

Power Engineering & Manufacturing Ltd.

2635 WCF & N Dr. ♦ Waterloo, Iowa 50703

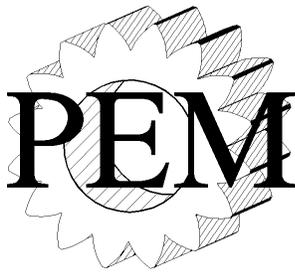
Phone (319) 232-2311 Fax (319) 232-6100

E-Mail sales@pemltd.com ♦ <http://www.pemltd.com>

CUSTOMER TERMS & CONDITIONS

These Terms and Conditions (“Agreement”) are effective as of the date of sellers quote (“Effective Date”) and is entered between **Power Engineering & Manufacturing, Ltd.** (“Seller”), an Iowa corporation with offices located at 2635 WCF&N Drive, Waterloo, Iowa 50703, and (“Buyer), sometimes referred to hereafter collectively as the “Parties” or individually as a “Party.” Any purchase order submitted by Buyer and accepted by Seller shall be governed by these Terms and Conditions as follows:

- 1. PRIORITY OF DOCUMENTS:** The priority of the documents, in the event of any conflict or inconsistency between documents, and the authority of each individual document relative to the other documents, is in descending order as follows: Sellers Quote, Terms and Conditions set forth in this document, Sellers Limited Warranty and Buyers Purchase Order.
- 2. ACCEPTANCE:** No contract of purchase and sale shall arise until the Seller has acknowledged and accepted in writing at its home office, a written Purchase Order from the Buyer for the product and/or services based on the terms and provisions quoted. Quotations are valid for thirty (30) days after date of issue, unless a different period is specified in the quote. 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.
- 3. PRICES:** Stated quote prices may change if a design change is requested by Buyer or the Quote specifies different terms for price change. Prices may be adjusted by seller to reflect such change. If such adjustments are not mutually satisfactory, either party may cancel on terms set forth in paragraph 11.
- 4. 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.
- 5. CREDIT:** Terms of payment for all products are net thirty (30) days from the delivery or date of invoice, whichever is later. If buyer defaults in making payment, Seller shall send written notice to Buyer detailing default in payment. Buyers default in making such payment when due shall not be deemed a breach until the expiration of fourteen (14) days from its receipt of the written notice. Notice will be deemed to be received by Buyer three (3) days after notice is mailed or one (1) day after notice is emailed. At the expiration of the written notice a 1.5% (18%) Annual service charge will be added to all unpaid amounts not in dispute.
- 6. PAYMENT:** Payments are to be made in United States funds or their equivalent by Company Check, International sales will require payment be made by wire transfer. There will be no Buyer set-off in whole, or in part, against any amounts payable to Seller by Buyer, whether arising under the Purchase Order or otherwise. Time and terms of payment are of the essence, and Seller may, at Seller’s discretion, demand cash upon delivery 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



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defer or discontinue further shipments until past due payments are made or satisfactory assurance of Buyer's financial responsibility is received by Seller.

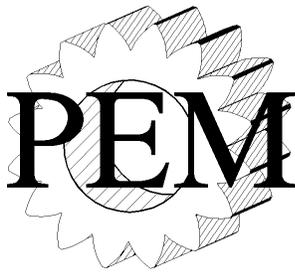
7. TOOLING COSTS: All patterns, dies, jigs, fixtures, and tools expense shown in connection with special production articles are priced at the Seller's bare cost and title shall be vested in the Seller. The Seller agrees to maintain and replace at the Seller's expense such equipment during the time that 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.

8. DESIGN & ENGINEERING: (a) **Unless stated in Seller's quote, all new designs and drawings are done to Buyer's specification. Final designs and drawings must be accepted by Buyer prior to beginning production.** (b) All engineering is the property of the Seller unless other arrangements have been made in writing between Seller and Buyer. All rights, title and interest in and to any and all intellectual property rights in and to Seller's products and services, and all underlying methods, processes, ideas, concepts, information and know-how related thereto, and otherwise owned or licensed by Seller shall remain vested in Seller. (c) All materials, drawings, photographs, tools, dies, and other engineering and manufacturing materials and proprietary information, and any and all intellectual property rights therein, furnished by Buyer to the Seller shall remain Buyer's property, shall not be copied by Seller without Buyer's prior written consent and shall with any and all copies thereof be returned to Buyer upon request, all such property shall be subject to removal and shall be used only for the Purchase Order, and shall be treated as proprietary information. (d) **Notes, correspondence, and reports prepared by Seller in connection with discussions between the parties are business records and such copies need not be returned and is not subject to removal.**

9. REPAIRS: Repairs by Seller does not imply that Buyer's Gearbox, parts or components conform to as-new performance conditions or tolerances or meet any requirement that the Gearbox was originally designed and manufactured to meet. Seller shall have no obligations, responsibility or liability for inspection or performance of any work, replacement or repair beyond that which is specifically directed by Buyer and confirmed by Seller. Seller shall not be responsible for latent or other defects or deficiencies in Buyer's Gearbox not discovered through inspection.

10. DELAYS: Delivery times are approximate and are predicated on conditions existing at the time made. Seller will make its best efforts to meet Buyer's requested delivery time. The Seller in the performance of its obligations herein to the extent that such performance is delayed by causes outside of its control and not due to its fault or negligence and not reasonably foreseeable or, if foreseeable, cannot be avoided by the exercise of all reasonable efforts, including acts of civil or military authority, acts of God, acts of war, acts of terrorism, acts of government, riot, insurrection, blockages, embargoes, sabotage, epidemics, fire, flood, and/or famine, breakdown, work stoppage, delay or default by subcontractor or supplier of materials or services, transportation difficulty, or rescheduling by Buyer. The Seller shall have an extension of time for performance equal to the time lost as a result of said interruption. In the event of such interruption, the Seller promptly shall notify Buyer in writing of the nature, cause, date of commencement and anticipated extent of such delay and its effect on the delivery Date. Seller will only be liable for damages due to delay for the amounts specifically set forth in Seller's Quote.

11. 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



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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. If an order is canceled after its completion Seller is entitled to the full sale amount, if an order is canceled during production, seller is entitled to all cost incurred and a pro-rata allowance for a reasonable profit, based upon cost incurred by Seller and what the final cost would be.

12. CLAIMS, WARRANTIES: All claims for shortage shall be filed with the Seller by the Buyer within ten (10) days after receipt of shipment, and all claims for product defective at time of receipt shall be filed with Seller by the Buyer within sixty (60) days after receipt of shipment, or shall otherwise be waived.

Defective product 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 products, 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 replace or rework defective product. 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 to exceed the price quoted thereof. There is no warranty by the Seller that the product will be suitable for any particular purpose, nor is there any other warranty, expressed or implied, except as set forth in Seller's written warranty. Any product made 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.

13. STORAGE, PACKING SPECIAL SERVICES: Prices do not include costs for storage, crating, packaging, palletizing, oiling, painting or similar services unless specifically stated in the quotation or otherwise agreed to in writing by the Buyer and the Seller.

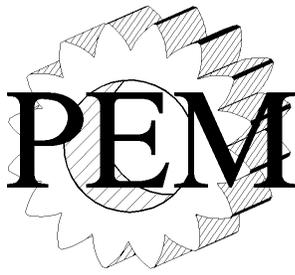
14. DEFERRED DELIVERIES: Deferred deliveries are subject to Seller's approval and then only under terms that will reimburse Seller for any costs incurred in anticipation of production, together with any resulting storage, handling, or carrying charges.

15. QUALITY ASSURANCE: Buyer shall have reasonable access to the Seller's plant and facilities for the purpose of inspection of work. Buyer will not have access to any internal records or documentation, except that which is specified in the quotation.

16. 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.

17. INDEMNITY: Each party shall indemnify and hold the other and its employees harmless from and against all Liabilities asserted by third persons to the extent resulting from any negligent or wrongful act or omission on the part of such indemnifying party, its employees, agents or representatives and which relate to these Terms and Conditions and the corresponding Purchase Order between the Parties.

At its expense and as appropriate under this Section, the party against whom indemnification is sought will defend against or settle Liabilities. The indemnifying party will have sole control of the settlement or defense of Liabilities, but the party seeking indemnification may participate in the defense or settlement at its own expense. The party seeking indemnification, as applicable under this Section, will give prompt written notice



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to the party responsible for indemnification, and provide full information and reasonable assistance to the indemnifying party. The indemnifying party shall have no liability whatsoever with respect to any Liabilities settled by the party seeking indemnification without the prior written consent of the indemnifying party. In the event it is determined during the third party action, that the Indemnifying party was not negligent, the indemnifying party's duty to defend ends. However if the party seeking indemnification is found to be negligent, then the indemnifying party is entitled to be reimbursed by the party seeking indemnification for legal fees incurred in the defense of the third party action.

18. BUYER DEFAULT: In the event of default by Buyer in any of the above and foregoing terms and conditions, including payment, Buyer 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.

19. DISPUTE RESOLUTION/ARBITRATION: If any dispute or claim arising under the Purchase Order cannot be readily resolved by the parties, the parties agree to refer the matter to a panel consisting of one senior executive from each party for review and resolution. If the dispute or claim cannot be resolved by the parties amicably, the issue may be submitted to non-binding arbitration, which proceedings shall be held in the city of Waterloo, Iowa.

20. MUTUAL LIMITATION OF LIABILITY: Notwithstanding anything to the contrary set forth in these terms and conditions, neither party will be liable to the other party for indirect or consequential damages. Each party's maximum liability to the other party shall not exceed the total sales price of the Purchase Order.

21. SEVERABILITY: If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force and effect so long as the essential terms and conditions of this Agreement reflect the original intent of the parties and remain valid, legal and enforceable.

22. 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.

23. COUNTERPARTS; ELECTRONIC COPIES: This Agreement may be executed in one or more counterparts. Each such counterpart is deemed an original instrument, but all such counterparts taken together constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or a .pdf data file or other scanned executed counterpart by email shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Each duplicate and counterpart shall be equally admissible in evidence, and each shall fully bind each party who has executed it. The Parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The Parties agree they will have no rights to challenge the use or authenticity of this document based solely on the absence of an original signature.

24. ENTIRE AGREEMENT; AMENDMENTS. These terms represents the entire understanding and takes precedence over any conflicting terms in prior agreements, representations, or negotiations, and undertakings, whether oral or written, between the parties. No amendment to these terms shall be effective, unless made in writing and signed by a duly authorized officer or representative of each party.