



## TERMS AND CONDITIONS OF SALE

Unless otherwise set forth in a quotation or agreed to by Weasler Engineering, Inc. ("Weasler") in writing, the following terms and conditions ("Terms") apply to all sales of Weasler products (collectively, "Products"). By placing an order for Products, you and/or your affiliates (collectively, "Buyer") accept and agree to be bound to these Terms.

**1. OFFER/COUNTEROFFER.** These Terms constitute an offer or counter offer by Weasler to sell Products to Buyer. No additional or different provisions in Buyer's purchase order shall be binding upon Weasler unless specifically agreed to by Weasler in writing. Weasler objects to and rejects any additional or different terms or conditions in any form tendered by Buyer, including expressly rejecting any provisions that dictate that Buyer's terms control or any additional or different provisions in Buyer's electronic business portal. Weasler's failure to object to any provisions or terms from Buyer shall not be a waiver or amendment of any of these Terms.

**2. ORDERS.** All orders are subject to acceptance by Weasler. Each accepted order shall constitute a separate legally binding contract between Weasler and Buyer. Weasler's acceptance of an order shall be indicated by (a) written confirmation, (b) fulfillment and shipment of the order, or (c) commencement of any work or procurement of any materials to supply the order.

**3. QUOTATIONS.** Weasler quotations are valid for thirty (30) days, unless otherwise stated in the quotation, and may be withdrawn by Weasler at any time and for any reason.

**4. PRICES, TAXES AND FEES.** Unless otherwise set forth in a quotation or agreed to by Weasler in writing, all prices for Products ("Prices") are subject to change without notice. All orders shall be invoiced at the Prices in effect on the dates the orders are shipped by Weasler. Prices do not include sales, use, excise, value added tax (VAT) or similar taxes, shipping, insurance while in transit, customs duties, import/export fees, or any other fees related to the sale, use and/or delivery of Products (collectively, "Taxes and Fees"). Payment of Taxes and Fees is the sole responsibility of Buyer. The quantities set forth in a quotation may affect Prices. Weasler reserves the right to adjust Prices if Buyer changes the quantities proposed in a quotation, or to reflect any increase in cost to Weasler beyond its control.

**5. DELIVERY.** Unless otherwise set forth in a quotation or agreed to by Weasler in writing, all Products will be delivered EXW Weasler's facility(s) (INCOTERMS 2010). Weasler will make every reasonable effort to fill orders within the stated shipment schedule, but stated delivery dates are approximate only, time is not of the essence, and Weasler reserves the right to readjust shipment schedules without liability to Buyer or any third party.

**6. CREDIT AND PAYMENTS.** All payments shall be made in the currency and time period noted on the applicable invoice, or if not noted, within thirty (30) days of the invoice date. Weasler reserves the right to withdraw credit at any time and for any reason. Buyer shall have no right to set off for any amounts due or allegedly due from Weasler and/or its affiliates to Buyer and/or its affiliates.

**7. OVERDUE ACCOUNTS.** Timely payment for all invoices is of the essence. To be timely, payment must be actually received by Elliott within terms; for example, mailing or initiating ACH payment on the last day of the payment term is not timely. Weasler reserves the right to charge Buyer a late penalty of 1.5% per month applied against overdue amounts, or the maximum rate permitted by law. If Buyer fails to make payment in accordance with the applicable payment terms, Weasler may, without any liability to Buyer, at its option, (a) defer shipments until payment is made in full, (b) cancel all or any part of the unshipped order, and/or (c) setoff and deduct from any credit balance owed to Buyer and/or its affiliates, the amount owed from Buyer.

**8. PASSAGE OF TITLE.** Unless otherwise set forth in a quotation or agreed to by Weasler in writing, title to each shipment shall pass from Weasler to Buyer upon Weasler's tender of the shipment to the initial carrier. Where permitted by law, in the event that Buyer does not make payment in full, Weasler reserves the right to reclaim all Products for which payment has not been received.

**9. CANCELLED ORDERS.** Weasler reserves the right to cancel any order at any time if Buyer becomes insolvent or is in breach of these Terms. **Orders for custom products which have been accepted by Weasler are non-cancellable by Buyer.** In the event that Weasler in its sole discretion, consents to the cancellation of any order for standard products, or cancels any order for Products due to Buyer's insolvency or breach of these Terms, in addition to any restocking fees that may apply, Buyer shall be liable for the payment of a cancellation charge. Such cancellation charge shall equal all costs and expenses incurred by Weasler in its performance under such order up to the date of cancellation, plus Weasler's anticipated profit margin.

**10. SPECIFICATIONS.** All weights, measurements, drawings, capacities and other specifications of Products provided by Weasler ("Weasler Specifications"), whether contained in photographs, schematics, catalogs, or otherwise, are only approximate and are provided solely for reference. Weasler Specifications are not part of these Terms and deviations from or subsequent changes to any Weasler Specifications do not constitute a breach of these Terms. Buyer represents and warrants that any drawing, design, instruction or specifications given to Weasler by or on its behalf ("Buyer Specifications") shall not infringe on any intellectual property rights of any third party. Buyer shall be responsible for ensuring the accuracy of all Buyer Specifications. If requested by Weasler, the design and specifications for Products must be approved in writing by Buyer prior to Weasler procuring materials for and/or beginning the manufacture of such Products.

**11. CHANGE ORDERS.** In the event that Buyer requests changes to the Specifications ("Change Order") of any Products after Weasler has accepted the order, such changes shall become part of the order only upon Weasler's acceptance of the Change Order. If any Change Order causes an increase in the cost of and/or in the time required for Weasler's performance under the Change Order, and/or if the Change Order results in rework or obsolescence charges, (a) Weasler shall be compensated for all costs incurred in connection with the Change Order, (b) delivery dates shall be extended, and (c) Prices shall be adjusted to maintain Weasler's anticipated profit margin.

**12. INTELLECTUAL PROPERTY RIGHTS.** All rights, title, and interests in the intellectual property (including, without limitation, all patents, copyrights, trade secrets, and trademarks) and written materials developed, designed or generated by Weasler in the supply of Products, belong solely and exclusively to Weasler. Buyer and/or Buyer's customers are only granted a limited, revocable license to use such intellectual property and written materials solely to facilitate their sale and/or use of the Products, as applicable.

**13. CORRECTIONS.** Weasler reserves the right to cancel orders arising from pricing, typographical, and/or other errors in any offer, price list, catalog, web page or quotation.

**14. EXCUSED DELAYS.** Weasler shall not be liable for any loss, damage or delay resulting from causes beyond its reasonable control, including, without limitation, strikes, acts, omissions or delays of Buyer, fires, natural disasters, breakdowns of essential machinery, accidents, material shortages, delays in transportation, or lack of production capacity.

**15. PRODUCT IMPROVEMENTS.** Weasler reserves the right to make changes in design and improvements to Products without liability to install such improvements in any Products manufactured prior to the date of such improvements.

**16. GOVERNMENT CONTRACTS.** If Buyer sells Products to any government, or to a government prime contractor or subcontractor, Buyer shall be solely and exclusively liable for compliance with all government acquisition statutes and regulations.

**17. LEGAL COMPLIANCE.** Buyer shall comply with all applicable laws and regulations that may be in effect during Buyer's purchase, sale and/or use, as applicable, of Products, including without limitation, all restrictions on the sale or other transfer of Products to prohibited parties, countries, end-users, or for a prohibited end-use. In addition, Buyer shall not directly or indirectly make any offer or promise to improperly influence any agent, government official, political party or candidate for office in order to obtain or retain business or gain inappropriate advantage.

**18. GOVERNING LAW.** These Terms and any claim, dispute or controversy arising from or relating to Buyer's purchase and/or use of Products ("Dispute"), shall be governed by and construed in accordance with the laws of the State of Wisconsin. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.

**19. DISPUTES.** The parties shall first try in good faith to settle any Dispute. If such good faith efforts are unsuccessful, the parties shall submit such Dispute to binding arbitration, which shall be conducted by one arbitrator in English and held in Milwaukee, Wisconsin, pursuant to the rules of the American Arbitration Association. The arbitrator shall have no authority to award any damages excluded in these Terms and the prevailing party shall be entitled to recover its costs including reasonable attorneys' fees.

**20. LIMITED WARRANTY.** Subject to the exclusions described below, all Weasler products ("Products") are warranted to be free from defects in materials and workmanship under normal use. Unless otherwise set forth in a quotation or agreed to by Weasler in writing, Products are warranted for twelve (12) months from the date of invoice.

**21. EXCLUSIVE REMEDY.** In the event that Weasler determines that a Product contains a defect in materials or workmanship, then Weasler, in its sole discretion, will (a) repair the Product, (b) replace the Product, or (c) refund the purchase price of the Product. THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDY OF REPAIR, REPLACEMENT OR REFUND IS BUYER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY. IN NO EVENT SHALL WEASLER'S LIABILITY UNDER THIS WARRANTY EXCEED THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO THE WARRANTY CLAIM. All Products which are repaired or replaced shall be warranted only for the unexpired portion of the original warranty period.

**22. EXCLUSIONS.** This warranty does not cover any failures which are not attributable to defects in materials or workmanship, including without limitation, failures caused by accidents, inadequate maintenance, misuse, unauthorized modifications or repairs, improper storage, and normal wear and tear.

**23. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, (I) IN NO EVENT SHALL WEASLER BE LIABLE FOR ANY INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, INDIRECT DAMAGES, PUNITIVE DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES, OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) UNDER NO CIRCUMSTANCES SHALL WEASLER (INCLUDING ITS AFFILIATES) OR ANY OF ITS EMPLOYEES, DIRECTORS, OFFICERS OR AGENTS BE LIABLE FOR OR INDEMNIFY ANY PERSON, COMPANY OR PARTY (COLLECTIVELY THE "INDEMNIFIED PARTY") FOR DAMAGES OF ANY KIND TO THE EXTENT ARISING OUT OF THE NEGLIGENCE, FAULT OR MISCONDUCT OF THAT INDEMNIFIED PARTY. WEASLER'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO ANY ORDER IS LIMITED TO THE ORDER PRICE FOR THE SPECIFIC PRODUCT THAT GIVES RISE TO THE CLAIM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS SHALL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OR LAW, OR OTHERWISE.

**24. WARRANTY RETURNS.** No Products shall be returned without issuance of an RGA (Return Goods Authorization) number from Weasler. To receive an RGA number, contact your Customer Service Representative. Buyer shall prepay all shipping charges for the return of Products to Weasler's designated service location.

**25. NON-WARRANTY PRODUCT RETURNS.** Except for warranty returns which have been authorized by Weasler, Products are non-returnable.

**26. INDEMNITY.** Buyer represents and warrants that it shall indemnify and defend Weasler and its affiliates against any and all damages, expenses (including reasonable attorneys' fees), losses, suits, claims, demands and liabilities arising out of any breach of these Terms by Buyer and/or any act, omission, misrepresentation, or negligence of Buyer, and/or its affiliates and agents, relating to the sale and/or use of any Products, including without limitation, any use of the Products which is contrary to their operating instructions and/or the purpose for which they were designed.

**27. ASSIGNMENT.** Buyer may not assign any of its rights or obligations, in whole or in part, under these Terms or any order to any party without the prior written consent of Weasler.

**28. TRADEMARKS.** Neither party shall use the name of the other on any publicity releases without securing the prior written approval of the other. Neither party acquires any right, title or interest in any of the trademarks or trade names of the other by virtue of these Terms. Neither party shall use or refer to the other's trademarks or tradenames.

**29. EXPORT.** Buyer shall be responsible for complying with any applicable laws and regulations governing the importation of the Products.

**30. ENTIRE AGREEMENT.** These Terms, together with any quotation or schedule of exceptions to these Terms which is signed by an authorized representative of Weasler, whether physically attached or incorporated by reference, constitute the entire agreement between Weasler and Buyer with respect to Weasler's supply of Products. Weasler reserves the right to update these Terms at any time; however, Buyer's rights and obligations shall be as provided in the version of these Terms provided to or made available to Buyer at the time of Weasler's acceptance of Buyer's order for Products. If any part of these Terms is for any reason found to be unenforceable, all other provisions of these Terms shall remain in full force and effect.