

## North East Wisconsin Welding, LLC' Terms and Conditions

**1. Signed Contract:** These Terms and Conditions and Buyer's Purchase Order to North East Wisconsin Welding, LLC are the "Contract." All terms and conditions contained in any prior or subsequent oral or written communications, including, without limitation, terms and conditions contained in Buyer's Purchase Order, which are different from or in addition to the Contract are hereby rejected and shall not be binding on North East Wisconsin Welding, LLC and North East Wisconsin Welding, LLC hereby objects thereto.

**2. Pricing:** North East Wisconsin Welding, LLC's prices and delivery terms are subject to change without notice from North East Wisconsin Welding, LLC. Any tax, excise or other charge imposed or levied by any governmental or taxing authority (other than on income) in respect to the products or services covered hereby or in respect of the manufacture, transportation or sale thereof, shall be added to the purchase price of the goods sold herein and be borne by the Buyer.

**3. Changes:** Buyer is obligated to pay for all changes and modifications beyond the original scope of this Agreement. All material changes and those changes affecting fit, form or function must be mutually agreed upon in writing. Buyer is responsible for all reasonable costs and actual damages to Seller related to delays caused by Buyer.

**4. Terms of Payment:** Buyer's obligation to pay on time is of the essence of these terms, and Buyer will pay the invoiced amount without setoff or deduction. Amounts not paid will incur an interest charge of 1.5% per month or the highest allowable by law.

**5. Delivery:** Time is of the essence of this Contract. Seller shall deliver the Goods strictly in accordance with the delivery requirements and deadlines set forth in this Contract.

**6. Shipping Dates:** Shipping dates quoted represent a reasonable estimate of the time required for manufacturing at the time of order acceptance or quotation. These dates will not be construed as promises or contractual agreements to ship or deliver goods unless specifically agreed to in writing.

**7. Force Majeure:** If Seller is delayed in the manufacture, shipment or delivery of the Goods due to any breach of this Agreement by Buyer, act of God, labor dispute or strike, war or civil disturbance, or any other cause beyond Seller's control and not due to Seller's fault or negligence which Seller could not reasonably anticipate and avoid, then the date of delivery shall be extended for such reasonable period of time as Buyer may agree to in writing. If such delay continues for more than thirty (30) days, Buyer shall have the right to terminate this Contract. If Buyer is unable to use or receive the Goods due to any breach of this Contract by Seller, act of God, labor dispute or strike, war or civil disturbance, or any other cause beyond Buyer's control and not due to Buyer's fault or negligence which Buyer could not reasonably anticipate and avoid, then Buyer may, at its option, (a) extend the date of delivery for the affected Purchase Order(s) for such reasonable period of time as Seller may agree to in writing, or (b) cancel all affected Purchase Orders or pending shipments.

**8. Risk of Loss; Title:** Freight terms and conditions are set forth on the Purchase Order. Title and risk of loss shall pass to Buyer at shipping point regardless of method of shipping.

### **9. North East Wisconsin Welding, LLC Limited Warranties:**

**9.1 North East Wisconsin Welding, LLC Product Limited Warranty:** Unless otherwise expressly agreed to in writing by North East Wisconsin Welding, LLC, North East Wisconsin Welding, LLC warrants products of its manufacture to be free from defects in materials and workmanship for a period of twelve (12) months from date of shipment by North East Wisconsin Welding, LLC. Products are warranted only to the extent used under normal conditions. North East Wisconsin Welding, LLC shall, at its option, repair or replace free of charge within the warranty period any product supplied by North East Wisconsin Welding, LLC which proves to be defective in workmanship or materials. Normal wear and tear are not covered under warranty. North East Wisconsin Welding, LLC reserves the right to reject those claims for warranty where it is reasonably determined that failure is caused by Buyer – or third party made – modifications, improper maintenance, misuse, misapplication, abuse of the product, damage due to factors which are beyond the control of North East Wisconsin Welding, LLC, damage caused by connections, interfacing or use in unforeseen environments. These conditions will render the warranty null and void.

**9.2 WARRANTY LIMITATION: THE NORTH EAST WISCONSIN WELDING, LLC LIMITED WARRANTIES IN THIS AGREEMENT ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NO WARRANTIES ARE EXPRESSED OR IMPLIED WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF.**

**10. Defective or Nonconforming Goods:** Buyer shall have the right but not the obligation to inspect all Goods. If any of the Goods are defective or otherwise not in conformity with the requirements of this Agreement, then Buyer's sole remedy is replacement of nonconforming Goods.

**11. Notices:** Unless otherwise provided in this Contract, any required notices shall be sent in writing, by certified mail (return receipt requested), reputable overnight courier, teletype or hand delivery, to the applicable party at the respective address shown on the Purchase Agreement, and shall be deemed effective on the date received. Either party may change its notice address by giving advance notice of such change to the other party in accordance with this Article 9.

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**12. Entire Agreement:** This Contract, together with the additional, non-conflicting terms, if any, set forth in the applicable Purchase Order, constitutes the entire agreement between Buyer and North East Wisconsin Welding, LLC with respect to the Goods. All prior and contemporaneous proposals, negotiations, representations and agreements with respect to the Goods are merged into this Contract and no course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. This Contract may not be altered, modified, superseded or amended and no additional or different terms shall become a part of this Agreement, except pursuant to a writing specifically referencing this Contract which is signed by both parties to this Contract.

**13. Limitation of Liability:** North East Wisconsin Welding, LLC's total liability and Buyer's exclusive remedy for any cause of action associated with the Contract, whether based in tort, contract, strict liability or any other legal theory is expressly limited to replacement of nonconforming goods or payment in an amount not to exceed the purchase price of the goods sold herein for which damages are claimed at North East Wisconsin Welding, LLC. In no event shall North East Wisconsin Welding, LLC be liable for any other damages including without limitation, incidental, special, punitive or consequential damages including loss of profits, loss of production, loss of use or any other indirect damage or loss of any kind to Buyer.

**14. Buyer's Default:** Seller may, upon written notice to Buyer, cancel any or all orders or agreements effective immediately if: (a) in Seller's opinion, Buyer's financial condition deteriorates to be detrimental to Seller's interest hereunder; (b) Buyer fails to perform any obligations under these terms and conditions and such failure is not remedied within fifteen (15) calendar days after notice has been given to Buyer; (c) Buyer fails to pay in accordance with any invoice payment terms; or (d) any change occurs in the direct or indirect ownership of Buyer if, in Seller's opinion, such change may be detrimental to Seller's interest hereunder. Any cancellation under this Section will be in addition to and will not be exclusive of or prejudicial to any other rights or remedies at law or in equity available to Seller.

**15. Governing Law:** The contractual relationship between North East Wisconsin Welding, LLC and Buyer relating to the supply of the goods sold herein shall be governed by, and construed in accordance with, the laws of the State of Wisconsin as though made and to be fully performed in said state.

**16. Severability:** If any provision of this Agreement is declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby, unless the deletion of such provision or provisions results in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

**17. Choice of Venue:** If there is a lawsuit, Buyer agrees upon North East Wisconsin Welding, LLC's request to submit to the jurisdiction of the courts of Outagamie County, State of Wisconsin.

**18. Survival:** The following sections survive termination, cancellation or expiration of this and related agreements: 9, 13 and 15.

**19. Attorneys' Fees; Expenses:** Should litigation between Buyer and North East Wisconsin Welding, LLC arise under the terms of the Contract, the prevailing party shall be entitled to Attorneys' Fees and Expenses from the other party.