

CALDWELL MANUFACTURING - Terms and Conditions of Sale

THE TERMS AND CONDITIONS OF SALE LISTED BELOW ARE EXCLUSIVE AND IN LIEU OF ALL OTHER TERMS AND CONDITIONS APPEARING ON PURCHASER'S PURCHASE ORDER OR ELSEWHERE AND APPLY TO ALL QUOTATIONS MADE AND ORDERS ACCEPTED BY CALDWELL MANUFACTURING NORTH AMERICA LLC, (HEREINAFTER THE "SELLER") UNLESS SPECIFICALLY STATED TO THE CONTRARY ON THE FACE OF SELLER'S SALES ORDER, QUOTATION OR ACKNOWLEDGMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS DOCUMENT OR ANY OF PURCHASER'S FORMS, THIS SALE IS EXPRESSLY CONDITIONED ON THE TERMS AND CONDITIONS SET FORTH IN THIS DOCUMENT AND NO OTHERS. WE REJECT ANY OFFER EMBODYING CONTRARY TERMS AND CONDITIONS AND, IN SUCH CASE, THESE TERMS AND CONDITIONS SHALL CONSTITUTE A COUNTER-OFFER BY SELLER.

In the event that Seller does not enforce or require strict performance of any term or condition hereof, or of any other document, instrument, or other agreement relating to goods sold, such lack of enforcement or requirement of strict performance will not waive, affect or diminish any right of Seller to enforce or require strict performance of such term or condition in the future.

Seller reserves the right to decline an order, in whole or in part, including (but not limited to) when the type or quantity of goods or credit worthiness of the Purchaser is not satisfactory to the Seller in Seller's sole and absolute discretion.

- Prices.** All prices are subject to change without notice and are not guaranteed. All shipments will be made at prices in effect at the time of order acceptance. Possession of Seller's price list does not constitute an agreement to sell. We reserve the right to correct clerical, stenographic and other obvious errors at any time. Additional charges, surcharges, minimum order volumes and other fees may be applicable.
- Taxes.** Prices do not include any taxes, now or hereafter enacted, applicable to the goods sold on this transaction. All applicable sales, use, excise or other taxes levied by federal, state or local authorities will be added by Seller to the sales price where Seller invoices the same to comply with law, and will be paid by Purchaser unless otherwise agreed in writing or Purchaser provides Seller with a proper tax exemption certificate. Seller shall be entitled to any duty drawback claims applicable to export sales of Products made by Purchaser and upon request and where applicable, Purchaser will provide to U.S. Customs Form 7543 entitled "Certificate of Delivery" properly executed.
- Terms.** Invoices will be dated as of the date of the shipment, and unless otherwise agreed, are payable net 30 days after the invoice date. Late charges at the rate of the lower of 1.5% per month or the highest rate permitted by law may be charged on past due accounts. In the event that Seller shall bring any action upon any default in performance or observance of any covenant herein, Seller shall be entitled to recover reasonable attorneys' fees in addition to any and all other remedies available to it. Where Seller has extended credit to Purchaser, the amount of credit or terms of payment may be changed, or credit withdrawn by Seller at any time. Seller reserves the right to withhold shipment on all past due accounts and with respect to accounts which Seller deems not creditworthy. If the goods are delivered in installments, Purchaser shall pay separately for each installment. Payment shall be made for the goods without regard to whether Purchaser has made or may make any inspection of the goods. If shipments are delayed by Purchaser, payments are due from the date when Seller is prepared to make shipments. Goods held for Purchaser are at Purchaser's risk and expense.
- Place of Delivery.** All shipments are FOB Origin. Title in, and risk of loss or damage to a Product, shall pass to the Purchaser in accordance with FOB Origin Terms. All orders qualifying for freight allowance will be shipped via transportation methods of Seller's choice, excluding Alaska and Hawaii. Any freight charges for special handling or additional freight charges for shipments to Alaska and Hawaii are the responsibility of Purchaser.
Alaska and Hawaii. All shipments are FOB Origin. Title in, and risk of loss or damage to a Product, shall pass to the Purchaser in accordance with FOB Origin Terms. Shipments will be made to the Purchaser's designated forwarding agent or representative.
- Force Majeure.** Shipping dates are approximate and are based upon prompt receipt of all necessary information. Seller will use reasonable efforts to deliver Products on or before the estimated delivery date. Seller will notify Purchaser if the estimated delivery date(s) cannot be honored. Seller will not be responsible for any delay in or impairment of performance or non-performance occasioned by any cause beyond its reasonable control, including, but not limited to, strikes, lockouts or labor disruption, delays of vendors or carriers, fire, wars, riots or embargo delays government or regulatory actions shortages of transportation equipment, fuel, labor or materials, severe weather conditions, or otherwise. Any such delays shall affect a corresponding extension of Seller's performance dates.
- Acceptance of Product.** Acceptance shall be presumed conclusively to have occurred seven (7) days following delivery of product to Purchaser, unless Purchaser has accepted the product prior to that date. Purchaser must give written notice of rejection for any products that do not conform to specifications within seven (7) days of delivery to Purchaser. All Products shortages must be reported to Seller within seven (7) days of date of delivery to Purchaser.
- Return of Goods.** Purchaser shall not return goods except with written authorization of Seller.
- Risk of Loss.** Delivery of material to a common carrier shall constitute delivery thereof, to Purchaser, and title and risk of loss shall pass to Purchaser at such time. Any loss or damage thereafter shall not relieve Purchaser from any obligation hereunder. Unless otherwise stated, Purchaser shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination. Claims for damaged or lost goods in transit shall be filed by Purchaser directly with the carrier. Shipping schedules are computed from time of entry of order to the specific manufacturing location. Seller shall not be liable for damages of any kind resulting from loss of use or lost profit due to failure to meet shipping schedules. Section 2-510 of the Uniform Commercial Code shall have no effect.
- Right to Assurance.** Whenever Seller, in good faith, has reason to question the Purchaser's intent to perform, Seller may demand that Purchaser give a written assurance of its intent to perform. In the event that a demand is made and no assurance is given within three (3) days after notice thereof, the Seller may treat this failure as an anticipatory repudiation of the contract.
- Right to Stop Delivery.** Irrespective of whether the goods are delivered directly to the Purchaser or to a customer of Purchaser or to some other third party herein designated by Purchaser, Seller shall have the right to stop delivery of the goods by a bailee or other third party transporting the same if Purchaser becomes insolvent, repudiates or fails to make a payment due to withhold or reclaim the goods under the provisions of the Uniform Commercial Code.

- Seller's Right to Cure.** If goods are tendered which do not fully comply with the provisions of this contract, and said goods are rejected by Purchaser, Seller shall have the right to cure within a reasonable time after notice thereof by substituting a conforming tender whether or not the time for performance has passed. Unless otherwise specified in writing, any variation over or under in quantities shipped not exceeding ten percent (10%) of the quantities ordered shall constitute compliance with the order and the unit price will continue to apply.

- Changes.** Any notice or instruction from the Purchaser received subsequent to Seller's acknowledgement, including supplementary information contained in a confirming purchase order, which has the effect of changing the specifications, scope of work, or other terms, will be effective only upon an appropriate adjustment in the price and/or delivery date, and acceptance of any change by Seller in writing.

- Termination and cancellation.** Purchaser may send Seller a termination, cancellation, hold, or similar notice applicable to any unshipped portion of the goods only upon the following conditions:

- That any hold, stop work, or similar notice shall be treated as a termination notice if and when, in the opinion of Seller, circumstances warrant such treatment;
- That Purchaser takes and pays for, at the contract price, all items ready for shipment, as well as items within thirty (30) days of completion, on the date of receipt by Seller of a termination notice, or on the date of receipt by Seller of a hold, stop work or similar notice which is subsequently treated as a termination notice;
- That Purchaser reimburses Seller for all costs, direct and indirect, incurred by Seller on the balance of the order to the date of receipt of such notice;
- That Seller will be under no further obligation with respect to goods not furnished by the time the termination order is received; and
- No orders or contracts for special products may be terminated or canceled.

If in Seller's judgment, the Purchaser's financial condition does not justify the terms of payment specified, Seller may cancel this contract unless Purchaser shall immediately pay for all goods which have been delivered and pay in advance for all goods prior to delivery.

- Remedies.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT WILL SELLER BE LIABLE FOR ANY PUNITIVE, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OF ANY KIND WHATSOEVER IN CONNECTION WITH THIS CONTRACT. IN NO EVENT WILL SELLER HAVE ANY LIABILITY IN CONNECTION WITH ANY PRODUCT SOLD HEREUNDER IN EXCESS OF THE PURCHASE PRICE FOR SUCH PRODUCT.

- Waiver.** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

- Time for Bringing Action.** Any and all actions brought by Purchaser for a breach of or otherwise in connection with this contract must be commenced within one (1) year after the cause of action has accrued.

- Assignment - Delegation.** No right, obligation or interest in this contract shall be assigned by Purchaser without the written permission of Seller.

- Choice of Law.** This agreement shall be governed exclusively by the laws of the State of New York, U.S.A. (without regard to the laws that might be applicable under principles of conflicts of law, and without regard to the jurisdiction in which any action or special proceedings may be instituted) as to all matters, including but not limited to matters of jurisdiction, validity, property rights, construction, effect and performance. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement. Purchaser hereby consents to the jurisdiction of the federal and state courts located in the State of New York in connection with the enforcement of any arbitration decision rendered concerning any dispute that may arise hereunder, and Purchaser hereby waives any objections it may have to the jurisdiction or venue of the New York courts.

- Interpretation.** This writing is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used herein.

- Modifications.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SALE OF THE GOODS DESCRIBED ON THE SALES ORDER, AND NO ADDITION TO OR MODIFICATION OF ANY PROVISION OF THIS CONTRACT SHALL BE BINDING UPON SELLER UNLESS MADE IN WRITING AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF SELLER LOCATED AT SELLER'S APPROPRIATE ORDER ENTRY LOCATION. In the event a master contract is or has been executed by the Seller and the Purchaser, the terms of the Master Contract shall supplement these terms and conditions and shall govern where these terms are inconsistent therewith.

- Product Application Indemnity.** Purchaser agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract, against Purchaser and/or Seller, including Attorney's fees, expenses and costs, arising out of the application of Seller's products to Purchaser's designs and/or products, or Seller's assistance in the application of Seller's products.

- Product Warranty.** Seller warrants the goods to be free from defects in materials and workmanship under normal use and service. Seller's obligation under this warranty shall be limited to repairing or replacing any defective or nonconforming part, or, at Seller's option, refunding the purchase price. Seller's obligation is further limited to include only those goods which are demonstrated to be defective or nonconforming within six (6) months after delivery to the original purchaser. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE. No person, firm or corporation is authorized to assume for Seller any other liability in connection with the sale of these goods. This warranty is expressly and exclusively for the benefit of the Purchaser. This warranty is not assignable to any third party. Any samples provided are not to be considered warranties. This warranty does not cover (a) normal wear or discoloration on finishes (such as brass finishes or brass-plated finishes); (b) any product that has been improperly installed, abused, misused, worn out, altered, neglected, tampered with or used for a purpose other than that for which it was intended or in a manner inconsistent with the instructions regarding its use; and (c) any corrosion-related damage if the product is used in corrosive environments.

Although Seller has used reasonable efforts to accurately illustrate and describe the products in its catalogues, literature, and websites, such illustrations and descriptions are for the sole purpose of product identification and do not express or imply a warranty affirmation of fact of any kind or a warranty or affirmation of fact that the products will conform to their respective illustrations or descriptions. Seller expressly disclaims any warranty or affirmation of fact, express or implied, other than as set forth in the warranty statement above.

- Patents.** Purchaser shall indemnify, defend and hold Seller harmless from and against all claims, suits, judgments, costs, losses, expenses, (including Attorneys' fees) and liabilities from infringement (actual or claimed) of patents or trademarks arising from compliance with Purchaser's specifications or instructions.

- Non-Waiver of Default and Collection Rights.** In the event of any default by Purchaser, Seller may invoke any remedy provided by law or by the terms herein stated, and may decline to make further shipments. If Seller elects to continue to make shipments, Seller's actions shall not constitute a waiver of any default by Purchaser or in any way affect Seller's legal remedies for any such default. In the event Seller resorts to a third party or to litigation in order to collect amounts due to Seller, Purchaser agrees to pay costs of collection for amount owed to Seller, including, but not limited to, Attorney's fees, court costs, and interest in the amount of 1.5% per month from the date the amount is due.

- Affidavits and Certificates.** No certificates of compliance, conformance, or chemical analysis shall be provided unless Purchaser's detailed requirements are stated on the face of the Purchaser's order. Seller reserves the right to charge an additional fee for any such certificate.

- Tools and Dies.** Unless otherwise provided herein, even though fitting-up charges may be specified, all tools and dies, including, without limitation, fixtures, gauges and assembly equipment manufactured for this contract, will be Seller's property, but will be retained by Seller for Purchaser's non-exclusive use; provided, however, that Seller may dispose of such tools and dies if Purchaser does not order from Seller goods for manufacture therefrom within any one (1) year period. If any tools and dies manufactured by Seller are to become Purchaser's property, it must be specifically so provided in writing by seller. Any such tools and dies, or any materials, tools, dies and other equipment furnished by Purchaser to Seller, shall be at Purchaser's sole risk and expense, and Seller shall not be liable for loss, damage, maintenance, repair or renewal, regardless of cause. If Purchaser desires to withdraw such tools and dies from Seller's plant, and if Seller consents to permit Purchaser to withdraw them, for any reason, Purchaser will first compensate Seller for any cost incurred with respect to them, including, without limitation, design and development costs.

- Legal Compliance.** Purchaser, at all times, shall comply with all applicable federal, state, and local laws and regulations.

- Government Contracts.** Seller will not be bound by the terms of any government contracts to which Purchaser may be a party.

- Severability of Terms.** If any phrase, clause or provision shall be declared void, the validity of any other provisions shall not be affected thereby.

- Release of Information, Confidentiality.** The Purchaser agrees, as does the Seller, to adhere to normal confidentiality and secrecy standards and practices with respect to all information received from each other except information which (a) at the time of its disclosure is in the public domain, (b) after disclosure becomes part of the public domain by publication or otherwise through no fault of the party bound to keep such information confidential, (c) which either the Purchaser or Seller can show was in its possession at the time of disclosure or received by such party after disclosure from the third party who did not require the Purchaser or Seller to hold it in confidence and did not acquire it from the other party under an obligation of secrecy. Upon termination, each party will return all written information and software received under the Agreement from the other. The parties agree to maintain the confidentiality of all such information and take all appropriate measures to do so such as, but no limited to, informing all persons having access to such information of its confidential nature.

- Resolution of Disputes.** Any dispute, controversy or claim arising out of or relating to this order, or the breach, termination, or invalidity thereof shall be finally settled under the American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. The place of arbitration shall be the Rochester, New York, U.S.A. and the law applicable to the arbitration procedure shall be determined by referring to the law in Controlling Law above. The English language shall be used throughout the arbitral proceedings. The parties agree that the award of the arbitrator(s); shall be the sole and exclusive remedy between them regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrator(s); that it shall be made and shall promptly be payable in U.S. dollars free of any tax, deduction or offset; that any costs and attorneys' fees incurred by the prevailing party as determined by the arbitrator(s) incident to the arbitration, shall be included as part of the arbitration award; and that any costs, fees or taxes incident to enforcing the award shall, to the maximum extent permitted by law, be charged against the party resisting such enforcement. The award shall include interest from the date of any damages incurred for breach or other violation of the contract, and from the date of the award until paid in full, at a rate to be fixed by the arbitrator(s).