

PHILADELPHIA GEAR CORPORATION STANDARD TERMS AND CONDITIONS OF SALE  
EXHIBIT A

**1. GOVERNING TERMS:** These terms and conditions and those stated in Seller's proposal, quotation or acknowledgement (hereinafter, "these Terms") shall exclusively govern the transaction(s) of sale of goods or services between Buyer and Seller. Notice of objection to any different or additional terms proposed by Buyer is hereby given and acceptance of Seller's offer or counteroffer by acknowledgement is expressly limited to these Terms, which may not be modified except in writing, executed by an officer of Seller.

**2. PRICES, PERMITS AND TAXES:** Except as otherwise provided, prices in Seller's proposal or quotation are valid for 14 days, subject to correction of clerical errors and, on orders for repair or refurbishment, subject to change upon initial or detailed inspection of Buyer's equipment. In addition, material and fuel surcharges are not included and may be added to quoted prices based on material and fuel prices at the time of order. Further, due to market volatility, the listed pricing is provided based on today's raw material and energy pricing. Any adjustment necessary will be determined at time of order placement and communicated before PO acknowledgement. Prices in Seller's acknowledgement are firm through the projected shipping date. Price lists of Seller and its suppliers are subject to change without notice and Seller reserves the right to apply prices in effect at order placement. All prices are exclusive of any and all taxes, duties or government fees. Buyer shall obtain any labor or work permits required. If exemption from any tax, duty, fee or permit is claimed, Buyer shall promptly furnish Seller with proof of exemption satisfactory to Seller and the governing authority, and shall indemnify Seller against any cost or expense, including attorneys' fees, incurred as a result thereof. Minimum order value is \$500.00.

**3. SHIPMENT:** Except for OTS contracts, shipments shall be F.O.B. shipping point (or Ex Works) and Buyer assumes all risk of loss or damage to goods in transit, but except to the extent of Seller's negligence. Buyer's exclusive remedy for shortage, loss or damage in transit shall be a claim against the carrier. For OTS contracts, shipments shall be F.O.B. as agreed to by the parties and Seller assumes all risk of loss or damage to goods in transit, but except to the extent of Buyer's negligence. Buyer shall pay for air expense incurred in connection with shipments hereunder. In the absence of specific instructions, Seller reserves the right to ship all goods upon completion by the common or contract carrier of its choice. Seller shall not be responsible for the accuracy of shipping weights, which are correct only within the limits necessary for estimating freight.

**4. TIME FOR DELIVERY:** All (i) shipping and delivery dates or (ii) schedules stated by Seller are approximate projections only. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING OUT OF ANY DELAY IN DELIVERY OF GOODS OR SERVICES.

**5. SELLER INSPECTION AND TESTS:** Seller's standard inspection and test procedures will be performed on its products before delivery when practicable and may be varied in its discretion. Buyer shall pay Seller reasonable additional charges for additional inspections or tests which Buyer requires Seller to perform, including any test or inspection required to be performed in the presence of a representative of Buyer. In the event of any delay on Buyer's part in attending any test or inspection, after three (3) days' advance notice by Seller of the scheduled time of test or inspection, it shall proceed in Buyer's absence and be deemed to have been in Buyer's presence.

**6. BUYER INSPECTION AND ACCEPTANCE:** Within ten days after tender of delivery to or receipt by Buyer of any shipment, Buyer shall inform Seller in writing if the products are non-conforming, defective or short in any respect. Failure to so inform Seller or any use or installation of the products by Buyer shall constitute a conclusive waiver of any right of rejection or claim of shortage. Seller reserves the right of reinspection at delivery point or to require return shipment with freight pre-paid by Buyer pending investigation of any claim. Non-conformities or defects, which do not impair satisfactory operation, shall not be cause for rejection. NO PRODUCTS, PARTS, OR COMPONENTS MAY BE RETURNED WITHOUT PRIOR WRITTEN AUTHORIZATION FROM SELLER.

**7. PAYMENT TERMS:** Progress payments are required on any order exceeding \$250,000. Payment shall be due thirty (30) days from date of invoice, which in the case of products shall be date of shipment or, if shipment is deferred, date of completion of manufacture. Overdue payments shall bear interest at the lesser of 1.5% per month or the maximum permitted by law. BUYER WAIVES ANY RIGHT OF SET-OFF AND SHALL MAKE NO DEDUCTIONS FROM PAYMENTS DUE TO SELLER OR FOR ANY DAMAGES OF ANY TYPE CLAIMED BY BUYER AGAINST SELLER. Retainage mandated by the end-user must be secured by Buyer's provision of an irrevocable standby Letter of Credit for 100% of the retainage. Extension of credit will be determined by Seller in its sole discretion. If, in Seller's judgment, Buyer's financial responsibility is or becomes impaired or unsatisfactory or if Buyer has failed or fails to perform under any contract, Seller shall have the right to demand and Buyer shall provide advance cash payment or security satisfactory to Seller and Seller may withhold shipment until receipt thereof.

**8. CHANGES:** Seller reserves the right to make any change in material or its designs which is minor or an improvement, but bears no obligation to do so. Any design, specification, or other change requested by Buyer shall be made only as agreed to in writing by Seller. Additional cost (plus overhead and reasonable profit) arising from any Buyer change not accepted in writing by Seller may be claimed against Buyer, with payment due upon presentation. Acceptance of payment of the original price shall not waive any such claim.

**9. BUYER-FURNISHED PROPERTY:** Prices and deliveries of products for which the Buyer furnishes components, castings or other materials, patterns or tools are based on timely receipt of Buyer-furnished property free from defects and within specifications, including quantity, condition, metallurgical alloy, hardness, machineability and dimensionality. If defects are found in Buyer-furnished property, all expenses incurred prior to discovery of the defect shall be borne by Buyer. Seller reserves the right to impose additional charges, including for repair of minor defects. Seller's responsibility for Buyer-furnished property is limited solely to loss or damage caused by Seller's active negligence and Buyer assumes all other risks of loss. Buyer's exclusive remedy and Seller's liability shall be limited to replacement or repair of Buyer-furnished property, or receipt of credit for the out-of-pocket costs thereof issued at the sole option of Seller.

**10. PRODUCT AND SERVICE STANDARDS:** The standards of the American Gear Manufacturers Association will be used where applicable in the manufacture of gears and gear units. Products of Seller's design and original manufacture will comply with applicable federal government occupational safety, noise, environmental, health and sanitation standards. Buyer is solely responsible for compliance of the products and their operation with any state or local laws, codes, rules or regulations, and for all necessary precautions and protections to insure the safety of persons when Seller's products are used as a component of a larger installation. OTS work shall be professional and comply with industry standard.

**11. LIMITED WARRANTY:** Except for OTS work, Seller warrants only that products, parts and components of its manufacture or design shall be of merchantable quality at the time of shipment and free from defects in material, workmanship and fabrication for a period of twenty-four (24) months from the date of shipment or eighteen (18) months from the date of installation, whichever occurs first. The warranty term for OTS work shall be as agreed to by the parties, but unless otherwise expressly stated, shall not exceed twelve (12) months. With respect to equipment furnished by Buyer for repair or refurbishment, this warranty extends solely to labor and new parts or components manufactured by Seller or to its specifications. This warranty applies only if the following conditions are met:

- The product is protected by Buyer from the elements, as prescribed by Seller and in accordance with normal use, due care and consideration for all foreseeable environmental conditions.
- The product is properly installed, operated, maintained, inspected and lubricated in strict accordance with Seller's manuals or instructions.
- The system of connected rotating parts is compatible, free from critical speed, torsional or other types of vibration or stresses, no matter how induced, and is operated within the specified operating speed range. Buyer bears exclusive responsibility for system analysis for compliance with these requirements.
- The transmitted load, imposed torsional, thrust and overhung loads are within the capacity limits for which the product was sold or specified by Seller.

**REMEDY:** Buyer's exclusive remedy and Seller's obligations under this warranty shall be limited to repair or replacement by Seller of the work, product, components or parts proving defective or damaged, or receipt of credit in lieu of repair or replacement issued at Seller's sole option. Seller shall not be responsible for the cost of removal or reinstallation of products for inspection, replacement or repair. Seller's liability under this warranty shall under no circumstances exceed the purchase price of the product or that portion of the price allocable to defective or damaged parts or components. Failure of Buyer to submit any warranty claim

within the applicable warranty period shall constitute an acknowledgement that the products sold are in every respect as warranted.

**LIMITATIONS:** Materials exposed to chemical or reactive processes are not warranted against corrosion or deterioration. Seller assumes no responsibility for the suitability, accuracy or reliability of materials, components, design conditions, specification, data or other items supplied, selected or furnished by Buyer. This warranty shall not apply to work or products of Seller which have been: repaired or altered by other than authorized representatives of Seller; subject to misuse, negligence or accident; or exposed to torsional vibration, critical resonant speeds or misalignment as installed by Buyer or others. Work, parts or components made by others are warranted only to the extent of the warranty to Seller by the manufacturer or supplier, and to the extent it is permitted to do so, Seller assigns such warranty to Buyer and Seller reserves the right to refer Buyer to the manufacturer or supplier for its exclusive remedy if such work, parts or components prove defective. Re-used or re-tooled parts or components are not warranted. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

**12. INSURANCE:** For OTS work, Seller shall provide such insurance as is reasonable and customary for the work being provided and that is generally consistent with the coverage that Seller has provided to other customers for which it has performed similar work.

**13. SUBCONTRACTING:** In providing the work or products hereunder, Seller may need to subcontract the same to third parties.

**14. FIELD SERVICE:** A. Seller shall provide technical advice and assistance only. Buyer shall furnish all supervision, labor, materials, tools or utilities required for work on the equipment. Use of "supervision," "supervise" or like words by Seller or Buyer shall not mean that Seller is to control the adequacy or performance of the work. Persons not directly employed by Seller shall not be deemed its employees or agents for any purpose. B. Should Buyer use or request an employee of Seller to act as leadman, foreman or supervisor, they shall become Buyer's employee for whom Buyer shall be fully liable. Buyer shall indemnify and hold Seller harmless from any claims arising out of such activities. C. Work by Seller on used equipment will be performed in a workmanlike manner to the extent reasonably possible, considering its condition, age, design, exposure to wear, and damage. Seller assumes no liability for the fitness, suitability or performance of such equipment or of any equipment if any work thereon is or was performed solely under the direction of Buyer or others. D. Seller may provide to Buyer a report concerning the work performed, condition of the equipment or any related matter, which is solely to assist Buyer and neither means or implies that Seller has examined all or approves of any aspects, details or conditions of the job site, equipment, installation or other item. Seller shall have no liability resulting from any such reports or use thereof.

**15. REPAIR AND REFURBISHMENT ORDERS:** Repair or refurbishment by Seller shall not imply that Buyer equipment, parts or components conform to as-new assembly or performance conditions or tolerances or meet any requirement that the equipment was not originally designed and manufactured to meet. On repair orders, Seller shall have no obligations, responsibility or liability for inspection or performance of any work, replacement or repair beyond that which is specifically directed by Buyer and confirmed by Seller. On refurbishment orders, Seller shall not be responsible for latent or other defects or deficiencies in Buyer's equipment not discoverable through visual inspection or examination. The scope of work, pricing and recommendations of Seller in any proposal or quotation are subject to change upon inspection or disassembly of Buyer's equipment. Failure of Buyer to follow the recommendations or instructions of Seller for repair or refurbishment voids any warranty whatsoever by Seller.

**16. DEFERRED DELIVERY:** Buyer may not defer delivery beyond the projected shipment date without the written consent of Seller. Buyer requests to defer delivery of products completed or in process are subject to payment of the value of work performed, additional work required, storage charges and any taxes levied on Seller due to possession. Buyer requests to defer delivery of products not yet in process are further subject to price increases for labor, material, component parts and overhead.

**17. PROPRIETARY RIGHTS:** All designs, configurations, drawings, specifications, means and methods of manufacture or fabrication, technical data or engineering information supplied to Buyer by Seller shall be and remain the sole and exclusive property of Seller, notwithstanding any engineering charges to Buyer, are subject to return at Seller's request, and shall not be disclosed to others or used by Buyer for purposes other than the transaction with Seller without the written consent of Seller. Seller reserves all proprietary and intellectual property rights in any changes, modifications or improvements to products of Buyer's design or specification. Any transfer of proprietary rights of Seller must be made in writing, executed by an officer of Seller.

**18. CANCELLATION:** Orders may not be cancelled or terminated by Buyer without the written consent of Seller and are subject to payment or reimbursement of Seller's costs, expense or loss, including overhead and anticipated profit.

**19. FORCE MAJEURE:** Seller shall not be liable for any loss, damage, expense, cost, product failure, cover, non-performance, delay or breach caused or occasioned by acts of God or any governmental authority, labor disputes (including lockouts), unusual weather conditions, fire, flood, accident, unavailability of materials or components or late delivery thereof, boycott, embargo, insurrection, riot, civil disturbance, war, exposure to conditions or processes not specified by Seller, or any other cause which is unavoidable or beyond Seller's reasonable control.

**20. WAIVER:** No waiver by Seller of any breach of these Terms shall constitute a waiver of any other breach or of such provision. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed an acceptance of such provisions or a waiver of these Terms.

**21. LIMITATION OF LIABILITY:** Seller's liability to Buyer on any claim or cause of action of any kind in contract, tort or otherwise, for any losses, costs, damages, expense, statutory violation, fine or penalty, loss of use, non-performance, exercise of cover or any breach or fault by Seller whatsoever, shall be limited to the purchase price paid by Buyer for the portion of the products or services allocable to the part, component or work out of which the claim arose. Under no circumstances shall Seller be liable for any special, incidental or consequential damages, including without limitation, the cost of removal or reinstallation of Seller's products.

**22. DISPUTES:** At the sole and exclusive election of Seller, any claim or controversy arising out of or relating to the transaction(s) between Seller and Buyer shall be settled by arbitration administered by the American Arbitration Association ("AAA") and judgment on the award rendered by the arbitrator(s) may be entered by any court of competent jurisdiction. The arbitrator(s) shall be entitled to award the charges of the arbitrator(s) and the AAA to the prevailing party. Exclusive venue shall be Philadelphia, Pennsylvania for any arbitration and Montgomery County, Pennsylvania for any court proceedings and Buyer waives any defenses or objections to venue and jurisdiction in Pennsylvania.

**23. GOVERNING LAW, LIMITATION PERIOD AND FEES:** These Terms and the transaction between Buyer and Seller shall be governed, interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws rules. No claim for breach of contract or warranty shall be asserted in any court or arbitration proceeding after one year from the date the cause of action accrues, except for claims by Seller to recover all or part of the purchase price or additional charges. Seller shall be entitled to recover its reasonable attorneys' fees incurred in connection with collection of all or a portion of the purchase price and/or reasonable additional charges from Buyer.

**24. NO OTHER REPRESENTATIONS:** There are no understandings, agreements, representations or warranties, either written or oral, relative to the goods that are not fully expressed in these Terms, which supersede and cancel any previous understanding or agreement between the parties with respect to the subject matter of the order. Any subsequent representation made by any person, including distributors, dealers, employees and representatives of Seller, which is inconsistent with or adds to these Terms shall not be binding on Seller unless approved in writing by an officer of Seller.