

TERMS & CONDITIONS OF SALE

These **Terms and Conditions of Sale**, along with Seller's **Standard Limited Warranty**, the contents of Seller's written acknowledgement, if any, to a purchase order or any other writing submitted by Purchaser to Seller; Seller's written proposal, if any, submitted by Seller to Purchaser; and the contents of any invoice submitted by Seller to Purchaser shall establish the commercial terms of the contract (the "Order") under which Martin Sprocket & Gear, Inc. ("Seller ") agrees to sell parts and equipment ("Products") to the purchaser (the "Purchaser") and Purchaser agrees to purchase Products from Seller.

1. **AGREEMENT:** Notwithstanding any additional, differing, or conflicting terms in a purchase order or any other writing submitted by Purchaser to Seller, the terms of the Order shall constitute the entire agreement between Seller and Purchaser. Writings transmitted from Purchaser to Seller, such as a purchaser order, that contain additional, conflicting, or differing terms from the Order shall not apply or in any way modify or alter the terms and conditions of the Order. Furthermore, writings with terms and/or conditions different from, or in addition to, the terms and conditions appearing in the Order, including any additional or differing terms and conditions contained in any purchase order submitted by the Purchaser, are expressly rejected. Purchaser's submission to Seller of an offer to purchase Products or Purchaser's acceptance of Seller's offer to sell Products, by whatever means, constitutes Purchaser's agreement that the Order contains the entire agreement between Purchaser and Seller. Purchaser's acceptance of the Order is expressly limited to the terms and conditions of the Order. Purchaser understands and acknowledges that the price Seller quoted for the Products is based upon Purchaser's acceptance of the terms and conditions of the Order and that the price for the Products would be different if other terms and conditions of sale were to apply.
2. **ACCEPTANCE:** If Seller is making an offer to sell Products, Purchaser may accept Seller's offer only on the terms and conditions set forth in the Order. If the Purchaser is making an offer to purchase Products from Seller, Seller's acceptance of Purchaser's offer is expressly conditioned on Purchaser's assent to the terms and conditions of the Order, and any commencement of performance by Purchaser shall be deemed to constitute such assent. Any additional and/or different terms and conditions proposed by Purchaser and/or any attempt by Purchaser to vary any of the terms and conditions of the Order shall be deemed a material alteration and is hereby objected to and rejected. Seller's shipment of any Products in response to a writing that attempts to vary any of the terms and conditions of the Order or Seller's acceptance of any payment by Purchaser shall not be deemed to constitute such assent to any additional and/or different terms and conditions proposed by Purchaser.
3. **RISK OF LOSS:** Unless a specific term of the Order provides otherwise, all shipments shall be shipped F.O.B. Seller's facility and risk of loss as to such Products shall pass and remain with Purchaser once Products depart Seller's facility.
4. **SPECIFICATIONS:** Seller shall furnish all stock Products as specified in the Order. Made-to-order Products shall be furnished in accordance with the specifications, details, requirements and/or drawings supplied by Purchaser, or prepared by Seller at Purchaser's direction. Any drawings, specifications, and calculations submitted by Seller to Purchaser shall be reviewed and approved by Purchaser. Seller warrants that all Products covered by the Order will conform to the specifications, drawings, samples or other descriptions furnished to Seller or adopted by the Purchaser. If it is determined that the Products delivered under the Order fail to meet the specifications, then Purchaser will contact Seller and Seller shall make corrections in accordance with Seller's Limited Warranty.
5. **LIMITED WARRANTY:** Seller's Standard Limited Warranty is attached hereto and incorporated herein for all purposes.
6. **PRICING, PACKAGING, DELIVERY AND PAYMENT:** All Products shall be sold on the terms, conditions and at the price quoted in the Order. All terms of pricing, packaging, shipment, delivery and payment are included in the Order.
7. **INSPECTION:** Purchaser shall have reasonable time after delivery to inspect the Products covered by the Order. Purchaser shall accept or reject the Products promptly after inspection. Payment by Purchaser prior to its inspection will not constitute acceptance of items covered by the Order.
8. **INDEMNIFICATION:**
 - 8.1. Seller agrees to indemnify and hold harmless the Purchaser, its successors and assigns against any and all liabilities, loss and expense (including attorney's fees) arising out of a third party product liability claim that results in a judicially determined, final, and non-appealable order finding that the Products were defective provided that no indemnification shall be provided for any loss (or any portion of any loss) determined to have resulted from the acts or omissions of the party seeking indemnification. Seller agrees to carry adequate product liability insurance to support this obligation and agrees to provide certificate(s) of insurance showing such coverage, as requested by Purchaser.
 - 8.2. Notwithstanding any of the other provisions in this Section 8., Seller's obligation to indemnify the Purchaser is limited to the extent of Seller's product liability insurance and the coverages and exclusions provided for thereunder. In the event Seller's product liability insurance will not cover any of the claims described in Section 8.1., then Seller shall have no obligation to indemnify Purchaser. Seller's obligation to pay any judgment, award, or settlement is likewise limited by the product liability insurance coverage amounts and policy limits provided for under Seller's liability insurance policies. Seller's obligation to indemnify Purchaser shall not apply to any Product which Purchaser (or Purchaser's employees, contractors, customers, or assigns) have altered, tampered with, misused or neglected, or for which Seller's operating instructions and warnings have been ignored or removed or to the extent of the negligence or legal fault of any party other than Seller. Indemnification provided herein is conditioned upon Purchaser providing Seller prompt notice of any claim and allowing Seller, or its insurance company, control over the defense and/or settlement of any such claim.
 - 8.3. Seller shall defend any suit or proceeding brought against Purchaser to the extent such suit or proceeding is based on a claim that any Product or part thereof (not developed, proposed or specifically mandated by Purchaser), constitutes an infringement of any patent. In the event that the sale or use of such Product, or any part thereof, is enjoined, Seller shall, at its own expense and its option, either: (a) procure for Purchaser, the right to continue using said Product; (b) replace same with a non-infringing Product; or (c) modify same so that it becomes non-infringing.
 - 8.4. The obligations of Seller with respect to indemnification for third party product liability claims and patent infringement are solely and exclusively as stated herein. **THE INDEMNITY OBLIGATIONS RECITED ABOVE ARE IN LIEU OF ALL OTHER INDEMNITIES WHATSOEVER, WHETHER ORAL, WRITTEN, EXPRESS, OR IMPLIED.**

9. TERMINATION:

9.1. Termination for Convenience: Purchaser, by written notice, shall have the right to terminate the Order, in whole or in part, at any time for its convenience. Upon receipt of written notice, Seller and any subcontractors and suppliers shall immediately cease all work with respect to the Products. Within thirty (30) days of Seller's receipt of any termination notice, Seller shall submit its claim for its costs of performance to the date of termination. The termination charges shall consist of a percentage of the contract price of the Products reflecting the percentage of the work performed prior to the date of termination, plus any additional direct costs reasonably incurred as a result of the termination. Percentage of work performed and other charges must be verifiable by Purchaser. Upon payment of the termination charges, title to all Products for which Seller has been paid shall be vested in Purchaser.

9.2. Termination for Default: The Purchaser may terminate the whole or any part of the Seller's performance under the Order in any one of the following circumstances: (1) if the Seller fails to make delivery of the Products or to perform within the time specified herein or any extension thereof; (2) if the Seller delivers Products which do not conform to the specifications; or (3) if the Seller fails to perform any of the other provisions of the Order in accordance with its terms or so fails to make progress as to endanger performance hereunder. In the event of any such failure, Purchaser will provide Seller with written notice of the nature of the failure and Purchaser's intention to terminate for default. Such notice shall provide Seller a commercially reasonable opportunity to cure such failure. In the event Seller does not cure such failure within a commercially reasonable time of such notice, Purchaser may provide Seller with a written Notice of Termination for Default. In the event the Purchaser terminates the Order for default, as provided in this clause, the Purchaser's exclusive remedy for such default is to (i) receive a refund of the price actually paid to Seller upon the return of the Products to Seller's facility from which the Products were originally shipped or (ii) accept the Product as delivered with a mutually agreed to adjustment to the price.

10. CONFIDENTIAL INFORMATION:

10.1. In the performance of its obligations under the Order, Seller may have access to trade secrets and other confidential information, including but not limited to, drawings, data, costs, operating procedures, customers and methods of doing business, which may be owned or controlled by Purchaser and its affiliates ("Confidential Information"). If Seller does in fact have access to any of the Purchaser's Confidential Information in connection with the Order, Seller agrees that any such Confidential Information shall at all times remain the exclusive property of Purchaser and shall be used by Seller and its authorized employees, agents or subcontractors solely for the purpose of performing its obligations hereunder. Seller agrees to keep such Confidential Information in confidence and not to copy or permit others to copy the Confidential Information or disclose the same to unauthorized persons for a period of three (3) years, or for any trade secret for the period of time during which such item is considered a trade secret under applicable law.

10.2. If Seller is required to disclose the Confidential Information pursuant to any legal proceeding, Seller shall notify Purchaser in writing and allow Purchaser to seek appropriate judicial relief.

10.3. Notwithstanding the foregoing, nothing herein shall limit the Seller's right to disclose any information which: (1) was in or enters the public domain without fault of the Seller; (2) is received by Seller from a third party without restriction or breach of any duty of confidentiality; (3) was known to Seller prior to receipt and such prior knowledge is demonstrated by competent evidence; or (4) is required to be disclosed pursuant to government process, law, order, rule or regulation.

11. FORCE MAJEURE: Neither Purchaser nor Seller shall be deemed to have breached the Order as a result of delays in performance where such delays result from acts of God, fires, strikes, pandemic, or occurrences, beyond the control, and without the fault, of the party seeking excuse. Any party seeking excuse under Section 11 shall promptly notify the other party in writing and take all reasonable steps to mitigate the effect of such delay on the other party. The time for performance by Seller shall be extended by a period equal to the length of any such excused delay. If any event of delay as identified in Section 11 is encountered by Seller and continues for more than ninety (90) days, the Purchaser shall have the right, but not the obligation, to terminate the Agreement for its Convenience in accordance with Section 9.1. entitled, "Termination For Convenience."

12. COMPLIANCE WITH LAWS: Seller certifies that its operations are in compliance with all applicable laws, executive orders, rules and regulations relating to Equal Employment Opportunity.

13. INSURANCE: Seller shall not insure the Product's for Purchaser's account, unless otherwise indicated in the Order.

14. ASSIGNMENT: The Order may not be assigned by either party without the written consent of the other party.

15. GOVERNING LAW: All disputes relating to the execution, interpretation, construction, performance, or enforcement of the Order and the rights and obligations of the parties shall be governed by the laws of, and resolved in the State or Federal courts in, the State of Texas. Purchaser hereby consents to and waives any objection to venue and jurisdiction in such courts.

16. CUMULATIVE REMEDIES : SELLER SHALL IN NO EVENT BE LIABLE TO PURCHASER , ANY PERSON WHO SHALL PURCHASE FROM PURCHASER , OR ANY PERSON THAT USES ANY PRODUCTS SOLO PURSUANT TO THE ORDER FOR DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PRODUCTION OR LOSS OF PROFITS RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY DELAY, ACT, ERROR, OR OMISSION OF SELLER, OR ANY DEFECT, FAILURE, OR MALFUNCTION OF THE PRODUCTS, AND SELLER 'S SOLE LIABILITY SHALL BE TO REPAIR OR REPLACE ANY PRODUCTS COVERED BY THE ORDER F.O.B. SELLER'S FACILITY, WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED UPON WARRANTY, CONTRACT, NEGLIGENCE, OR OTHERWISE.

17. SEVERABILITY: The terms and conditions of the Order are subject to all applicable laws and regulations. The unenforceability or invalidity of any provision of any of the writings that collectively constitute the Order shall not affect the validity or enforceability of the remaining provisions thereof, but such remaining provisions shall be construed and interpreted in such a manner as to carry out fully the intent of the parties.

18. DISPUTE RESOLUTION: The parties agree to attempt to resolve disputes prior to submitting such disputes to determination by litigation by good-faith negotiations between knowledgeable, responsible representatives of each party who are fully authorized to settle any such dispute.

19. WAIVER : Seller's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, right, or privilege.

Limited Warranty

Revised September 16, 2021

Subject to the limitation expressed in subsequent paragraphs, Martin Sprocket & Gear, Inc. and Martin Sprocket & Gear Canada Inc., and Martin Sprocket & Gear de Mexico, S.A. de C.V., make the following warranties: We warrant that each of our products of manufacture will be free from defects in material and workmanship under normal use, and service and stored, installed and maintained properly for twelve months from the date of delivery to the original user. We will correct any such defects in material or workmanship by repair or replacement of the product F.O.B. our plant. Tools will carry the following lifetime warranty: If a Martin tool fails to satisfactorily perform its designated use, it may be returned to the Martin distributor from which such tool was purchased and will be repaired or replaced without cost.

THE FOREGOING WARRANTIES ARE EXPRESSLY IN LIEU OF ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHETHER ARISING FROM STATUTE, COMMON LAW, CUSTOM, OR OTHERWISE. THE REMEDY OF REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT OR TOOL SET FORTH IN THE FOREGOING WARRANTIES SHALL BE THE EXCLUSIVE REMEDY AVAILABLE TO ANY PERSON.

Charges for correcting defects will not be allowed, nor can we accept goods returned to us for repair or replacement, unless we are previously notified of the defect in writing and the return or correction is authorized by us in writing. All warranty claims alleging defects of materials or workmanship must be submitted in writing within thirty days of the discovery of a defect or such claim shall be considered waived. (This paragraph is subject to the provisions of the Consumer Protection laws of Mexico.)

The foregoing warranties shall not apply to any products or tools which have been subjected to misuse, neglect or accident, or have been altered or tampered with, or have been used beyond their normal useful or expected life, or which have had corrective work done thereon without our written consent. WE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, EXPENSE, OR DAMAGE, WHETHER DIRECT, CONSEQUENTIAL, INCIDENTAL, OR OTHERWISE, RESULTING FROM THE USE OF OUR PRODUCTS OR TOOLS OR CAUSED BY ANY DEFECT, FAILURE, OR MALFUNCTION OF ANY PRODUCT OR TOOL, WHETHER A CLAIM FOR SUCH DAMAGES IS BASED UPON WARRANTY, CONTRACT, NEGLIGENCE, OR OTHERWISE. Equipment manufactured by others, and included in our proposal, is not warranted in any way by us but carries only the manufacturer's warranty, if any. No person has the authority to bind us to any representation or warranty other than the foregoing limited warranties as disclaimed.

Sale of Martin products and tools shall be governed by the laws of the State of Texas and of the United States of America. The provisions of the United Nations Convention on Contracts for the International Sale of Goods or any local statute declaring it to have the force of law in the jurisdiction of one of the parties shall not apply to products or tools supplied hereunder.

"YOU ARE HEREBY NOTIFIED THAT ANY ADDITIONAL OR DIFFERENT TERMS FROM THOSE CONTAINED IN THIS LIMITED WARRANTY ARE OBJECTIONABLE. NO ADDITIONS OR CHANGES ARE BINDING ON MARTIN UNLESS THEY ARE IN WRITING AND SIGNED BY AN AUTHORIZED OFFICER."

NOTE: All past due invoices shall be payable to Martin Sprocket & Gear, Inc., at P.O. Box 91588, Arlington, Tarrant County, Texas 76015-0088. All past due invoices of Martin Sprocket & Gear Canada Inc., shall be payable at 896 Meyerside Drive, Mississauga, Ontario, Canada L5T 1R9. All past due Invoices of Martin Sprocket & Gear de Mexico, SA de C.V., shall be payable at Km. 52 Carretera, Naucalpan-Toluca, Calle 3 Mz.7 Lt. 11, Parque Industrial, Toluca 2000, Toluca, Edo. de Mexico, c.p. 50200. Reasonable attorneys' fees will be added if collection is forced.

ADDITIONAL TERMS & CONDITIONS APPLICABLE TO ORDERS OF MARTIN STOCK PARTS

TAXES: Any sales, use, consumption, or other similar tax applicable to the sale, purchase, or use of any Product is not included in quoted price and shall be paid by the Purchaser.

RETURNED PRODUCT: When it is desired to return Product for credit or exchange, it is necessary that permission in writing first be obtained from the nearest Martin Sprocket & Gear sales office.

SHIPMENTS: If Seller is not able to meet Purchaser's shipment requirements and/or expected dates of shipment, Seller will not accept liability for delays beyond Seller's control, nor will Seller accept cancellations unless a settlement has been agreed upon between all parties.

FREIGHT ALLOWANCE: Freight allowances are shown on the different product discount sheets. In cases where a Purchaser's specified routing of any Order is more costly than the routing selected by Seller, the excess charges will be added to the net amount of the invoice. Weights shown in supplier's publications are approximate, and may not be used to determine qualifications for freight allowance.

CASH DISCOUNT: Unless modified in the Order or Invoice, payment shall be: A 1% cash discount will be allowed on invoices paid net 15 days. All invoices are due in 30 days. Cash discount does not apply to other charges such as freight, postage, or delivery charges.

PUBLISHED DIMENSIONAL DATA: Due to changes in engineering and manufacturing processes and procedures, it becomes necessary, from time to time, to make alterations to products. Such alterations may not be reflected in supplier's publications. Therefore, if dimensions, specifications or appearances represented by pictures or drawings or tables are critical in their applications, please consult the factory for clarification or certified drawings.