

WEBER SPECIALTIES COMPANY'S STANDARD TERMS AND CONDITIONS OF SALE

1. Expiration of Quotation. Any quotation by Weber Specialties Company ("Weber") will be held open for acceptance for a period of 30 days from the date of the quotation; however, Weber reserves the right to correct clerical and typographical errors, including price and quantity numbers, within 15 days after acceptance of an order based on the quotation.
 2. Acceptance. This order is subject to the following terms and conditions. Terms stated by Buyer in any other communication, prior or subsequent hereto, shall NOT be binding on Weber if different from or in addition to any of the provisions hereof or the quotation, unless expressly agreed to in writing. Acceptance by Buyer of this order, orally or in writing, or of any goods provided hereunder or payment therefor, shall constitute acceptance of these terms and conditions.
 3. Samples. Samples submitted are considered approved unless written notice of rejection is received within 10 days after the submittal date.
 4. Payment. Payment is due on a NET 30 DAYS basis unless otherwise agreed in writing. If Buyer fails to fulfill the terms of payment, or Weber has any doubt at any time as to Buyer's financial responsibility, Weber may either decline to make further deliveries except upon receipt of cash or other satisfactory security, or may terminate the entire agreement. Buyer shall reimburse Weber for any costs of collection incurred in collecting any past due sums, including attorneys' fees and court costs. To secure Buyer's obligation to pay Weber the purchase price of the goods, Buyer grants to Weber a security interest in the goods and any proceeds thereof, with full rights as a secured party under the Uniform Commercial Code, and Buyer appoints Weber as its attorney in fact to sign any financing statements evidencing such security interest on behalf of Buyer.
 5. Shipment and Risk of Loss. Buyer shall take delivery of the goods F.O.B. Weber's facility at Schoolcraft, MI 49087, unless otherwise agreed in writing. Method and route of shipment are at Weber's discretion, unless Buyer supplies instructions otherwise. All expenses and risks of loss or any damages incurred in the transportation of the goods, including any risks of loss in loading or unloading, shall be borne solely by Buyer, unless otherwise specified. All claims for loss, damage, or delay against the carrier must be made by Buyer. Buyer shall accept partial delivery of any order, and any defect therein or failure to make any subsequent partial delivery shall be severable and not constitute a breach of the entire agreement.
 6. Delays and Damages. Weber shall attempt to make deliveries in accordance with its quotation or production order, but if for any reason Weber fails to make such deliveries or to make them within the time stated, or cancels any order, Weber shall not be liable for any loss or damage resulting from any such failure or delay in delivery, or from any such cancellation or for loss of use or loss of profits, or for any other consequential, incidental or special damages on account of delay in delivery.
 7. Rejection of Non-Conforming Goods. Buyer must notify Weber of any rejection of goods as non-conforming within 10 days after delivery at the place of destination by Buyer and confirm such rejection in writing. The notification shall identify each alleged non-conformity of the goods and describe that portion of the shipment being rejected. If Buyer shall fail to give such notice or if Buyer uses the goods in any manner inconsistent with the rights of Weber, the goods shall be deemed to conform with the terms hereof in all respects and Buyer shall be bound to accept and pay for the goods in accordance with these terms.
 8. Cancellation or Modification. Any order accepted by Weber may be canceled or modified by Buyer only upon the written approval of Weber. Buyer shall reimburse Weber for all expenses incurred by Weber in connection with such order, including without limitation for engineering, drawings and materials.
 9. Specially Manufactured Goods. Orders for goods manufactured to Buyer's specifications are non-cancelable, and if Buyer attempts to cancel or repudiates any such order after Weber accepts it, Weber shall be entitled to recover a reasonable profit in addition to the amount of any other losses Weber may have sustained in reliance on such order or, at Weber's option, the price of the goods.
 10. Limited Warranty and Limitation of Remedy and Damages. Weber warrants the goods to be free from defects in design, material or workmanship under normal operating conditions for sixty days from the date of shipment, regardless of the date of installation or first use. Any claim under this warranty shall be deemed waived unless Weber is notified within 30 days of the discovery of the defect and given the opportunity to inspect such defect, and, if necessary, the goods are returned to Weber, transportation prepaid. Weber's obligation under this warranty shall be LIMITED, at its option, to the modification, repair or replacement of the goods by Weber. In no event shall Weber be liable for consequential, incidental or special damages, loss of profit or production, or for transportation, installation or other costs associated with the goods.

THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- This warranty shall not apply to any goods which has been subject to abuse, accident, alteration or misuse.
11. Limitation of Liability. Weber's liability on any claim of any kind, including negligence, strict or product liability, or breach of warranty or contract, for any loss or damage arising out of or connected with this contract, or the performance or breach thereof, or the manufacture, sale or use of the goods furnished hereunder shall in no case exceed the price allocable to such goods which gives rise to the claim, and shall not include any liability for any consequential, incidental or special damages.
 12. Reliance Upon Buyer's Information. In the preparation of the quotation and the goods, Weber has relied on information or specifications supplied by Buyer. In the event such information/specifications are inaccurate, Weber shall not be liable for any claim resulting from such inaccurate information/specifications, including negligence, strict or product liability, or breach of warranty or contract, with respect to the goods, the performance or breach of this contract, or any defects of design, material or workmanship.
 13. Indemnification. Buyer shall defend, indemnify and hold harmless Weber and its agents from any claims, damages or expenses including attorneys' fees, arising or alleged to arise from: any asserted deficiencies or defects in the goods caused by any alteration thereof with or without Weber's consent made by Buyer; the improper handling, storage, application or installation by Buyer; any action taken by Buyer which voids any applicable certifications; or any claims resulting from alleged infringement of patents or trademarks stemming from information or specifications provided by Buyer.
 14. Non-Performance. Neither party shall be liable to the other for failure to perform its obligation in whole or in part when performance is prevented by flood, drought, fire or any other casualty, war, riot, insurrection, acts of God, restrictions or interference by any government or governmental agency, strike, labor action, or any similar cause beyond the control of the party failing to perform, for the period during which such cause of failure exists.
 15. Limitation Period for Bringing Action. No action may be commenced to enforce this contract or for any breach hereof, or for any defect or deficiency of the goods to be delivered hereunder, whether on warranty, contract, negligence, or strict products liability, unless such action is brought within 12 months after accrual of such cause of action.
 16. Entire Agreement. This contract, together with any attachments, constitutes the entire understanding between the parties and supersedes any prior discussions, negotiations, agreements and understandings. No modification of the contract shall be effective unless made in writing and signed by an authorized representative of both parties.
 17. Choice of Law and Forum. This contract shall be governed by the laws of the State of Michigan, notwithstanding any state's choice of law rules to the contrary. Buyer consents and agrees that any action brought to enforce this contract, or for any breach hereof, or for any defect or deficiency of the goods to be delivered hereunder, whether on warranty, contract, negligence, or strict products liability, shall be brought solely in a state or federal court sitting in Kalamazoo County, Michigan, and Buyer consents and submits to the jurisdiction of such court.