

Terms of Sale

- 1. PURCHASE DOCUMENTS.** The Terms and Conditions of this contract shall apply to sales hereunder and may not be expressly referred to in each purchase order, sale acknowledgement, invoice or other document of purchase or delivery issued by seller or buyer.
- 2. TERMS.** Buyer agrees to pay for the products according to the Seller's payment terms. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. All past due amounts are subject to service charges at the rate agreed upon when credit application was submitted. In the event of default requiring collection, the applicant agrees to pay, in addition to the delinquent amount and finance charges thereon, collection and/or attorney fees including travel and incidentals for BWC personnel required for court appearances.
- 3. REMEDIES OF SELLER.** Upon default by Buyer, Buyer agrees to reimburse Seller all attorney fees and court costs incurred by Seller in connection therewith. Buyer agrees that any of the following shall constitute an event of default which shall enable Seller, at its option, to cancel any unexecuted portion of this order or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein (b) any failure of Buyer to give required notice (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt; (d) the death, incompetence, dissolution or termination of existence of Buyer; (e) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Seller or (f) if Seller, in good faith, believes that Buyer's prospect of performance under this agreement is impaired. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have by law. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including reasonable attorneys' fees, applicable travel and expenses will be added to the balance due and Buyer shall pay all such charges
- 4. DELIVERY.** Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no backcharge for loss or damage due to delay or inability to delivery, whether or not such loss or damage was made known to Seller, including, but not limited to liability for Seller's non-beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.
- 5. INSPECTION AND REJECTION.** Buyer agrees to inspect the product supplied hereunder immediately after delivery and give notice in writing of any claim within Seven (7) days of delivery. Failure to give notice in writing as aforesaid within the specified time constitutes an unqualified acceptance of the Product and a waiver of all claims with respect thereto. Upon receipt of written notification of a claim, Seller, at its discretion, will approve the return requested and issue a Return Authorization Number. All return requests must be accompanied by Return Material Authorization Number and such Return Material Authorization Number must be clearly written on the package or box exterior. Seller, at its own discretion, may replace the Product or issue a credit for material returned.



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- 6. LIABILITY.** Upon acceptance by Buyer's carrier or upon delivery to Buyer's premises, whichever comes first, buyer assumes all responsibility and liability for loss and damage resulting from the handling, storage or use of the Product. Seller's liability with respect to the Product and under this contract shall be limited to the purchase price of the product supplied hereunder in respect of which damages are claimed. Seller shall in no event be liable for any consequential, incidental, or other damages.
- 7. FORCE MAJEURE.** Deliveries or acceptance of the Product may be delayed or suspended by Seller or Buyer in the advent of Act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel, power raw material, labor containers or transportation, facilities, governmental laws, regulations, order or action, breakage or failure of machinery or apparatus, national defense requirements or any other event beyond the reasonable control of such party or in the event of labor trouble, strike, lockout or injunction (whether or not such labor event is within the reasonable control of such party), any of which events prevent the manufacture, shipment or acceptance of a shipment of the product or of a material upon which the manufacture of the product is dependent. If, because of any such event, Seller is unable to supply part or total demand of the product or if the Buyer, because of any such event, is unable to accept part or total of quantity contracted for, the affected party shall be exempted to such extent from its obligations hereunder with respect to the particular delivery involved upon giving prompt notice of such event to the other party. The other party shall be likewise exempted from its corresponding obligations, but this contract shall otherwise remain unaffected.
- 8. BUYER'S CREDIT.** Seller reserves the right, among other remedies, either to terminate this contract or to suspend further deliveries under it in the event Buyer fails to pay for any one shipment when payment is due. Should Buyer's credit standing become unsatisfactory to Seller, cash payments or satisfactory security may be required by Seller for future deliveries and for goods theretofore delivered.
- 9. WARRANTY.** The buyer's sole and exclusive warranty, if any, is that provided by the product's manufacturer. Seller makes no expressed or implied warranties, seller hereby disclaims all expressed or implied warranties, whether implied by operation of law or otherwise, including without limitation, all implied warranties of merchantability and fitness or fitness for a particular purpose, under no circumstances, and in no event, will seller be liable for personal injury or property damage or any other loss, damage, cost of repair, or incidental, punitive, special consequential, or liquidated damages of any kind, whether based upon warranty, contract, strict liability, negligence or any other cause of action arising in connection with the design, manufacture, sale, transportation, installation, use or repair of products sold by seller, buyer hereby acknowledges and agrees that under no circumstances, and in no event, shall seller's liability, if any, exceed the net sales price of the defective product(s); no additional allowance shall be made for the labor or expense of repairing or replacing. Defective products or workmanship or damage resulting from the same. Except as expressly set forth in this paragraph, all products and/or services provided by seller and its employees and agents are provided by seller and its employees and agents are provided "as is", "where is" and "with all faults".
- 10. RECOMMENDATIONS BY SELLER.** Buyer acknowledges that Seller does not make and specifically negates, renounces and disclaims any representations, warranties and/or guaranties of any kind or character,



Nadcap - Welding
AS9100 / ISO 9001:2000
Quality Management Certified



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expressed or implied, with to (i) the products sold, their use, design, application or operation, their merchantability, their physical condition or their fitness for a particular purpose, (ii) the maintenance or other expenses to be incurred in connection with products, (iii) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by Seller and/or its agents, suppliers and employees or (iv) the accuracy or reliability of any information, designs or documents furnished to Buyer. Seller neither assumes, nor authorizes any person to assume for it, any other obligation in connection with the sale of its products and/or rendering of its services. Any recommendations made by Seller concerning the use, design, application or operation of the products shall not be construed as a representations or warranties, expressed or implied. Failure by Seller to make recommendations or give advice to Buyer shall not impose any liability upon Seller

- 11. TAXES.** The amount of any sales, excise or other taxes, if any, applicable to the products shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the taxing authorities. Any taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sales purchase delivery, storage, processing, use or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to Seller upon demand.
- 12. CANCELLATION.** Cancellation maybe subject to charges up to the full amount of the accepted purchase order. Cancellation request must be made in writing and submitted to BWC Sales personnel. Buyer will be notified if any charges incurred and invoice will be issued.



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