

Power Engineering & Manufacturing Ltd.

2635 WCF & N Dr. ♦ Waterloo, Iowa 50703

Phone (319) 232-2311 FAX (319) 232-6100

E-Mail info@PEMLTD.COM ♦ <http://www.pemltd.com>

TERMS & CONDITIONS

1. **ACCEPTANCE:** No contract of purchase and sale shall arise until the Seller shall have acknowledged and accepted in writing at its home office, a written purchase order from the purchaser for the material based on the terms and provisions quoted. Quotations are subject to change without notice and shall be void after stated date. Acceptance of orders based on this quotation after its expiration date signifies that there are no changes in the price and conditions of sale and the expiration date is automatically extended to cover the date of the accepted order.

2. **PRICES:** Prices stated herein are based on current labor, material and overhead costs and, if any changes occur in such costs at any item prior to shipment, prices may be adjusted by the Seller to reflect such cost changes. If such adjustments are not mutually satisfactory, either party may cancel on terms set forth in paragraph 9.

3. **TAXES:** The Seller's prices do not include any sale, use, excise or similar taxes which Seller may be required to pay in connection with filling any of Buyer's orders. The amount of any applicable present or future such tax shall be paid by the Buyer as an additional charge or, in lieu thereof, the Buyer shall provide the Seller with a tax exemption certificate acceptable to the taxing authorities.

4. **CREDIT:** Orders accepted are subject to approval of the purchaser's credit by the Seller at the Seller's home office. Unless otherwise arranged between the Seller and the Purchaser, terms of payment for all items are net 30 days. F.O.B. Our Plant, Waterloo, Iowa. A 1.5% (18% Annual) Service Charge will be added to all amounts past 30 days.

5. **PAYMENT:** Payments are to be made in United States funds or their equivalent. Time and terms of payment are of the essence, and if any default therein is made by Buyer, or if the financial responsibility of Buyer at any time becomes impaired or unsatisfactory to Seller, or if Buyer commits an act that could make Buyer the subject of a proceeding under applicable law for relief of debtors, Seller shall have the right, without liability on Seller's part and without prejudice to any other legal rights or claims Seller may have, to terminate without notice or to defer or discontinue further shipments until past due payments are made or satisfactory assurance of Buyer's financial responsibility is received by Seller. Seller may, at Seller's discretion, demand cash upon delivery.

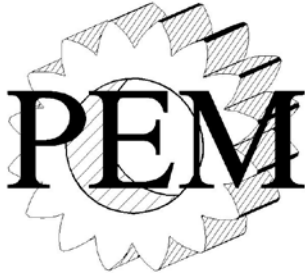
6. **TOOLING COSTS:** All patterns, dies, jigs, fixtures, and tools expense shown in connection with special production articles are priced at the Seller's bare cost and title shall be vested in the Seller. The Seller agrees to maintain and replace at the Seller's expense such equipment during the time that the respective articles (without change) continue to be purchased from the Seller. Equipment may be considered obsolete and scrapped by Seller if no articles have been fabricated from it during a continuous period of one year. Should the Buyer wish to own the equipment outright, the Seller's total cost will be furnished on request.

7. **DESIGN & ENGINEERING:** All engineering is the property of the Seller unless other arrangements have been made in writing between Seller and Purchaser. Any drawings or engineering provided to Purchaser pertaining to the order are provided to be used on the project only and are to be treated as proprietary information.

8. **DELAYS:** Delivery promises are approximate and are predicated on conditions existing at time made. Seller's obligation with respect to deliveries is subject to delays caused by any act of God, flood, war, riot, fire, explosion, accident, breakdowns, work stoppage, act of government, delay or default by subcontractor or supplier of materials or services, transportation difficulty, rescheduling by Purchaser or any other cause.

9. **CANCELLATION:** Orders will not be subject to cancellation or modifications, either in whole or in part, without the Seller's written consent, and then only under terms that will reimburse the Seller for all applicable costs incurred by it, including costs of purchased raw material either non-cancelable, in transit, or on hand, tools and dies, patterns, models, engineering costs, labor, and a reasonable allowance for profit.

10. **PATENT INFRINGEMENT:** No liability will be assumed by the Seller for infringement of any patent rights asserted because of the nature, structure, or use of any products ordered by the Purchaser, and the Purchaser shall indemnify and hold harmless the Seller from all court costs, attorney's fees and other expenses paid or incurred by or imposed upon Seller in connection with the defense of any action brought against Seller by reason of Seller's performance of any order. Upon request by the seller, the Purchaser will undertake at the Purchaser's own cost and expense to defend any such action which may be brought against the Seller.



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11. **CLAIMS, WARRANTIES:** All claims for shortage shall be filed with the Seller by the Purchaser within five days after receipt of shipment, and all claims for defective material shall be filed with Seller by the Purchaser within 60 days after day of shipment, or shall otherwise be waived. Defective material may be returned at **Seller's expense** only after inspection or authorization by Seller and upon definite shipping instructions from Seller. For shortages and defective materials, the measure of damages shall not exceed the quoted price thereof and the Seller shall not be liable for any incidental or consequential damages. The Seller reserves the right to replace all shortages and all defective material. If the quantity to be replaced is less than a minimum practical production run, the Seller reserves the right to credit the purchase in an amount not exceed the price quoted thereof. There is no warranty by the Seller that the material will be suitable for any particular purpose unless specifically stated in the specifications, nor is there any other warranty, expressed or implied, except as set forth in Seller's written warranty. Any material or work done to Buyer's specifications or drawings are certified to meet those requirements, within normal tolerances, and are not warranted to be **merchantable** or suitable for any specific purpose.

12. **STORAGE, PACKING SPECIAL SERVICES:** Prices do not include costs for storage, crating, packaging, palletizing, oiling, painting or similar services unless specifically stated on the front side hereof or otherwise agreed to in writing by the Purchaser and the Seller.

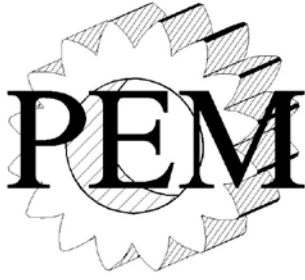
13. **DEFERRED DELIVERIES:** Deferred deliveries are subject to Seller's approved and then only under terms that will reimburse Seller for any costs incurred in anticipation of production, together with any resulting storage, handling, or carrying charges.

14. **WAIVERS, ALTERATIONS, MODIFICATIONS:** No waiver, alteration, or modification of the provisions hereof shall be binding on Seller unless agreed to in writing by a duly authorized official of Seller. Waiver by either party of any default by the other shall not be deemed a waiver by such party of any default of the other which may thereafter occur.

15. **INDEMNITY:** Purchaser agrees to defend, protect, indemnify and hold harmless Seller, its agents, successors and assigns, against any and all claims for personal injury, property, consequential or special damages arising from or resulting from the manner or location of installation of Seller's product by Purchaser in Purchasers equipment, defects in equipment in which Seller's product is installed by Purchaser, or installation in equipment exceeding product's design, speed, and load specifications, or the use of any of Seller's products in combination with unsuitable goods or products not furnished by Seller, or from unauthorized modification or alteration of Seller's products, including all costs of defense and attorney's fees.

16. **BUYER DEFAULT:** In the event of default by Purchaser in any of the above and foregoing terms and conditions, including payment, Purchaser shall pay all costs incurred by Seller as a result of such default, including, in the case of collection or institution of suit to collect, all legal fees, including reasonable attorney's fees for Seller's attorney.

17. **GOVERNING LAW:** The construction and validity of this agreement shall be determined in accordance with the laws of the State of Iowa, United States of America.



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LIMITED WARRANTY

Power Engineering and Manufacturing, Ltd., hereinafter referred to as "Company" warrants each new transmission or gear box, new parts and/or components and each rebuilt gear box made by Company as follows: Company warrants each new transmission or gear box, new parts and/or components, and each rebuilt gear box manufactured by Company to be free from defects in materials supplied or manufactured by Company and workmanship furnished by Company, under normal use and service conditions. Wearable or consumable parts such as clutches, brakes, etc. are not covered by this Limited Warranty, and it is the obligation of the user to maintain same in proper working condition. Company's warranty is limited to defects in materials supplied or manufactured by Company and/or work, furnished by Company which occur, are discovered and are reported to Company within the following:

LIMITED WARRANTY PERIODS (DURATION)

New transmission or gear boxes. The first 1,000 hours of operation or the first six (6) months from date of shipment, whichever occurs first by Company's original customer, if Company's original customer is engaged in selling same or selling a unit incorporating same, or date of delivery by Company to a customer that is an ultimate or end user. If Company's original customer is a manufacturer incorporating same in its product, customer shall be granted a period of up to six (6) months storage time between date of delivery to customer and shipment by customer. All claims reporting of warranty claims made under this Limited Warranty must be delivered in writing to Company within sixty (60) days of the occurrence giving rise to same, or all rights of customer shall be deemed waived. Company's address for reporting is:

Power Engineering and Manufacturing, Ltd., 2635 WCF&N Dr., P.O. Box 4055, Waterloo, IA 50704-4055 USA

Rebuild or Reconditioned Gear Boxes or Transmissions. The first ninety (90) days commencing with the date of the first use of same, but in no event longer than nine (9) months from the date of shipment by Company to customer. Only the new parts that were installed during rebuilding are covered by this warranty. The original warranty of the rebuilt gear box remains unaffected.

New Parts and Components. The first ninety (90) days commencing with the date of delivery to customer by Company.

Parts or Components Supplied Under Warranty. Ninety (90) days from date of delivery to customer or to original warranty period, whichever longer.

LIMITATION ON WARRANTIES AND REMEDIES AND GENERAL CONDITIONS APPLICABLE TO ALL LIMITED WARRANTIES

1. Limited Warranty and Disclaimers of Warranties. This Limited Warranty is made expressly **IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED. COMPANY GIVES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS LIMITED WARRANTY IS MADE IN LIEU OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE COMPANY.** Customer's rights and remedies are governed exclusively by the terms and conditions of this Limited Warranty and customer expressly waives, for himself and any purchaser from customer, any claim based upon contract, tort, strict liability or otherwise.

2. Exclusive Remedies. Company's obligation under this warranty is exclusively limited, at Company's option to either:

- Replacement of all parts supplied or manufactured by Company and found to be defective by reason of material and/or design workmanship, all shipping charges to be paid by customer, or
- Furnishing without charge, FOB Company's factory, a similar transmission, gear box or other product with respect to any failure of such transmission or gear box or product due to defects in materials supplied or manufactured, or designed by Company and/or work furnished by Company.

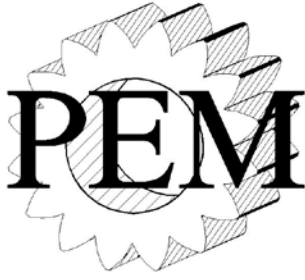
3. Limitation on Damages. **COMPANY SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR CLAIMS OF ANY KIND, WHETHER ARISING IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCTS LIABILITY, STATUTORY OR REGULATORY VIOLATION, OR UNDER ANY OTHER LEGAL THEORY.** Company shall not be liable for any secondary damages; expenses of disconnecting or removing parts and/or components; losses or damages resulting from an alleged defect; or damage to or loss of use of the equipment in which said parts and/or components have been installed; loss of profits; loss incurred as a result of delays caused by vendors, loss incurred as a result of delays in shipping, labor shortages or work stoppages, strikes, or any other reason.

4. All claims made under this Limited Warranty must be delivered in writing to Company within sixty (60) days of the occurrence giving rise to same, or all rights of customer shall be deemed waived.

5. This Limited Warranty and Company's obligations hereunder shall be void and of no effect, in the event that Company's original customer:

- Shall install such products in equipment other than as specified in original customer's drawings, specifications and/or order;
- Shall install such products in equipment having speeds or loads in excess of that specified in Company's original customer's drawings, specifications and/or order;
- Shall fail to allow Company to inspect its products under ordinary operating conditions while the taking of load and other measurements;
- Shall be more than sixty (60) days past due or delinquent with respect to any account.

6. This Limited Warranty does not cover failures of prototype or production gear boxes where the failure occurs due to the usage of the gear box in an application substantially different than anticipated by Company, including but not limited to using the gear box to handle a different type of material than that specified, or perform an operation which has not been approved by Company.



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7. Prior to opening a gear box still under warranty, written authorization must be obtained from Company. Failure to obtain such written authorization shall result in the terms of this Limited Warranty being declared void.
8. Customer agrees to analyze the entire mechanical system in which the gear box shall operate in order to determine the natural frequency of vibrations of the system and to provide adequate remedies to eliminate damaging vibrations. This Limited Warranty does not cover failures of the gear box which result from the operation of the machine or gear box at vibration frequencies at or near the natural frequency of vibration of the machine in such a way that damage may result. It is the responsibility of the customer to analyze the dynamic operations of the entire system where the PEM gear box is used. It is also the customer's responsibility to prevent any overload from occurring. (This overload may be from shock load or from any source.) **IF THERE EXISTS AN OVERLOAD, CUSTOMER SHALL PROVIDE A DETAILED DESCRIPTION OF SUCH OVERLOAD, IN WRITING, TO PEM, AND OBTAIN A WRITTEN RELEASE FROM PEM FOR USE OF THE PEM PRODUCT. FAILURE TO OBTAIN SUCH A RELEASE SHALL VOID THE PROVISIONS AND WARRANTIES SET FORTH HEREIN.**
9. This Limited Warranty does not cover and is void with respect to defects or failures directly attributable to materials or equipment supplied by or furnished by Company's original customer or the original manufacturer of the equipment in which such parts and/or components have been installed.
10. Company neither assumes nor authorizes any person to assume for Company, any other liabilities in connection with the sale of said transmissions, gear boxes, parts or other products. This warranty shall not apply to any transmission, gear box or other product which shall have been repaired or altered outside of Company's factory, or in the event of disassembly by a person other than Company authorized service personnel nor shall this warranty apply to any transmission, gear box or other product that has been subjected to misuse, neglect, accident or operated other than in accordance with the specifications of Company and/or the manufacturer of the equipment in which the same has been installed.
11. Company reserves the right to charge customer for any expenses incurred by Company in connection with a warranty service in the event that Company shall determine, before or after performance of such service, that this warranty has been voided by the act or omission of either customer or customer's ultimate user or that no service is required. Such expense shall include, but shall not be limited to, the cost of travel, meals and lodging of Company's service personnel, and customary labor or service charges.
12. If any terms or conditions of this agreement are void, the remaining provisions are valid and enforceable.
13. If the company, either as principal or by agent or employee, enters upon the premises or property of the Customer in order to do any work hereunder, including but not limited to construction, erection, inspection, delivery, servicing or repairing, the Customer shall save and hold the Company harmless from and against all liability, claims and demands on account of personal injuries, including death, or property loss or damage to others (including Company and employees and invitees of Company and of the Customer) arising out of or in any manner connected with the performance of such work, and caused by the negligent or willful act or omission to act of Company, or a supplier of Company, or employees and invitees, or either of them, and the Customer shall, at its own expense, defend any and all action based thereon and shall pay all charges of attorneys and all costs and other expenses arising there from. Customer shall also procure and carry the insurance of employees on such work that may be required by any Workmen's Compensation Act or similar liability act. The Customer shall procure and maintain such other insurance in connection with the work, as the Company shall specify.
14. Customer agrees that customer's rights and responsibilities in regard to this transaction shall be governed by the laws of the State of Iowa and the State shall be the exclusive forum and jurisdiction for bringing any action with respect to any disputes regarding Company's liability.
15. Customer agrees to incorporate the terms of this Limited Warranty into any subsequent sale or transfer of these goods to a third party such that Company's liability shall be expressly limited to the terms and conditions of this Limited Warranty, as well as the choice of law and choice of forum and jurisdiction provisions of this agreement. If a party that has purchased goods from customer, or from persons in privity with customer, brings an action against Company for a remedy other than those set forth in this Limited Warranty, customer agrees to defend Company against such claims at customer's expense, including attorney's fees and to indemnify and hold Company harmless against any such claims or judgments thereon. In no event shall Company's liability or warranties extend beyond the term of the warranty provided by Company's original customer to the end user.
16. This writing constitutes the entire agreement of the parties and there are no other representations, or warranties, oral or written, expressed or implied, statutory or otherwise. This Limited Warranty may be modified only in writing, signed by Company, at its home office in Waterloo, Iowa.
17. Customer acknowledges that customer is knowledgeable concerning the goods being purchased; that customer has reviewed The Limited Warranty; and that the remedies provided are adequate and acceptable to customer.