WINZELER's gross negligence or willful misconduct. Before removal of molds from WINZELER, costs incurred by WINZELER for mold maintenance and repair not otherwise recovered by WINZELER, shall be paid by Buyer to WINZELER along with all other costs and amounts due from Buyer to WINZELER for the Products, raw materials and packaging used therewith, and other related items. Mold or maintenance charges may be waived at WINZELER's discretion. Buyer acknowledges WINZELER's right to a molder's lien with respect to all amounts due WINZELER, as provided by applicable law. WINZELER reserves the right to invoice Buyer for all costs and expenses incurred by WINZELER (including labor costs) in the maintenance and repair of any of Buyer's tooling upon termination of the supply relationship between the parties.

**6. Price and Payment.** Terms are net thirty (30) days unless otherwise noted in writing by WINZELER. Terms are upon receipt for all Invoices. WINZELER reserves the right at any time to suspend, limit or otherwise modify the terms of such credit whenever, in WINZELER's opinion, Buyer's financial condition so warrants (including requiring Buyer to make cash payment or provide other security prior to or upon tender by WINZELER of delivery of Products). A monthly charge of one and one percent (1%) on all sums outstanding will be added to each past due amount and WINZELER shall be entitled to all costs of collection (including reasonable attorneys' fees). Unless otherwise agreed to in writing by WINZELER, all prices quoted are exclusive of transportation and insurance costs, duties, tariffs, and all taxes including, but not limited to, federal, state, provincial and local sales, excise value added goods and services taxes and any other taxes.

**7. PO Modification/Cancellation.** Buyer shall have no right to order any change or modification to any PO or otherwise cancel any PO without WINZELER's written consent and payment to WINZELER of all charges, expenses and reasonable profits owed to or incurred by WINZELER.

**8. Limited Warranty.** The exclusive and limited warranty provided by WINZELER hereunder is that the Products will conform to those specifications provided by Buyer and accepted in writing by WINZELER (the "Warranty"). **OTHER THAN THE WARRANTY, WINZELER MAKES NO WARRANTY WITH RESPECT TO THE PRODUCTS, AND THE BUYER AND WINZELER HEREBY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** The Warranty applies only to the extent that any nonconforming Products have been properly handled, stored, used, installed and/or maintained by Buyer or Buyer's customers. WINZELER recommends that Buyer independently test the Products to determine suitability, durability, and performance for the intended use and of any materials used in the manufacture of the Products (and Buyer is not relying upon WINZELER to determine suitability, durability, or performance).

**9 Warranty Service:** Any claims for breach of warranty shall be made by notifying WINZELER's Quality Department in writing and obtaining a Return Material Authorization ("RMA") Number for return of the Products (which is to be referenced in all return shipping documents). The warranty service shall be performed at WINZELER's facility. In order to receive the warranty service, Buyer must return the defective part within thirty (30) days of notification from Buyer hereunder. All warranty claims will be handled pursuant to WINZELER's standard RMA procedures. If WINZELER determines that the original parts were not defective, Buyer shall reimburse WINZELER all costs of handling, transportation, and repairs at WINZELER's prevailing rates. All defective parts returned under this warranty which are replaced or for which a refund is given to Buyer shall become WINZELER's property.

**10. Limitation of Liability.** In the event that it is determined by WINZELER that the Warranty has been breached, the liability of WINZELER and the exclusive remedies available to Buyer will be limited to the repair or replacement of the Product by

WINZELER or the return of the purchase price of such Product, as determined by WINZELER in its sole discretion. **SUBJECT TO THE FOREGOING LIMITATIONS, WINZELER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE PRODUCTS OR ANY SERVICE PROVIDED BY IT TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE NET INCOME EARNED BY WINZELER FROM THE PRODUCTS IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE OCCURENCE OF THE CLAIM. IN ADDITION, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES AND/OR PRODUCT(S), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**11. Indemnification.** Subject to the limitations on liability set forth in Section 10, the parties shall indemnify and hold each other and their respective affiliates, shareholders, members, directors, officers, employees, and agents ("Indemnified Parties") harmless from and against any loss, liability, damage, or expense, including reasonable attorneys' fees ("Losses"), such parties may incur as a result or, arising out of or by reason of any breach, misrepresentation, or nonfulfillment on the part of such party of this Agreement. Buyer shall further hold WINZELER Indemnified Parties harmless from and against Losses resulting from or relating to Buyer's or Buyer's customers' design, use, marketing, distribution, or sale of the Products.

**12. Representations.** Buyer represents and warrants that: (a) the Products, their specifications, and their sale or use do not and will not infringe any intellectual property rights of any third party, including, but not limited to, any trade secret, trademark, copyright, or patent (except to the extent designed by WINZELER), and (b) the marketing, sale, distribution, and use of the Products by Buyer comply and will comply with applicable laws and regulations.

**13. Improvements and Developments.** Unless otherwise agreed to in writing by WINZELER, any and all Improvements shall be the exclusive property of WINZELER and Buyer agrees to perform all actions necessary or desirable to vest and confirm ownership of Improvements in WINZELER. "Improvements" shall mean any inventions, developments, enhancements, adaptations, advancements and other intellectual property, whether or not patented or patentable, derived from, associated with or relating to the manufacturing, molding, or production process, technique, or procedure used for the Products which may be discovered, developed, invented or acquired by WINZELER, in whole or in part. Buyer acknowledges that WINZELER expends and provides considerable time, resources, and expertise in connection with the intake and preparation of Products for production, including, but not limited to, molding process optimization, material selection, and other development and application of intellectual property and proprietary practices ("Development Costs"), and that WINZELER undertakes those efforts with the reasonable expectation that it will be retained to provide significant production of the Products. Should the supply relationship between Buyer and WINZELER embodied in these terms and conditions terminate prior to purchase of a total quantity of Products equal to the production volume indicated in the original project information provided by Buyer, WINZELER shall be entitled to issue Buyer an invoice for the unrecovered portion of the Development Costs based upon the actual purchases of Products relative to this forecasted amount, as determined by WINZELER in its reasonably exercised sole discretion. The terms of such invoice shall be as provided in Section 6 of these terms and conditions and Buyer further acknowledges that any amounts due in connection with Development Costs shall be subject to WINZELER molders' lien rights pursuant to applicable law.

**14. PPAP:** All costs associated with production part approval process ("PPAP"), including any annual PPAP revalidation, shall be paid for by Buyer.

**15. Lead Time.** Delivery lead time will be communicated at the time of order confirmation. Lead times are dependent on production part qualification and approval process (e.g. PPAP), machine availability, machine capacity, and material availability.

**16. Termination.** WINZELER and Buyer shall have the right to terminate this Agreement and any applicable PO upon or after the material breach of any provision of this Agreement by the other party if the breaching party has not cured such breach

within the thirty (30)-day period following written notice of termination by the non-breaching party. WINZELER shall have the right to terminate this Agreement and any applicable PO for any reason or no reason at all with ninety (90) days advance written notice to Buyer. Termination of this Agreement or any applicable PO shall not (a) affect any other rights of either party which may have accrued up to the date of such termination or expiration or (b) relieve Buyer of its obligation to pay to WINZELER sums due for Product ordered under POs, all inventory and work in process produced, all raw materials and packaging obtained for benefit of Buyer, and any and all tooling or components purchased for Buyer for which WINZELER has not been reimbursed. The obligations and rights of the parties under this section shall survive termination of this Agreement and any applicable PO.

**17. Part Pricing.** Product pricing is quoted based on the variables identified below. Product pricing will be reviewed on a monthly basis. Future pricing is subject to change and adjustment upon written notice from WINZELER based on changes to the variables discussed herein, as follows:

- Resin and Purchased Component Price: Increase in the cost of resin or purchased components will result in an equitable adjustment of the Product price. Substitution of an alternate resin due to obsolescence or availability may also trigger price adjustment, along with limits on applicable warranties.
- Production Scrap: Scrap over the initial estimate may be assessed on future orders by an increase in part price. Examples include mold-caused defects where the Buyer does not wish to pay for the repairs necessary to repair the tool. In such a circumstance, WINZELER will continue to run in a higher scrap condition yet adjust the part price accordingly.
- Cycle Time: Cycle times that deviate by more than 25% from the estimate will result in an equitable adjustment to the product price.
- Design or engineering changes: When such changes require modifications to form, fit, function, or handling, a requote of the price will result.
- Part Weight: When weights are estimated, the Product price will be adjusted after actual weight is established through approved sample parts,
- Labor: Changes in the applicable prevailing wage will result in an equitable adjustment to the Product price.

**18. Confidentiality.** In addition to any confidentiality agreement signed by Buyer and WINZELER, which shall remain in full force and effect except for those terms inconsistent with this Agreement, Buyer will maintain the confidentiality of all information identified as such by WINZELER or which would generally be understood by a reasonable person to be confidential, based on the manner and circumstances in which it is disclosed. Buyer will not disclose any such confidential information to any third party or use such confidential information other than in support of this Agreement, the Products, or a PO.

**19. Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois (regardless of the laws that might be applicable under principles of conflicts of laws) as to all matters, including, but not limited to, matters of validity, construction, effect and performance. The parties hereby irrevocably consent to the exclusive jurisdiction of the courts of the State of Illinois in Cook County, and the federal courts for such jurisdiction, and waive any contention that any such court is an improper venue for enforceability of this Agreement. The prevailing party in any action seeking to enforce this Agreement shall be entitled to recover its reasonable attorneys' fees and costs. The failure of WINZELER to insist upon performance of any provision or to exercise any right or privilege granted to WINZELER in this Agreement shall not be construed as waiving such provision or privilege. The invalidity of any terms or provisions hereof shall not affect the validity of the remaining terms or provisions, and this Agreement shall be construed as if such invalid terms or provisions had been omitted. Buyer may not assign this Agreement or PO without the written consent of WINZELER.