

EURO GEAR USA TERMS AND CONDITIONS OF SALE EQUIPMENT

1. **ACCEPTANCE** Scope and terms and conditions of SELLER's quotation/proposal including these terms and conditions signed or un signed represent the entire offer by SELLER and supersede all prior solicitations, discussions, agreements, understandings and representations between the parties. Any scope or terms and conditions included in BUYER's order that are in addition to or that conflict with SELLER's terms and conditions are hereby rejected unless accepted in writing by SELLER's authorized representative.

2. **DELIVERY** Any statements relating to the date of shipment of the Products represent SELLER'S best estimate, but is not guaranteed, and SELLER shall not be liable for any damages due to late delivery. The Products shall be delivered to the delivery point or points in accordance with the delivery terms stated in SELLER's proposal. If such delivery is prevented or postponed by reason of Force Majeure, SELLER shall be entitled at its option to tender delivery to BUYER at the point or points of manufacture, and in default of BUYER's acceptance of delivery to cause the Products to be stored at such a point or points of manufacture at BUYER'S expense. Such tender, if accepted, or such storage, shall constitute delivery for all purposes of this agreement. If shipment is postponed at request of BUYER, or due to delay in receipt of shipping instructions, payment of the purchase price shall be due on notice from SELLER that the Products are ready for shipment. Handling, moving, storage, insurance and other charges thereafter incurred by SELLER with respect to the Products shall be for the account of BUYER and shall be paid by BUYER when invoiced.

3. **TITLE AND RISK OF LOSS** SELLER shall retain the fullest right, title, and interest in the Products to the extent permitted by applicable law, including a security interest in the Products, until the full purchase price has been paid to SELLER. The giving and accepting of drafts, notes and/or trade acceptances to evidence the payments due shall not constitute or be construed as payment so as to pass SELLER's interests until said drafts, notes and/or trade acceptances are paid in full. Risk of loss shall pass to BUYER at the delivery point.

4. **PAYMENT TERMS** SELLER reserves the right to ship the Products and be paid for such on a pro rata basis, as shipped. Payments not made in accordance with this Agreement are subject to a late payment charge of the maximum percentage per month permitted by law from the date due until paid. Euro Gear USA legally reserves all rights to lock down or shut down machinery or equipment in which parts or work performed by Euro Gear USA or in C/O if resulting in a non payment or a delinquent over 30 days or other specifically discussed terms of payment. Euro Gear USA will assume NO responsibility due to loss of production or ANY incurred expense this may cause. Unless expressly stated otherwise, all dollar amounts referred to are in American Dollars.

5. **TAXES** Unless otherwise specifically provided in SELLER's quotation/proposal; BUYER shall reimburse SELLER, in addition to the price, for all sales, use and other taxes, excises and charges which SELLER may pay or be required to pay to any government directly or indirectly in connection with the production, sale, transportation, and/or use by SELLER or BUYER, of any of the Products or services dealt with herein (whether the same maybe regarded as personal or real property). BUYER agrees to pay all property and other taxes which may be levied, assessed or charged against or upon any of the Products on or after the date of actual shipment, or placing into storage for BUYER'S account.

6. **MECHANICAL WARRANTY** Solely for the benefit of the ORIGINAL USER, SELLER warrants that new equipment and parts manufactured by it and provided to the ORIGINAL USER (collectively, "Products") shall be free from defects in material and workmanship. The warranty period shall be twelve months from startup of the equipment not to exceed eighteen months from shipment. If any of SELLER'S Products fail to comply with the foregoing warranty, SELLER shall repair or replace free of charge to ORIGINAL USER, EX WORKS SELLER'S FACTORIES or other location that SELLER designates, any Product or parts thereof returned to SELLER, which examination shall show to have failed under normal use and service operation by the ORIGINAL USER within the Warranty Period; provided, that if it would be impracticable for the Product or part thereof to be returned to SELLER, SELLER will send a representative to the ORIGINAL USER'S job site to inspect the Product. If it is determined after inspection that SELLER is liable under this warranty to repair or replace the Product or part thereof, SELLER shall bear the cost of returning the Product to SELLER for inspection or sending its representative to the job site; however, if it is determined after inspection that SELLER is not liable under this warranty, the ORIGINAL USER shall pay those costs. For SELLER to be liable with respect to this warranty, the ORIGINAL USER must make its claims to SELLER with respect to this warranty in writing no later than thirty (30) days after the date the ORIGINAL USER discovers the basis for its warranty claim and in no event more than 30 days after the expiration of the Warranty Period. In addition to any other limitation or disclaimer with respect to this warranty, SELLER shall have no liability with respect to any of the following: (i) failure of the Products, or damages to them, due to ORIGINAL USER'S negligence or willful misconduct, abuse or improper storage, installation, application or maintenance (as specified in any manuals or written instructions that SELLER provides to the purchaser); (ii) any Products that have been altered or repaired in any way without SELLER'S prior written authorization; (iii) the costs of dismantling and reinstallation of the Products; (iv) any Products damaged while in transit or otherwise by accident; (v) decomposition of Products by chemical action, erosion or corrosion or wear to Products or due to conditions of temperature, moisture and dirt; or (vi) claims with respect to parts that are consumable and normally replaced during maintenance such as filter media, filter drainage belts and the like, except where such parts are not performing to SELLER'S estimate of normal service life, in which case, SELLER shall only be liable for the pro rata cost of replacement of those parts based on SELLER'S estimate of what the remaining service life of those parts should have been; provided, that failure of those parts did not result from any of the matters listed in clauses (i) through (v) above. With regard to third-party parts, equipment, accessories or components not of SELLER'S design, SELLER'S liability shall be limited solely to the assignment of available third-party warranties. **THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER WRITTEN, ORAL OR STATUTORY, ARE EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.** All warranties and obligations of SELLER shall terminate if BUYER fails to perform its obligations under this Agreement or fails to pay any charges due SELLER. SELLER'S quoted price for the Products is based upon this warranty. Any increase in warranty obligation may be subject to an increase in price.

7. **CONFIDENTIAL INFORMATION** All nonpublic information and data furnished to BUYER hereunder, including but not limited to price, size, type and design is submitted for BUYER'S own confidential use in connection with this Agreement and is not to be made known or available to any third party without SELLER'S prior written consent.

8. **PAINTING** The Products shall be painted in accordance with SELLER'S standard practice, and purchased items such as motors, controls, speed reducers, pumps, etc., will be painted in accordance with manufacturers' standard practices, unless otherwise agreed in writing.

9. **DRAWINGS AND TECHNICAL DOCUMENTATION** When BUYER requests approval of drawings before commencement of manufacture, shipment may be delayed if approval drawings are not returned to SELLER within fourteen (14) days of receipt by BUYER of such drawings for approval. SELLER will furnish only general arrangement, general assembly, and if required, wiring diagrams, erection drawings, installation and operation-maintenance manuals for SELLER'S equipment (in English measure and language). SELLER will supply six complete sets of drawings and operating instructions. Additional sets will be paid for by BUYER. Electronic files, if requested from SELLER, will be provided in pdf, jpg or tif format only.

10. **GENERAL INDEMNITY** Each party shall protect and indemnify the other party, its parent and their respective officers, directors, employees and agents, from and against all claims, demands and causes of action asserted by any entity to the extent of the indemnifying party's negligence or willful misconduct in connection with the furnishing of Products or services under this Agreement.

11. **SOFTWARE** BUYER shall have a nonexclusive and nontransferable license to use any information-processing program supplied by SELLER with the Products. BUYER acknowledges that such programs and the information contained therein is Confidential Information and agrees: a) not to copy or duplicate the program except for archival or security purposes; b) not to use the program on any computer other than the computer with which it is supplied; and c) to limit access to the program to those of its employees who are necessary to permit authorized use of the program. BUYER agrees to execute and be bound by the terms of any software license applicable to the Products supplied.

12. **PATENT INDEMNITY** SELLER will defend at its own expense any suit instituted against BUYER based upon claims that SELLER'S Product hereunder in and of itself constitutes an apparatus infringement claim of any presently issued Canadian or United States patent, if notified promptly in writing and given, all information, assistance, and sole authority to defend and settle the same, and SELLER shall indemnify the BUYER against such claims of infringement. Furthermore, in case the use of the Products is enjoined in such suit or in case SELLER otherwise deems it advisable, SELLER shall, at its own expense and discretion, (a) procure for the BUYER the right to continue using the Products, (b) replace the same with no infringing Products, (c) modify it so it becomes non-infringing, or (d) remove the Products and refund the purchase price less freight charges and depreciation. SELLER shall not be liable for, and BUYER shall indemnify SELLER for, any claim of infringement related to (a) the use of the Products in any process or method other than that for which it was furnished by SELLER, (b) compliance with equipment designs not furnished by SELLER or (c) use of the equipment in combination with any other equipment. The foregoing states the sole liability of SELLER for patent infringement with respect to the Products.

13. **DEFAULT, TERMINATION** In the event that BUYER becomes insolvent, commits an act of bankruptcy or defaults in the performance of any term or condition of this contract, the entire unpaid portion of the purchase price shall, without notice or demand, become immediately due and payable. SELLER at its option, without notice or demand, shall be entitled to sue for said balance and for reasonable legal fees, plus out-of-pocket expenses and interest; and/or to enter any place where the Products are located and to take immediate possession of and remove the Products, with or without legal process; and/or retain all payments made as compensation for the use of the Products; and/or resell the Products, without notice or demand, for and on behalf of the BUYER, and to apply the net proceeds from such sale (after deduction from the sale price of all expenses of such sale and all expenses of retaking possession, repairs necessary to put the Products in saleable condition, storage charges, taxes, liens, collection and legal fees and all other expenses in connection therewith) to the balance then due to SELLER for the Products and to receive from the BUYER the deficiency between such net proceeds of sale and such balance. BUYER hereby waives all trespass, damage and claims resulting from any such entry, repossession, removal, retention, repair, alteration and sale. The remedies provided in this paragraph are in addition to and not limitations of any other rights of SELLER.

14. **CANCELLATION** BUYER may terminate this contract for convenience upon notifying SELLER in writing of such fact and paying SELLER for all costs and expenses (including overhead) incurred by it in performing its work and closing out the same plus a reasonable profit thereon.

15. **REMEDIES** The rights and remedies of the Parties hereunder are cumulative and exclusive.

16. **INSPECTION** BUYER is entitled to make reasonable inspection of Product's at SELLER'S facility. SELLER reserves the right to determine the reasonableness of the request and to select an appropriate time for such inspection. All cost of inspections not called out in the contract shall be paid by BUYER.

17. **WAIVER** Any failure by SELLER to enforce BUYER'S strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

18. **COMPLIANCE WITH LAWS** Seller certifies that items provided under this agreement, including their manufacture, fabrication, constructions, transportation or use will conform with all applicable provincial environmental or hazardous products legislation, including without limitation the Hazardous products Act and the Environmental Protection Act (Quebec) or comparable provincial legislation. Seller represents and warrants that it has not violated any provincial occupational health and safety legislation in connection with the manufacture, fabrication, construction or transportation of the items, including without limitation the Occupational Health and Safety Act (Quebec), Workplace Safety and Insurance Act (Quebec) or comparable provincial legislation.

19. **FORCE MAJEURE** If SELLER is rendered unable, wholly or in material part, by reason of Force Majeure to carry out any of its obligations hereunder, then on SELLER'S notice in writing to BUYER within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. "Force Majeure" shall include, but not be limited to, acts of God, laws and regulations, strikes, lightning, fire, flood, washout, storm, communication lines failure, delays of the BUYER or BUYER'S subcontractors, breakage or accident to equipment or machinery, wars, police actions, embargos, and any other causes that are not reasonably within the control of the SELLER. If the delay is the result of BUYER'S action or inaction, then in addition to an adjustment in time, SELLER shall be entitled to reimbursement of costs incurred to maintain schedule.

20. **INDEPENDENT CONTRACTOR** It is expressly understood that SELLER is an independent contractor, and that neither SELLER nor its principals, partners, employees or subcontractors are servants, agents, partners, joint ventures or employees of BUYER in any way whatsoever.

21. **SEVERABILITY** Should any portion of these Terms and Conditions, or any agreement incorporating these Terms and Conditions therein, be held to be invalid or unenforceable then the validity of the remaining portions thereof shall not be affected by such unenforceability and shall remain in full force and effect.

22. **CHOICE OF LAW, CHOICE OF VENUE** This agreement shall be governed and construed in accordance with the civil codes of New York USA without regard to its rules regarding conflicts or choice of law. The parties submit to the jurisdiction and venue of the new York state courts located in Plattsburgh, New York.

23. **ASSIGNMENT** BUYER shall not assign or transfer this agreement without the prior written consent of the SELLER. Any attempt to make such an assignment or transfer shall be null and void.

24. **SET OFF** This agreement shall be completely independent of all other contracts between the parties and all payments due to SELLER hereunder shall be paid when due and shall not be set off or applied against any money due or claimed to be due from SELLER to BUYER on account of any other transaction or claim.

25. **LIMITATION ON LIABILITY TO THE EXTENT PERMISSIBLE BY LAW** SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE COST OF CORRECTING ANY DEFECTS, OR IN THE ABSENCE OF ANY DEFECT, IN EXCESS OF THE VALUE OF THE PRODUCTS SOLD HEREUNDER. NOTWITHSTANDING ANY LIABILITIES OR RESPONSIBILITIES ASSUMED BY SELLER HEREUNDER, SELLER SHALL IN NO EVENT BE RESPONSIBLE TO THE BUYER OR ANY THIRD PARTY IN CONTRACT OR IN TORT, OR OTHERWISE, FOR LOSS OR DAMAGE SUSTAINED AS A RESULT OF THE OPERATION OF THE PRODUCTS, LOSS OF USE, EXPENSES INVOLVED IN LOSS OF CAPITAL CLAIMS OR BUYER'S LOSS OF PROFIT OR REVENUES, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE, WHETHER ARISING FROM DEFECTS, DELAY, OR FROM ANY OTHER CAUSE WHATSOEVER.

Signature: _____

Title: _____

