

# GOLDSTEIN GEAR MACHINERY LLC

## Terms and Conditions of Sale

**ACCEPTANCE:** The goods being offered herein are subject to prior sale and are intended for immediate acceptance. By the issuance of a purchase order, Buyer accepts completely and exclusively the terms and conditions herein, which constitute the entire contract. The Seller shall not be bound by any other terms contained within the Buyer's purchase order or any other document which attempts to impose conditions at variance with the terms and conditions of this quotation unless said variance is specifically agreed to in writing by a duly authorized officer of the Seller. All quotations and acceptances of orders are made with the mutual understanding that the orders are not subject to cancellation. The shipping date is approximate only and may be subject to delays and availability of goods. This agreement shall be an ILLINOIS contract and shall be interpreted and administered for all purposes under the laws of the STATE OF ILLINOIS. The covenants expressed herein shall be severable, and the invalidity, now or in the future, of any of the covenants recited herein shall not affect the validity of the remaining covenants.

**TERMS:** Terms are cash with order and before removal of goods, unless otherwise agreed to in writing. It is understood that there are no conditions or agreements outside of this written quotation and that all prior conversations, agreements, or representations with reference to its subject matter are superseded. All sales are subject to applicable federal, state, and local use, sales and excise taxes, which the Buyer agrees to pay and which may be billed as part of the selling price or separately, if the Seller is required by any taxing authority to collect and pay such a tax. A 2% monthly service charge will be added to all balances past due from the date of delivery, plus all costs of collection, including legal fees, expenses, and court costs.

**TITLE:** Where less than the entire purchase price (including taxes) is to be paid prior to delivery, title shall not pass to Buyer with delivery of the goods, but shall remain vested in Seller until the entire purchase price (including taxes) is paid. In the event that title is transferred or deemed to have been transferred by operation of law or otherwise, Buyer hereby grants and transfers to Seller a security interest in favor of Seller in and to all machinery and equipment purchased from Seller pursuant hereto which shall come into Buyer's control or actual or constructive possession. This security interest shall secure the timely payment of all sums due to Seller from Buyer. Buyer agrees to sign and deliver to Seller such financing statements and such other documents as may be, from time to time, reasonably required for public filing or any other reason, all in a form satisfactory to Seller and/or its attorneys as may be requested. Seller may, at its sole discretion, file any such financing statements or other documents. In the event that Buyer refuses to execute and deliver such financing statements within one (1) day of receipt thereof, the Buyer hereby irrevocably appoints any present or future officer of Seller as its lawful attorney in fact to take possession of, and to endorse in the name of the undersigned, any financing statement or similar instrument. Buyer further agrees to pay any and all costs incurred by Seller (including reasonable attorney's fees) in connection with the documentation and perfection of Seller's security interest.

**CLAIMS:** In the event of any breach of this sales agreement by the Seller, it is expressly agreed that the Buyer's sole and exclusive remedy shall be limited to a return of the goods, freight prepaid, for a refund of the purchase price only. Seller shall not accept, for refund, goods altered in any way. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR ANY ECONOMIC LOSSES DUE TO BREAKDOWNS, SPECIAL OR CONSEQUENTIAL DAMAGES.

**WARRANTY:** The goods described herein are pre-owned used goods and are offered "as is", unless otherwise noted herein. Seller makes no warranties of any kind whatever, express or implied, and ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED AND EXCLUDED FROM THIS AGREEMENT. All specifications and descriptions of said goods are approximate only. Seller makes no representation or warranty that said goods conform to any specification, description, condition, or performance. The goods may neither include certain standard or optional features, tooling or accessories, nor may they have the same capacity that may have been offered by the original manufacturer when the goods were new. It is the Buyer's responsibility to inspect the goods and ascertain if the specifications, description, features, capacity, tooling, and accessories (if any), and the condition of the goods conform to the Buyer's requirements. Any warranty concerning said goods made by a third party is enforceable only against the third party and not the Seller. Seller reserves the right to correct typographical errors herein.

**GUARANTEE:** Seller guarantees that every machine sold with a return privilege will be mechanically satisfactory for a period of 30 days from date of shipment in the case of machines delivered out of Seller's facility. Machines found to be unsatisfactory within the stated time will, upon Buyer's written notification to Seller and at Seller's option, be repaired at Seller's expense or returned by the Buyer with written authorization by Seller, freight prepaid, in the same condition as originally delivered by Seller, for full refund of purchase price, less the cost of special tooling, fixtures, repairs, improvements, preparation, loading, packing, or transportation fees or costs, paid or advanced by Seller or ordered by the Buyer and any commissions or finder's fees paid to third parties. Buyer must remove all liquid material prior to the return of any machine. This includes, but is not limited to, emptying of all tanks and sumps of all lubricating, cutting, hydraulic and cooling fluids. Buyer assumes full responsibility for any damages or liabilities of any kind resulting from Buyer's failure to do so. It is expressly understood by Buyer that this guarantee extends only to Buyer to the exclusion of all third parties, that Seller's liability is limited as outlined under "CLAIMS", and "WARRANTY", and that any "TERMS AND CONDITIONS OF SALE" that may be in conflict with this paragraph supersede the terms of this Guarantee. Machines offered "as is", "as taken from service", "as inspected", "cleaned, painted & power tested" or "cleaned painted & demonstrated under power", with unstated condition, or from locations other than Seller's facility are sold "as is", unless otherwise confirmed in writing by Seller.

**MACHINE USE AND SAFETY/INDEMNIFICATION:** Buyer acknowledges that the goods described herein are pre-owned used goods which were neither designed nor manufactured by the Seller, nor has the Seller knowledge of or control over the prior use or misuse of said goods, nor over the future application of these goods by the Buyer. It is the Buyer's sole responsibility to provide proper safety devices and equipment for any particular use, operation, or setup, to obtain manufacturer's instruction manuals and materials, and to take all necessary steps to conform to all federal, state and local government and industry safety standards, including OSHA. In consideration of one dollar (\$1.00), delivery of the subject machinery and/or equipment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer, for itself, its successors, and its assigns, does hereby remise, release, and forever discharge Seller, its successors and assigns, of and from all claims, demands, rights, and causes of action of whatsoever kind or nature that it has or may have against Seller arising from or out of any use whatsoever (including resale) of the machinery or the equipment sold pursuant to this agreement, and agrees to indemnify, hold harmless and defend Seller, its parent, subsidiaries, affiliates, agents, officers and directors, of and from any and all claims, liabilities, losses, damages, expenses, demands, or costs, judgments, or settlements involved or alleged to involve any use whatsoever of the goods sold pursuant to this agreement caused by, based upon or resulting from (1) acts or omissions of the Buyer, his employees, assigns, or agents including, but not limited to the failure of Buyer, his employees, assigns or agents to obtain and follow manufacturer's instructions, warnings or recommendations or comply with federal, state or local laws, regulations, ordinances or standards applicable to the use of such machinery or equipment, including, but not limited to regulations and standards promulgated under Federal and State occupational safety and health laws; or (2) any liability, loss or damages, claims, demands, costs or judgments based upon or resulting from any negligence or alleged negligence of Seller or of Seller's officers, agents, employees, officers and directors in the sale or servicing of the equipment that is the subject of this agreement; or (3) liability, loss or damages, claims, demands, costs or judgments based upon or resulting from breach of contract, breach of warranty, tort (including negligence) or any legal theory of strict liability or liability without fault applied to Buyer or to Seller or to the original manufacturer of the subject machinery or equipment or to any party who sold such machinery or equipment to Seller; or (4) liability, loss or damages, claims, demands, costs or judgments based upon or resulting from any theory of breach of warranty of any kind.