

# WHOLESALE DISTRIBUTOR TERMS AND CONDITIONS GOVERNING ALL SALES OF HARRIS PRODUCTS

Effective February 1, 2022

## 1. ACCEPTANCE AND AGREEMENT:

The provisions on the face hereof and these Terms and Conditions of Sale constitute the entire agreement between HARRIS and the Purchaser and supersede the Purchaser's purchase order (in the case of HARRIS' acknowledgement) and all other communications between the parties, whether written or oral. Any terms in the Purchaser's purchase order not consistent with these terms and conditions are hereby rejected. No purported modification or waivers of the provisions hereof shall be binding on HARRIS for any purpose unless contained in writing signed by an authorized representative of HARRIS. The provisions hereof shall be deemed to have been accepted by the Purchaser's acceptance of all or any part of the products covered hereby.

## 2. PRICE CHANGES AND TAXES:

a. The prices which the Purchaser shall pay to HARRIS for the products identified on the face hereof are those prices set forth on the face hereof. Notwithstanding the foregoing, HARRIS prices are subject to change from time to time at HARRIS's discretion in connection with its adoption of a new price schedule or modification of existing schedule, generally applicable to products of the kind covered hereby, and the Purchaser shall pay to HARRIS such increased prices. Upon receipt of notice of an increase of prices Purchaser may cancel that part of the order scheduled to be shipped four or more weeks after the date of the notice by giving written notice to HARRIS within 7 days after Purchaser receives the notice of increased prices.

b. Because alloy pricing changes daily, pricing for Harris products shall be based upon written quotation or contract.

b. HARRIS' prices are exclusive of all federal, state, and local taxes imposed on the manufacture, sale, delivery, or use of any products covered hereby. All such taxes shall be paid by the Purchaser in addition to the contract price.

## 3. PAYMENT TERMS:

Net 30 days. Invoice for shipment of goods will be due 30 days following the date of shipment. Invoices carry date of shipment information. HARRIS may deliver the products to the Purchaser in installments. If so, the Purchaser shall pay for each installment in accordance with the terms of payment hereof. Minimum invoice shall be \$50.00 on all purchase orders. No cash discounts are allowed. Orders will be invoiced at the price in effect at the time of order.

## 4. FREIGHT, SHIPPING SCHEDULE, AND CONTINGENCIES:

F.O.B. HARRIS shipping point. HARRIS prepays and absorbs standard shipping charges on shipments within the contiguous United States on orders of \$2,500 or more at net price (EXCEPT SPECIAL ORDERS). When HARRIS absorbs shipping charges, HARRIS reserves the right to route the freight by the most expeditious and economical mode of transportation. Where HARRIS makes a partial shipment of an order that qualifies for freight prepayment, HARRIS will absorb transportation charges on any shipment applying to that order. HARRIS shall not be liable for any delay in delivery or for non-delivery, in whole or part, caused by the occurrence of any contingency beyond the control of either HARRIS or HARRIS' suppliers including, but not limited to, embargoes, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, strike, picket, accident, fire, explosion, flood, storm, or other act of God, shortage of labor, fuel, raw materials, machinery or equipment or technical failure where HARRIS has exercised ordinary care in the prevention thereof. If any such contingency occurs, HARRIS may allocate production and deliveries among HARRIS customers.

## 5. CANCELLATION:

Orders may not be cancelled except upon HARRIS' written approval which shall be subject to the Purchaser's payment of HARRIS' reasonable cancellation charges. Such charges shall include all reasonable costs incurred by HARRIS in preparing to meet the Purchaser's delivery schedule including, without limitation, commitments by HARRIS to its suppliers, the cost of inventory (raw material, work in process, and finished goods) allocated to the Purchaser's order, any related unamortized special costs, and a reasonable allowance for prorated expenses and profits.

## 6. TITLE AND DELIVERY:

Delivery of goods to a carrier by HARRIS, consigned to Purchaser or as Purchaser may direct, shall constitute transfer of title, ownership, possession and property in and to the goods at such point of delivery, and such carrier shall thereafter be deemed to be acting for Purchaser and the goods shall thereafter be at Purchaser's risk. Shipping dates are approximate only. HARRIS shall not be liable for any loss or expense (consequential or otherwise) incurred by the Purchaser if HARRIS fails to meet the specified delivery schedule because of unavoidable transportation delays. Purchaser shall be liable for detention, demurrage, storage, or auxiliary charges assessed by carriers or warehousemen resulting from the Purchaser's requirements for special service or the Purchaser's failure to accept delivery in a timely manner. HARRIS will not allow any claim of the Purchaser with respect to shortages or error in shipment unless reported to HARRIS in writing within 10 days after the Purchaser receives the products.

## 7. TOOLS AND DIES:

All special tools, dies, equipment, machinery and plans which HARRIS manufactures, develops, or purchases in connection with the manufacture of products to the Purchaser's specifications, whether or not they are covered by a purchase order from the Purchaser, will remain on the property of, and in the possession and control of, HARRIS. All charges for such tools, dies, equipment, machinery, or plans are for the use thereof only and do not convey to the Purchaser any interest therein.

## 8. INDEMNITY AGAINST INFRINGEMENT OF PATENTS, DESIGNS, COPYRIGHT AND TRADEMARKS:

With respect to all goods manufactured either in whole or part to the Purchaser's specification, Purchaser warrants that the goods manufactured will not infringe any United States letters, patent or any design, copyright, or trademark of any third party. Purchaser agrees to defend, indemnify, and hold harmless HARRIS, its successors and assigns, against any loss, damage, liability, cost, and expenses from any suit, claim, judgment, or demand involving any infringement or alleged infringement of any United States letters patent or any design, copyright or trademark of any third party by the sale or use of the goods manufactured hereunder.

Likewise, HARRIS shall defend any suit or proceeding brought against the Purchaser insofar as such suit or proceeding is based on a claim that any products manufactured and supplied by HARRIS to the Purchaser constitute direct infringement of any duly issued United States patent and HARRIS shall pay all damages and cost finally awarded therein against the Purchaser, provided that HARRIS is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information, and assistance (at HARRIS' expense) necessary to defend or settle said suit or proceeding.

## 9. WARRANTY:

HARRIS warrants to the Purchaser all of its products to be free from defects in workmanship and materials for the following, from date of shipment:

7 years - Standard Industrial Regulators. Contact Harris Products Group customer service for a complete list of qualifying industrial regulators.

1 year - Specialty Gas Brass Regulators

90 days - Specialty Gas Stainless Steel Regulators

1 year - All Stick Electrodes, Welding Wire and Flux

1 year - All other Harris products

HARRIS extends no warranties on products not of its own manufacture. The foregoing constitutes HARRIS' only warranty in connection with this sale and is in lieu of all other warranties, expressed or implied, written or oral. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE THAT APPLY TO THIS SALE. No employee, agent, dealer, or other person is authorized to give any warranties on behalf of HARRIS, nor to assume for HARRIS any other liability in connection with any of its products, except an officer of HARRIS as signed in writing. HARRIS assumes no liability for faulty or improper application of its products to any end product. All claims under the HARRIS warranty must be made in writing and received by HARRIS prior to the expiration of the warranty period (time being of the essence) and the product claimed to be defective or nonconforming must be returned by the Purchaser to HARRIS at the Purchaser's expense. HARRIS' warranties shall not be expanded,

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diminished, or affected by, and no obligation or liability shall arise or grow out of, HARRIS' rendering technical advice or service in connection with the Purchaser's order of the products furnished hereunder.

**LIMITATION OF REMEDY:** HARRIS will repair or replace, at HARRIS' option, F.O.B. factory, freight prepaid, any HARRIS product defective in workmanship or materials if such product is returned, freight prepaid, within the warranty period. It is agreed that such replacement or repair is the exclusive remedy available from HARRIS should any of HARRIS' products prove defective. In no event shall HARRIS be liable for any special, indirect, or consequential damages of any character, including but not limited to loss of use of productive facilities or equipment, lost profits, or lost production, irrespective of whether claims or actions for such damages are based upon contract, warranty, tort (including negligence), strict liability or otherwise.

HARRIS agrees to indemnify Distributor for any loss or injury it may incur to the extent that the loss or injury was directly caused by:

- i) the negligence of HARRIS, or
- ii) the failure of HARRIS products to substantially perform according to HARRIS'S published specifications and the standards to which HARRIS states the product conforms.

The loss of the product itself, if caused by the above, shall be handled according to Harris's standard warranty for the product.

It is agreed that welding products may substantially change their properties when utilized in the arc welding process. The chemical and mechanical properties of the deposited filler metal are significantly influenced by factors not within the control of Lincoln including, for example, other welding materials and the base metal used, the welding procedure and shielding gases etc. Excluded from this indemnification is any loss or injury to the extent it is caused by:

- i) inadequate or poor workmanship or negligence of Distributor or by a party other than Lincoln, or
- ii) the failure to install, operate, use, store or maintain the product properly according to Lincoln's instructions and safety precautions, or applicable laws and regulations, or
- iii) the inadequate design of Distributor's application, or
- iv) the improper application by Distributor of Lincoln's product, or
- v) other factors over which HARRIS has no control.

Indirect or consequential losses or damages are also excluded from this indemnification. This indemnification shall be subject to a total cap, in the aggregate, of \$5,000,000.

Distributor shall be responsible to mitigate any damages by executing reasonable goods inspection procedures to identify and prevent obviously defective products from being used.

HARRIS will maintain general liability insurance coverage in an amount no less than \$5,000,000 subject to Lincoln's included self-insured retention (currently \$2,000,000 per claim), and will, upon request, provide Distributor with a certificate of general liability insurance evidencing that coverage.

## 10. RETURN POLICY:

- 1.Returned Goods - To be eligible for credit, goods returned to Harris must meet the following requirements:
  - a.Product must be listed in the current published price list (SPECIAL ORDERS ARE NON-RETURNABLE).
  - b.Product must have been purchased within the last twelve months.
  - c.All returns must be accompanied by a copy of the original purchase invoice, or provide the purchase order number.
  - d.An offsetting order of equal dollar value must accompany the return.
  - e.Approval for the return must be obtained in writing from the Sales Department, Gainesville, Georgia in the form of an RMA listing the items accepted for return.
  - f.Transportation charges must be prepaid by the Purchaser.
- 2.Returned Goods accepted for credit are subject to a minimum handling charge of \$50.00 or 20% of the returned goods, whichever is greater.
- 3.Any reconditioning or repackaging cost, if necessary, will be charged extra. We reserve the right to issue credit on returned goods at purchase price or current price.

## 11. FAIR LABOR STANDARDS ACT:

HARRIS certifies that all products sold hereunder have been manufactured in compliance with the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the United States Department of Labor issued under Section 14 thereof.

## 12. WAIVERS:

Failure of Harris to insist upon performance of any provision of the Terms and Conditions of Sale shall not be construed as a waiver of such provision or any other provisions herein, and shall not affect the right of HARRIS thereafter to enforce each and every provision of the Terms and Conditions of Sale.

## 13. IMPAIRMENT OF PURCHASER'S CREDIT:

If HARRIS decides at any time that the Purchaser's credit has become impaired, HARRIS shall be entitled to decline to make further shipments to the Purchaser until receipt of satisfactory security or of cash payments in advance, or HARRIS may terminate the purchase order as to any remaining shipments, without prejudice to rights accrued up to the date of any cessation of shipments or the termination of the order.

**14. CUSTOMER ASSISTANCE POLICY:** The business of The Harris Companies is manufacturing and selling high quality gas cutting and welding equipment, consumables, fluxes, solders, pressure regulation and flow control equipment. Our challenge is to meet the needs of our customers and to exceed their expectations. On occasion, purchasers may ask The Harris Companies for advice or information about their use of our products. We respond to our customer based on the best information in our possession at that time. Harris is not in a position to warrant or guarantee such advice, and assumes, no liability, with respect to such information or advice. We expressly disclaim any warranty of any kind, including any warranty of fitness for any customer's particular purpose, with respect to such information or advice. As a matter of practical consideration, we also cannot assume any responsibility for updating or correcting any such information or advice once it has been given, nor does the provision of information or advice create, expand or alter any warranty with respect to the sale of our products. Harris is a responsive manufacturer, but the selection and use of specific products sold by Harris is solely within the control of, and remains the sole responsibility of the customer. Many variables beyond the control of Harris affect the results obtained in applying these types of fabrication methods and service requirements. Subject to change- This information is accurate to the best of our knowledge at the time of printing.

**15. California Proposition 65 Warning on Finished Products:** Proposition 65 requires that warnings be provided on products sold in California if they contain certain chemicals listed by the State of California as causing cancer, birth defects or other reproductive harm. Examples of listed chemicals are chromium, lead, nickel and di(2-ethylhexyl) phthalate DEHP (used as a plasticizer in PVC) and products containing even very small amounts of those or any other listed chemical (see [http://oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://oehha.ca.gov/prop65/prop65_list/Newlist.html)) must have a Proposition 65 warning. Sellers of finished products, whether supplied in retail or bulk packaging, shall be solely responsible to determine if the product contains a listed chemical and, if so, label the product or its retail packaging with the warning as required. Sellers of materials and component parts shall be responsible to notify Buyer if the material or component it supplies contains a listed chemical so Buyer can apply an appropriate warning. Seller agrees to defend and indemnify Buyer from any claim that its product does not comply with Proposition 65 or if it fails to notify Buyer that a component it sells contains a listed chemical. For additional information about California Proposition 65 see <http://www.oehha.ca.gov/prop65.html>

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**16. EQUAL OPPORTUNITY**

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), as applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

**17. NOTICE OF EMPLOYEE RIGHTS**

Buyer incorporates into this Agreement, as applicable, the obligations regarding the notice of employee rights under federal labor laws found at 29 CFR Part 471, Appendix A to Subpart A, and supplier will likewise incorporate those obligations into all applicable subcontracts as required by 29 CFR Part 471.

**18. VETS-4212**

For Buyer purchases of \$100,000 or above, in a single purchase order and not aggregated, which purchase is necessary for the performance of BUYER'S direct federal contracts, supplier may be obligated to complete a VETS-4212 in accordance with 41 CFR Part 61-300.

**COMPLIANCE WITH LAWS**

Buyer shall comply with all applicable laws and regulations with respect to the business conducted by Buyer with or on behalf of Lincoln, and in connection with the resale or marketing of Lincoln products, including (without limitation) all applicable "Anti-bribery Laws," which prohibit the payment or transfer directly or indirectly of anything of value to governments, government officials, state-owned enterprises, political parties, political party officials, or to relatives or associates of such officials, in connection with obtaining or maintaining business or an improper business advantage.

Buyer agrees that it will not participate in the sale of Harris products to any entity in or for export to any country that is deemed to be a "prohibited country" under U.S. export control laws (currently, Cuba, Iran, North Korea, Sudan or Syria) or for use in nuclear, chemical or biological weapons or rocket or missile applications.

Ethical Business Conduct. Buyer shall be committed to fair, honest and ethical business practices. Buyer acknowledges that Harris has adopted a Code of Corporate Conduct and Ethics (a copy of which is available on Lincoln's website at [www.lincolnelectric.com](http://www.lincolnelectric.com)) and Buyer agrees to conduct itself in its dealings with or on behalf of Harris, or in connection with the resale or marketing of Harris products, in a manner that is consistent with and facilitates compliance with Harris's Code.