

# PURCHASE ORDER TERMS AND CONDITIONS

## 1. Effectiveness

As used herein, "Contract" means this document, including, without limitation, all terms, provisions, sub-parts, sections and attachments, along with any documents incorporated by reference herein. This Contract will be accepted by Seller and become effective immediately upon the first to occur of: (a) the date on which Seller provides written acceptance to Buyer (whether by electronic means or otherwise), or (b) Seller's commencement of any work under this Contract.

## 2. Entire Agreement; Applicability

This Contract sets forth the exclusive terms and conditions under which Seller will sell and Buyer will purchase the goods or services described herein for the period(s) specified in this Contract. Terms and conditions proposed by Seller that are different from or in addition to the provisions of this Contract are expressly rejected by Buyer and are not a part of this Contract, and Seller's acceptance is expressly limited to the terms of this Contract. This Contract constitutes the entire agreement between Seller and Buyer with respect to the matters contained herein and supersedes all prior or contemporaneous oral or written agreements, representations and/or communications. This Contract may be modified only by an amendment issued by Buyer.

## 3. Delivery; Scheduling; Electronic Data Interchange

Seller will comply, in all respects, with Buyer's delivery and logistics requirements, as amended or updated from time to time and as incorporated in this Contract by reference. Time is of the essence, and deliveries must be made both in quantities and at times specified in Buyer's delivery schedules. Buyer will not be required to make payment for goods delivered to Buyer that are in excess of quantities specified in Buyer's delivery schedules. Buyer may change the rate of scheduled shipments, the quantity of shipments or direct temporary suspension of scheduled shipments. Where quantities and/or delivery schedules are not specified, Seller will deliver goods in such quantities and times as Buyer may direct in subsequent delivery schedules. Further, if Seller's acts or omissions result in or are likely to result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified by Buyer, Seller will be solely responsible for all costs and expenses associated with such expedited shipments.

## 4. Packing and Shipping

All items shall with shipping instructions specified herein and otherwise in accordance with the requirements of common carriers so as to obtain the lowest transportation cost Buyer shall have the right to route all shipments. No charge shall be made to Buyer for packaging, boxing, or cartage unless separately itemized. Seller shall be liable to Buyer for any loss or damage resulting from Seller's failure to act so as to provide adequate protection during shipment. Additional expenses, charges or claims incurred as result of deviation from the specified route, non-compliance with other shipping instructions or improper description of the shipment in shipping documents shall be Seller's responsibility. Immediately upon shipment Seller is to notify Buyer, advising of complete shipping and routing information.

## 5. Non-conforming, Rejected or Surplus Goods

Buyer will not perform incoming inspections of the goods and Seller waives any requirement that Buyer conduct such inspections. Payment for nonconforming goods will not constitute an acceptance of them, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects. Any goods (a) determined to be nonconforming by Seller (or its suppliers); (b) rejected by Buyer as nonconforming; or (c) that become obsolete or surplus, will be rendered unusable prior to salvage or disposal by Seller (or its suppliers). Seller will ensure that nonconforming, rejected, obsolete or surplus goods are not sold as service or replacement parts to third parties. Seller will institute appropriate controls with its suppliers to ensure compliance with this Section.

## 6. Inspection

Seller agrees to permit Buyer to have access to Seller's plant at all reasonable times for the purpose of inspecting any items set forth in this order or work in progress for production of such items. All items are subject to final inspection and approval at Buyer's plant or other place designated by Buyer. Such inspection shall be made within a reasonable time after delivery, irrespective of the date of payment. Notwithstanding any payment that may be made, no goods are to be deemed accepted until Buyer has had a reasonable opportunity to inspect them.

## 7. Transfer of Title

Title to the goods will transfer to Buyer free and clear of any liens, claims, encumbrances, interests or other rights at the moment the risk of loss transfers from Seller to Buyer with respect to such goods in accordance with the UCC or alternative delivery term set forth in this Contract.

## **8. Changes**

By written notice to Seller, Buyer may, from time to time, direct changes, or direct Seller to make changes, to drawings and specifications of the goods or to otherwise change the scope of the work covered by this Contract, including, without limitation, work with respect to such matters as inspection, testing or quality control, and Buyer and Seller will promptly discuss, reasonably and in good faith, any pricing adjustments (up or down) to be made in connection with such changes. Notwithstanding any such discussions, Seller will promptly implement such changes as directed by Buyer without delay. In the event that Buyer and Seller are unable to reach agreement on any pricing adjustments to be made in connection with such changes, any difference in price or time for performance resulting from such changes will be equitably adjusted by Buyer based on a fair cost assessment after receipt of documentation in such form and detail as Buyer may direct. Seller will accept any amendments issued by Buyer implementing such changes.

## **9. Subcontracting**

Seller will not subcontract any of its obligations under this Contract without the prior written consent of Buyer. Any such consent of Buyer will not release Seller from, or limit, any of Seller's obligations under this Contract. Seller warrants and guarantees that any such subcontractor's performance will satisfy all requirements applicable to Seller under this Contract.

## **10. Quality**

Seller will comply, in all respects, and will cause its subcontractors and suppliers to comply, in all respects, with Buyer's quality requirements and procedures as amended or updated from time to time and as incorporated by reference in this Contract. Seller will promote continuous improvement in the quality of the goods and Seller's manufacturing and logistics processes.

## **11. Warranty**

In addition to its standard warranty and/or service guaranty, Seller warrants that all goods supplied hereunder shall be free and clear of all liens and encumbrances, good and merchantable title thereto being in the Seller; be free from any defects in design, material or workmanship and of good and merchantable quality; conform to Buyer's specifications or the sample approved by Buyer, as the case may be, or be fit for the known purposed for which purchased hereunder; and comply and have been produced, processed and delivered in conformity with all applicable federal, state or other laws, administrative regulations and orders. The foregoing warranties shall survive inspection, delivery and payment and shall run in favor of Buyer and its customers.

## **12. Ingredients Disclosure; Special Warnings and Instructions**

Seller will promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients and materials incorporated in the goods; (b) the amount of such ingredients and materials; and (c) information concerning any changes in or additions to such ingredients and materials. Prior to and with the shipment of the goods, Seller agrees to furnish to Buyer sufficient advance warning and notice, in writing (including, without limitation, appropriate labels on the goods, containers and packing), of any dangerous goods or hazardous material that is an ingredient or a part of any shipment of goods, together with such special handling instructions as may be necessary to advise carriers, Buyer and their respective employees of how to exercise that measure of care and precaution that will comply with any applicable laws or regulations and best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing shipped to Buyer. Upon Buyer's request, Seller will certify to Buyer in writing the origin of any ingredients or materials in the goods. Seller will promptly provide, in writing, any information regarding the goods requested by Buyer so that Buyer may comply in a timely manner with reporting requirements under applicable law with respect to consumer protection, "conflict minerals" or similar materials or ingredients, if any.

## **13. Duty to Inform and Notify**

Seller will promptly notify Buyer in writing of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (a) any failure by Seller to perform any of its obligations under this Contract; (b) any delay in delivery of goods or services under this Contract; (c) any defects or quality problems relating to the goods or services covered by this Contract; (d) any changes in Seller's corporate structure or organization (including any direct or indirect change in control or ownership of Seller); (e) any deficiency in Buyer specifications, samples, prototypes or test results relating to this Contract; (f) any failure by Seller, or its subcontractors or common carriers, to comply with applicable laws and regulations, including, without limitation, with respect to transportation of goods under this Contract; or (g) any change in Seller's authorized representatives or insurance coverage.

## **14. Work Performed on Buyer's Premises**

If Seller or its subcontractors perform any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises, Seller will indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including, without limitation, legal and other professional fees) for damages to the property of or injuries, including death, to Buyer or Seller, Buyer's or Seller's employees, subcontractors or any other person arising from or in connection with Seller's performance of work or use of Buyer's property, except for such liability, claim or demand arising out of the sole negligence of Buyer.

## **15. Customs; Origin**

Credits or benefits resulting or arising from this Contract, including trade credits, export credits or the refund of duties, taxes or fees, will belong to Buyer. Seller will timely and accurately provide all information necessary (including written documentation and electronic transaction records) to permit Buyer to receive such benefits or credits, as well as to fulfill its import and, where required by this Contract,

export customs related obligations, origin marking or labeling requirements and local content origin requirements, if any. Seller will undertake such arrangements as necessary for the goods to be covered by any duty deferral or free trade zone program(s) of the country of import. Seller will ensure compliance with the recommendations or requirements of all applicable Authorized Economic Operator (AEO), governmental security/anti-terrorism and enhanced border release programs (including, without limitation, the United States Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism (C-TPAT), Canada Border Services Agency's Partners in Protection initiative and Administración General de Aduanas de Mexico's Neuvo Esquema Empresa Certificada (NEEC) program). At the request of Buyer or the appropriate Customs Authority, Seller will certify in writing its compliance with the foregoing.

#### **16. Transactional Tax**

Unless otherwise provided in this Contract, the prices set forth in this Contract will be exclusive of all transactional taxes, including any sales, use, excise, services, value added tax, goods and services tax, or similar tax, and these taxes should be separately identified by Seller in both Seller's quote and in this Contract even if the tax rate is zero. Buyer will not be responsible for any transactional taxes charged by the Seller that are not identified in this manner. Seller shall separately state all charges for transactional taxes on its invoices (or other such documents). Additionally, Seller shall provide Buyer with invoices in line with the applicable tax laws in its country to enable the Buyer to reclaim the transactional taxes and Seller will provide such documentation no later than when the payment to which the invoice relates is due from Buyer. Seller will be responsible for remitting the transactional tax to the applicable taxing authority except for those states or jurisdictions where Buyer has provided Seller with an appropriate exemption certificate. Seller will use reasonable efforts to apply for such exemptions where applicable. Seller will not charge Buyer for any transactional taxes charged by a subcontracting supplier if such tax is recoverable by Seller, or if not recoverable, it would have been, had the transaction been structured through other entities (either the Seller's or the Buyer's affiliated companies). If transactional taxes are not recoverable by Seller, Seller agrees to provide detailed billing, customs or other documents as requested, which set out the transactional taxes paid or payable to any of the Buyer's subcontracting supplier or to a taxing authority.

#### **17. Insolvency**

Buyer may immediately terminate this Contract without liability to Seller in any one or more of the following or other comparable events: (a) insolvency of Seller (including, without limitation, a circumstance in which Seller's liabilities exceed its assets or Seller is unable to pay its debts as they come due); (b) appointment of a receiver, trustee or administrator over Seller or its assets; or (c) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment or assignment is not vacated or nullified within 15 days of such event. Seller will inform Buyer immediately should any of these events occur or Seller becomes aware of events or circumstances likely to give rise to any such events. Seller will reimburse Buyer for all costs and expenses incurred by Buyer in connection with any of these events (regardless of whether Buyer exercises its termination rights with respect thereto, including, and without limitation, all legal or other professional fees).

#### **18. Seller's Property**

Unless otherwise agreed to by Buyer, Seller, at its expense, will furnish, keep in good condition, and replace when necessary all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns and other items ("Seller's Property") necessary for the production of the goods. Seller will insure Seller's Property with coverage for all losses for its replacement value. Seller grants Buyer an irrevocable option to take possession of and title to Seller's Property that is used exclusively for the production of the goods upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items, but less any amounts otherwise owing to Buyer by Seller; provided, however, that this option will not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others, and this option may only be exercised in connection with a termination of this Contract.

#### **19. Buyer's Property**

Seller shall insure, and bear the risk of loss, of any property of Buyer in Seller's possession of the contract. Tool charges convey ownership of the tools to Buyer, and Seller shall deliver such tools (and other property of Buyer) to Buyer on demand.

#### **20. Intellectual Property Indemnification**

Seller will investigate, defend, hold harmless and indemnify Buyer, its successors, its affiliates (collectively "Buyer Group") and its dealers and customers against any actual or alleged claims of infringement or other assertions of proprietary rights violations (including patent, trademark, copyright, industrial design right, or other proprietary right, misuse, or misappropriation of trade secret) and resulting damages and expenses (including attorney's and other professional fees) arising in any way in relation to the goods or services contracted, including such claims where Seller has provided only part of the goods or services (collectively "IP claims").

#### **21. Remedies; Indemnity**

The rights and remedies reserved to Buyer in this Contract are cumulative with, and additional to, all other rights and remedies of Buyer under applicable law or in equity. Without limiting the foregoing, in the event that any goods fail to conform to the warranties set forth in this Contract or the product specifications incorporated by reference in this Contract, or if Seller otherwise breaches any of its obligations under this Contract, Buyer will be entitled to recover from Seller any and all damages, including, without limitation, any direct, indirect, incidental and consequential damages and all legal and other professional fees and costs incurred by Buyer as a result of such breach or failure, including, without limitation, costs, expenses and losses incurred by Buyer (a) in inspecting, sorting, testing, repairing or replacing

nonconforming goods or nonconforming deliveries; (b) resulting from production interruptions; (c) in conducting recall campaigns or other corrective service actions; or (d) resulting from personal injury, including death, or property damage. If requested by Buyer, Seller will enter into a separate agreement for the administration and processing of warranty chargebacks for nonconforming goods. Seller will indemnify, defend and hold harmless Buyer Group against any liability, claim, demand and expense (including, without limitation, legal and other professional fees) arising from or relating to any failure of Seller to fully perform any of its obligations under this Contract.

## **22. Force Majeure**

Any delay or failure of either party to perform its obligations under this Contract will be excused to the extent that Seller is unable to produce, sell or deliver, or Buyer is unable to accept delivery, buy or use, the goods or services covered by this Contract, directly as the result of an event or occurrence beyond the reasonable control of such party, without such party's fault or negligence (a "force majeure event"), including, if applicable, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars and sabotage; provided that written notice of such force majeure event (including the anticipated duration of the delay) must be given by the affected party to the other party as soon as possible (but in no event more than 10 days after the force majeure event occurs). During any force majeure event affecting Seller's performance, Buyer may, at its option, purchase goods or services from other sources and reduce its delivery schedules to Seller by such quantities, without liability to Seller, or require Seller to provide goods or services from other sources in quantities and at times requested by Buyer at the price set forth in this Contract. Seller will use all diligent efforts to ensure that the effects of any force majeure event are minimized and, as promptly as possible, resume full performance under this Contract. If requested by Buyer in writing, Seller will, within 5 days after Buyer's request, provide adequate assurances that the delay in Seller's performance resulting from such event will not exceed 30 days. If the delay lasts more than 30 days or Seller does not provide such adequate assurances, Buyer may immediately terminate this Contract without liability to Seller.

## **23. Insurance**

Seller will maintain insurance coverage with insurance carriers acceptable to Buyer and in the amounts set forth elsewhere in this Contract. Seller will name Buyer as an additional insured or a beneficiary on all liability policies. If applicable, Seller will furnish to Buyer either a certificate showing compliance with these insurance requirements or certified copies of all insurance policies within 10 days of Buyer's written request. The certificate will provide that Buyer will receive 30 days' prior written notice of any termination or reduction in the amount or scope of coverage. Seller's furnishing of certificates of insurance or purchase of insurance will not release Seller of any of its obligations or liabilities under this Contract.

## **24. Technical Information**

Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical or other information that Seller has disclosed or may hereafter disclose to Buyer or its affiliates in connection with this Contract or the goods or services contracted. Any technical or other information provided by Seller to Buyer or its affiliates will not be subject to confidentiality or nondisclosure obligations unless the parties have entered into a separate written confidentiality and nondisclosure agreement signed by their respective authorized representatives prior to the effective date of this Contract.

## **25. Confidentiality; No Advertising**

Seller will maintain the confidentiality of any information provided by Buyer or its representatives, and any materials or information that contain, or are based on, any such information. Without Banner Welder's consent, Seller may only use such information in connection with its performance under this Contract and will not provide such information to any third party (including, without limitation, Seller's subcontractors) without Buyer's advance written consent. Seller will not, without first obtaining the written consent of Buyer, in any manner (a) advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services covered by this Contract; (b) use Buyer's trademarks, trade names or confidential information in Seller's advertising or promotional materials; or (c) use Buyer's trademarks, trade names or confidential information in any form of electronic communication such as web sites (internal or external), blogs or other types of postings.

## **26. Export Controls; Sanctions Compliance**

Seller agrees to comply with all applicable export control and sanctions laws and regulations of the United States of America, of member States of the European Union, and any other relevant country (the "Export Control Laws"). Seller will not violate, and will not cause Buyer to violate, any Export Control Laws (e.g. by transshipping goods through, or supplying goods or services from, sanctioned countries). Licenses or other authorizations required for the export of goods or services will be the responsibility of Seller unless otherwise indicated in this Contract, in which event Seller will provide such information as may be requested by Buyer to enable Buyer to obtain such licenses or authorizations.

## **27. Termination For Convenience**

In addition to any other rights of Buyer to terminate this Contract, Buyer may, at its option, terminate all or any part of this Contract before the expiration date set forth in this Contract, at any time and for any reason, by giving written notice to Seller. In the event Buyer exercises its right to terminate for convenience under this Section, Buyer will pay to Seller only the following amounts, without duplication: (a) the contract price for all goods and services that have been completed in accordance with this Contract and not previously paid for; and (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods or services under this Contract, to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the

terminated portion of this Contract; less, however, the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent and the cost of any damaged or destroyed goods or material. Seller will promptly make available for delivery to Buyer, as specified by Buyer, any goods completed but not delivered as of the time of Buyer's termination hereunder. Any request for payment submitted to Buyer under this Section must include sufficient supporting data to permit an audit by Buyer, including, without limitation, such supplemental and supporting information as Buyer may request. Any request for payment under this Section must be in writing and include, without limitation, a statement setting forth the contract price for the goods or services, invoices reflecting the actual cost of work-in-process and raw materials, the basis for the allocation of such costs to the terminated portion of this Contract, and any other supporting documentation reasonably requested by Buyer. Any amount otherwise due to Seller pursuant to this Section will be reduced by any amount owed by Seller to Buyer under this Contract or otherwise. Any payment under this Section will not be deemed a waiver of any of Buyer's other rights arising under this Contract or applicable law. Notwithstanding any other provision of this Contract, Buyer will make no payments under this Section for finished goods, services, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in Buyer's delivery schedules or any undelivered goods that are in Seller's standard stock or that are readily marketable. Further, any payments made under this Section will not exceed the aggregate price payable by Buyer for finished goods or services that would have been produced or performed by Seller under Buyer's delivery schedules outstanding at the date of termination. Except as expressly provided in this Section, Buyer will not be liable for and will not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, overhead, interest on claims, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges from termination of this Contract. The payment specified in this Section is the Seller's sole remedy for termination of this Contract under this Section.

#### **28. No Waiver**

The failure of either party at any time to require performance by the other party of any provision of this Contract will in no way affect the right to require such performance at any time thereafter, nor will the waiver of either party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision.

#### **29. Non-Assignment**

Under no circumstances may Seller transfer, assign or delegate, in whole or in part, any of its rights or obligations under this Contract (including, without limitation, any right of payment), whether directly or indirectly, by merger, acquisition or contribution to a joint venture, without Buyer's prior written consent.

#### **30. Nature of the Relationship of Parties**

Seller and Buyer are independent contracting parties and nothing in this Contract will make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

#### **31. Severability**

If any term of this Contract is invalid or unenforceable under applicable law or regulation, such term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such applicable law or regulation, and the remaining provisions of this Contract will remain in full force and effect.