

# GUNG-HO TERMS AND CONDITIONS OF SALE

## 1. CONTROLLING TERMS

These Terms and Conditions of Sale take precedence over Purchaser's additional or different terms and conditions, to which notice of objection is hereby given. Gung-Ho's acceptance of Purchaser's purchase orders is limited to these Terms and Conditions of Sale. Neither Gung-Ho's commencement of performance nor delivery of product shall be deemed or construed as acceptance of Purchaser's additional or different terms and conditions.

## 2. PRICING AND QUOTATIONS

All printed price lists are subject to change without notice. Outstanding price quotations will be honored for a period of thirty (30) days, after which they will be subject to review. All quoted artwork costs are subject to review based on the actual artwork submitted for reproduction. All prices and quotes are in U.S. Dollars.

## 3. PURCHASE ORDERS

Purchase Orders must be complete with all specifications, quantities, prices, and relevant dates and be accompanied by artwork to be entered for processing. Although not encouraged, we realize the necessity of occasional verbal orders. ALL VERBAL ORDERS MUST BE CONFIRMED IMMEDIATELY IN WRITING and be marked "Confirming Order." We will not be held responsible for the correctness of verbal orders or duplication of orders not marked "Confirming Order."

All orders are subject to availability of materials and component parts. Gung-Ho shall not be liable for inability to ship any order due to material or part shortages, strikes, fires, accidents, or other causes beyond our control.

## 4. ARTWORK AND PREPARATORY MATERIALS

Any artwork furnished (film is preferred) must be camera ready, mechanically separated by color and include complete instructions specifying position and color (a PMS number or swatch is preferred). Artwork and film will be reproduced as furnished unless corrective work is requested by and quoted to the Purchaser. Gung-Ho will try to call to your attention any errors in spelling, alignment, or quality but will not be responsible if such defects are reproduced. Artwork or changes can be made in-house and will be charged at competitive rates that will be approximated and approved before the order is initiated. Art preparation charges are subject to review after we receive and evaluate the actual artwork.

Special pricing may be required for artwork that has bleeds, critical registration, fine detail, excessive ink coverage or an image area exceeding our press size. Questionable artwork should be submitted for our evaluation at the time of quotation.

Negatives, positives, screens, and other items produced by Gung-Ho remain our property. Art copy and film furnished by the Purchaser remain the Purchaser's property and will be returned upon request following completion of and payment for the order.

## 5. INK AND MATERIAL COLOR MATCH

Ink colors can be modified by the materials and colors on which they appear; therefore, we are unable to guarantee a perfect match but will make every effort to match them as closely as possible. Material colors and patterns vary from mill run to mill run; therefore, we cannot guarantee a perfect match but will make every effort to maintain consistency.

## 6. DIES AND SETUPS

Sealing dies, cutting dies and setups maintained by Gung-Ho for standard products will not be charged to the Purchaser. Special dies will be quoted separately. Such dies remain the property of Gung-Ho and once added to our existing inventory of dies, there will be no die charge for reruns of orders requiring their use.

Imprinting dies supplied by Gung-Ho for a specific job, and charged to the Purchaser, remain the property of Gung-Ho. Worn imprinting dies will be replaced at cost to the Purchaser.

Dies and tooling furnished by Purchaser are subject to our approval and will be maintained at cost to the Purchaser and returned upon request following completion of and payment for the order.

## 7. SAMPLES

Samples of our stock items will be furnished at no charge. Samples of custom-made products will be charged at cost and must be quoted on an individual basis.

## 8. PROOFS

Proofs are offered as a means of ensuring that the artwork has been setup to achieve the desired effect. We offer these proofs in varying degrees of completion:

- Photocopy of artwork.
- Photostat or PMT of artwork.
- Sample ink swatch on specified material.
- Printed artwork on sheet of specified material.
- Complete printed sample of item ordered.

Unless otherwise arranged, an order for which a printed proof has been requested will be processed up to the printing operation at which point it will be placed on hold until the proof is approved. Proof approval can be made verbally but must be confirmed in writing by signing the proof and returning it to Gung-Ho. Any delays in obtaining proof approval will delay further processing of the order.

If you want to reserve the right to change specifications other than printing, a pre-production proof must be requested. Pre-productions proofs are run exactly as the job will be produced. Orders requesting pre-production proofs are placed on hold pending possible changes. Any custom materials will only be ordered as approved by the Purchaser.

The type of proof requested and the size of the order determines whether proof charges will be required. If so, such charges will be quoted individually and billed independently of the order. A credit for proof charges may be available if a firm order is placed within thirty (30) days.

## 9. CHANGES

All changes in purchase orders and specifications must be confirmed in writing and will be charged at current prices. Any changes affecting work that has been started will be done at a reasonable cost of implementing the change. Increases in quantity will be treated as separate orders and priced accordingly unless they can be added to an existing order without disruption.

## 10. CANCELLATIONS

Cancellations of orders, verbal or written, will be permitted only on terms that cover all costs incurred by Gung-Ho. If your order has been entered but production has not been started, there will be a minimum charge of fifty dollars (\$50) to cover order entry costs, etc.

rev. 05-22-02

## 11. SHIPPING SCHEDULE

Lead times for shipping at the time of quotation are guidelines only and a more accurate estimation of the shipping date will be given at the time the order is received. Every effort will be made to ship as scheduled but shipping dates are not guaranteed.

## 12. OVER-RUNS AND/OR UNDER-RUNS

On all custom products we reserve the right to over or under ship ten percent (10%) of the ordered quantity and invoice for the actual quantity shipped. Since all custom products are manufactured independently, we will try but cannot guarantee that matching quantities of various items will be produced. For exact quantities of any custom product, add ten percent (10%) to the cost of the item.

## 13. SHIPPING INFORMATION

Unless otherwise stated, all prices quoted are for a single shipment without storage F.O.B. point of manufacture. Freight collect or third party billing should be specified. All freight prepaid by Gung-Ho will be invoiced with a service charge of fifteen percent (15%) of the freight bill. Orders shipped to more than one location will be invoiced with an additional service charge of twenty dollars (\$20) for each location.

When not specified, our best judgement will be used to select carriers and routings taking speed of delivery and transportation costs into consideration.

Title for finished work and risk of loss or damage shall pass to the Purchaser or consignee upon delivery to carrier at shipping point.

## 14. SHIPPING DAMAGE/FREIGHT CLAIMS

Any claims resulting from goods damaged in transit, shortages received, or tampering must be filed by the consignee. The goods are the consignee's property when they leave our plant so IT IS VERY IMPORTANT THAT THE CONSIGNEE INSPECTS EVERY SHIPMENT AND MARKS THE DELIVERY RECEIPT AS TO ANY DAMAGES OR SHORTAGES AND ADVISES THE DELIVERING CARRIER ACCORDINGLY.

## 15. PAYMENT

Payment shall be NET THIRTY (30) DAYS from date of invoice unless otherwise provided in writing by Gung-Ho. All invoices not paid within the agreed upon terms will be assessed a finance charge at the maximum rate permitted by applicable law.

Current orders will be put on hold and new orders will not be entered if any unpaid invoices exceed forty-five (45) days. As security for payment of any sum due or to become due under any agreement, Gung-Ho shall have the right to retain possession of and shall have a lien on all Purchaser property and artwork in our possession, including work in process and finished work, and a purchase money security interest and right of possession in goods already shipped. Purchaser shall cooperate in whatever manner necessary to perfect said security interest and hereby grants Gung-Ho power of attorney to sign any documents necessary for such purpose in the event of Purchaser's refusal or failure to do so. The extension of credit or the acceptance of notes or guarantee of payment shall not affect such security interest and lien.

## 16. CREDIT

New Purchasers will be asked to complete a confidential application for credit. Until we receive information sufficient to establish credit, we will require a minimum fifty percent (50%) deposit and the balance upon shipment. Promptly upon Gung-Ho's demand therefor, Purchaser shall provide Gung-Ho adequate assurance of Purchaser's performance hereunder and Purchaser's failure to provide such assurance within a reasonable time shall constitute a repudiation hereof.

## 17. GUARANTEE

Gung-Ho guarantees all of its products against defect in materials and workmanship provided the products have not been misused or modified. Any claims for repair, replacement, or refund must be made by the Purchaser in writing within thirty (30) days after shipment. Returns cannot be made without prior authorization. Defective goods must be returned immediately after authorization. Repair, replacement, or refund will be subject to receipt and inspection by Gung-Ho. The undisputed part of an invoice is due under regular terms. THIS LIMITED WARRANTY SETS FORTH THE ENTIRE EXTENT OF GUNG-HO'S LIABILITY FOR DEFECTIVE PRODUCTS. ALL IMPLIED WARRANTIES, INCLUDING FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. IN NO EVENT WILL GUNG-HO BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCURRED BY PURCHASER OR ANY OTHER PERSON. IF FOR ANY REASON THE FOREGOING LIMITATION ON LIABILITY IS VOIDED OR IS NOT EFFECTIVE, PURCHASER AGREES THAT GUNG-HO'S LIABILITY FOR DAMAGES, IF ANY, SHALL NOT EXCEED THE PAYMENTS MADE BY PURCHASER FOR ANY DEFECTIVE PRODUCT, NET OF INSURANCE, TAXES, SHIPPING, AND SIMILAR EXPENSES. All claims for defects shall be waived unless presented in writing within thirty (30) days after shipment.

## 18. ENFORCEABILITY

In the event any collection effort is initiated or any legal action is brought to interpret or enforce any of the terms or conditions of sale between the Purchaser and Gung-Ho, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses incurred including attorneys fees whether such action is prosecuted to judgment or not. The parties further agree that the laws of Nevada (irrespective of choice of law principles) shall govern this transaction and that any action arising hereunder shall be brought in the federal or state courts located in Washoe County, State of Nevada.

Any terms or condition set forth herein which is prohibited by law shall be ineffective to the extent of such prohibition; but such prohibition shall not invalidate the remaining terms and conditions, all of which shall remain in force and effect to the full extent permitted by law.

## 19. LIMITATION OF ACTIONS

No action, regardless of form, arising out of or in any way connected with these Terms and Conditions of Sale or the products sold hereunder may be brought by Purchaser more than one (1) year after such cause of action shall have accrued.

## 20. ENTIRE AGREEMENT

These Terms and Conditions of Sale constitute the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect hereto. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof.