

TERMS OF BUSINESS

1. **Definitions**
In these Terms:
"we" and "us" mean Nord Gear Limited a company incorporated in England and Wales under number 02970420 whose registered office is at 7th Floor, Beaufort House, 15, St Botolph Street, London, EC3A 7NJ;
"you" means the company or organisation to whom the Order is addressed;
"the Goods" means the goods described in the Order;
"the Contract" means the contract between us and you incorporating these Terms;
"Incoterms 2010" means the official rules for the interpretation of trade terms of the International Chamber of Commerce. Unless the context otherwise requires, any term which is defined by the provisions of Incoterms 2010 shall have the same meaning in these terms of business;
"Force Majeure" means circumstances outside our control, including Act of God, war, riot, sabotage, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, government action or regulations (UK or otherwise), delay by suppliers, accidents and shortage of materials, labour, or manufacturing facilities;
"the Order" means your purchase order or your written acceptance of our quotation;
"Specification" means any specification for the Goods, including any related plans and drawings, supplied by you to us or provided by us and agreed by you in writing;
"these Terms" means these Terms of Business.
2. **Contract**
2.1 The Contract will be on these Terms to the exclusion of any other terms that you may seek to impose even though they may be submitted in a later document and/or purport to exclude these Terms.
2.2 No Order will be deemed to be accepted by us until we have either issued a written order acknowledgement or delivered the Goods to you.
2.3 Quotations are open for acceptance for 30 days provided they have not previously been withdrawn.
2.4 Our sales representatives are not authorised to vary these terms, or to make any representations on our behalf.
2.5 No amendment to these terms of business may be made unless expressly accepted by us in writing.
2.6 The Contract constitutes the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made or given by us or on our behalf which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by us and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They do not form part of the Contract or any other contract between you and us for the sale of the Goods.
3. **Specification**
3.1 We reserve the right to make any changes to the Specification which:
3.1.1 are required so that goods will conform with any applicable safety or other statutory requirements; or
3.1.2 do not materially affect the quality or performance of the Goods.
3.2 Cancellation is not permitted except where expressly agreed in writing by one of our directors. If we agree to cancel you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damage, charges and expenses incurred by us as a result of cancellation.
4. **Price**
4.1 Where no price has been quoted (or a quoted price is no longer valid) the price is as listed in our published price list current at the date of acceptance of the Order.
4.2 Unless otherwise stated all prices are EXW our premises in Abingdon, England, goods unpacked, exclusive of VAT (in accordance with INCOTERMS 2010).
4.3 We reserve the right, by giving you notice at any time prior to delivery to adjust the price of the Goods to take account of any increase in our costs owing to fluctuations in currency exchange rates or other factors beyond our control.
5. **Payment**
5.1 Unless agreed otherwise, payment must be made in full and in cleared funds within 7 days after the date of our invoice.
5.2 Time for payment is of the essence. We reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 at the statutory rate on all overdue amounts and you must pay the interest immediately on demand.
5.3 We reserve the right at any time at our discretion to demand security for payment before continuing with or delivering an order.
5.4 You do not have the right to assert any credit, set-off or counterclaim against the price of the Goods.
6. **Delivery**
6.1 Unless agreed otherwise, delivery will be made EXW our premises in Abingdon, England (in accordance with INCOTERMS 2010).
6.2 Time of delivery is not of the essence. Any date mentioned is given only as a guide and we are not liable for any reasonable delay in delivery or any delay in delivery caused by Force Majeure.
6.3 Goods may be delivered in advance of any scheduled delivery date after giving you reasonable notice.
6.4 We reserve the right to deliver by instalments and to invoice each delivery separately.
6.5 If you fail to take delivery of the Goods or fail to give adequate delivery instructions at any time stated for delivery then, without prejudice to any other right or remedy we may have, we may store the Goods until actual delivery and charge you for storage.
7. **Risk**
The Goods are at your risk as soon as they are delivered.
8. **Title**
8.1 Ownership of the Goods does not pass to you until:
8.1.1 payment due under all your contracts with us is made in full (in cash or cleared funds); or
8.1.2 you sell the Goods, in which case title to the Goods which you sell is deemed to pass to you immediately prior to delivery to your customer.
8.2 Until ownership of the Goods passes to you:
8.2.1 you hold the Goods as fiduciary agent and bailee for us; and
8.2.2 the Goods must be kept in good repair and insured for an amount equal to the contract price.
8.3 We may at any time revoke our permission to sell and use the Goods by giving you written notice if any amount due to us under any contract with you is overdue by more than 7 days or if we have bona fide doubts about your solvency.
8.4 Your right to sell and use the Goods automatically ceases if:
8.4.1 you make any voluntary arrangement with your creditors or become subject to an administration order, or (being an individual or firm) become bankrupt or (being company) go into liquidation;
- 8.4.2 a receiver or administrative receiver is appointed over any of your property;
- 8.4.3 you cease, or threaten to cease, to carry on business; or
- 8.4.4 we reasonably apprehend that any of the events mentioned above is about to occur and we notify you accordingly.
- 8.5 If your right to sell and use the Goods is terminated under the above provisions, you must place any of the Goods under your control and unsold at our disposal and allow us to remove them from your premises. For this purpose we may enter your premises using reasonable force if necessary and we may dismantle the Goods from any other goods or equipment in which they have been incorporated and we will not be liable for any resulting damage caused to those other goods or equipment that cannot reasonably be avoided.
9. **Insolvency**
If you make any voluntary arrangement with your creditors, become subject to an administration order, have a receiver or administrative receiver appointed over any of your property, go into liquidation or cease to carry on business, then we shall be entitled to cancel the Contract or suspend further deliveries under the Contract without any liability to you, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
10. **Warranties**
10.1 We warrant that on delivery and for a period of 12 months from the date of delivery the Goods will:
10.1.1 conform in all material respects with their description and any applicable Specification;
10.1.2 be free from material defects in design, materials and workmanship;
10.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
10.1.4 be fit for any purposes specifically held out by us.
10.2 Subject to clause 10.3, if:
10.2.1 you give notice in writing to us during the warranty period within a reasonable time after discovery that some or all of the Goods do not comply with the warranty set out in clause 10.1; and
10.2.2 we are given a reasonable opportunity of examining those Goods; and
10.2.3 you return the Goods at our request to our place of business at your cost, we will at our option either (a) repair or replace the defective Goods or (b) refund the price of the defective Goods in full.
10.3 We will not be liable for the failure of any Goods to comply with the warranty in clause 10.1 if:
10.3.1 you make any further use of the Goods after giving notice in accordance with clause 10.2; or
10.3.2 the defect arises because you failed to follow our instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice; or
10.3.3 the defect arises as a result of our following any drawing, design or specification supplied by you; or
10.3.4 you alter or repair the Goods without our prior written consent; or
10.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
10.4 Except as provided in this clause 10 and subject to clause 11.1, we will have no liability to you in respect of the Goods' failure to comply with the warranty in clause 10.1.
10.5 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
10.6 These Terms shall apply to any repaired or replacement Goods supplied by us.
11. **Liability**
11.1 Nothing in these Terms will limit or exclude our liability for:
11.1.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
11.1.2 fraud or fraudulent misrepresentation; or
11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
11.1.4 defective products under the Consumer Protection Act 1987; or
11.1.5 any matter in respect of which it would be unlawful for us to exclude or restrict liability.
11.2 Subject to clause 11.1:
11.2.1 we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract (including any such losses that may result from our deliberate personal repudiatory breach of the Contract); and
11.2.2 our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by our deliberate personal repudiatory breach will not exceed the price of the Goods.
11.3 If the Goods are to be manufactured or modified to your specification:
11.3.1 you shall indemnify us against all loss, damages, costs and expenses incurred by us in respect of a claim brought by any third party for loss, injury, or damage (including but not limited to a claim for infringement of intellectual property rights) resulting from our use of your specification;
11.3.2 we shall not be responsible if the Goods do not meet applicable British and/or international standards unless we specifically warrant that the Goods are manufactured to comply with a particular standard.
11.4 We shall not be responsible for any direct or indirect loss suffered by you arising from your use of the Goods in excess of the catalogue ratings.
12. **Force Majeure**
12.1 We are not liable for any failure to deliver the goods arising from Force Majeure.
12.2 If the Force Majeure preventing delivery continues for 3 months, either party may cancel the Contract immediately by notice to the other.
12.3 If the Contract is cancelled in this way we are not liable to compensate you for any loss or damage caused by the failure to deliver.
13. **Notices**
Any notice given by either party to the other shall be in writing addressed to that other party at its registered office or principal place of business.
14. **Third Party Rights**
A person who is not a party to the Contract shall not have any rights under or in connection with it.
15. **Governing Law and Jurisdiction**
The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.