

NORD GEAR CORPORATION

Conditions of Sale

1. CONTRACT

Any contract between Nord Gear Corporation, hereinafter designated as Seller, and the Buyer is subject to the terms and conditions of sale hereinafter set forth. Any deviation from such terms and conditions must be specifically set forth in writing and consented to by Seller. Accordingly, the Buyer and Seller acknowledge and agree that the terms and conditions set forth below and on the face hereof shall govern Buyer's purchase of the goods described on the face hereof and shall take precedence over and represent the final agreement between Buyer and Seller, notwithstanding any inconsistent, contradictory or other prior or further conditions contained in any oral or written request or purchase order issued by Buyer or any other document furnished by Buyer in connection with its purchase of the Goods, regardless of whether such document or documents are exchanged simultaneously with this Invoice or prior or subsequent thereto. Any additional or different terms or conditions which may appear in any communication, oral or written, from Seller, its officers, employees, agents or representatives, are hereby expressly rejected and shall not be effective or binding upon the Seller, unless specifically hereafter agreed to in writing by Seller and no such additional or different terms or conditions in any document submitted to Seller by Buyer shall become part of the contract between Buyer and Seller, unless such written acceptance by Seller specifically recognizes and assents to their inclusion. Any objection by Buyer to the terms and conditions hereof shall be ineffective unless Seller is advised in writing thereof within two (2) days of the date of this Invoice.

2. CONFIRMATION

An order shall be deemed accepted only when duly confirmed by Seller, at Nord Gear Corporation's home office in Waunakee, Wisconsin, and upon such confirmation the order shall become a contract binding upon the parties hereto, their successors and assigns.

3. PRICES

Prices shown are list prices and may be subject to applicable discounts. Unless otherwise agreed upon in writing, prices are FOB factory Waunakee, Wisconsin. Prices and discounts are subject to change without notice until order is accepted. Seller's prices do not include cost of any inspection permits required.

4. LIMITED WARRANTY

Seller warrants the goods sold hereunder to be free from defects in material and workmanship under normal use and service not arising from misuse, negligence, or accident, including but not limited to the use, installation, and transportation of the goods by the Buyer, its agents, servants, employees, or by carriers. Such obligations under this warranty are limited to remedying any deficiencies in the goods at Waunakee, Wisconsin, or at such place or places in the United States of America as may be designated by Seller. THIS WARRANTY SHALL PERTAIN TO ANY PART OR PARTS OF ANY GOODS TO WHICH BUYER OR ITS ASSIGNS HAS GIVEN WRITTEN NOTICE OF CLAIMED DEFECTS TO SELLER. NORD GEAR CORP. WARRANTS ITS PRODUCTS AGAINST DEFECTS IN MATERIAL AND WORKMANSHIP FOR A PERIOD OF 12 MONTHS FROM DATE OF INSTALLATION OR 18 MONTHS FROM DATE OF SHIPMENT WHICHEVER COMES FIRST ON ALL COMPONENTS. 36 MONTHS FROM DATE OF INVOICE OR 24 MONTHS FROM DATE OF INSTALLATION WHICHEVER COMES FIRST ON GEARS AND HOUSINGS ONLY. PARTS WHICH ARE SUBJECT TO OPERATIONAL WEAR AND TEAR, SUCH AS BELTS & TRACTION DISCS, ARE NOT COVERED BY THE LIMITED WARRANTY. Buyer shall be required to furnish Seller with details of such defects and this warranty shall be effective as to such goods which Seller's examination shall disclose to its satisfaction to have been defective and which at Seller's option shall promptly thereafter be returned to Seller or its nominees. THE LIMITED WARRANTY SET FORTH HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, SELLER HAS MADE AND MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED. AS TO THE GOODS SOLD HEREUNDER, INCLUDING, BUT NOT LIMITED TO, THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. ANY DESCRIPTION OR MODEL OF THE GOODS IS FOR IDENTIFICATION OR ILLUSTRATIVE PURPOSES ONLY AND SHALL NOT BE DEEMED TO CREATE ANY WARRANTY, EXPRESS OR IMPLIED. SELLER MAKES NO REPRESENTATIONS AS TO THE CAPACITY OR PERFORMANCE OF THE GOODS SOLD HEREUNDER, EXCEPT AS SET FORTH IN THE INVOICE'S SPECIFICATIONS OR OTHER VALID AGREEMENT OR CONDITION AGREED TO BETWEEN THE PARTIES, AND ANY SUCH REPRESENTATIONS ARE EXPRESSLY CONDITIONED UPON THE CORRECTNESS OF THE DATA AND INFORMATION FURNISHED BY THE BUYER AND UPON THE GOODS BEING PROPERLY INSTALLED AND MAINTAINED. THE REMEDIES OF THE BUYER PROVIDED HEREUNDER ARE EXCLUSIVE. In no event shall the Seller be liable to the Buyer or to any other person for any loss or damage, direct or indirect, arising out of or caused by the use or operation of the goods, or for the loss of profits, business, or good will, or for any incidental, special or consequential damages. Seller shall in no event be liable to any person or firm (including any assignee or Buyer) except Buyer and its successors. Unless specifically authorized by Seller in writing, Seller shall not become responsible for any repair work done by Buyer or any other party on any goods sold. Any and all costs of the return to the Seller of such goods and all related costs to remove and re-install such goods, shall be borne by Buyer. Goods sold but not manufactured by the Seller are being warranted as to defects in material and workmanship consistent with the limited warranty policy of the original manufacturer of the goods and if there is not such a limited warranty policy, the warranty shall be limited to the provision of the preceding paragraph of Article 4 herein. Standards for the operating characteristics of the gearboxes and the gearmotors are in conformity with Seller's tests.

5. SHORTAGE AND NONCONFORMITY

Any claim of shortage or that the goods do not conform with the specifications of the order or model must be made in writing within ten (10) days after delivery of the goods (as to which such claim is made) to Buyer or its nominees, but in no event shall the claim be later than within the time limit provided by the carrier or insurance company, otherwise such claim shall be deemed waived. Buyer may not return any goods claimed to be in non-conformity without Seller's prior written authorization. Goods returned without permission will not be accepted, including for credit, and will be returned to Buyer, F.O.B. Seller's plant. Any claim based on the receipt of damaged Goods must be filed with the carrier which delivered the goods. The samples, measurements, dimensions and weights contained in the Seller's catalogs, sales manuals, photographs and drawings constitute only an approximate guide. The Seller reserves the right to make any change which the Seller, in its absolute discretion, considers necessary. While the goods will be delivered principally according to specifications or standards or quantities agreed upon, insignificant deviations or insignificant changes in construction are permissible. The same applies to partial deliveries. In the event that Buyer has a verified claim of shortage or nonconformity of the goods to the specifications of the order or the model, and if such claim has been submitted within the required time limit as set forth above, the Seller shall, at its own expense, make up for the shortage of the goods, or replace or repair the goods, as the case may be, but in no event shall Seller be or become liable to Buyer or to any other person or persons for any loss in damage, direct or indirect, arising out of or caused by such incidents or for the loss of profits, business or good will. The liability of the Seller to Buyer, if any hereunder, for breach of warranty, contract, negligence or otherwise, shall in no event exceed the amount of the purchase price of the goods sold with respect to which any damages are claimed. Shipping dates are estimates unless parties expressly agree on time of the essence.

6. FORCE MAJEURE

The obligation of the Seller shall be modified or excused, as the case may be, for reasons of Acts of God, war, governmental law regulations, strikes or lock-outs, fire, breakdown of machinery, whether in its own business enterprise, or if for any other cause beyond Seller's control, the goods cannot be delivered or their delivery becomes delayed in whole or in part. In the above instances time for delivery shall be extended for the period of the delay caused, with the proviso, however, that either party may cancel in writing the undelivered portion of the order or contract if the delay exceeds six (6) months from the delivery date originally confirmed by Seller. In no event shall Seller become liable in the aforesaid instances to Buyer or any third party for consequential damages or business loss.

7. SHIPMENT AS UNIT

Each shipment by Seller shall be treated as a separate and distinct unit with respect, but only with respect to forwarding, terms of payment, and the making of claims by the Buyer: provided, however, that if the Buyer defaults in the payment of any obligation to Seller or any installments thereof, under any agreement between Buyer and Seller, or if Buyer refuses to accept any goods when tendered for delivery, the Seller may, on fifteen (15) days written notice to the Buyer, without prejudice to Seller's other lawful remedies, either defer further performance until the defaulted payments are made in full, or make future deliveries for cash in advance only, or treat the entire contract or contracts with Buyer as breached by the Buyer and pursue its remedies for breach.

8. BUYER'S REFUSAL OF DELIVERY

If Buyer refuses to accept delivery of any goods tendered for delivery, then Seller, without prejudice to Seller's other lawful remedies, may either store or cause such goods to be stored in a warehouse, for buyer's account and at Buyer's cost, risk and expense, or sell such goods (without notice) to any purchasers at public or private sale, and hold the Buyer liable for any difference between (a) the contract price of the goods, and (b) the price at which goods are resold less the costs and expense of such resale including brokerage commissions, or restocking charges.

9. GOODS IN TRANSIT

If prior to delivery or while the goods are in transit, Buyer or Seller becomes bankrupt or insolvent, or any petition in bankruptcy or for the reorganization or for a state court receivership is filed against Buyer or Seller, as the case may be, then the other party hereto may forthwith terminate this contract by giving written notice of such termination. Such termination shall not affect any claim for damages available to the Buyer, provided that if Buyer is then indebted to Seller, the amount of any such damage claim shall be abated to the extent that the indebtedness of Buyer to Seller, as actually paid in money, is abated by any order of judgement entered or any plan adopted in any bankruptcy, reorganization, receivership, or similar proceeding. Such termination shall not prejudice the Seller's rights to any amounts then due under the contract. If Buyer becomes bankrupt or insolvent or any petition in bankruptcy or for reorganizing or if a state court receivership is filed against Buyer, then, at its option Seller may take possession of any goods theretofore sold to Buyer, in connection with which the full purchase price has not been paid, analogous to the terms and provisions set forth in Paragraphs 11 and 12 hereinafter.

10. DELIVERY

(a) Any indicated dates of delivery are approximate only, but NORD Gear will attempt to meet them whenever possible. (b) NORD Gear will not be liable for any penalty clauses contained in any specifications or order submitted unless agreed to in writing by an authorized officer of NORD Gear Corporation. (c) Unless otherwise agreed, delivery of the goods to any carrier shall constitute delivery to the Buyer, and thereafter the risk of loss or damage to the goods shall be upon the Buyer. (d) If the Buyer does not give delivery instructions to the Seller at least (10) days prior to the delivery date ex factory confirmed by the Seller, the Seller may deliver the goods to a carrier of its own choosing, at Buyer's cost and risk, or, at Seller's option, may store the goods on the pier or any warehouse, at Buyer's cost and risk. Any purchase price in such event becomes due and payable within ten (10) days of such storage.

11. PAYMENT OF PURCHASE PRICE

Time of payment is of the essence under the contract. Unless otherwise provided, terms of payment are 30 days net from the date of invoice with a 1% discount if paid within 10 days of date of invoice. Upon default in any of the terms of the contract, or failure to comply with any of the conditions thereof, or upon seizure of the property under execution or other legal process, or if the Buyer becomes bankrupt or insolvent, or any petition for reorganization or for a state court receivership is filed against Buyer, or if the Buyer makes any assignment for the benefit of its creditors or otherwise sells, encumbers or disposes of the goods, or if for any other reason the Seller should deem itself insecure, the full amount of the purchase price then remaining unpaid shall at once become due and payable at the option of the Seller.

12. BUYER'S DEFAULT

Upon the Buyer's default, the Seller may dispose of the merchandise in any manner that it deems fit and, if it desires to resell same, may do so at private or public sale, with or without notice, and with or without the property being at the place of sale, subject, however, to applicable laws. The Seller or its assigns shall have the right to bid at such sale and may become the purchaser of the property. The proceeds of the sale shall first be applied to the expenses incurred in retaking, repairing, storing and selling the goods, reasonable attorney's fees included, and then shall be applied to the payment of the balance due under the contract. Any surplus amount shall be paid to the Buyer. If a deficiency results after the resale, the Buyer agrees to pay such shortfall, together with reasonable attorney's fees, for the recovery of the goods incurred by the Seller. If upon the Buyer's default, the Seller elects not to resell any goods which it may repossess, then the cost of repossession, including reasonable attorney's fees, shall forthwith be due and payable from Buyer to Seller. Buyer agrees to pay all reasonable costs and reasonable attorney's fees incurred by Seller in enforcing Seller's rights against Buyer, including Seller's right to payment of the purchase price of the goods and Buyer's payment of all other amounts owing to Seller required under this Invoice and Conditions of Sale.

13. SECURITY INTEREST AND TITLE

In states and localities which are governed by the Uniform Commercial Code, this contract shall serve as security agreement, reserving in Seller a security interest until full payment of purchase price. The provisions of the Uniform Commercial Code regarding security interest shall have preference and apply if inconsistent with other terms of the conditions of sale. In states and localities where the Uniform Commercial Code does not apply, title to the goods shall remain in the Seller or its assigns until full payment of the purchase price. Buyer agrees to execute forthwith with all documents in such a way and form as Seller may need for filing or recording the security interest under the Uniform Commercial Code with the proper registers or offices, or for filing or recording the conditional sales contract.

14. SALES AND USE TAX

Buyer agrees to bear and pay any sales or use tax in connection with the purchase herein, and to hold the Seller harmless from payment. At the option the Seller, Buyer shall give evidence of payment or of exemption certificate.

15. INSURANCE

The Buyer shall keep the goods insured against damage by fire, water or other casualty as required by Seller, with a company acceptable to Seller, with loss payable to Seller for the total purchase price until the Seller is fully paid. Seller, if it so elects, may place said insurance at Buyer's expense; Seller may cancel such insurance at any time and without notice and may receive the return premium, if any.

16. MODIFICATION BY SELLER

Any contract may be assigned or transferred by the Seller, or the time for the making of any payment due by Buyer may be extended by Seller without derogation of any of the rights of the Seller or its assigns. Waiver by any party of any default shall not be deemed a waiver of any subsequent default.

17. RETURNED GOODS

No goods will be accepted for return unless authorized in writing by Seller. In all cases, transportation and restocking charges will be borne by Buyer.

18. PACKING

The Buyer will be charged for export packaging or other special packing desired. Cost for cartage to ship or transfer express will be added to the invoice. No credit will be allowed if no packing is required.

19. CHANGES/CANCELLATION

NORD Gear will not accept changes in specifications to a confirmed order unless such changes are requested in writing and confirmed back in writing. In addition, the purchaser must agree to any additional charges that may arise from the change. Placing orders on hold or cancellation of orders require Seller's written approval, and are subject to cancellation and/or restocking charges.

20. BUYER'S RESPONSIBILITY AS TO MAINTENANCE

Buyer shall use and shall require its employees and agents to use all safety devices and guards and shall maintain the same in proper working order. Buyer shall use and require its employees and agents to use safe operation procedures in operating the equipment and shall further obey and have its employees and agents obey safety instructions given by Seller. If Buyer fails to meet the obligations herein, Buyer agrees to defend, indemnify and save Seller harmless from any liability or obligation with regard to any personal injuries or property damages directly or indirectly connected with the operation of the equipment. Buyer further agrees to notify Seller promptly and in any event not later than ten (10) days after notice or knowledge of any accident or malfunction involving Seller's equipment which has caused personal injury or property damages and to cooperate fully with Seller in investigating and determining the causes of such accident and malfunction. In the event that Buyer fails to give such notice to Seller or to cooperate with Seller, Buyer shall be obligated to defend, indemnify and save Seller harmless from any such claims arising from such accident.

21. MISCELLANEOUS PROVISIONS

(a) If for any reason a provision of a contract is legally invalid, then in such event the rest of the contract shall remain in full force and effect, except that the parties shall try to replace such invalid provision closest to their original mutual intentions. (b) This Invoice and these Conditions of Sale constitute the entire agreement between the parties regarding the subject matter hereof and supercedes all prior agreements, understandings and statements, whether oral or written, regarding such subject matter. No modification to, change in or departure from, the provisions of this Invoice and Conditions of Sale shall be valid or binding on Seller, unless approved in writing by Seller. No course of dealing or usage of trade shall be applicable unless expressly incorporated into this Invoice and Conditions of Sale. Any amendments to any contract or contracts between the parties shall be valid only upon the written consent of both parties.

22. NON ASSIGNMENT BY BUYER

Contract or contracts may not be assigned by the Buyer without prior written consent of the Seller.

23. APPLICABLE LAW AND VENUE

All contracts and their interpretation are governed by the applicable, substantive laws of the State of Wisconsin. Any litigation brought by the Buyer regarding this Invoice or goods purchased hereunder may only be brought in the Circuit Court for Dane County, Wisconsin.