

TERMS AND CONDITIONS

1. **APPLICABLE TERMS:** The terms and conditions on Seller's sales order acknowledgement ("Acknowledgement") and the following terms and conditions comprise all of the terms and conditions of the agreement between Buyer and Seller ("Agreement"). No statements or agreements, oral or written, made prior to or at the signing of the Agreement shall vary or modify the terms provided in this Agreement. Seller specifically objects to any terms and conditions proposed by Buyer, whether set forth in a purchase order, shipping release or elsewhere. If, however, Buyer and Seller have entered into a Distributorship Agreement and the terms and conditions therein are inconsistent with the following terms and conditions, the terms and conditions in the Distributorship Agreement shall control.
2. **SELLER'S QUOTES:** All quotations provided by Seller are nonbinding and will not give rise to a binding agreement until Buyer issues its purchase order or otherwise offers to purchase the goods of Seller and Seller accepts such order or offer with an Acknowledgement.
3. **PRICES:**
 - A. All prices are f.o.b. Seller's plant and are based upon the material cost, labor rates, and other costs in effect on the date of the Acknowledgement.
 - B. Unless otherwise stated in the Acknowledgement, the prices confirmed in the Acknowledgement shall be effective only for goods shipped within 90 days of the date of the Acknowledgement. For shipments that occur more than 90 days after the date of the Acknowledgement, prices may be adjusted at the Seller's sole discretion if labor rates, material costs and other costs change prior to the date of shipment. If a price increase is warranted as a result of such conditions, Seller will notify Buyer of the change in writing.
 - C. Prices stated in the Agreement do not include any tax, excise, duty, or levy now or hereafter enacted or proposed by any governmental authority on the manufacture, sale, delivery, and/or use of any item delivered. If Seller is required to pay or collect any such amounts, unless Seller is furnished with a proper exemption certificate-relieving Seller of the obligation to pay or collect such tax, excise, duty, or levy, an additional charge will be made which shall be paid by the Buyer.
4. **CANCELLATIONS AND OTHER MODIFICATIONS:** Buyer may not cancel, or otherwise alter the terms of the Agreement, (including, but not limited to, the terms governing the quantities ordered, the delivery dates or the specifications of the goods to be provided) without the express written consent of Seller, which consent may be withheld or conditioned on such terms as determined in Seller's sole discretion.
5. **TITLE AND RISK OF LOSS:** Title to and risk of loss of all goods sold by Seller to Buyer shall pass to Buyer upon delivery thereof by Seller to a carrier for shipment to Buyer.
6. **DELAYS:** Seller shall endeavor to meet Buyer's requested delivery dates as shown on the Acknowledgement. However, any requested delivery date is only approximate and Seller shall incur no liability whatsoever for any delays beyond the requested delivery date, unless specifically agreed to in writing. In no event will Seller be liable for any default or delay in fulfilling any order caused by any condition beyond Seller's control, including but not limited to acts of God, strike, lockout, boycott, or other labor trouble, war, riot, fire, flood, any statute, regulation, rule, ordinance, order or recommendation of any governmental entity or delays by any of Seller's subcontractors or suppliers in furnishing materials, services, or supplies.
7. **PATENT PROTECTION:** Seller agrees to hold Buyer and its customers harmless only against infringement of United States or Canadian patents covering the goods in the form sold by Seller, provided Buyer or its customer, as the case may be, promptly notifies Seller of any claim or litigation and tenders the defense thereof to Seller. Buyer agrees to defend, indemnify and hold Seller harmless from any threatened or actual liability of Seller for infringement of patents resulting from Seller's manufacture of parts or material in accordance with designs or specifications provided by Buyer or resulting from Buyer's incorporation of goods supplied by Seller into a more comprehensive assembly than sold by Seller provided Seller promptly notified Buyer of any such claim or litigation and tenders the defense thereof to Buyer. Seller grants no license, expressed or implied, other than the right of Buyer to use the goods in the form delivered by Seller.
8. **COMPLIANCE WITH FEDERAL AND STATE LAW:** In the performance of this Agreement, Seller will comply with all provisions of any applicable, valid federal or state laws and rules or regulations thereunder, existing at the time this Agreement was executed. In the event that subsequent statutes or regulations apply to the production, sale, distribution or shipment of the goods hereunder, Seller may increase the price charged Buyer for the goods to compensate for any increases in costs to Seller to comply with such new statutes or regulations. To the extent that compliance with any federal, state, or local statute, regulation, order or ordinance, in the sole judgment of Seller, renders the production, marketing or delivery of the goods economically, technically, or commercially infeasible, Seller may terminate this Agreement without further obligation to Buyer.
9. **CREDIT TERM:** Seller may, whenever it has reasonable grounds for insecurity based on Buyer's financial condition or Buyer fails to pay outstanding invoices according to terms, suspend or alter credit terms and require payment before shipment, or before manufacture in the case of goods to be made to special order.
10. **TOOL AND DIE CHARGES:** Tool and die charges, if any, are for the use-of-tooling and are in addition to the price for the goods and are due and payable upon completion of the tooling. Charges for use-of-tooling do not convey title to Buyer or the right to Buyer to remove any tooling from Seller's factory or vendor's factory, nor prevent their use of such tooling for other purposes except in the case of a special agreement in writing signed by both parties.
11. **LIMITED WARRANTY AND DISCLAIMER:** The limited warranty offered by the Seller varies by product line. Refer to <https://auburngear.com/warranty/> for the specific limited warranty covering the goods quoted. To the extent allowed by law, SELLER SPECIFICALLY EXCLUDES AND DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.
12. **DRAWINGS:** Seller's prints or drawings furnished by Seller to Buyer in connection with the sale or potential sale of goods to Buyer are the proprietary property of the Seller in which the Seller retains any and all patent, trade secret, copyright and other rights, including exclusive rights of use of said prints or drawings and/or manufacture and/or sale of the goods depicted therein. Prints and drawings are to be reviewed only by authorized personnel of the Buyer with a need to do so. Seller does not convey any permission to show, reproduce, or manufacture the goods shown, such permission to be granted only by specific authorization in writing signed by an officer, or other authorized agent of Seller. Buyer agrees that any drawings, specifications or designs provided to Buyer by Seller in connection with any quotation, or the obtaining or performance of this Agreement are the confidential information of Seller, whether or not such drawings, specifications or designs actually may be proved to be trade secrets. Accordingly, Buyer shall protect such drawings, specifications and design as the confidential property of Seller and in the event Buyer, its employees, agents or former employees or agents utilize said drawings, specifications or designs without first obtaining express written permission from Seller, Buyer shall pay to Seller the amount of profit Seller would have realized from any sales resulting from said persons utilizing said drawings, specifications or designs.
13. **REMEDIES OF SELLER:** In the event of Buyer's breach, Seller shall have all rights and remedies under this Agreement and the Uniform Commercial Code and other applicable law. In addition, Buyer specifically acknowledges that, at the time of any such breach, Seller may have on hand component parts or raw materials acquired by Seller in connection with the production of goods to be sold to Buyer pursuant to the Agreement. If any such materials are unique to the goods intended to be sold to Buyer or Seller will otherwise be unable to use the component parts or raw materials within six (6) months of Buyer's breach, Buyer shall, upon the demand of Seller and in addition to being subject to all other remedies of Buyer, purchase the excess component parts and raw materials from Seller at the prices paid for such component parts and raw materials by Seller.

14. LIMITATION ON REMEDIES: The remedies for Seller's breach of any warranties provided by Seller and the limitations relating thereto are set forth in the description of the applicable warranty found at <https://auburngear.com/warranty/>. FOR ANY OTHER BREACHES OR CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE LEGAL BASIS ASSERTED, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, PROVIDED, HOWEVER, THE FOREGOING LIMITATION SHALL NOT APPLY TO SELLER'S SPECIAL REMEDIES SET FORTH IN SECTION 12 AND 13. Buyer assumes all risks and liability and Seller assumes no liability, with respect to unloading, storage, handling, sale and use of the goods.

15. ATTORNEYS' FEES: Seller will be entitled to recover from Buyer the reasonable attorneys' fees incurred by Seller in collecting the sums due to Seller under this Agreement or otherwise incurred in enforcing its terms.

16. APPLICATION ANALYSIS: Seller may, in its discretion, provide (i) life calculations for gearing and bearings based upon Buyer loading inputs; and/or assist Buyer with the proper drive selection based on loads and speeds. Such calculations and assistance are informational only and Buyer shall retain ultimate responsibility for determining and validating the fitness of Seller's products for Buyer's particular use.

17. APPLICABLE LAW AND FORUM: This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without giving effect to any choice of law provision that would require the application of another state's law. The United Nations Convention on the International Sale of Goods shall not apply. Any legal action or proceeding arising or related to the agreement between Buyer and Seller must be instituted in the state courts located in DeKalb County, Indiana or the federal court located in Fort Wayne, Indiana. Seller and Buyer each irrevocably submit to the exclusive jurisdiction of said courts and waive any rights to a change of venue under applicable law or the doctrine of forum non conveniens.

18. SEVERABILITY: In the event that any provisions of this quotation, or contract resulting therefrom, is judged to be illegal or unenforceable, the remaining provisions shall remain in full force and effect.

19. AMENDMENT: No modification, amendment or release of any provision hereof shall be effective unless such agreement is in writing signed by both parties and is specifically stated therein to be an amendment to this Agreement. No modification, or addition to this Agreement shall be effected by the acknowledgment or acceptance by Seller of any purchase order, acknowledgment, release or other forms submitted by Buyer containing additional or different terms and conditions.

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