

# SEW-EURODRIVE COMPANY OF CANADA LTD.

## TERMS & CONDITIONS



### 1. GENERAL

All orders for the equipment (hereinafter called "Equipment") manufactured or supplied by the Vendor, including any supplementary services, advice or assistance provided in relation to such equipment, shall be subject to these warranties, terms and conditions of sale. No modifications or additional warranties, terms or conditions will be binding on the Vendor unless agreed to in writing and signed by an authorized officer of the Vendor. Any purchase order provided by the Purchaser is solely for the convenience of the Purchaser and in no way alters or supercedes the provision of the warranties, terms and conditions of the sale as stated herein which shall have priority and shall govern this transaction.

### 2. QUOTATIONS

Notwithstanding the retention of title by the Vendor, price quotations by the Vendor are subject to change without notice, are not effective unless signed by an authorized officer of the Vendor and expire 30 days from their date. Further, quotations are based on data provided to the Vendor by the Purchaser, and the Vendor shall have no liability to the Purchaser if the data provided to the Vendor is incorrect or incomplete. Finally, orders accepted by the Vendor for equipment to be manufactured outside of Canada, are accepted at prices based on the currency exchange rate and customs duty rate in effect on the day of acceptance of the order. Should there be a change in any one of these rates of more than +1/1% prior to full payment of Vendor's invoice to Purchaser, the selling price will be adjusted accordingly.

### 3. TAXES

The Vendor's prices do not include sales, use, excise, or other taxes payable to any government authority in respect of the sale of the Vendor's equipment. The Purchaser shall pay, in addition to the Vendor's price, the amount of any such taxes or shall reimburse the Vendor for the amount thereof that the Vendor may be required to pay. Without limiting the generality of the foregoing, taxes shall include (a) all applicable sales, use or other taxes (notwithstanding their designation as sales tax, goods and services tax, harmonized sales tax and other taxes imposed by any governmental body upon the transaction described herein, unless the Purchaser provides the Vendor with satisfactory evidence of exemption acceptable to the taxing authorities; (b) all additional costs arising from any duties and any federal, provincial or local laws imposed as processing or any other taxes on the raw materials or manufactured product for which Vendor may be liable; and (c) all additional costs arising from any federal, provincial or local laws fixing or regulating hours and/or costs of labor producing the equipment described herein.

### 4. PAYMENTS

Unless otherwise provided, terms of payment are 30 days net from the Delivery time, as defined hereinafter, for Purchasers whose credit is acceptable to the Vendor. The Vendor reserves the right to charge interest on any balance outstanding, at the rate of two percent (2%) per month from the date payment is due to the date that payment is actually received. Where such balance is payable in installments, the Vendor reserves the right to charge interest on overdue installments at the said rate from the date payment is due to the date of payment. Pro rata payments shall become due as shipments are made and actually received. If shipments are delayed by or at the request of the Purchaser, payment shall become due when the Vendor is prepared to make shipment. If the cost to the Vendor of equipment is increased by reason of delays caused by the Purchaser, such additional cost incurred by the Vendor shall be paid by the Purchaser. Equipment held for the Purchaser shall be at the risk and expense of the Purchaser.

### 5. ACCEPTANCE

No order or other offer shall be binding upon the Vendor until accepted in writing by an authorized officer of the Vendor. Whenever Vendor reasonably deems itself insecure, Vendor may cancel any outstanding contract with Purchaser, withhold or revoke any extension of credit, reduce any unpaid debt by enforcing its security interest, created hereby, in all equipment (and proceeds therefrom) furnished by Vendor to Purchaser and take any other reasonable steps to secure itself.

### 6. CHANGES

The Vendor will not accept changes in specifications unless such changes are requested in writing by the Purchaser and approved in writing by an authorized officer of the Vendor and the Purchaser agrees to pay in addition to the original purchase price a sum so fixed by the Vendor.

### 7. CANCELLATION

Any order when placed with, and accepted by, the Vendor is not subject to cancellation without the prior written consent of an authorized officer of the Vendor. Cancellations are subject to a reasonable charge based upon expenses already incurred, commitments made by the Vendor, overhead and reasonable profit.

### 8. DELIVERY

Any indicated dates of delivery are approximate only, but the Vendor will attempt to meet them where commercially reasonable. The Vendor shall not be liable in any manner whatsoever for delays in manufacturing or delivery. The Vendor will not be bound by any penalty clause

contained in any specification or order submitted by the Purchaser unless such clause is specifically agreed to in writing by an authorized officer of the Vendor. Delivery terms are FCA to the first carrier provided by the Purchaser and, for the purposes of this agreement, it is agreed that delivery shall be deemed to have taken place when the Equipment is delivered into the custody of the Purchaser or the Purchaser's carrier/agent (hereinafter the "Delivery Time"). Acceptance by the Purchaser of each delivery shall constitute a separate contract subject to all of the terms and conditions hereof. In the event of failure to pay according to the terms of this contract, further deliveries may be suspended at the sole discretion of the Vendor, and, thereupon, all direct and indirect costs incurred by the Vendor in respect of the time spent or materials purchased by the Vendor in relation to any contracts outstanding between the parties at such date shall become due and payable.

### 9. RISK

The purchaser assumes and shall bear the entire risk of loss of or of damage to the goods from any cause whatsoever from the Delivery Time as set out herein.

### 10. PRICING

All prices are in Canadian funds unless otherwise specified in writing by the Vendor. Prices, terms and conditions of sale are all subject to change without notice to the Purchaser.

### 11. WARRANTY

The Vendor warrants all its products against defects in material and workmanship, for a period of exactly one year from the Delivery Time, as specified herein, provided that:

- (a) the Purchaser notifies the Vendor of the alleged defect immediately after it becomes known to the purchaser;
- (b) no alterations, repairs or services have been performed by the Purchaser or third parties on the equipment without written approval of an authorized officer of the Vendor;
- (c) the equipment which is subject to the warranty is returned to the location designated by the Vendor at the risk and expense of the Purchaser.

This warranty does not cover damage or defects due to normal wear and tear, incorrect assembly or start-up by the Purchaser or a third party, misuse (including failure to follow operating instructions and unsuitable operating conditions), alteration, neglect or accident or use of the equipment above rated capacity. The Vendor shall in no event be liable to the Purchaser, under this warranty or otherwise, for claims, expenditures or losses arising from operational delays or work stoppages or damage to property caused by defective equipment, or for consequential damages of any nature whatsoever.

This warranty does not apply to products sold by the Vendor but manufactured by a manufacturer other than the Vendor (or the Vendor's affiliated companies in the SEW group of companies). If the Purchaser acquires products from the Vendor which are manufactured by another manufacturer, the Vendor shall have no liability whatsoever to the Purchaser in respect of such products, and the Purchaser's sole remedy shall be against the manufacturer of said products pursuant to said manufacturer's warranty or otherwise.

Any products returned to or exchanged by the Vendor may, at the Vendor's discretion, be subject to a re-stocking fee, such re-stocking fee to be set unilaterally by the Vendor on a case-by-case basis.

**THIS WARRANTY REPLACES EXPRESSED, STATUTORY OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THE VENDOR DOES NOT ASSUME, NOR DOES IT AUTHORIZE ANY PERSON TO ASSUME, ON ITS BEHALF, ANY OTHER OBLIGATION OR LIABILITY.**

### 12. ASSIGNMENT

No contract to purchase equipment from the Vendor may be assigned by the Purchaser without the prior consent of the Vendor in writing by one of its authorized officers.

### 13. TITLE AND SECURITY INTEREST

**TITLE TO AND OWNERSHIP OF THE EQUIPMENT WILL NOT TRANSFER TO THE PURCHASER BUT WILL REMAIN WITH THE VENDOR UNTIL SUCH TIME AS ALL AMOUNTS OWING TO THE VENDOR IN RESPECT TO SUCH EQUIPMENT, INCLUDING INTEREST, COSTS AND EXPENSES ARE FULLY PAID IN CASH, NOTWITHSTANDING THE TRANSFER OF RISK TO THE PURCHASER PURSUANT TO CLAUSE 9 HEREOF.**

In the event of the loss or damage to or destruction of equipment, whether caused by *force majeure* or otherwise, and without prejudice to any other rights and recourses of the Vendor, the purchase price of such equipment will become immediately due and payable to the Vendor. To

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secure payment of all amounts owing hereunder and the due performance by the Purchaser of its obligations hereunder, the Purchaser hereby grants to the Vendor and the Vendor hereby reserves a security interest and a purchase money security interest in the equipment and all substitutions, replacements and additions thereto and the proceeds therefrom.

### 14. INDEMNIFICATION AND RELEASE

The Purchaser shall indemnify and agree to hold the Vendor harmless from any and all claims, charges, expenses, damages, liabilities and other costs incurred (a) as a result of any breach by the Purchaser of this Contract, (b) arising from the misuse of the goods or the use of the goods in a manner not consistent with industry standards, (c) arising from any act or omission of the Purchaser, any affiliate of the Purchaser, or any agent or employee of the Purchaser, or (d) arising from the manufacture by the Vendor of goods or special parts made in accordance with the Purchaser's specifications. The Purchaser hereby remises, releases and forever discharges the Vendor from all claims arising out of a breach by the Vendor of this contract, including any claims for indirect or consequential damages.

### 15. LIMITATIONS OF LIABILITY

If a court of competent jurisdiction determines that the release contained in Article 14 is invalid, ineffective or unenforceable, the Purchaser agrees as follows:

(a) VENDOR'S LIABILITY FOR ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR THESE TERMS AND CONDITIONS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY PRODUCTS OR SERVICES COVERED BY OR FURNISHED UNDER THE AGREEMENT OR ANY EXTENSION OR EXPANSION THEREOF (INCLUDING REMEDIAL WARRANTY EFFORTS), SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE SPECIFIC PRODUCT OR SERVICES THAT GIVES RISE TO THE CLAIM. ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD SPECIFIED ABOVE.

(b) IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL VENDOR, ITS EMPLOYEES AND SUPPLIERS BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF PURCHASER FOR SUCH DAMAGES AND PURCHASER WILL INDEMNIFY VENDOR, ITS EMPLOYEES AND SUPPLIERS AGAINST ANY SUCH CLAIMS FROM PURCHASER'S CUSTOMERS. IF PURCHASER RESELLS THE PRODUCTS SOLD HEREUNDER TO ANY THIRD PARTY, PURCHASER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING VENDOR AND ITS SUPPLIERS THE PROTECTION OF THE PRECEDING SENTENCE.

(c) If Vendor furnishes Purchaser with supplementary advice, assistance or services concerning any products or systems which are not required pursuant to the Agreement, whether provided in the course of fieldwork or not, including but not limited to electronic support and programming assistance services, specifically including the programming of programmable devices, the furnishing of such advice or assistance will not subject Vendor to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. VENDOR WILL NOT BE HELD LIABLE TO ANY PERSON FOR DAMAGES OF ANY KIND, WHETHER COMPENSATORY, INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE ARISING FROM OR RELATED TO THE PROVISION OF THE ABOVE-REFERENCED SUPPLEMENTARY ADVICE, ASSISTANCE OR SERVICES PROVIDED IN RELATION TO THE EQUIPMENT PURCHASED IN THIS AGREEMENT.

(d) Infringement: Vendor will not be liable for the infringement of any patent by the Purchaser's use of any equipment or materials delivered hereunder.

### 16. DEFAULT

If the Purchaser defaults in performing any of its obligations to the Vendor under this agreement or any other agreements, the Vendor may at its option, in its sole discretion, and without incurring any liability thereby, elect to terminate this agreement and to terminate any or all other agreements with the Purchaser. The Vendor shall have a right to all damages sustained by it as a direct or indirect result of the Purchaser's default, including loss of profits. The Vendor shall also, in addition to any rights or remedies provided herein, have all of the rights and remedies with respect to defaults as may be provided for under the laws of the particular province in which the transaction occurred.

**If default is made in any of the payments herein, the Vendor shall be entitled to the immediate possession of the goods and shall be free to enter the premises where the**

**goods may be located and remove them as the Vendor's property, without prejudice to the Vendor's right to recover any further expenses or damages.**

### 17. INSOLVENCY

If the Purchaser should be insolvent, cease doing business or be the subject of any proceedings under bankruptcy, insolvency, reorganization or arrangement statute or law, such act shall, at the Vendor's option, be deemed a default under this contract, and the Vendor may elect to cease performing and cancel this contract with respect to any equipment not delivered or received prior to the election. All of the foregoing shall be without prejudice to the recovery by the Vendor of damages for work performed and for loss of profits and material and equipment delivered.

### 18. PERMITS, COMPLIANCE AND SAFETY FEATURES

Vendor is not responsible for obtaining any permit, inspection or license that is required for installation or operation of the Equipment. Vendor does not make any promise or representation that the Equipment will conform to any law, ordinance, regulation, code or standard. Purchaser shall install and operate the Equipment properly and according to Vendor's operating instructions and shall not remove or change any safety device, warning or operating instructions that Vendor places on the Equipment.

### 19. CONFIDENTIALITY/INTELLECTUAL PROPERTY

The Purchaser acknowledges and agrees that the Vendor hereby reserves all right, title and interest, including all intellectual property rights, in the design of the equipment, including all patterns, illustrations, drawings, calculations and similar information, whether in electronic format or otherwise. All such intellectual property rights, including technical information and/or drawings, specifications, sales literature, quotation, etc. supplied by Vendor in connection herewith shall be treated as strictly confidential by Purchaser and shall not be made available to third parties both prior to or after execution of this Agreement and delivery of the equipment or services. The Vendor retains title to and reserves ownership of all such intellectual property rights respecting all documents, descriptions, compilations of data, photographs, illustrations, estimates, and other technical information provided to Purchaser in connection with the quotation or with the sale, installation, service, or repair of the equipment, and Purchaser shall return same to Vendor upon its request unless such materials containing technical data are retained in connection with Purchaser's maintenance and use of equipment purchased hereunder.

### 20. ENTIRE CONTRACT

This instrument, together with any and all pricing supplements, sets forth the entire understanding and agreement of the parties hereto in respect of the subject matter hereof, and all prior undertakings between the parties hereto, together with all representations, warranties, conditions and obligations of such parties in respect of such subject matter shall be superceded by this instrument. No provisions of this instrument shall be waived, changed, terminated, modified, discharged, or rescinded orally or otherwise except by a memorandum in writing signed by all of the parties hereto, and any amendment hereof shall be null and void and shall not be binding upon any party which has not given its consent as aforesaid.

### 21. SEVERABILITY

In the event that any of the warranties, representations or covenants or any portion of them contained in this agreement are unenforceable or are declared invalid for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining terms or portions of this agreement, and such unenforceable or invalid warranty, representation or covenant or portion thereof shall be severable from the remainder of this agreement.

### 22. BINDING EFFECT

The provisions of this agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and (subject to any restrictions or assignment hereinabove set forth) assigns.

### 23. LANGUAGE

All parties acknowledge having required that the present General Terms and Conditions of sale and all invoices, documentation, notices, and judicial proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto be drawn up in English. Les parties reconnaissent avoir exigé la rédaction en anglais des présentes conditions de vente ainsi que des tous documents, factures, avis et procédures judiciaires qui pourront être exécutés, donnés ou intentés à la suite de ou ayant un rapport direct ou indirect avec les présentes.

### 24. FORUM AND CHOICE OF LAW

The parties hereto submit to the jurisdiction of the Courts of the Province of Ontario, and agree that this contract shall be governed by the laws of the Province of Ontario.

**Terms and conditions are available in French upon request**