



Terms and Conditions of Purchase Orders

As of September 20, 2022

The following terms and conditions are a part of each purchase order submitted by Techniweld USA, Inc., and are binding upon Seller.

ACCEPTANCE BY SELLER IS LIMITED TO THE TERMS OF THE PURCHASE ORDER AND THESE TERMS AND CONDITIONS. PURCHASER OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS IN SELLER'S ACCEPTANCE OR ANY OTHER DOCUMENT OR FORM TRANSMITTED ON BEHALF OF SELLER, UNLESS PURCHASER'S WRITTEN CONSENT IS FIRST OBTAINED.

Purchaser's objection to different or additional terms shall not be waived by acceptance of any merchandise or by payment of any invoice. The purchase order is subject to the terms of any written Agreement between Purchaser and Seller in which they have agreed upon terms and conditions that apply to purchases. If there is ever a conflict between a provision of any such written agreement and a provision of these terms and conditions, then the provision of the written agreement shall prevail.

1. Acceptance of a Techniweld USA purchase order, or shipment of product or performance of work in connection therein, constitutes Seller's agreement to all terms and conditions set forth herein. The provisions of these terms and conditions may be modified by Purchaser at any time. Such modifications will be provided to Seller, and shall be binding upon the parties from the date of such provision to Seller.
2. Purchaser may utilize purchase orders in writing, by facsimile, or by electronic transmission, including the electronic data interchange system ("EDI") in accordance with published industry guidelines. Verbal orders will not be valid unless confirmed with a written or electronic purchase order. Purchaser will not assume liability for any product shipped to its facilities, or upon which work has commenced by Seller prior to receipt by Seller of a duly authorized purchase order. Each party shall be responsible for its own costs related to EDI systems and transmissions and shall maintain security procedures sufficient to ensure that EDI transactions are authorized and protected against improper access.
3. In the event Seller is unable to deliver any part of the product called for by any purchase order, by the required delivery date on the purchase order, Seller agrees to notify the Purchaser immediately and will be subject to paying expediting

charges. Such notice will not limit the remedies available to Purchaser or the liability of Seller for nonperformance.

4. Purchaser or Purchaser's agent may refuse delivery or return the product for:
 - a. Shipments that arrive more than three (3) days prior to the required delivery date, unless Purchaser has requested expedite of the product, or shipments that arrive more than three (3) days after the required due date of the purchase order, unless Seller has received written authorization from Purchaser for a later delivery date.
 - b. Shipments of less than or in excess of quantities ordered.
 - c. Products determined by Purchaser to be nonconforming.
 - d. Product which is not as represented or as warranted.
 - e. Shipments which are not in compliance with all quality standards, transportation terms and conditions, packing instructions, and invoicing instructions.
 - f. Product which, for any reason, except payment of applicable duties and tariffs, will not be cleared for entry by U.S. Customs.
 - g. Product which is recalled for any reason.
5. All product delivered under any purchase order shall be subject to inspection and testing by representatives of Purchaser, its customers or agents, and may be rejected and returned to Seller at Seller's cost when found to be defective, or otherwise subject to return as set forth above, at any time prior to resale, or at any time after resale if Purchaser's customer is allowed a refund or credit. If a shipment, or a portion of a shipment, is determined by sampling procedures to include product that is defective or otherwise subject to return as set forth above, the entire shipment or portion may be rejected and returned to Seller at Seller's cost. At the option of the Purchaser in its sole discretion, any rejected or returned product or shipment shall be subject to refund, repair by Purchaser or Seller, or replacement by Seller, at Seller's cost. Payments for product prior to inspection shall not constitute acceptance and Purchaser reserves the right to hold for Seller or return to Seller, at Seller's expense, any rejected product.
6. Seller warrants and agrees to indemnify and defend against all Product Liability Claims. Product Liability Claims includes, but is not limited to, claims asserted against a manufacturer or seller of a product, regardless of the substantive theory

of such claim upon which the claim is asserted, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

7. Seller warrants to Buyer that Product delivered under the Agreement complies with the California Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5, et seq. ("Proposition 65") for sale of the Product in California. Any Product delivered by Seller to Buyer shall contain all warnings required by Proposition 65 for sale of the Product in California, and shall be accompanied by a list prepared by Seller for Buyer identifying all Product contents listed as a carcinogen or reproductive toxicant ("listed chemicals") by the State of California. The Proposition 65 Warranty shall inure to the benefit of the Buyer, Buyer's customers, and the customers, end users, successors, and assigns of Buyer and Buyer's customers.
8. Seller warrants that the merchandise shipped under any purchase order, including packaging and labeling:
 - a. Was produced and processed in strict compliance with all applicable laws, regulations, orders and ordinances of the country of origin and of the United States and any state, or any agency or political subdivision thereof, including without limitation any applicable environmental or hazardous substance laws and regulations;
 - b. Was produced in strict compliance with all applicable requirements of the Federal Fair Labor Standards Act, as amended, and with all applicable regulations and orders of the United States Department of Labor;
 - c. Was produced in strict compliance with all applicable requirements of the National Labor Relations Act and other federal, state and local wage and hour and wage payment laws, and with all applicable regulations and orders issued under any of the foregoing;
 - d. Does not and will not, and will be produced in a manner that does not and will not infringe or violate any intellectual property or other proprietary rights, including without limitation: any patent, trademark, trade name, copyright, trade secret, right of privacy, publicity or moral right, or utilize any manufacturing or administrative process that would infringe or violate

any such right, and Seller has not received any notification of and has no knowledge of any basis upon which a third party could claim or contest the intellectual property in Seller's product;

- e. Is accurately labeled and clearly identified the country of origin;
 - f. Is labeled in accordance with and complies in all respects with any and all applicable federal, state and local laws, regulations, orders and ordinances, including without limitation any applicable rules of the Federal Trade Commission, the Consumer Products Safety Commission, and the Department of Health, Education and Welfare, including warning and instruction label requirements, and the requirements of each of the following Acts to which it may be subject: The Fair Packaging and Labeling Act, the Textile Fiber Products Identification Act, the Federal Hazardous Substances Act and the Flammable Fabrics Act, the California Proposition 65 Act; and
 - g. Is processed, packed and shipped in accordance with requirements related to the Customs-Trade Partnership Against Terrorism (C-TPAT), as well as applicable US Customs rules and regulations.
9. Seller agrees to defend (with counsel acceptable to Purchaser), indemnify and save harmless the Purchaser from any and all claims, suits, liabilities, damages, losses or expenses, including attorneys' fees and costs, asserted against or incurred by Purchaser by reason of, or arising out of or occurring in connection with (a) any breach or alleged breach of any of these terms and conditions, the provisions of any purchase order, or the applicable provisions of Techniweld USA's most current shipping policies, or any representations or warranties of Seller made herein or in any purchase order or otherwise, (b) any act or omission of Seller, or the agents, partners or subcontractors of Seller, in the furnishing of goods or in the performance of work under any purchase order, or (c) the possession of use of Seller's product by customers of Purchaser or others. Seller shall not, without the prior written consent of the Purchaser, settle or compromise any action, suit, proceeding or claim in which Purchaser is named as a party, or consent to the entry of any judgment in any such matter. All indemnification obligations of Seller hereunder shall survive termination or cancellation of any purchase order. Seller agrees that Purchaser may maintain records of Seller's compliance with the representations and warranties of Seller made in any purchase order or otherwise that Purchaser may at any time, upon notice to Seller, undertake inspection of Seller's facilities in order to determine such

compliance. Seller agrees to maintain insurance in full force and effect to fulfill Seller's indemnification obligations hereunder, and will furnish Purchaser with certificates of insurance evidencing coverage for Commercial General Liability Insurance including Contractual and Products Liability, on an occurrence basis, with at least \$1,000,000 combined single limit per occurrence, and in the aggregate, and including Supplier's Endorsement naming Techniweld USA, Inc. as an additional insured. By requiring insurance herein, Purchaser does not represent that coverage and limits will be adequate to protect Seller and such coverage and limits shall not be deemed as a limitation on Seller's liability hereunder.

10. Seller may have access to certain commercially valuable or otherwise proprietary or confidential information relating to the operations, products, sales and business of Purchaser and its affiliated and related companies or third parties including, without limitation, inventions, improvements, trade secrets, processes, data and know-how, techniques, marketing plans, strategies, forecasts, unpublished copyrightable material, customer lists, personal information with respect to employees, customers or others, sources of supply, prospects or projections, manufacturing techniques, work in process or any other proprietary or confidential matter. Confidential information can be contained in any medium, including verbal form, graphic form, machine readable or electronic form, or written or other tangible form, whether or not marked as Confidential. Confidential information shall exclude any information that:
 - a. is or becomes part of the public domain through no wrongful act or failure to act on the part of the Seller;
 - b. that is rightfully received by seller from a third party in possession of it who was not subject to any restrictions on the disclosure of such information;
 - c. is approved in writing for release by Purchaser, or
 - d. which has been independently developed by Seller (as evidenced by its written records) without violation of these terms and conditions or any rights of Purchaser hereto.

In any dispute between the parties with respect to the foregoing exclusions, the burden of proof shall be on the party to whom such confidential information was disclosed and such proof shall be clear and convincing evidence. Seller agrees that, except as directed by Purchaser, Seller will not at any time, use for Seller's benefit or disclose to any person for any purpose of any confidential information,

or permit any person to use, examine and/or make copies of any documents, files, data or other information sources which contain or are derived from confidential information, whether prepared by Seller or otherwise coming into the Seller's possession or control, without the prior written permission of Purchaser. Seller shall maintain security procedures and practices sufficient to protect the confidentiality of confidential information from unauthorized access, destruction, use, modification or disclosure.

11. Seller represents and warrants that the prices and terms specified in any purchase order are no less favorable to the Purchaser than any prices or terms upon which Seller sells or offers to sell to others goods substantially of the same kind as ordered by Purchaser. If at any time good substantially of the same kinds ordered by Purchaser are sold or offered for sale by Seller to a third party (or to Purchaser or any affiliate of Purchaser's) at a lower price or on terms more favorable than those stated in the purchase order, the prices and terms in the purchase order shall be automatically revised to equal the lowest prices and most favorable terms at which Seller shall have sold or shall have offered such goods and payment shall be made accordingly, or at the option of Purchaser, the product may be returned to Seller, at Seller's cost, for a full refund of the purchase price. In the event Purchaser shall become entitled to such lower prices, Seller shall notify Purchaser of such lower prices, and if Purchaser shall have made payment at any price in excess thereof, Seller shall promptly refund the difference in price to Purchaser.

Seller agrees to meet any lower price offered by any competitor of Seller for good substantially of the same kind as ordered by Purchaser or accept cancellation of the purchase order by Purchaser. Unless otherwise provided in the purchase order, prices for domestic shipments include all charges for packaging, boxing, crating and freight, F.O.B. Destination, and prices for international shipments include all charges for packaging, boxing, crating and inland freight, F.O.B. port of export. Purchaser shall have the right to conduct a post-payment review of all payments made to Seller for determining compliance with these terms and conditions. Non-compliance will result in a chargeback or expense offset fee or to provide Purchaser with the more favorable pricing and/or terms.

12. Purchaser reserves the right to cancel all or any part of any purchase order which has not actually been shipped by Seller in the event Purchaser's business is interrupted because of strikes, labor disturbances, lockout, riot, fire, act of God, or the public enemy, or any other cause, whether like or unlike the foregoing, if

beyond the reasonable efforts of the Purchaser to control. Seller's timely performance under any purchase order shall not be excused or deemed to have been made impracticable by reason of any delay or failure to perform by Seller or any agent, subcontractor or supplier of Seller, caused or related to any computer system incompatibility or inability to accurately process date and time data.

13. A waiver of or failure to perform any one or more of the conditions of any purchase order shall not constitute a waiver of or an excuse for nonperformance as to any other part of these terms and conditions or any purchase order.
14. Payment terms will be identified on each purchase order and shall be in accordance with payment terms previously negotiated between Purchaser and Seller. Payment terms will be calculated from the receipt of goods at destination or receipt of invoice, whichever is later. Purchaser reserves the right to offset any amounts claimed by Purchaser against any amounts otherwise due Seller.
15. In any dispute under any purchase order or these terms and conditions, whether or not litigation is commenced, the prevailing party shall be entitled to its costs and expenses incurred, including reasonable attorneys' fees. The rights and remedies herein expressly provided shall be in addition to any other rights and remedies given by law or in equity, including without limitation, injunctive relief and the right of Purchaser to recover all incidental special and consequential and punitive damages. All warranties, representations, and guarantees and indemnities made by Seller herein are in addition to any and all express or implied warranties provided by law and shall survive termination or cancellation of any purchase order.
16. In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency by or against the Seller, including any proceeding under the United States bankruptcy laws, or any bankruptcy, insolvency or receivership laws of any state or any foreign country, or any political subdivision thereof or in the event of the appointment with or without Seller's consent of receiver or an assignee for the benefit of creditors, Purchaser may, at its option, cancel any purchase order as to any undelivered portion of the product.
17. Seller agrees that it will not use any trademark, service mark, or trade name or patent owned or controlled by or licensed by Purchaser or any of its affiliates, or used by Purchaser or its affiliates in connection with any products, lines, departments, or other goods or services of Purchaser or its affiliates, except in connection with product shipped to Purchaser in accordance with a valid purchase order. Seller agrees that all trademarks and trade names of Purchaser

belong to or are licensed to Purchaser and Seller will make no claim of right to use or of ownership, nor will Seller attempt to register any such trademark or name. Seller agrees that product rejected or returned for any reason pursuant to the terms of the purchase order, whether or not such rejection is disputed by Seller, including but not limited to product rejected or returned due to shipment after the delivery date or cancel date specified in the purchase order, will not be resold or otherwise distributed by Seller unless all labels, tags, logos, and other items or characteristics identifying Techniweld USA, or any other trademark, service mark, or trade name owned or controlled by or licensed to Purchaser or its affiliates, or used by Purchaser or its affiliates in connection with any products, lines, departments or other goods or services of Purchaser or its affiliates, have first been removed.

18. Seller agrees that all product shipped under any purchase order may be advertised and sold by Purchaser (or any of Purchaser's affiliates) at any retail facility, or by means of catalogs, the Internet, or any other electronic or other medium.
19. Each purchase order and the rights and obligations of the parties hereunder shall be determined in accordance with the laws of the State of Colorado and shall not be subject to or governed by the U.N. Convention on Contracts for the International Sale of Goods. If litigation arises under any purchase order or these terms and conditions, or as a consequence of any transaction contemplated or resulting from this or either party's performance or breach thereof, jurisdiction and venue of such litigation shall be in the Superior Court for the State of Colorado for Larimer County, or the United States District Court for Larimer County, Colorado, at the option of Purchaser, and Seller hereby consents to such jurisdiction and venue. Any award or judgment of any of said courts may be entered and enforced in any other domestic or foreign court or competent jurisdiction, and shall be awarded full faith and credit.
20. No claim, action or demand arising out of the transactions under any purchase order may be brought by Seller more than one year after the cause of action has occurred.
21. Seller hereby assigns to Purchaser all assignable warranty rights with respect to the product in each purchase order, including without limitation all rights of Seller under warranties of any manufacturer of any of the product or any part or component thereof.
22. Each purchase order is enforceable by Purchaser directly against Seller,

regardless of whether the purchase order was submitted directly to Seller by Purchaser or was submitted to Seller by another party on behalf of Purchaser. No such other party shall have any authority to act for Purchaser, bind Purchaser to any agreements or modifications or otherwise act as an agent for Purchaser. Seller shall not assign or transfer any purchase order, or any interest therein, without the prior written consent of Purchaser, and any attempted assignment made without such consent shall be null and void.

INVOICE AND PACK SLIP REQUIREMENTS:

Seller must submit a separate invoice and pack slip for each PO issued. Invoices submitted with more than one purchase order on them will be rejected. Pack slip must include Techniweld USA SKU's (part numbers). No payments will be made by Purchaser to Seller until and unless payment terms and conditions have been negotiated and agreed to by Seller and Techniweld USA's Supply Chain Manager. Inaccurate invoices and pack slips may be subject to fines including the labor hours required to reconcile these to the purchase order.

TRANSPORTATION TERMS AND CONDITIONS:

- A. Unless otherwise advised, the Shipping Terms on the purchase order will be EXWORKS (Export cleared) or FOB origin and must be adhered to exactly unless permission to deviate is given by Techniweld USA's Logistics Manager, or if there is a written agreement or exception signed by Purchaser on file.
- B. Notwithstanding any agreement to pay freight or other transportation charges, delivery will not be deemed complete and all risk of loss shall remain with Seller until the product has actually been received and accepted by Purchaser or Purchaser's designated agent.
- C. All C.O.D. shipments will be refused.
- D. For all domestic shipments:
 - a. Authorized carrier selection will be made by Techniweld USA's Logistics Manager or authorized agent. Questions regarding shipments should be directed to the Techniweld USA Logistics Manager at the following email: **POconfirmation@TWusa.com**
 - b. Purchaser's requirements regarding shipping policies/pallet sizing/heights shall be strictly adhered to.

- c. In addition to any other remedies available to Purchaser, any deviation from the terms of the purchase order or shipping policies will result in Seller being charged offset charges for freight expenses, handling fees, storage fees and other expenses incurred by Purchaser or Purchaser's refusal agent, and may result in the sale of any rejected and unclaimed product to a salvage agent for recoupment of expenses.
 - d. Product must be packed, shipped and described on bills of lading in accordance with applicable freight tariffs, and shipment must be without declared value EXCEPT when shipping via Techniweld USA's small package carrier where the shipper declares value and also prepays for the carrier insurance coverage fees. Any deviations will result in offset charges and handling fees being charged to Seller.
 - e. Prepaid shipments: All shipments to Purchaser via air and surface carrier must be sent "Collect" or "Consignee Billing" except U.S. Mail shipments. Purchaser will not reimburse Seller for "prepaid" shipments.
 - f. Standard domestic routing for shipping will be based on weight: A consolidated shipment under 150 lbs. will be shipped via UPS Ground and for shipments over 150 lbs. Seller should email Logistics at **POconfirmation@TWusa.com** for carrier selection.
- E. For all international shipments:
- a. Authorized freight forwarder selection should be made by Techniweld USA's Logistics Manager. For all international shipping related questions, contact Techniweld USA's Logistics Manager at **imports@twusa.com**
 - b. Documentation: The supplier must send the required International documents for Exports at the time of the shipment. This will include a commercial invoice with detailed descriptions, values, export classification and country of origin.
 - c. In addition to any other remedies available to Purchaser, any deviation from the terms of the purchase order or shipping instructions will result in Seller being charged offset charges for freight expenses, handling fees, storage fees, and other expenses incurred by Purchaser. If a purchase order provides for shipment via ocean and Seller ships the product via air to meet the delivery date, Seller shall reduce Purchaser's first cost of the product prior to shipment by an amount at least equal to the difference in the cost of shipment via air over the cost of shipment via ocean.