

Terms and Conditions of Sale

- 1. Acceptance:** The sale of tanks, vessels, materials, and/or equipment (the "Goods") by the Modern Welding Company subsidiary (the "Seller") specified on the Quotation, Order Acknowledgment, Invoice or Purchase Order is governed by these terms and conditions (the "Terms") and these Terms are an integral part of and are incorporated into the offer and agreement for the sale of the Goods by Seller. Buyer's acceptance of Seller's offer is limited to these Terms and shall not include any additional terms stated or proposed by Buyer. Amendment of the Terms is only valid if confirmed in writing by Seller. Any terms or conditions specified by the Buyer in its order or otherwise are rejected and will only have effect if accepted by Seller in writing. Buyer's issuance of a Purchase Order or other acknowledgements of a sales order, and/or Buyer's acceptance of delivery of the Goods, shall serve as a confirmation and acceptance of these Terms.
- 2. Changes:** Buyer may by written notice to Seller request changes in the order, including but not limited to changes in the specifications for the Goods or place of delivery. Seller shall be entitled to charge Buyer for increased costs resulting from any requested change, and Buyer and Seller must agree in writing to the change and the adjustment in price before such change shall be effective.
- 3. Payment:** All payments shall be made in accordance with the payment terms as stated on Seller's Order Acknowledgment / Invoice. Past due balances are subject to interest charged at a monthly periodic rate of 1.5% (18% per year), or the maximum amount permitted by applicable law, whichever is less. In addition, Buyer shall pay all collection costs and expenses, including reasonable attorneys' fees, incurred by Seller in collecting or attempting to collect any past due account. If Buyer shall fail to make any payment to Seller in accordance with the Terms, Seller shall in addition to its other remedies provided by law, have the right to cancel the order for the Goods or any remaining shipments.
- 4. Taxes:** Unless otherwise indicated, the price for the Goods does not include any present or future federal, state, or local taxes based upon or measured by the sale, use, manufacture or shipment of the Goods. All such taxes shall be for Buyer's account, and, if paid by Seller, the Buyer agrees to promptly reimburse Seller the full amount thereof.
- 5. Delivery, Risk of Loss, Inspection and Acceptance:** Delivery terms shall be as stated in the Quotation, Order Acknowledgment, or Invoice. Risk of loss to the Goods shall pass to Buyer upon such delivery. The Buyer shall, within ten (10) days of delivery, promptly inspect the Goods and notify the Seller in writing of any nonconformance or defect in material or workmanship discovered during the inspection.
- 6. Title and Security Interest:** Legal and beneficial title to the Goods shall pass to Buyer only upon full payment to Seller for the Goods, unless otherwise agreed to by the parties. Buyer shall, at Seller's request, take any measures necessary under applicable law to protect Seller's interest in the Goods, and notify Buyer's present or potential creditors of Seller's title in and interest to the Goods. Buyer grants to Seller a first priority purchase money security interest in the Goods, and Buyer will execute financing statements and similar or other required documentation for Seller to perfect or enforce its security interest.
- 7. Inspection and Quality Control:** Seller agrees to maintain an appropriate quality control program during the manufacture of the Goods. When an inspection is required by Buyer, advance written notice thereof shall be provided to Seller at least three business days prior to the date of inspection.
- 8. Warranty:** The Seller warrants all new Goods, if installed within the continental United States of America, Alaska, Hawaii and the Commonwealth of Puerto Rico or Canada and operated and maintained in a proper manner, will be fabricated according to the agreed written specifications and will be free from defects in workmanship and material for one year from date of delivery. Warranties and liabilities shall extend only to the original owner at the original installation site. Upon written notice of any warranted defect by Buyer received by Seller during the warranty period, after confirmation by Seller, Seller shall at its option: (a) repair the defective Goods; (b) replace the defective Goods; or (c) return the original purchase price of the Goods. The Seller shall have the right to furnish all material and/or perform all labor required for the correction of any errors or omissions on the part of the Seller, and no charge will be allowed for any material furnished or labor performed by the Buyer or others, unless the Seller is given sufficient prior written notice and a written order is issued by the Seller for such material and/or labor. In no event shall Seller be liable for any labor, installation, removal or transportation costs or for any indirect or consequential or incidental damages (including without limitation loss of profits, business interruption or other pecuniary loss) in connection with the Goods. SELLER'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER WARRANTY, IN NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS. THE FOREGOING CONSTITUTES SELLER'S EXCLUSIVE WARRANTY OBLIGATION, AND SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WHATSOEVER, EXCEPT AS STATED ABOVE. AS TO ORIGINAL EQUIPMENT MANUFACTURER ("OEM") PARTS/ACCESSORIES THAT ARE PART OF THE GOODS, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND AND SELLS THOSE OEM PARTS AS IS. SELLER MAY ASSIST BUYER IN PURSUING ANY CLAIM RELATED TO ANY APPLICABLE WARRANTY OF THE MANUFACTURER OF THE OEM PARTS.
- 9. Intellectual Property:** Seller represents that to the extent fabricated to a design provided by Seller the Goods shall not infringe on any intellectual property rights of others. Seller shall indemnify and hold harmless Buyer from and against all claims, damages, judgments, expenses and losses arising from infringement of any patent or other intellectual property rights by any such Goods fabricated to a design provided by Seller. Likewise, Buyer shall indemnify and hold harmless Seller from and against all claims, damages, judgments, expenses and losses arising from infringement of any patent or other intellectual property rights by any Goods that are fabricated to a design or specifications provided by Buyer. Any proprietary technology, designs, know-how, information or processes owned, in the possession of or controlled by Seller ("Seller Intellectual Property") prior to the date of this Purchase Order which are incorporated into the Goods shall remain the intellectual property of Seller, and Seller does herein grant to Buyer a non-exclusive, worldwide, transferable, fully-paid and perpetual license to use the Seller's Intellectual Property only to the extent necessary in connection with the Buyer's use or operation of the Goods.
- 10. Indemnification:** Seller shall indemnify and hold harmless the Buyer from and against any claims, damages, losses, and expenses attributable to bodily injury or death or to injury to or destruction of tangible property, but only to the extent caused by the negligent act or omission or willful misconduct of the Seller in the performance of Seller's Purchase Order obligations. Buyer shall indemnify and hold harmless the Seller from and against any claims, damages, losses, and expenses attributable to bodily injury or death or to injury to or destruction of tangible property, but only to the extent caused by the negligent act or omission or willful misconduct of the Buyer.
- 11. Force Majeure:** Neither party shall be liable for delay in performing or failure to perform its obligations if the delay or failure results from any cause outside its reasonable control including, but not limited to, war, terrorism, fire, explosion, adverse weather conditions, accidents, machine break downs, strikes, lockouts and other labor disputes, fire, unusual delay in deliveries, epidemic, pandemic, governmental order, rule, regulation, or law, or other unavoidable casualties. The delayed party shall give notice to the other party after the delayed party becomes aware of any adverse impact to its performance caused by such delay.
- 12. Governing Law and Forum:** Buyer and Seller agree that any claim or dispute arising out of or related to these Terms or the Goods (i) will be governed by the law of the state where the Seller's principal office is located, exclusive of conflict of laws principles; and (ii) that the exclusive jurisdiction for such claim or dispute shall be a federal or state court of competent jurisdiction in the state and county where Seller's principal office is located.
- 13. Technical Services:** Any and all designs, plans, drawings, specifications, and all other technical services which Seller may have furnished or may hereafter furnish with reference to the Goods are furnished solely for the approval of Buyer and its engineers. Seller makes no representation or warranty with respect to the accuracy or sufficiency of any of said drawings, advice or services, whether or not reviewed by Buyer or its representatives.
- 14. Confidentiality:** Seller shall not make any news releases or advertising pertaining to the Buyer's project without the prior written approval of Buyer. Seller shall treat all information provided by Buyer as confidential and only disclose such information as necessary to furnish the Goods, provided such obligation of confidentiality shall not apply to any information which: (a) was in the possession of Seller at the time of its disclosure, as shown by prior written records, prior manufacturing practices or other evidence of possession; (b) is or becomes generally available to the public through no fault of Seller; (c) is received by Seller from a third party who discloses such information without violating any obligation of confidentiality to Buyer relating to the information disclosed; or (d) is independently developed by Seller without utilization of information disclosed by Buyer on a confidential basis.
- 15. Cancellation:** Except as provided in Section 16 below or within our quotation / order acknowledgement, the order for the Goods is not subject to cancellation by Buyer unless (a) Seller approves such cancellation in writing, and (b) the Buyer pays the cancellation costs specified in the Quotation, Order Acknowledgment, or Invoice, or if not specified there, the reasonable costs incurred by Seller in regard to the manufacture of such Goods prior to receipt of notice of cancellation (including, without limitation, all work in process, commitments to Seller's suppliers and others, and the cost of materials or equipment purchased by Seller for incorporation into the Goods) plus 15% of such costs. Completed Goods are not subject to cancellation.
- 16. Thirty Day Return Policy:** A 20% restocking charge will be assessed on all stock items returned in unused, unaltered, and undamaged condition within thirty days from date of purchase. All returns must be accompanied by the original sales receipt. Special order items and steel service center items which are cut or otherwise modified for Buyer are not returnable.
- 17. Storage Fees:** Seller reserves the right to assess storage charges for Goods remaining at Seller's facility for a period in excess of thirty days after the delivery date specified in the Purchase Order. In addition, if any Goods remain at Seller's facility, through no fault of Seller, in excess of one hundred twenty days from the agreed shipment or delivery date (as applicable), in addition to any other remedies available to Seller, Buyer shall forfeit any right or title in said Goods, which shall revert to Seller, Seller may resell those Goods, and Seller shall retain from any such sale an amount equal to Seller's damages sustained because of Buyer's failure to effect shipment or delivery of the Goods, storage fees, costs of sale, and any other damages sustained by Seller as a result of Buyer's breach of its obligation hereunder.