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**QP 8.4 F003****New****3/5/2019****Weber Metals Purchase Order Terms and  
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# WEBER METALS PURCHASE ORDER TERMS AND CONDITIONS

## A. GENERAL TERMS AND CONDITIONS

- 1. Definitions.** As used herein, "Weber" means "Weber Metals Incorporated," who is the buyer of the goods/services referenced herein and is the party authorized to alter, modify or change provisions of this Order (defined herein). "Supplier" means the party identified on the face of this Order as the seller of the goods/services. "Order" means this purchase order, including all documents, exhibits and attachments referenced herein. "Products" means the goods/services identified on the face of this Order.
- 2. CONTROLLING TERMS.** THESE TERMS AND CONDITIONS CONTROL, AND ANY DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS CONTAINED IN ANY OTHER WRITING OF THE SELLER ARE HEREBY REJECTED BY WEBER AND SHALL NOT IN ANY WAY BE INCORPORATED INTO THE AGREEMENT BETWEEN THE PARTIES, UNLESS SPECIFICALLY AGREED TO IN WRITING BY WEBER.
- 3. Shipping and Packing.** Supplier shall (i) properly pack, mark and ship the Products in accordance with the requirements of Weber and involved carriers in a manner to secure the lowest transportation cost and meet delivery times; (ii) provide with each shipment packing slips with Weber's Order number, or when applicable job number, marked thereon; (iii) properly mark each package with this Order/Job number, and (iv) promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Weber's instructions and carrier's requirements. The packaging, labeling and shipping of all materials must conform to all applicable federal, state and local laws and regulations. The marks on each package and identification of the Products on packing slips, bills of lading and invoices shall be sufficient to enable Weber to easily identify the Products.
- 4. Delivery.** Time is of the essence in the performance of this Order. Supplier shall make deliveries at such times and places and of such items and quantities as specified by Weber. Strict adherence to Weber's stated delivery schedule is a material condition of this Order. Unless otherwise provided for on the face of this Order, the Products shall be delivered to Weber FOB Weber's facility at the address specified on the face of this Order, and title to the Products shall pass to Weber upon delivery of such Products at Weber's facility. Supplier shall be responsible for all risk of loss or damage until such passage of title. If at any time it appears to Supplier that any delivery schedule cannot be met, Supplier shall notify Weber as soon as possible as to the causes thereof, the action being taken to mitigate such cause of non-delivery, and when delivery will be made. Supplier shall, at its expense, take whatever reasonable action is necessary, with or without Weber's request, to meet such delivery schedules as set forth herein or to recover to the maximum extent possible any delay in meeting such delivery schedules.
- 5. Conformance.** Supplier warrants that all Products or materials will conform to the specifications, representations, or descriptions specified in this Order, will be merchantable, and will be of quality material and workmanship, free from

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defect and fit for the purpose specified by Weber. In addition, Supplier acknowledges that Supplier is aware of Weber's intended use and expressly warrants that all Products which have been selected, manufactured, or assembled by Supplier, based upon Weber's stated use, will be fit and sufficient for the particular purposes intended by Weber. Weber may reject and hold at Supplier's risk and expense, Products which do not conform to applicable specifications or descriptions or which are defective in material, workmanship or otherwise fail to meet the warranties for the Products. To the extent Weber rejects Products as nonconforming; the quantities of such Products under this Order will automatically be reduced by the number of nonconforming items unless Weber notifies Supplier in writing otherwise. Weber is not responsible for payment to Supplier for rejected non-conforming Products. Moreover, payment by Weber for non-conforming Products shall not constitute an acceptance thereof, limit or impair Weber's right to assert any legal or equitable remedy, or relieve Supplier's responsibility for latent defects. Without limiting any other rights Weber may have, Weber may, upon rejection and at its option, require Supplier: (i) to repair or replace at Supplier's expense any Products or items which fail to meet the requirements of applicable specifications or descriptions or other requirements of this Order; or (ii) to refund the price that may have been paid by Weber for any such Products.

6. Inspection. Weber shall have the right to inspect the Products or materials during manufacture, prior to delivery, upon delivery or within a reasonable time after delivery. Such inspection shall not constitute acceptance.

7. Changes. Weber reserves the right to make changes to this Order, including quantities, place of inspection, delivery or acceptance, by written instruction to the Supplier. Any change which will have a material adverse impact on the Supplier is subject to Supplier's consent, which will not be unreasonably withheld. Any changes may be made by mutual written agreement of Weber and the Supplier. Any attempted oral modifications to this Order shall not be binding upon the parties. In the event that such changes result in a change in the cost of Products ordered, the price of such Products shall be adjusted by mutual written agreement.

8. Pricing and Payment. Pricing of the Products reflected in this Order shall be inclusive of all taxes, fees, excises, tariffs, duties or other governmental charges or expenses imposed in connection with the Supplier's obligations under this Order. Supplier shall (i) promptly render, after delivery of the Products, correct and complete invoices to Weber with respect to such Order; and (ii) accept payment by check or, at Supplier's discretion, other commercially reasonable method of payment (including electronic transfer of funds). Payment to Supplier of invoiced amount(s) shall be due forty-five (45) days from the date of receipt of the invoice, unless otherwise agreed to in writing by Weber. Weber reserves any rights of set-off.

9. Cancellation for Default. Weber reserves the right to cancel this Order, in whole or in part, without liability to Weber, if Supplier: (i) refuses or fails to deliver the Products or any installment thereof strictly within the time specified herein or any extension thereof granted by Weber in writing; (ii) fails to comply strictly with any provision of or repudiates this Order or so fails to make progress to perform under this Order in accordance with its terms; (iii) makes representations which are untrue or misleading at the time they were made; or (iv) is liable for substantial, uninsured loss, theft or damage to the Products or materials while in its possession and for which Weber has not paid.

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10. Termination for Convenience. Weber may terminate this Order, in whole or in part, at any time for any reason by providing notice to Supplier in writing. In such event, Weber shall pay Supplier for Supplier's actual costs incurred in the production of any Products not yet delivered to Weber, which shall be Supplier's exclusive remedy for such termination.
11. Insolvency. If Supplier ceases to conduct business, becomes insolvent, is insecure, subject to a take-over, bankrupt (involuntary or voluntary), is part of an assignment, placed in receivership or other similar proceeding then this Order may be terminated in Weber's sole discretion.
12. Good Title. Supplier has and will transfer good title to the Products, materials and parts covered by this Order, free and clear of all liens, claims or security interests of any kind.
13. Remedies. The rights and remedies reserved to Weber in this Order shall be cumulative and additional to all other or further remedies provided in law or equity.
14. Assignment. Neither this Order, nor any of the rights or interests by Weber or Supplier hereunder, may be assigned, transferred, or conveyed by operation of law or otherwise without the prior written consent of the other party, except to a parent or subsidiary thereof, in which event the party so assigning shall remain obligated and liable to the other party for the full and complete performance of this Order by the parent or subsidiary to which this Order is assigned.
15. Force Majeure. Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence not reasonably foreseeable and beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) days of such occurrence. During the period of such delay or failure to perform by Supplier and after prompt notice from Supplier to Weber of the occurrence of such an event, Weber, at its option, may purchase goods from other sources and reduce its supply from Supplier by such quantities, without liability to Supplier, or have Supplier provide the Products from other sources in quantities and at times requested by Weber and at the price set forth in this Order. If requested by Weber, Supplier shall, within ten (10) days of such request, provide adequate assurance that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days, Weber may immediately cancel this Order without liability.
16. Notices. All notices required or permitted to be given under this Order shall be in writing and shall be deemed given upon personal delivery, by facsimile with confirmation of receipt, by overnight carrier with confirmation of delivery, or upon the expiration of the second day after the date of deposit in the United States mail as registered or certified mail, return receipt requested, postage prepaid, addressed to the parties listed on the Order or their then current address if notice of such change of address has been given pursuant to this Section.

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17. Intellectual Property Ownership and Patent Indemnity. Supplier warrants that all Products shall not violate or infringe on any patent, copyright, trademark, or proprietary interest. Notwithstanding the foregoing, if such intellectual property is deemed or alleged to infringe on the rights of others, Supplier shall (i) defend, hold harmless and indemnify Weber, its successors, affiliates and customers against all claims, demands, proceedings, losses, suits, damages, liability and expenses (including reasonable attorneys' fees) arising out of or based upon any claim for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, trade secret, or copyright by reason of the manufacture, use or sale of the Products ordered from Supplier, including infringement arising out of compliance with specifications furnished by Weber, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Supplier's actions; (ii) waive any claim against Weber under the Uniform Commercial Code 1 or otherwise, in any way related to any claim described in (i) above; and (iii) procure for Weber the right to continue the use of such Products, or replace them with substantially equivalent non-infringing goods, or modify the Products at Supplier's expense so they no longer infringe should the manufacture, use or sale of the Products be made the subject of any such suit or claim as described in (i) above. This section shall survive termination, cancellation or expiration of this Order.

18. Indemnification. Supplier shall defend and indemnify Weber and its successors, assignees, affiliates, officers, shareholders, directors, employees, agents, dealers, distributors and customers (the "indemnities"), and hold each of them harmless, from and against any claim, suit, loss, and expense (including reasonable attorneys' fees) or any liability whatsoever against or suffered by any of the indemnities arising from or as a result of (i) the performance, actions or omissions of Supplier or any of its officers, shareholders, directors, employees and agents (except for claims arising from the sole and exclusive negligence of Weber), or (ii) for any property damage or bodily injuries (including death) of any person resulting from or attributable to the Products, the use thereof or any defect or deficiency in any of the Products, including claims based on theories of product liability, strict liability, or any variation thereof, or (iii) any act, failure to act or omission of Supplier or any of its agents or subcontractors in the course of performing the Order or designing, producing or furnishing the Products; or (iv) any failure of the Products to comply with the applicable Specifications, warranties, and certifications regarding the Products. Supplier shall take all precautions, special or otherwise, and shall be responsible for compliance with all local, state and federal safety laws in the performance of the work hereunder. This section shall survive termination, cancellation or expiration of this Order or of any other agreement or relationship between Weber and Supplier.

19. Insurance. Supplier shall maintain insurance coverage for any risks arising out of use of or related to the Products with solvent, highly rated insurance companies on commercially reasonable terms, including the amounts of coverage. At Weber's request, Supplier shall furnish to Weber certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration of insurance maintained by Supplier. Such certificates will provide that Weber shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Supplier's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Supplier of its obligations or liabilities under this Order. Supplier's insurance coverage shall not be Weber's exclusive remedy; instead Weber shall be entitled to all remedies available to it under equity or at law.

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20. **Severability.** If any provision or term of this Order becomes or is deemed invalid or unenforceable under any statute, regulation, ordinance, executive order, or other rule of law, such provision or term shall be deemed reformed or deleted, but only to the extent necessary to comply with any statute, regulation, ordinance, executive order, or other rule of law, and all other provisions and terms of this Order shall remain in full force and effect.
21. **Relationship of Parties.** Supplier and Weber are independent contracting parties, and nothing in this Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.
22. **No Implied Waiver.** The failure of Weber at any time to require performance by Supplier of any provision of this Order shall in no way affect Weber's right to require such performance at any time thereafter, nor shall the waiver of Weber of a breach of any provision of this Order constitute a waiver of any succeeding breach of the same or any other provision.
23. **Term for Claims.** Supplier shall bring any claim against Weber under this Order within one (1) year of the date the Supplier knew or reasonably should have known of the facts giving rise to such claim under this Order.
24. **Fees.** Each party is responsible for their own legal and accounting fees unless otherwise expressly provided for herein.
25. **Governing Law.** This Order is to be construed and governed in accordance with the laws of the State of California, exclusive of any choice of law principles. Supplier consents to the jurisdiction of Indiana courts. Any action arising out of or relating to this Order or the Products shall be brought in the State of California. Supplier agrees that Indiana is not an inconvenient forum for any action arising from or relating to this Order.
26. **Entire Agreement.** This Order, together with the documents specifically referenced in this Order and properly executed pursuant to the terms of this Order, or which specifically references this Order, constitutes the entire agreement between the parties with respect to the matters contained herein and supersedes all prior oral or written representations or agreements.
27. **Confidentiality.** Supplier shall not disclose to any third party (other than its attorneys, accountants or other professional advisors which receive information under an obligation of confidentiality) any of the terms or conditions of this Order or of any other aspect of its business relationship with Weber without Weber's prior written consent (given or withheld in Weber's discretion), other than pursuant to any court order or other lawful process.
28. **REACH.** This paragraph applies only when specifically referenced on a purchase order.

Supplier represents and warrants that all the products, parts of products and/or materials supplied under this Agreement (the "Products") in the European Economic Area (EEA) (the EEA includes all countries in the European Union or "EU" as well as Norway, Iceland and Liechtenstein) will be supplied in full compliance with the provisions of the European Regulation (EC) n° 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorization

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and Restriction of Chemicals (the "REACH Regulation"). Terms used in this Section and not otherwise defined herein shall have the meanings ascribed to them in the REACH Regulation.

Supplier represents and warrants that all the substances in the Products, that are present in the Products supplied anywhere, that require registration by Supplier or by Supplier's suppliers will be registered within the applicable REACH statutory deadlines and that such registration will cover all the uses identified in due time by Buyer to Supplier. Upon request, Supplier expressly undertakes to appoint (or obtain that the non-EU manufacturers/formulators appoint) an Only Representative to pre-register and register any substance present in the Products imported by Buyer or one of its affiliates or customers in the EEA.

Supplier shall investigate and communicate to Buyer if there are any substances present in the Products, or in any of the processes used to manufacture, assemble, use, maintain or repair the Products, that are listed: (i) in Annex XIV of REACH for Authorization, (ii) on the "Candidate List" (as published in accordance with Article 59.1 of the REACH Regulation), (iii) for which a REACH Annex XVII restriction exists or is proposed, (iv) in the "CoRAP" list for Substance Evaluation under REACH, or (v) the International Aerospace Environmental Group's ("IAEG") AD-DSL ("Aerospace and Defense Declarable Substance List"). Supplier shall provide Buyer for each such substance identified and communicated in (i) through (v) with (a) its chemical identity, (b) its weight/weight percent on a substance by substance basis in each Product type and in each component/part (hereinafter "part") thereof to the extent such parts are "articles" under REACH, and (c) safe use information. This ongoing obligation also applies to Products already supplied under this Agreement at the time the substances are identified as per (i) through (v) above.

Supplier undertakes to timely provide Buyer with a safety data sheet ("SDS") that is compliant with REACH and the European Regulation (EC) n° 1272/2008 of 16 December 2008 on the classification, labeling and packaging of substances and mixtures (the "CLP Regulation"), including providing the SDS in the language of the country or area where the Goods will be delivered, for any Product supplied under this Agreement that meets the criteria of Article 31 of REACH on SDS, and where an SDS is not required, provide Buyer with such other information as set forth in Article 32 of REACH.

Where the Products or parts thereof meet the definition of "articles" under REACH and contain chemical substances listed on the Candidate List, Supplier undertakes to timely provide Buyer with all relevant information on such Products and parts that Supplier and/or its suppliers are required to communicate down the supply chain under the REACH Regulation, including safe use information compliant with REACH.

To the extent that the Supplier is a chemical manufacturer, formulator or distributor, this paragraph applies. Supplier agrees to assist Buyer in (i) determining which chemicals/products supplied by Supplier to Buyer contain SVHC's that will require Authorisation for the Products supplied within Buyer's supply chain and (ii) determining which upstream Supplier(s) can ensure Authorisation for such substances to cover Buyer's uses, including but not limited to identifying and providing Buyer with the name of the chemical formulator or other Supplier supplying the SVHC that either require Authorisation or are likely to require Authorisation in the future. Supplier will assist Buyer in obtaining full product

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chemical content from upstream Suppliers for all Products supplied by Supplier to Buyer no later than 5 years from the effective date of the Agreement.

To the extent that the Supplier is a chemical manufacturer, formulator or distributor, this paragraph applies. Supplier agrees to assist Buyer in ensuring that all chemicals/products containing SVHC's that require Authorisation are appropriately Authorised for Buyer's uses, or at Buyer's request apply for such Authorisation where appropriate. Should Supplier apply for such Authorisation at Buyer's request, Supplier and Buyer shall negotiate an equitable fee for such service based on both the additional cost to Supplier as well as the benefit to Supplier in holding such an Authorisation.

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**CHANGE HISTORY LOG**

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<b>New</b>	3/5/2019	Updated document from QP 7.4 F003 to QP 8.4 F003