1. CONTRACT
Any contract between NORD GEAR Limited, hereinafter designated as “Seller”, and the party or parties accepting these terms and conditions of sale and any agent, officer, servant, employee or subcontractor of such party or parties, hereinafter designated as “Buyer”, shall be subject to the terms, conditions and provisions set forth herein, and no deviation from such terms and conditions must be specifically set forth in writing and consented to by Seller.

2. CONFIRMATION
An order shall be deemed accepted only when duly confirmed by Seller, at Nord Gear Limited’s home office in Brampton, Ontario, and upon such confirmation the orders shall become a contract binding upon the parties hereunto, their successors and assigns.

3. PRICES
Prices listed are firm and prices may be subject to applicable discounts. Unless otherwise agreed upon in writing, prices are FOB factory Brampton, Ont., and discounts and credits are to be extended only upon written notice without notice until the order is accepted. Seller’s prices do not include cost of any inspection permits required.

4. LIMITED WARRANTY
Seller warrants the goods sold, pursuant to be free from defects in material and workmanship under normal use and service not arising from misuse, negligence, or accident, including but not limited to the use, installation, and transportation of the goods by Buyer, its agents, servants, employees, or by carriers. This warranty shall pertain to any part of any goods of any kind or description which Seller or its assigns has within one year from date of delivery given written notice of claimed defects to Seller. Buyer shall be required to furnish Seller with details of such defects and this warranty shall be as to such goods which Seller’s examination shall disclose to its satisfaction to have been defective and which at Seller’s option shall promptly thereafter be returned to Seller or its nominees. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, SELLER MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY; INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ANY DESCRIPTION OR MODEL OF THE GOODS IS FOR IDENTIFICATION OR ILLUSTRATIVE PURPOSES ONLY AND SHALL NOT BE DEEMED TO CREATE AN EXPRESS WARRANTY. The Buyer’s exclusive remedy for claims arising from defective or nonconforming goods shall be limited to the repair or replacement thereof at the Seller’s sole option. THE SELLER SHALL NOT BE RESPONSIBLE OR LIABLE FOR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE, DELIVERY, USE, PERFORMANCE, OR SERVICE OF THE GOODS SOLED UNDER THIS AGREEMENT. SELLER SHALL NOT BE LIABLE FOR ANY COSTS OR EXPENSES INCLUDING INFORMATION OR DEMAND AGAINST SELLER BY ANY PARTY. IN NO EVENT WILL SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER’S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING FROM OR BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, TORT OR OTHER CAUSE OF ACTION, SHALL IN NO CASE EXCEED THE PURCHASE PRICE THAT BUYER PAYS FOR THE PARTICULAR GOODS INVOLVED. Seller shall in no event be liable to any person or firm (including any assignees or “Buyer”) except Buyer and its assigns. Unless otherwise agreed in writing by Seller, Seller shall not become responsible for any repair work done by Buyer or any other person or any party on said goods. Any costs of the return of such goods to Seller shall be borne by Buyer. Goods sold but not manufactured by Seller are being warranted as to defects in material and workmanship consistent with the limited warranty policy of the original manufacturer of the goods and if there is not such a limited warranty policy, the warranty shall be limited to the provisions of Article 4 herein. Standard warranty terms and the year of manufacture with the goods in conformity with Seller’s tests. THIS WARRANTY IS IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER, NOR ANY OF ITS EMPLOYEES THEREOF, DOES NOT AUTHORIZE ANY PERSON TO ASSUME, ON ITS BEHALF, ANY OTHER OBLIGATION OR LIABILITY.

5. SHORTAGE AND NONCONFORMITY
Any claim of shortage or that the goods do not conform with the specifications of the order or model must be made in writing within ten (10) days after receipt of the goods (as to which such claim is made) by Buyer or its agents or carriers, but in no event shall the claim be later than within the time limit provided by the carrier or insurance company, otherwise such claim shall be deemed to have been waived by Buyer. Any such claim must be made in writing within ten (10) days of the receipt of the goods and shall be supported by proper documentation and a copy of Seller’s catalogs, sales manuals, photographs and drawings constitute only an approximate guide. Seller reserves the right to make any changes which it, in its absolute discretion, considers necessary. While the goods will be delivered according to specifications it is understood that in certain cases quantities agreed upon, specifications as to dimensions, weights, capacities, and materials may be subject to changes which are permissible. The samples furnished to Buyer may not be conclusive. The Buyer’s order shall be accepted in full. If any such claim has been submitted within the required time limit as set forth above, Seller, at its own expense, make up for the shortage of the goods, or replace or repair the goods, as the cause may be, but in no event shall Seller be or become liable to Buyer or to any other person or persons for any loss in damage, direct or indirect, arising out of or caused by such incidents or for the loss of profits, business of goods shipped. Packing dates are estimates unless parties expressly agree otherwise in good faith.

6. FORCE MAJEURE
The obligation of Seller shall be modified or excused as the case may be, for reasons of Acts of God, war, governmental law regulations, strikes or lock-outs, fire, breakdown of machinery, whether in its own business enterprise or if any other act or cause beyond the control of Buyer or the cost of such repairs. This provision is subject to the terms, conditions and provisions set forth herein, and no deviation from such terms and conditions must be specifically set forth in writing and consented to by Seller.

7. SHIPMENT AS UNIT
Each shipment by Seller shall be treated as a separate and distinct unit with respect, only with respect to forwarding, terms of payment, and the making of claims by Buyer; provided, however, that if Buyer defects in the payment of any obligation to Seller or any instalments thereof, under any agreement between Buyer and Seller, or if Buyer refuses to accept any goods when tendered for delivery, Seller may, on fifteen (15) days written notice to Buyer, without prejudice to Seller’s other lawful remedies, further defer performance until the defaulted payments are made in full, or make further deliveries for cash in advance only, or to treat the entire contract or contracts with Buyer as breached by Buyer and pursue its remedies for breach.

8. BUYER’S REFUSAL OF DELIVERY
If Buyer refuses to accept delivery of any goods tendered for delivery, then Seller, without prejudice to Seller’s other lawful remedies, may store such goods in warehouse for Buyer’s account and charge all costs and expenses thereon. Such storage shall be at the risk and expense of Buyer. Seller shall have the right to dispose of any goods in Buyer’s possession or under Buyer’s control, subject to the terms, conditions and provisions set forth herein. If Buyer becomes bankrupt or insolvent or in any petition in bankruptcy or for reorganization or for an assignment of Buyer’s property, or if any court of competent jurisdiction shall at any time enter any order or decree of reorganization or reorganization or reorganization of Buyer, or if Buyer makes any assignment for the benefit of its creditors or otherwise sells, exchanges, or transfers or possesses the goods, then the purchase price or any additional amount of the purchase price then remaining unpaid shall at once become due and payable at the option of Buyer. Interest on the delinquent payment from the due date thereof until paid shall be at a rate of two (2%) percent per month.

9. 12. BUYER’S DEFAULT
Upon Buyer’s default, Seller may dispose of the merchandise in any manner that it deems fit, and if it desires to resell same, may do so at private or public sale, with or without notice, and with or without the property being at the disposal of the prospective purchaser, or any solicitor, receiver, or other person or entity which may be appointed by Buyer for such purpose and may become the purchaser of the property. The proceeds of the sale shall first be applied to the expenditure incurred in reselling, representing the cost of any inspection permits required, reasonable solicitor’s fees incurred, and then shall be applied to the payment of the balance due under the contract. Any surplus amount shall be paid to Buyer. If a deficiency results after the sale, Buyer agrees to pay such forthwith, together with reasonable solicitor’s fees, for the recovery of the goods incurred by Seller. If upon Buyer’s default, Seller elects not to resell any goods which it may repossess, then the cost of repossession, including reasonable solicitor’s fees, shall be the responsibility of Buyer.

10. SECURITY INTEREST AND TITLE
In provinces which are governed by a Personal Property Security Act, this contract shall serve as a security agreement, reserving in Seller a security interest until full payment of the purchase price. The provisions of the Personal Property Security Act regarding security interest shall have preference and apply in connection with other terms of the conditions of sale herein. In provinces where a Personal Property Security Act does not apply, title to the goods shall remain in the Seller or its assigns until full payment of the purchase price. Buyer agrees to execute forthwith any and all documents in such a way and form as Seller may need for filing or recording the security interest under a Personal Property Security Act with the proper registrants or offices, or for filing or recording the Conditional Sales Contract herein.

11. SALES AND USE TAX
Seller’s prices do not include sales, use, excise or other taxes payable to any governmental authority in respect of the sale of the goods. If Buyer pays in full, or make future deliveries for cash in advance only, or to treat the entire contract or contracts with Buyer as breached by Buyer and pursue its remedies for breach.

12. PACKING
Seller shall be charged for standard packaging for domestic shipment. Buyer will be charged, however, for export packaging or special packing desired. Cost for carriage to ship or express will be added in the invoice. No credit will be allowed if no packing is required.

13. EXPORT ORDER
Export orders are to be accompanied by a confirmed irrevocable Letter of Credit in Seller’s favor, in Canadian currency, with an accredited Canadian bank, subject to Seller’s draft, with shipping documents attached.

14. CANCELLATION
Placing orders on hold or cancellation of orders require Seller’s written approval, and are subject to cancellation and/or restocking charges.

15. BUYER’S RESPONSIBILITY AS TO MAINTENANCE
Buyer shall use and shall require its employees and agents to use all safety devices and guards and maintain the same in proper working order. Buyer shall use its employees and agents to use safe operating procedures in operating, using, or holding in any way the equipment, and shall further use its employees and agents to obey safety instructions given by Seller. If Buyer fails to meet the obligations herein, Buyer agrees to indemnify and save Seller harmless for any loss or damage, direct or indirect, or for any bodily injury or wrong done to any person or property damages and to cooperate fully with Seller in investigating and determining the causes of such accident and malfunction. In the event that Buyer fails to give such notice to Seller or to cooperate with Seller, Buyer shall be liable to indemnify and save Seller harmless from any such claims arising from such accident.

16. MISCELLANEOUS PROVISIONS
(A) For any reason a provision of a contract is legally invalid, then in such event the rest of the contract shall remain in full force and effect, except that the parties shall try to replace such invalid provision with a provision closest to their original mutual intentions. (B) Any amendments to any contract or contracts require the consent in writing. Headings in this document are for ease of reference only.

17. NON-ASSIGNMENT BY BUYER
Contract or contracts may not be assigned by Buyer without prior written consent of Seller.

18. APPLICABLE LAW
This agreement shall be governed by the laws of the Province of Ontario and the applicable laws of Canada. Buyer and Seller agree that any judicial proceeding with respect to this agreement must brought and maintained in the City of Toronto, in the Province of Ontario.

19. INVOICE
This instrument sets forth the entire understanding and agreement of the parties herein respecting the subject matter of this agreement, and all information to the parties herein, together with all representations and obligations of such parties in respect of such subject matter, shall be superseded by and merged into this instrument.

20. PROVISIONS OF THIS AGREEMENT
The provisions of this agreement shall bind and ensure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and (subject to any restrictions or assignment herein) assigns.

21. DUTIES AND RESPONSIBILITIES
The parties acknowledge that they have requested this document and all notices or other documents relating thereto be drafted in the English language.

22.amosusment
Les parties reconnaissent qu’ils ont requis que ce contrat et tous les avis ou autres documents qui y sont rapporté soient rédigés en langue anglaise.

*Terms and Conditions in French available upon request.*