



PHIL's Terms and Conditions of Sale

PHIL's sales are limited to the terms and conditions on both sides of this document. Note: Our Terms and Conditions of Sale may vary from your conditions of purchase. We cannot be bound by such additional or different terms or conditions of purchase unless we expressly agree to additional or different terms in writing. Otherwise, you agree that our terms and conditions of sale shall become the contract between us. PHIL's quotation is made conditional on your assent to the terms and conditions of sale on both sides hereof, and any goods or services furnished hereunder are furnished on that condition. These terms constitute the complete agreement between us with respect to your order, and the goods or services received by you are deemed to be delivered upon the terms and conditions contained on both sides of this document. Failure of either party to insist upon strict performance of any of the terms and conditions on both sides hereof shall not constitute a waiver of any such rights or remedies nor of any other rights or remedies under this contract. In addition to the rights and remedies reserved herein, we also shall have all rights, and remedies provided by law.

Arbitration: The parties agree to binding arbitration of any controversy or claim arising out of or relating to their purchase agreement, which shall be settled exclusively in accordance with the rules of the American Arbitration Association. Any arbitration proceedings shall take place in Peoria, Illinois and with punitive damages excluded from arbitration judgment. The parties knowingly waive their right to jury trial.

Interpretation, Jurisdiction: This agreement shall be governed by and construed in accordance with the laws of the State of Illinois and in the event any judicial proceedings are commenced to enforce, affirm, or reverse any arbitration decree or for any other purpose, the parties consent to venue and jurisdiction in any court of competent jurisdiction located in Peoria County, IL or the United States District Court for the Central District of Illinois, Peoria Division.

1. Price
The prices quoted herein are for immediate acceptance and shipment, and may be changed by us after thirty (30) days without notice. Orders based on our quotation and accepted by us within this thirty (30) day period will be invoiced as quoted, provided you place no restriction on our shipping your order within ninety (90) days from the day of our acceptance. If a delivered price has been quoted, any charges at destination for spotting, switching, handling, storage, and other accessorial services and demurrage shall be borne by you and any increases or decreases in transportation charges shall be added to the quoted price. We reserve the right to correct any obvious errors in specifications or prices, and adjust the prices on any alterations or changes requested or authorized by you after our acceptance of your order.
2. Taxes
Any taxes, (sales, excise, or use) and duties where applicable which, under any existing or future law, we may be required to pay or collect now or in the future with respect to the sale, purchase, delivery, storage, processing, use, consumption, or transportation of any of the goods or services covered hereunder shall, if not separately shown herein, be added as a separate item to the quoted price and shall be paid by you to us on demand. The foregoing shall not apply to any taxes, the payment or collection by us is excused by reason of delivery to us by you of valid tax exemption certificates. If prices do not include sales or use taxes, you are liable direct to your local or state governments as the case may be for all local or state taxes that may be applicable, as we are not licensed to collect such taxes.

3. **Payment Terms**

Unless otherwise expressly provided herein, payment shall be net on receipt of invoice, due twenty (20) days from the date of each invoice, without discount. And, without regards to whether material furnished has delivered or held up in transit. Any cash discount, which may be expressly provided herein, applies only to the sale price of goods or services at the shipping point, and does not apply to any charges made for taxes, storage, loading, or transportation. On all past due accounts, interest maybe charged at a rate of one and a half (1 ½%) per month due in advance and added to the invoiced amount at twenty-one (21) days from date of invoice and thirty (30) day monthly periods thereafter. On all past due accounts all discounts will be negated; all collection charges will be added to the cost of the invoices. Payment is to be made in U.S. funds.
4. **Try & Buy Terms**

This clause with the following special terms and conditions of a Try & Buy Special sale applies ONLY to our Try & Buy proposal as we may extend it to you on the face hereof. Our offer to extend to you a Try and Buy purchase is predicated on our assisting you to install or put into service the goods furnished by us on a trial basis. We will try to provide this assistance within fourteen (14) days of our receiving such goods and you agree to place no delays or time restrictions on our furnishing such assistance. Invoices for goods not installed or put into service for whatever reason in this time frame will be processed by you for payment under our normal "Net 20 Day" terms with the trial period to subsequently start as soon as we assist you in installing or putting into service the goods furnished. If, however, we don't assist you in installing or putting into service the goods offered on a trial basis (you do it without our assistance) and/or the goods are not installed or put into service within ninety (90) days from your receiving same, for whatever reason, this Try and Buy purchase shall convert to a standard sale with your being held liable for the purchase.
5. **Set Off**

You authorize us to apply toward payment of any moneys that become due us hereunder any sums, which may now or hereafter be owed to you by Philippi-Hagenbuch, Inc. or Welarco Fabrications, Inc. or by any subsidiary or affiliated company.
6. **Deliveries**

Any delivery schedule indicated herein is based on our present estimate of the time required to complete your order after receipt of order. In the event of any delay in our performance due in whole or in part to any cause beyond our reasonable control, we shall have such additional time for our performance as may be reasonably necessary under the circumstances. We will endeavor to complete delivery as near the time indicated as possible but will not be responsible for any loss or damage due to our failure to make delivery as promised. Acceptance by you of any goods or services shall constitute a waiver by you of any claim for damages on account of any delay in delivery of such goods or services. We reserve the right to ship in advance of specified shipping date as deemed necessary by our production schedule.
7. **Routing & Shipment**

Unless as otherwise expressly requested by you and stated herein, shipment may be by carrier or other means selected by us. However, though we will try to select the route or means taking the lowest transportation rate, we will accept no responsibility for failure to do so in this regards. Title and the right of possession to all goods or services and risk of loss will pass to you upon delivery by us to you, your agent or shipping carrier at the point of shipment, no matter how freight is paid. We will not be held responsible for delays of carriers or loss or damage to materials in transit resulting form anything occurring during, or attributable to, transportation, no matter how shipped i.e. whether shipped with

freight prepaid, collect, allowed or otherwise. Shipments delayed at your request may be invoiced and dated on the day shipment is ready. Upon prior notification, we reserve the right to make partial shipments and invoice pro rate as these shipments are made. Claims for loss or damage due to shipment must be filled with the carrier by you the consignee. A shipping notice or packing slip will accompany each shipment indicating order number, contents, etc.

8. Suspension If in our judgment reasonable doubt exists as to your financial responsibility, or if you are past due in payment of any amount owing to us, we reserve the right without liability and without prejudice to any other remedies, to suspend performance, decline to ship, or stop any material in transit, until we receive payment of all accounts, whether or not due, owing to us, or adequate assurance of such payment.

9. **WARRANTIES** **There are no warranties which extend beyond the description on the face hereof. All implied warranties, including IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, are excluded.**

10. Tolerances & Variations All goods shall be subject to tolerances and variations consistent with usual trade practices and our manufacturing variations and practices regarding dimensions, straightness, section, composition, and mechanical properties and shall be subject to deviations from tolerances and variations consistent with practical testing and inspection methods.

11. Substitutes In so far as it does not effect the performance of the goods or services furnished hereunder we may substitute as we find necessary and deem fit i.e., material types, sizes, etc.

12. Claims If any goods received by you are damaged or if the quantities received by you do not agree with the quantities indicated on the shipping documents, and if you intend to assert any claim against us on this account, you shall mark an exception on your receipt to the carrier and shall, within 15 days after receipt of such good, furnish us detailed written information as to any damage or shortage. You shall advise us in writing promptly after receipt of any goods or services and in no later than 30 days after such receipt, of any other claim you may have against us with respect to such goods or services. If you have any claims against us with the respect to any goods or services you shall afford us a reasonable opportunity to inspect such. Any action for breach of this contract must be commenced within this thirty day period, and no such action may be maintained which is not commenced within such period.

13. EXCLUSIVE REMEDY Your exclusive remedy for any breach of contract, breach of warranty, failure or defect as to any goods or services and our only liability for any such breach, shall be replacement or repair of such goods or services, or repayment to you of the purchase price paid by you for such goods or services, whichever such remedy we shall select, and if we elect to repay the purchase price of any such goods and so advise you, you must return such goods to us immediately. In no event will we be liable for incidental or consequential damage. No material shall be accepted for return without our prior written consent and instruction.

14. LIMITATIONS Any claim of breach of contract, breach of warranty, failure or defect shall be limited to ninety (90) days from your receipt of the goods or services.

15. Inspection Where an inspection is made by you of work in progress, your Inspectors shall be deemed your agents with the authority to accept products on your behalf, waive specific tests, and accept products, which may deviate from formal specifications.
16. Tools, Dies & Fixtures Unless otherwise expressly provided herein, tooling, set-up, fixtures, dies, fitting-up, drawings, design information, proprietary information, and preparation charges which may be developed for use in the production of the goods and services furnished shall be owned by us and when invoiced to you cover only part of the cost thereof to us. And, even though you are charged in whole or in part for the cost of such, you do not acquire any right, title or interest in any tooling, set-up, fitting-up, drawings, design information, or invention resulting there from.
17. Patent Infringement If any of the goods are to be furnished to your specifications, you agree to indemnify us and our successors and assigns, against all liabilities and expenses resulting from any claim of infringement of any patent in connection with the production of such goods. There is no warranty on our part that the goods furnished hereunder are free from any third person claim of infringement.
18. Compliance with Laws Any clause required to be included in a contract of this type by any administrative regulation having the effect of law, is hereby incorporated herein. This contract is made and entered into the City of Peoria, State of Illinois, United States of America. It is subject to the laws of the State of Illinois.
19. Cancellation This contract may be cancelled or modified only by written agreement between us. Orders can only be cancelled with our written consent and then only upon such terms as we may agree and which will reimburse us for any and all indirect and direct expenses incurred in regard to such order. Your insistence upon our canceling or suspending fabrications or shipment, or your failure to furnish specifications when required may be treated by us as a breach of contract by you, and we may cancel any unshipped balance without prejudice to any other remedies we have.
20. Purchase Status Even though you in purchasing the goods and services furnished may only be acting as an agent, distributor, dealer, etc., to the actual user of the goods or services, we may furnish hereunder and even though such use may not be under your control, we will apply and hold you responsible for all the purchaser's obligations and/or rights set forth herein, and we will direct all claims for same to you, the party to whom we confirm this order. And, any assignment by you of such claims or rights will in no way relieve you of this responsibility in this regard.
21. Publicity Except as otherwise provided for herein, no details of your order to us are confidential and we may make public reference to this order as we deem necessary.
22. Assignability In performing or supplying the goods or services we are to furnish, we may assign or sub-contract for standard commercial supplies, raw material, services, etc, as needed without restriction.
23. Confidential or Proprietary Information All knowledge and information that we have disclosed or hereafter disclose to you in connection with furnishing goods or services to you is, unless otherwise specifically agreed to in writing by us, deemed to be confidential

and/or proprietary information and shall be treated and governed by the restrictions that normally pertain to sensitive information of this type.

24. Technical

We will furnish one (1) set (or more as requested in writing) of specifications (including installation manual, parts list, service maintenance manual, and operation manual) covering the equipment we furnish and any other information as needed i.e. general arrangement drawings, bills of material, etc., covering goods or services furnished by us. All of this material is however furnished by us with the express understanding that it is to remain our property subject to our disposition or to be disposed of by you in a proper manner. And, that it is understood you have no right, will be held liable for, and are not free to license to make or have made component parts, replacements of, or copies of equipment furnished by us.

25. Entire Agreement

This contract sets forth and constitutes the sole terms and conditions of sale and supersedes all previous communications, representations or agreements, whether oral or written between us. No other terms, conditions or understanding whether oral or written shall be binding upon us, unless hereafter made in writing and signed by our authorized representative. Further, no statement, recommendation or assistance made or offered by us or our representative to you or your representative, in connection with the use of any products sold by us, shall constitute a waiver by us of any of the provisions herein or change our liability as herein defined. Where rubber stamp and written notations appear on the face of this order: In the event of conflict, they take precedence over any printed conditions appearing elsewhere on this order.