

SEW-EURODRIVE COMPANY OF CANADA LTD.

TERMS & CONDITIONS OF SALE



1. APPLICATION OF TERMS

These terms and conditions of sale ("Terms") are the **only** terms which govern the sale of equipment (the "Equipment") manufactured or supplied by SEW-Eurodrive Company of Canada Ltd. (the "Vendor") to the purchaser of the Equipment (the "Purchaser"), including any supplementary services, advice or assistance provided in relation to such Equipment (the "Services"). These Terms shall prevail over any terms and conditions of purchase provided by the Purchaser regardless of whether or when the Purchaser has submitted such terms or purchase order. Fulfillment of the Purchaser's purchase order does not constitute acceptance of any of the Purchaser's terms and conditions and does not in any way modify, amend or supersede these Terms. No modifications or additional terms or conditions will be binding on the Vendor unless agreed to in writing and signed by an authorized officer of the Vendor.

2. QUOTATION AND PRICE

Unless otherwise specified in writing, all written quotations shall be intended for reference purposes only, constituting neither an offer to sell nor imposing any obligations or liability on the Vendor. All written quotations and offers to sell are subject to change without notice and automatically expire 30 days from the date quoted. 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.

The Purchaser shall pay the fees as set forth in the order confirmation or quotation (whichever is applicable) (the "Contract Price").

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 the Purchaser, the Contract Price will be adjusted accordingly.

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

3. TAXES

The Contract Price does not include sales, use, excise, or other taxes payable to any government authority in respect of the sale of the Equipment and Services. The Purchaser shall pay, in addition to the Contract 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. ACCEPTANCE OF ORDER

No order placed by the Purchaser shall be deemed to be accepted by the Vendor unless and until confirmed in writing through order acknowledgement.

5. PAYMENTS

Unless otherwise specifically authorized, terms of payment are 30 days Net from the date of invoice for purchasers with approved credit. The Vendor may charge interest on any outstanding balance beyond the approved payment date at the rate of 2% per month (24% per annum), applied and calculated daily and compounded monthly, until such payment is 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. The Vendor's shipment of a quantity of Equipment on a piecemeal basis shall not entitle the Purchaser to object to or reject the Equipment or any portion thereof. If shipments are delayed by or at the request of the Purchaser, payment shall become due when the Vendor is prepared to make the shipment. If the cost to the Vendor is increased by reason of delays caused by the Purchaser, such additional costs shall be paid by the Purchaser. Equipment held for the Purchaser shall be at the risk and expense of the Purchaser.

The Vendor reserves the right to stop or suspend delivery of the Equipment or the provision of Services for nonpayment where such failure continues 10 days after written notice thereof. The Purchaser shall not withhold payment for any amounts due and payable by reason of any set-off claim or dispute with the Vendor.

If at any time the Vendor determines in good faith that the Purchaser's financial condition or credit rating does not justify a sale on credit or if the Purchaser is at any time in default of any undelivered indebtedness or obligation owed to the Vendor, then the Vendor may: (a) suspend further delivery of the Equipment or provision of Services until payment is received in full; and/or (b) require cash payment in advance of the delivery of the Equipment or the provision of Services; and/or (c) refuse to deliver any undelivered Equipment or Services, without incurring any liability to the Purchaser for non-delivery or any delay in delivery; and/or (d) terminate this agreement, and any other agreement with the Purchaser, with immediate effect upon written notice to the Purchaser. The Purchaser agrees to submit such financial information from time to time as may be reasonably requested by the Vendor for the establishment and/or continuation of credit terms. The Purchaser agrees to pay any and all legal fees associated with payment collection.

6. CHANGES

The Vendor will not accept changes to the order or specifications unless such changes are requested in writing by the Purchaser and approved in writing by an authorized officer of the Vendor. The Purchaser agrees to pay, in addition to the Contract Price, a set sum determined by the Vendor to accommodate or effectuate such change or changes.

7. CANCELLATION

Once an order has been accepted by the Vendor, it 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, performance dates or dates of completion of deliverables are approximate only, but the Vendor will attempt to meet them where commercially reasonable. The Vendor shall not be liable to the Purchaser, 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.

Unless otherwise agreed to by the Vendor, delivery of the Equipment shall be made to the Vendor's facility and shall be FOB Origin (Incoterms 2020) from the Vendor's facility. 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 (the "Delivery Time"). The Vendor shall not be liable or responsible to the Purchaser, nor be deemed to have defaulted or breached any agreement with the Purchaser, for any failure or delay in performing under this agreement to the extent such failure or delay is the result of force majeure or causes beyond the Vendor's reasonable control, or as set forth in Section 5 above. Each delivery of Equipment will constitute a separate sale, and the Purchaser shall pay for all Equipment delivered whether in whole or in part.

9. CUSTOMER OBLIGATIONS

The Purchaser shall cooperate with the Vendor in all matters relating to the Services and provide such access to the Purchaser's premises, and such office accommodation and other facilities as may be reasonably requested by the Vendor for the purpose of performing the Services along with providing complete and accurate copies of all materials or information that the Vendor may reasonably request to carry out the Services. The Purchaser shall also respond promptly to any Vendor request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary to for the Vendor to perform Services in accordance with the requirements of these Terms. Where the Vendor's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Purchaser or its agents, the Vendor shall not be deemed to be in breach of any obligations under this agreement or otherwise liable for any costs, charges, fees, or losses associated with such prevention or delay.

10. TITLE AND RISK OF LOSS

The Purchaser assumes and shall bear the entire risk of loss of or of damage to the Equipment from any cause whatsoever from the Delivery Time.

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, NOTWITHSTANDING THE TRANSFER OF RISK TO THE PURCHASER PURSUANT TO CLAUSE 9 HEREOF.

As collateral for the payment of the Equipment and Services and the due performance by the Purchaser of its obligations hereunder, the Purchaser hereby grants to the Vendor a lien on and security interest in and to the right, title, and interest of the Purchaser in, to, and under the Equipment, wherever located or however arising whether now or hereafter, and all substitutions, replacements and additions thereto and the proceeds (including insurance proceeds) therefrom. This security interest shall constitute a purchase money security interest under the applicable laws of the Province of Ontario. The Purchaser hereby grants to the Vendor whatever power and authority necessary to protect and perfect that security interest, including power for the filing of financial statements or other similar documents.

11. 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 the Vendor in connection herewith shall be treated as strictly confidential by the Purchaser and shall not be made available to third parties both prior to or after execution of this Agreement and delivery of the Equipment. 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 the Purchaser in connection with the quotation or with the sale, installation, service, or repair of the Equipment, and the Purchaser shall return same to the Vendor upon its request unless such materials containing technical data are retained in connection with the Purchaser's maintenance and use of the Equipment.

12. LIMITED WARRANTY

The Vendor warrants the Equipment and Services against defects in material and workmanship, for a period of exactly **one year** from the Delivery Time of the Equipment (the "Warranty Period"), provided that:

- (a) the Purchaser notifies the Vendor in writing immediately when the Purchaser discovers or ought to have discovered the alleged defect;
- (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 Purchaser does not make further use of the Equipment after discovery and notice of the alleged defect; and
- (d) 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.

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Any parts or components purchased separately shall be covered for **one year** from the Delivery Time of the specific part or component. Equipment or parts serviced or repaired or Services repaired or re-performed under warranty shall be covered under the original Warranty Period only. Equipment or parts serviced or repaired outside warranty shall be covered for a period of **one year** from the date of delivery of such repaired portions thereof.

Upon receipt of the written warranty notice, the Vendor shall, in its sole discretion, either repair such Equipment (or the defective portion thereof) or repair/re-perform such Services (or the defective portion thereof), or credit/refund the Contract Price of such Equipment or Services at the pro rata contract rate.

Any Equipment 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 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.

EXCEPT FOR THE WARRANTY SET FORTH ABOVE, THE EQUIPMENT AND SERVICES ARE SOLD "AS IS". 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.

THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE PURCHASER'S SOLE AND EXCLUSIVE AND THE VENDOR'S ENTIRE LIABILITY FOR ANY BREACH OF THIS LIMITED WARRANTY.

13. 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 these Terms, (b) arising from the misuse of the Equipment or the use of the Equipment 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 Equipment 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 THESE TERMS, INCLUDING ANY CLAIMS FOR INDIRECT OR CONSEQUENTIAL DAMAGES.

14. LIMITATIONS OF LIABILITY

If a court of competent jurisdiction determines that the release contained in Clause 13 is invalid, ineffective or unenforceable, the Purchaser agrees as follows:

NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL THE VENDOR, ITS AFFILIATED COMPANIES, SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS (COLLECTIVELY, "RELATED PARTIES") BE LIABLE, EITHER JOINTLY OR SEVERALLY, TO THE PURCHASER FOR ANY DAMAGES, CLAIMS, DEMANDS, SUITS, CAUSES OF ACTION, LOSSES, COSTS, EXPENSES AND/OR LIABILITIES IN EXCESS OF AN AMOUNT, IN THE AGGREGATE, EQUAL TO THE PRICE ALLOCABLE TO THE SPECIFIC EQUIPMENT OR PART OR SERVICE THAT GIVES RISE TO THE CLAIM, REGARDLESS OF WHETHER SUCH LIABILITY ARISES OUT OF BREACH OF CONTRACT, GUARANTY OR WARRANTY, TORT, PRODUCT LIABILITY, INDEMNITY, CONTRIBUTION, STRICT LIABILITY (INCLUDING PRODUCT LIABILITY CLAIMS) OR ANY OTHER LEGAL THEORY.

UNDER NO CIRCUMSTANCES WILL THE VENDOR AND ITS RELATED PARTIES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF ACTUAL OR ANTICIPATED PROFITS OR REVENUE (INCLUDING LOSS OF REVENUES), LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, BUSINESS INTERRUPTION COSTS, DOWNTIME COSTS, INJURY TO PERSON OR PROPERTY OR DEATH, PROPERTY LOSSES AND DAMAGES DUE TO THIRD PARTY CLAIMS, ARISING OUT OF THESE TERMS OR THE VENDOR'S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER. THE PURCHASER WILL INDEMNIFY THE VENDOR AND ITS RELATED PARTIES AGAINST ANY SUCH CLAIMS FROM THE PURCHASER'S CUSTOMERS. IF THE PURCHASER RESELLS THE EQUIPMENT TO ANY THIRD PARTY, THE PURCHASER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING THE VENDOR AND ITS RELATED PARTIES THE PROTECTION OF THE PRECEDING SENTENCE.

If the Vendor furnishes the Purchaser with supplementary advice, assistance or services concerning any products or systems which are not required pursuant to this 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 the Vendor to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. THE 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.

The Vendor will not be liable for the infringement of any patent by the Purchaser's use of any Equipment or materials delivered hereunder.

Any action or suit by the Purchaser against the Vendor relating to these Terms and any transaction in connection herewith must be brought within the Warranty Period. The parties hereto acknowledge and agree that this is a commercial transaction.

15. DEFAULT AND TERMINATION

In addition to, and without limitation of, any other remedies provided to the Vendor by these Terms or by law, the Vendor may at its option, in its sole discretion, and without incurring any liability thereby, terminate this agreement, and any other agreement with the Purchaser, with immediate effect upon written notice to the Purchaser, if the Purchaser: (a) fails to pay any amount due under this agreement, (b) has not performed or complied with or otherwise defaulted on the obligations under this agreement, or (c) becomes insolvent, files a petition for bankruptcy, ceases doing business, undergoes a substantial change of ownership, or commences or has commenced against it any proceeding related to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. 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

16. COMPLIANCE WITH LAWS

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

The Purchaser shall comply with all applicable laws and regulations, including trade, economic, or financial restrictions or trade embargoes and any amendments thereto (collectively, the "Laws") imposed by any applicable governmental authority, including, where applicable, Canada, the United States and the European Union. The Vendor shall not be liable, and the Purchaser agrees to hold harmless and indemnify the Vendor, for any breach of such Laws. The Purchaser shall not, except as otherwise permitted under applicable Laws, transship, re-export, or otherwise divert Equipment purchased from the Vendor. If applicable, the Purchaser undertakes to provide all information and documentation necessary for export, shipment and import to the Vendor in a timely manner. The Vendor shall not be liable, and the Purchaser shall hold the Vendor harmless, for delays or any other losses resulting from the Purchaser's failure to provide accurate information and documentation, export/import reviews, or any related permitting procedures in a timely manner. To the extent permitted by law, the Purchaser shall, promptly upon becoming aware, provide to the Vendor details of any claim, action, suit, proceedings or investigation against it with respect to the Laws brought by any enforcement authority. In the event that the Vendor should believe, acting in good faith, that the Purchaser has violated, or is under investigation for violating, any Laws, or if the Purchaser is identified on any applicable sanctions list, the Vendor shall have the immediate right to terminate its relationship and/or any contract with the Purchaser without liability.

17. PRIVACY POLICY

Any personal information collected by the Vendor in the course of this transaction shall be subject to the Vendor's Privacy Policy. The Vendor's Privacy Policy is available for review at <https://www.sewcan.ca/english/privacy.aspx> and is incorporated by reference into these Terms.

18. ASSIGNMENT

The Purchaser shall not assign any of its rights or delegate any of its obligations under this agreement without the express prior written consent of an authorized officer of the Vendor, and all purported assignments or delegations in violation of these Terms shall be null and void.

19. ENTIRE CONTRACT

These Terms, together with any and all pricing supplements, sets forth the entire agreement between the parties, and shall supersede all prior or contemporaneous understandings, agreements, negotiations, representations, warranties, and communications, whether written or oral.

20. WAIVER

No amendment or waiver by the Vendor of any provision of these Terms is effective unless set forth in writing and signed by of an authorized officer of the Vendor. No failure to exercise, or delay in exercising, any provision or right granted thereby of these Terms shall be construed as waiver thereof.

21. SEVERABILITY

In the event that any term or provision contained in these Terms 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 these Terms, and such unenforceable or invalid warranty, representation or covenant or portion thereof shall be severable from the remainder of these Terms. If any term or provision of these Terms is found invalid, illegal, or unenforceable in any relevant jurisdiction, such invalidity, illegality, or unenforceability shall not strike, invalidate, or render unenforceable or ineffectual such term or provision in any other jurisdiction.

22. BINDING EFFECT

These Terms shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

23. 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.

24. 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.