

# 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 The St Botolph Building, 138 Houndsditch, London EC3A 7AR  
"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- 2.3 Quotations are open for acceptance for 30 days provided they have not previously been withdrawn.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. We have the right to revise and amend these Terms from time to time, and shall do so by posting such Terms on our website, and where appropriate, by notifying you of any such changes.
- 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.
- 2.7 Electronic signatures will be accepted on all purchase orders & contracts up to the combined order value of £10,000, anything in excess of this sum is accepted at the Company's discretion.
- 2.8 Regardless of clause 2.7, acceptance of any electronic signature orders & contracts will only be valid upon the Company issuing an order acknowledgement to you.
3. **Specification & Cancellation**
- 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 For customers who do not have a credit account with us, payment must be made in full on the placement of your order. For customers who have a credit account with us, payment must be made in full and in cleared funds within 30 days after the end of the month following the date of our invoice. Time for payment is of the essence. We reserve the right to claim interest at a rate of 2% per annum above the base rate of HSBC Bank Plc from time to time on all overdue amounts and you must pay the interest immediately on demand.
- 5.2 We reserve the right at any time at our discretion to demand security for payment before continuing with or delivering an order.
- 5.3 You do not have the right to assert any credit, set-off or counterclaim against the price of the Goods. We shall use reasonable endeavours to mutually agree the currency of any orders. However, we reserve the right to present an invoice in any currency, and you agree to pay our invoices in the currency set out in such invoice, together with any value added tax, any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts. If you are required under any applicable law to withhold or deduct any amount from the payments due to us, you shall increase the sum you pay to us by the amount necessary to leave us with an amount equal to the sum we would have received if no such withholdings or deductions had been made.
6. **Delivery and Acceptance**
- 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 You shall inspect the Goods upon delivery and shall notify us within 3 working days of any delivery shortages or damage; and if you fail to provide such notice, you shall be deemed to have accepted such Goods.
- 6.6 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. **Retention of 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; a receiver or administrative receiver is appointed over any of your property;
  - 8.4.2 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 The Goods supplied by the Company shall conform to any specification supplied by the Company in all material respects and shall be of satisfactory quality. However, you acknowledge that the Goods are not tested or sold as fit for any particular purpose unless expressly agreed in writing by the Company.
- 10.2 You shall inspect the Goods upon delivery and shall within three days thereof notify the Company of any alleged defect, damage or failure to comply with any relevant specification provided. Photographs or other documentary evidence of any damage should be taken of the Goods where possible and forwarded to us for investigation without delay.
- 10.3 If during the period of 24 months from the date of delivery any part manufactured by the Company for you under the Contract is found by the Company to have become defective under normal conditions of service and use, the Company may, at its sole discretion, repair or replace the defective part. All such repair and/or replacement under this Clause 10.3 shall be undertaken by the Company solely upon Company premises and you shall bear the costs of delivering the Goods to the Company together with any costs incurred by the Company in dismantling and/or reassembling the Goods (unless agreed otherwise). The benefit of this Clause is personal to you and cannot be assigned.

For the avoidance of doubt, the operation of Clause 10.3 above and/or any defective Goods shall remain subject to the provisions of Clause 13.5 below.
- 10.4 The Company may assign to you at its sole discretion the benefit of any guarantee, warranty, service or maintenance commitment which it may have received from any third party in relation to the Goods.
- 10.5 The warranty set out at clause 10.1 is given by the Company subject to the following conditions:
  - 10.5.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by you; and
  - 10.5.2 the Company shall be under no liability in respect of any defect arising from wear and tear, wilful damage, negligence, abnormal storage or working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse, or alteration or unauthorised repair of the Goods without the Company's approval; and
  - 10.5.3 the Company shall be under no liability in respect of any part that has been incorrectly installed and/or connected by you, your employees, agents or any third party; and
  - 10.5.4 the Company shall be under no liability in respect of any part whose identification or serial number has been altered, defaced, removed or otherwise deliberately damaged by your employees, agents or any third party; and
  - 10.5.5 the Company shall be under no liability in respect of any part if it has, in the Company's view, not been maintained in accordance with its recommended maintenance procedure (as referred to at clause 11.2) and/or the specifications provided.
- 10.6 Subject to this Clause 10 all warranties and conditions whether implied by statute or otherwise are hereby excluded to the fullest extent permitted by law, and provided that nothing herein shall restrict or exclude liability for death or personal injury caused by the negligence of the Company.
11. **Maintenance**
- 11.1 You shall at all times act in accordance with all statutory or regulatory enactments relating to the Goods. You shall indemnify the Company against any liability incurred due to the breach of this Clause 11.1.
- 11.2 You shall at all times adhere and comply with the Company's maintenance schedules and the specifications overleaf relating to the Goods. Maintenance documentation can be found on our website [www.nord.com](http://www.nord.com).
- 11.3 You accept that failure to adhere to the agreed maintenance schedule will invalidate the warranty conditions set out in clause 10
12. **Intellectual Property**

You acknowledge that:
- 12.1 all intellectual property rights (including but not limited to any patent, invention, discovery, copyright, trade mark, design right or other intellectual property right) in the Goods are our (or our licensor's) property;
- 12.1.1 nothing in these Terms shall be construed as conferring any licence or granting any rights in your favour under any such intellectual property rights held, made, obtained or licensable by us now or in the future; and
- 12.1.2 any reputation in any trade marks affixed or applied to the Goods shall accrue to our sole benefit.
13. **Liability**
- 13.1 Nothing in these Terms will limit or exclude our liability for:
  - 13.1.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
  - 13.1.2 fraud or fraudulent misrepresentation; or
  - 13.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 13.1.4 defective products under the Consumer Protection Act 1987; or
  - 13.1.5 any matter in respect of which it would be unlawful for us to exclude or restrict liability.
- 13.2 Subject to clause 13.1:
  - 13.2.1 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
  - 13.3 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.
  - 13.3.1 If the Goods are to be manufactured or modified to your specification:
  - 13.3.2 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.
- 13.4 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.
- 13.5 Any claim made under these terms & conditions shall be limited to the purchase price of the goods.
14. **Force Majeure**
- 14.1 We are not liable for any failure to deliver the goods arising from Force Majeure.
- 14.2 If the Force Majeure preventing delivery continues for 3 months, either party may cancel the Contract immediately by notice to the other.
- 14.3 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.
15. **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.
16. **Third Party Rights**

A person who is not a party to the Contract shall not have any rights under or in connection with it.
17. **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.