

Weld-Seam, Inc. Terms and Conditions of Sale

- 1. ACCEPTANCE.** Any order for the purchase of products or services from Weld-Seam, Inc. ("Seller") shall be subject to the terms and conditions set forth herein. There are no understandings or agreements other than as set forth herein and on the face hereof, and no additions, deletions, or modifications of these terms shall be binding upon the parties unless agreed upon in writing and signed by an officer of Seller. Buyer understands and agrees that these terms and conditions shall apply to all purchase orders placed at any time by Buyer. Seller reserves the right to amend these terms and conditions from time to time.
- 2. QUOTATIONS.** Unless otherwise specifically stated in a quotation, quotations are only valid in writing for thirty (30) days from the date of the quotation and are subject to change or withdrawal without prior notice to Buyer. Quotations are made subject to approval by Seller of Buyer's credit. Seller shall have no obligation to sell or deliver products or services covered by Seller's quotation unless and until Seller issues an order acknowledgement form or upon the shipment of products or commencement of work by Seller.
- 3. TITLE, RISK OF LOSS, PRICES.** Terms of delivery are F.O.B. point of shipment. Risk of loss and title shall pass to Buyer upon delivery of the products to the carrier or Buyer at Seller's facility, as the case may be. Unless specifically otherwise set forth, prices do not include the cost of freight, which is for Buyer's account, or cost of charges for such costs and/or charges in addition to the price(s) of the products supplied hereunder, and Buyer shall be obligated to pay such charges and costs on the same terms as those which apply to payment of the price(s) hereunder.
- 4. TERMS OF PAYMENT.** Upon credit approval, terms of payment are net thirty (30) days from the invoice date, in U.S. dollars, unless otherwise agreed in writing by an officer of Seller. A finance charge of the lesser of 1.5% per month (18% APR) or the highest rate permitted by law will be added to all past due accounts. Accounts with a balance over ninety (90) days past due will be sent for collection. Buyer shall be responsible for and shall pay for all collection costs, including without limitation court costs and attorneys' fees. Collection costs, including attorneys' fees, shall be added to Buyer's account and shall become part of Buyer's outstanding indebtedness to Seller.
- 5. REMEDIES.** If Buyer fails to pay when due any amount on any invoice issued in connection with this order, fails to pay when due any amount(s) owing to Seller under any other contract or instrument, is in breach of any of Buyer's obligations to Seller under this or any other contract with Seller, or if the financial condition of Buyer shall become impaired or unsatisfactory to Seller, Seller reserves the right, at Seller's option, to cancel the order without liability to Seller, suspend work on the order and/or future orders and/or withhold delivery of all or part of the products, in all cases without prejudice to any legal or equitable remedy, until past due payments are made and satisfactory assurance of payment is received. Buyer agrees to pay Seller all costs of collection, including without limitation, attorney's fees. All amounts not paid when due shall bear interest at the lesser of 18% per annum or at the highest rate permitted by law. Seller retains a security interest in all goods delivered under this order to secure payment of amounts due in respect thereof. Seller shall, in addition to the rights and remedies herein set forth, be entitled to all rights and remedies provided for by the Uniform Commercial Code and other applicable laws as from time to time amended and at equity.
- 6. DELIVERY.** Dates of delivery are determined from the date of receipt by Buyer of Seller's written order acknowledgment and are estimates of approximate dates of delivery, not a guarantee of a delivery date. Seller is not responsible for delays in delivery resulting from causes beyond Seller's reasonable control. Seller's time for delivery shall be extended by the time required to eliminate such cause for delay. Delivery to Buyer's designated carrier or common carrier F.O.B. point of shipment shall constitute delivery to Buyer.
- 7. CANCELLATION.** Seller may cancel any purchase order or release thereunder by providing at least thirty (30) days' written notice to Buyer. Once Seller has either accepted a purchase order or has begun taking actions with respect to such purchase order, Buyer cannot cancel or modify such purchase order in whole or in part except with Seller's consent in writing. In such event, Buyer shall be liable for cancellation or modification charges, which shall include a price adjustment based on the quantity of Products actually delivered, and all costs, direct and indirect, incurred and committed for the order or in connection with the modification, as applicable, together with a reasonable allowance for prorated expenses and anticipated profits. In the event of termination, Buyer shall be liable for a minimum termination charge of ten percent (10%) of the dollar amount of sales terminated.
- 8. INSPECTION; RETURN.** Notification of order quantity discrepancies must be made within forty-eight (48) hours of delivery. Buyer agrees to inspect, test, and accept or reject product(s) delivered by or for Seller within ten (10) days after delivery thereof, and all product(s) delivered shall be deemed accepted and to conform to contract requirements unless rejection is made or specific objection or notice of non-conformity is given in writing within such ten (10) day period. Any freight damage must be noted on bill of lading at time of delivery and promptly reported to Seller at time of delivery. If freight damage occurs all packing materials must be saved. All returns require authorization by Seller prior to return.
- 9. EXPRESS WARRANTY, LIMITATION, DISCLAIMER AND LIMITATION OF LIABILITY.** Seller warrants that at the time of shipment that products manufactured or fabricated by Seller and supplied hereunder shall conform to agreed specifications for such products and shall be free from substantial defects in material and workmanship. If any products covered by this warranty are determined to be nonconforming or defective and Buyer notifies Seller of such nonconformity or defect within **thirty (30) days after** shipment, then Seller shall, as Seller's sole and exclusive liability and Buyer's sole and exclusive remedy, at Seller's option, repair or replace such products or refund to Buyer so much of the purchase price as is allocable to the defective or nonconforming products. Examination and repair or replacement of such products will be effected, at Seller's option, either on location or at Seller's facilities. The freight charges to ship and return the products to Seller's facilities for inspection or Seller's travel expenses to inspect the products on location shall be prepaid by Buyer. If, after inspection, the products are determined by Seller to conform to Seller's specifications and to be free from defects in material and workmanship, then Buyer shall be responsible for and shall pay for all return shipping costs, as well as for Seller's expenses and service time expended on and off location, including transportation fees. If the products fail to conform to Seller's warranty hereunder, then Seller shall pay for reasonable shipping or transportation costs within the continental United States associated with the repair or replacement of the warranted products, as determined by Seller.

Seller's warranty applies only to products manufactured or fabricated by Seller. Parts or components not manufactured or fabricated by Seller are specifically excluded from Seller's warranty. Normal wear and tear and damages or defects caused by or resulting from Buyer's specifications of materials, Buyer's design, abuse, misuse, negligence, modification, improper installation or accident are also specifically excluded from Seller's warranty.

EXCEPT AS SET FORTH HEREIN, SUPPLIER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) WITH RESPECT TO THE PRODUCTS (OR SERVICES).

SELLER SHALL NOT BE LIABLE, AND BUYER WAIVES ALL CLAIMS AGAINST SELLER, FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. SELLER WILL NOT BE LIABLE TO BUYER FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE. IN NO EVENT WILL SELLER'S LIABILITY UNDER THESE TERMS AND CONDITIONS OR IN CONNECTION WITH THE SALE OF PRODUCTS OR SERVICES BY SELLER EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE.
- 10. ASSUMPTION OF RISK.** Buyer expressly assumes all risk of patent infringement by reason of its use of product(s) provided hereunder in combination with other material, or in operation of any process. All use and applications made of the products are solely at Buyer's risk, and Buyer assumes all risk and liability resulting from the use of the product(s) delivered hereunder, whether used singly or in combination with other products.
- 11. PATENT INFRINGEMENT.** Buyer shall, in respect of goods manufactured by Seller in accordance with designs, formulas, or processes supplied, determined or requested by Buyer, hold harmless and defend Seller, at Buyer's expense, and pay any judgment awarded in any suit brought against Seller for damages of any kind arising or alleged to arise from the manufacture, sale, or use of the goods, attributable, or alleged to be attributable in whole or in part to such designs, formulas, or processes, including, without limitation of the foregoing, suits for breach of warranty, negligence or infringement of any letters patent (whether of the United States or any other government), provided Seller promptly notifies Buyer in writing of any such suit and tenders the defense thereof to Buyer. Seller is entitled to be represented in any such suit at its own expense.
- 12. TAXES.** Any tax imposed by federal, state, or other governmental authority on the sale of the merchandise and service shall be paid by Buyer in addition to the purchase price.
- 13. FORCE MAJEURE.** Seller shall not be responsible for failure to perform in a timely manner when its failure results from events beyond its reasonable control, including (but not limited to) acts of God, earthquakes, fire, flood, washouts, destruction of facilities, epidemics, acts of war whether declared or undeclared, blockades, insurrections, riots, strikes, and lockouts.
- 14. LIMITATIONS OF ACTION.** Any action for breach of contract or any other cause of action arising out of Seller's acceptance of Buyer's orders and/or goods sold by Seller to Buyer must be commenced by Buyer within one (1) year of delivery of the products in question.
- 12. GOVERNING LAW.** These terms and conditions shall be construed in accordance with the laws of the State of Illinois. Any action or proceeding shall be subject to the exclusive jurisdiction of the state and federal courts of Cook County, Illinois and Buyer agrees to be subject to and accepts such jurisdiction.
- 13. ASSIGNABILITY.** Buyer may not assign this order or any contract resulting from this order without Seller's prior written consent.
- 14. WAIVER AND MODIFICATION.** No waiver or modification of these terms and conditions shall be valid unless made in writing and signed by an officer of Seller.
- 15. ENTIRE AGREEMENT.** These terms and conditions comprise the entire agreement between Buyer and Seller as to all sales and transactions. Headings and titles are for convenience purposes only and are not intended to restrict or limit the substance of any paragraph or subsection. No other terms and conditions shall apply. Any terms and conditions set forth in any document or communication of Buyer which is inconsistent with or in addition to the terms set forth herein shall be null and void.