



Wenger Corporation Terms and Conditions (www.wengercorp.com/terms-and-conditions.php)

Controlling Provisions: These terms and conditions and supplemental exhibits contained herein (the "Terms and Conditions") govern the sale by WENGER CORPORATION ("WENGER CORP") and purchase by any direct buyer ("Buyer") of certain services, products, replacement parts and related software (collectively, the "Goods"). These Terms and Conditions comprise the entire agreement between the parties (collectively, the "Agreement") and supersede all prior or contemporaneous understandings, agreements, or representations, whether oral or written. These Terms and Conditions shall supersede any provisions, terms, and conditions contained on any purchase order or other written form Buyer may use or provide prior or subsequent to the date of the Agreement, unless otherwise specifically agreed to in writing by WENGER CORP. Fulfillment by WENGER CORP of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms and Conditions.

Quotations: Any quotation is a good faith estimate. Acceptance of a quotation, whether by a separate purchase order or by other means, shall constitute an acknowledgement and approval of the quotation as written and an acceptance of these Terms and Conditions. Written quotations which have not been finalized by a binding purchase order shall expire on the date specified in the quotation or, in the absence of such specification, 30 calendar days from the date issued. WENGER CORP may revise or withdraw a quotation at any time prior to the finalization of a binding purchase order.

Shipping: While WENGER CORP will use commercially reasonable efforts to maintain the delivery date(s) acknowledged or quoted by WENGER CORP, all shipping dates are approximate and not guaranteed. WENGER CORP reserves the right to make partial shipments. WENGER CORP, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions and other required information. The actual shipping weights may vary.

A minimum of two weeks' advance notice is required when Buyer requests any delays in shipment, delivery, or installation beyond WENGER CORP'S acknowledged ship date. The costs of storage, rehandling, additional freight, and additional installation or labor costs will be billed to Buyer. If the Goods require storage, transfer to storage will be deemed as shipment to Buyer for all purposes, including but not limited to, invoicing and payment.

Title, Risk of Loss, Inspection of Goods: Title to the Goods and risk of loss for the Goods shall pass to Buyer upon WENGER CORP'S delivery of the Goods to the shipping point. Buyer shall immediately inspect the Goods upon receipt, and any damage must be noted on the delivery carrier's bill of lading at time of receipt. If Buyer arranges a delivery carrier, WENGER CORP shall not be held liable for any damages caused after WENGER CORP provides product to Buyer's delivery carrier. WENGER CORP is not liable for any shortages or nonconformance unless notified by Buyer within two business days of Buyer's receipt of the Goods.

Installation and Use: Buyer will be solely responsible for the proper application, installation, and service of the Goods. Installation instructions are supplied by WENGER CORP and must be followed. WENGER CORP may provide installation services upon request for an additional fee.

Buyer's Acts or Omissions: If WENGER CORP'S performance of its obligations under the Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, WENGER CORP shall not be deemed in breach of its obligations under the Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

Price; Payment Terms: All prices are FOB shipping point, unless otherwise stated or referenced. Prices may be subject to change without notice. Instruments and accessories displayed with Goods throughout WENGER CORP'S catalog shall be priced separately.

Buyer shall pay WENGER CORP the purchase price as set forth in the respective order between WENGER CORP and Buyer. All prices are in U.S. Dollars and are exclusive of all freight, storage, insurance, sales, use, and excise taxes, import taxes and duties, and any other similar charges of any kind imposed by any governmental authority. Unless otherwise agreed to in writing between WENGER CORP and Buyer, Buyer shall be responsible for all such charges, costs, and taxes. If WENGER CORP is required to pay any such charges, costs, and taxes, Buyer shall immediately reimburse WENGER CORP upon notice from WENGER CORP of same.

All payments are due within approved credit terms. The credit terms granted on each order are subject to WENGER CORP'S continuing approval of Buyer's credit. WENGER CORP may withdraw the extension of credit and require modified payment terms if, in WENGER CORP'S sole judgment, Buyer's credit or financial standing is impaired such that WENGER CORP in good faith deems payment insecure.

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Buyer shall make all payments in immediately available funds and in U.S. Dollars. Buyer may be charged the lower of 1.5% interest per month or the maximum legal rate, calculated daily and compounded monthly, on all amounts not received by the due date. Buyer shall reimburse WENGER CORP for all costs or charges, including reasonable attorneys' fees, incurred by WENGER CORP in the collection of any past due amounts from Buyer. In addition to any other remedies available under these Terms and Conditions or at law, WENGER CORP shall be entitled to defer performance hereunder until such default is resolved.

Changes and Cancellations: Buyer may request in writing changes or additions to the Goods consistent with WENGER CORP'S specifications and criteria. In the event such changes or additions are accepted by WENGER CORP, WENGER CORP shall have the absolute right to revise the prices and dates of delivery, and to add charges for work and materials rendered unnecessary by such changes or additions. In the event Buyer requests the changes within 15 days of shipment, a 25% fee may apply.

Buyer may at any time cancel all or any part of the Goods by written notice to WENGER CORP. Upon termination, Buyer will pay WENGER CORP an amount equal to the sum of: (a) the price for that portion of the Goods furnished, accepted, and delivered prior to cancellation; plus (b) 25% of the cost of any non-custom Goods subject to the Agreement but not yet delivered; and (c) 100% of the cost of any custom Goods subject to the Agreement but not yet delivered; provided, however, that in no event will the amount paid by Buyer exceed the total purchase price under the Agreement, less any payments previously made.

Return Policy: WENGER CORP must approve in writing any and all returns and will only accept Goods returned within six months from the date of manufacture, un-used, and current production models. All authorized returns are subject to a minimum 20% restocking/rehandling fee. Buyer must obtain from WENGER CORP a Returned Material Authorization ("RMA") number for any Goods Buyer wishes to return for credit. Buyer is responsible for payment of return shipping fees unless such returned Goods result from a WENGER CORP order processing error. WENGER CORP will not accept returns for Goods that are custom-built or installed for Buyer, as such items cannot be resold by WENGER CORP.

Warranty and Disclaimer: The terms and conditions of WENGER CORP'S warranty with respect to the Goods is available at: https://www.wengercorp.com/Lit/Wenger_Product%20Warranty.pdf.

WENGER CORP MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS IS SPECIFICALLY SET FORTH IN THESE TERMS AND CONDITIONS. WENGER CORP EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Limitations of Liability. IN NO EVENT SHALL WENGER CORP BE RESPONSIBLE FOR ANY LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT, OTHER THAN DIRECT LOSSES ARISING SOLELY AS A RESULT OF WENGER CORP'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ACCORDINGLY, IN NO EVENT SHALL WENGER CORP BE REQUIRED TO PAY OR BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES, OPPORTUNITY COSTS, LOSS OF USE, OR LOST PROFITS, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL WENGER CORP'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT PAID BY BUYER TO WENGER CORP FOR THE GOODS.

Compliance with Law: Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all licenses, permissions, authorizations, consents, and permits necessary to carry out its obligations under the Agreement. Buyer shall comply with all applicable import and export laws, regulations, orders, and requirements of all countries involved in the sale of the Goods; provided, however, that WENGER CORP shall obtain any applicable export approvals and pay any customs duties, taxes, and other fees as may be required by the U.S. government in connection therewith. Unless otherwise expressly agreed in writing by WENGER CORP, any and all customs, duties, taxes, and other fees in any form which may be charged or assessed with respect to the importation into any foreign country of any Goods or technical data related thereto shall be for the account of and paid for by Buyer. WENGER CORP may terminate the Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

Termination: In addition to any remedies that may be provided under these Terms and Conditions, WENGER CORP may terminate the Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under the Agreement; (b) has not otherwise performed or complied with any of these Terms and Conditions, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

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Intellectual Property: All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "IP Rights") in and to the Goods (other than intellectual property provided by Buyer or a third party) shall be owned by WENGER CORP. Following Buyer's acceptance and final payment, WENGER CORP shall grant to Buyer a non-exclusive, non-transferable, non-sublicensable license to use the IP Rights solely to the extent necessary to enable Buyer to operate, maintain, and repair the Goods pursuant to the terms of the Agreement and any applicable end user agreement(s).

Confidential Information: All non-public, confidential or proprietary information of WENGER CORP, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by WENGER CORP to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with the Agreement, is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by WENGER CORP in writing. Upon WENGER CORP'S request, Buyer shall promptly return all documents and other materials received from WENGER CORP. WENGER CORP shall be entitled to injunctive relief for any violation of this paragraph. This paragraph does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

Force Majeure: WENGER CORP shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement, when and to the extent such failure or delay is caused by or results (directly or indirectly) from acts beyond WENGER CORP'S reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, explosion, or natural disasters; (c) war, invasion, hostilities (whether war is declared or not), cyber-attacks, sabotage, terrorist threats or acts, riot or other civil unrest; (d) foreign or domestic government order, law, or actions; (e) actions, embargoes or blockades in effect on or after the date of the Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) public health emergencies; (i) strikes, labor stoppages or slowdowns or other industrial services (provided WENGER CORP has exercised commercially reasonable efforts to avoid it); (j) failures of utilities or public services; (k) sub-supplier delays caused by any of the above provided the same are not caused or contributed to by the negligence or fault of WENGER CORP; or (l) any other cause beyond the reasonable control of WENGER CORP.

Applicable Law and Forum: Any disputes between Buyer and WENGER CORP shall be in the state and federal courts of Steele County, Minnesota or the county and state in which the project is located, as mutually agreed to in writing by the parties. Buyer agrees to submit to such jurisdiction and agrees that the dispute shall be governed by and construed in accordance with the laws of the State of Minnesota or the county and state in which the project is located, as mutually agreed to in writing by the parties, without giving effect to any choice or conflict of law provision or rule.

Miscellaneous: No amendment to the Agreement or waiver of the rights or obligations of either party shall be effective unless in writing signed by the parties. Any provision of the Agreement that by its express terms or by its nature is intended to survive the expiration or termination of the Agreement will survive any such expiration or termination, including, without limitation, paragraphs "Warranty and Disclaimer," "Limitations of Liability," "Compliance with Law," "Intellectual Property," "Confidential Information," "Applicable Law and Forum," and "Miscellaneous." If any provision of the Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of the Agreement will remain in full force and effect. Any provision of the Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable. A party's failure to insist on compliance or enforcement of any provision in the Agreement will not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or any other provision in the Agreement. Unless otherwise set forth in the Agreement, the Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns. The parties are independent contractors, and nothing in the Agreement or otherwise will be deemed or construed to create any other relationship, including one of employment, joint venture, or agency.

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