

LINCOLN ELECTRIC BESTER SP Z O.O.  
HARRIS CALORIFIC SP. Z O.O. WELDING CONSUMABLES FACTORY

## GENERAL TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

„**Buyer**” means the person, whose order for Goods is accepted by the Seller (or who accepts the Seller’s offer for the sale of Goods);

„**Seller**” means Lincoln Electric Bester Sp. z o.o., ul. Jana III Sobieskiego 19A, 58-263 Bielawa, Poland or welding consumables production plant of Harris Calorific Sp. z o.o., ul. Strefowa 8,58-200 Dzierżoniów, Poland; hereinafter referred to as Lincoln or Lincoln Electric.

„**Terms of Sale**” mean the standard terms of sale set out below;

„**Agreement**” means the agreement for sale of Goods concluded between the Seller and the Buyer;

„**Force Majeure**” means any circumstances beyond the control of the Seller (including, without limitation, any strikes, shutdowns of the plant or other protest actions);

„**Goods**” mean the items ordered by the Buyer from the Seller, items offered by the Seller to the Buyer or sold to the Buyer by the Seller, where in particular these are:

“**Standard Goods**” – goods, which the Seller has on stock.

“**Made-to-order goods or specially manufactured Goods**” – Goods manufactured exclusively at the customer's request or according to its specification. This category includes additional testing, specific chemical analysis, batch/series control. The buyer bears the costs of additional non-standard activities, including fees for the tests, certificates, etc.

„**Offered Price**” means the price of Goods indicated in the price lists or catalogues of the Seller, determined in the manner referred to in point 4 of the Terms of Sale;

„**Agreed Price**” means the prices of Goods determined in the Offer or Order Confirmation;

„**Offer**” means the offer submitted to the Seller by the Buyer, where the purpose of the offer submission is to conclude an Agreement;

„**Order**” means the order submitted by the Buyer to the Seller, where the purpose of the order submission is to conclude an Agreement;

„**Order Confirmation**” means the declaration of the Seller regarding the acceptance of the Order submitted by the Buyer, which contains the provisions referred to in item 3.2. of the Terms of Sale. If the terms contained in the Order are in all aspects the same as the terms contained in the Order Confirmation, confirmation of order is equivalent to the conclusion of the Agreement by the parties. Otherwise, the Agreement is concluded under the conditions determined in the Confirmation of Order Acceptance, and the Agreement is binding if there is no immediate response from the Buyer of non-acceptance of such conditions.

## 2. SALES RULES

- 2.1 These rules apply to all Agreements, unless the parties of the Agreement agreed other terms in a way that leaves no doubt. The terms in the Buyer's order form or other similar documents are not binding for the Seller, unless the Seller will agree to their use explicitly and in a way that leaves no doubt.
- 2.2 Employees or agents of the Seller are not authorized to represent the Seller in the scope of sale of the Goods, granting the discounts, guarantees and approving the returns, unless it's confirmed in writing by the Seller. By concluding the Agreement, the Buyer confirms that it will not rely on unconfirmed offers and that it will waive all claims for breach of the agreement as a result of reliance on such offers.
- 2.3 Any typographical or other errors, or other unintentional omissions in promotional materials, Offer, price list, Order Confirmation, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller. In the case that the Buyer believes that the Seller made a mistake or omission referred to in the preceding sentence, the Buyer shall immediately request the Seller to clarify.
- 2.4 Seller reserves the right to amend these General Terms and Conditions of Sale.
- 2.5 Change of provisions contained within General Terms and Conditions requires, for its validity and entry into force, publishing of amended version on [www.lincolnelectric.pl](http://www.lincolnelectric.pl) website together with posting of email information to the Buyers. Change of General Terms and Conditions authorizes the Buyer to submit a statement on termination of agreement by means of termination effective on the day of new General Terms and Conditions coming into effect, however the orders accepted for realization by the Seller within the period of the so far General Terms and Conditions being in place will be realized according to the so far principles. Statement of the Buyer ought to be submitted in a written form within 3 days from the date of obtaining information about the statement placed on the internet website of the Seller regarding the change to General Terms and Conditions.
- 2.6 The hereby General Terms and Conditions apply from 01.02.2018

## 3. GOODS

- 3.1 The quantity, quality, description and specification of the Goods are determined in the Offer or in the Order if the Agreement was concluded by acceptance of the Offer or if the Order was confirmed.
- 3.2 The basis for execution of the submitted Order is the receipt of the Order Confirmation from the Seller, in which the terms of sale will be indicated, i.e. Agreed Price, payment term, shipping address.
- 3.3 The Buyer is obliged to check each time whether the sent Order Confirmation contains correct data, particularly the quantities and prices of ordered goods. In the case of irregularities, the Buyer is obliged to immediately inform the Seller about such irregularities.
- 3.4 If the goods are supposed to be manufactured in accordance with the special requirements of the Buyer or if the Seller is supposed to apply processes according to the specification provided by the Buyer, the Buyer declares that instructions supplied to the Seller in no way violate any rights of the third parties, particularly intellectual property rights. If the Seller's manufacture of Goods according to the Buyer's instructions will violate the rights referred to in the preceding

- 3.5 sentence, the Buyer shall be obliged to reimburse all expenses incurred due to this violation by the Seller and to compensate for damage suffered by the Seller.
- 3.6 The Seller reserves the right to make any changes in the specification of the Buyer, which are required in order for the Seller to adapt the Goods to any safety or other statutory requirements, and these changes do not affect the agreed usable or qualitative parameters.
- 3.7 Orders are accepted by the Seller depending on availability of the Goods.
- 3.8 Date of delivery of the goods indicated in the Order Confirmation is an estimated date.
- 3.9 Submitting by the Buyer the order shall be considered as unconditional acceptance on the side of the Buyer of the hereby General Terms and Conditions of Sale and a waiver of his own conditions concerning the purchase or other similar documents.

#### 4. PRICES

- 4.1 For Sale within Poland the prices are given in PLN, outside of Poland in EUR, unless contract or quotation specify otherwise.
- 4.2 The indicated prices are prices determined under CPT term according to Incoterms 2010.
- 4.3 Prices for materials in effect at time of shipment.
- 4.4 The Seller reserves the right to change the Offered Prices.
- 4.5 The Offered Prices are net prices, i.e. they do not include taxes and they are subject to increase by any taxes determined by law.
- 4.6 The prices include our packing or packaging in accordance with the Seller's standard practice.
- 4.7 Additional costs will be charged for:
  - additional packing
  - insurance, legalization of documents
  - tests and certification;if the above-mentioned activities are necessary or requested by the Buyer.
- 4.8 There's a minimum order value applicable in the sale process, which depends on the place of order execution.  
Minimum order value amounts to:
  - customers from Poland: 4000 PLN net
  - customers outside Poland: 1000 EUR netIn the case when the value of the Order is lower than the minimum order value, the Seller is entitled to charge an additional shipping and handling.  
Shipping and handling fee for the one Order amounts to:
  - customers from Poland: 120 PLN net
  - customers outside Poland: 200 EUR netIn special cases, the minimum value of the order may not apply.
- 4.9 The applicable minimum value of the Order depends on the delivery address indicated at the stage of Order submission by the Buyer.
- 4.10 Orders below net value:
  - customers from Poland: 400 PLN
  - customers outside Poland: 100 EUR netcan be accepted for execution only if entered by online web platform MyLincoln, otherwise will be rejected.

## 5. TERMS OF PAYMENT

- 5.1 During acceptance of the order, the Seller may grant the Buyer a deferred payment date.
- 5.2 The Seller reserves the right to internally set a credit limit for the Buyer, above which the execution of the orders will require prepayment.
- 5.3 The agreed payment term is applicable only up to the amount of credit limit determined by the Seller. At the Buyer's request, the Seller will provide the amount of this limit to the Buyer.
- 5.4 The Seller reserves the right to periodically verify the amount of credit limit and to withhold execution of the order above the determined credit limit, unless the Buyer will make a prepayment for the given order.
- 5.5 The Seller reserves the right to withhold the order execution in the case, when the Buyer is in arrears with payments to the Seller.
- 5.6 The payments may be made by:
- bank transfer under conditions agreed upon on invoice or bill of lading;
  - payment by credit or debit card at the Seller's premises;
  - export documentary collection;
  - irrevocable letter of credit
- Cash payments will not be accepted by the Seller.

## 6. TRANSFER OF RISK

- 6.1 Transfer of risk takes place according to Incoterms 2010 rules applicable at the moment of shipping.

## 7. RESERVATION OF PROPERTY RIGHT

- 7.1 The Goods remain the property of the Seller, which reserves the right to dispose of Goods until the moment of full payment for sold Goods.
- 7.2 If the Buyer fails to pay any amount of his total liability in regard to the Seller under the Terms of Sale, then in the event of the lack of payment, Seller hereby on the basis of this provision has the right to immediately pursue its claim in any manner permitted by law and the Buyer is obliged pay all the costs of debt collection incurred by the Seller.
- 7.3 Until the Seller receives a full payment, the Buyer is obliged to keep the Goods in a manner that expressly demonstrates the Seller's ownership.
- 7.4 The Buyer declares that until all of its liability in regard to the Seller under the Agreement has been paid, the Buyer will store the Goods and take care of them in a way preventing their damage, deterioration, loss or any other detriment.

## 8. RESPONSIBILITY AND DELAYS

- 8.1 All of the offered availability lead times of the Goods are optimal lead times developed on the basis of assurances of our various suppliers. The Seller will make every effort to ensure that the availability of Goods and Services takes place according to the schedule, but shall not be liable

for delays caused by Force Majeure or other circumstances beyond the Seller's control (such as untimely delivery by the suppliers of the Seller, unpredictable disruptions in the Seller's work, e.g. lack of electricity, transport and customs delays, transport damages, including road blocks, time constraints in the truck road traffic, electricity shortages, etc.).

- 8.2** In the event of recognition of the complaint, the Seller reserves responsibility only up to the amount of value of the Goods indicated in the original invoice for the Buyer.

## **9. ACCEPTANCE OF GOODS**

- 9.1** Acceptance of the Goods by the Buyer is carried out at the place of its issue by the Seller, in accordance with the applicable Incoterms 2010 for shipping. The Buyer is obliged to check the Goods in terms of their compliance with the Agreement, particularly in the aspect of quantity and quality. In the case of finding any irregularities, the Buyer is obliged to immediately inform the Seller about such irregularities.

## **10. CANCELLATION OF ORDERS**

- 10.1** Cancellation of the Orders (withdrawal from the Agreement by the Buyer before its execution by the Seller) in the case of standard Goods will be accepted under the following conditions:
- no compensation for termination of the agreement in the case of written notice of cancellation received at least 4 weeks before the date of issue of the Goods;
  - with required payment of compensation for termination of the agreement amounting to 10% of the value of the Order in the case of written notice of cancellation received within 4 to 1 week before the date of issue of the Goods.
- 10.2** For the goods Made-to-order or specially manufactured Goods (class of the Goods is clearly indicated in the Offer and in the Order Confirmation issued by the Seller; these categories also include Goods for which the following is required: specific chemical analysis; mechanical tests, additional testing or non-standard packaging), after conclusion of the Agreement, it is not possible to make such changes as:
- cancellation of the order;
  - change in the quantity of the order;
  - change in the Goods.
- 10.3** The Seller has no obligation but in sporadic cases may grant consent for cancelling the Order for goods classified as "made-to-order" or "specially manufactured". In such case, the Buyer shall be obliged to cover the costs of certificates, tests and other non-standard actions undertaken by the Seller designated for execution of the special Order and he shall pay an additional 4% of severance payment from the value of the Order, unless it was otherwise agreed upon Order Confirmation.

## 11. RETURN OF GOODS

- 11.1** The Buyer wanting to make a return of any or all of the Goods is always required to receive written consent from the Seller for such return with the use of return form. Any goods delivered to the Seller's warehouse without a return form will be sent back at the cost of the Buyer.
- 11.2** Return of goods is possible within 30 days from the date of shipment under the following conditions:
- all Goods must be new, unused, undamaged and in their original packaging. Equipment and spare parts must be in original, intact packaging and must contain all original documents (user manual, etc.). Packaging of materials must be intact and stored under appropriate conditions.
- 11.3** The cost of transport of the returned Goods is incurred by the Buyer, even if the original order was shipped at the expense of the Seller.
- 11.4** The correcting invoice will be issued only after a positive assessment of the Goods carried out by authorized personnel of the Seller. No charge documents, including Buyer's debit notes sent to the Seller for return of goods shall not be accepted, settlement of returns will be made only on the basis of the Seller's correcting invoice.
- 11.5** In the case of acceptance of the return of Goods by the Seller, if the Goods do not meet the requirements of point 11.2 here above, then the correcting invoice will be reduced by 18% of the value of the returned Goods.
- 11.6** In the case of return of the Goods after more than 30 days from the date of shipment, if the above-mentioned all conditions from point 11.2 are met, the correcting invoice will be reduced by 18% of the value of the returned Goods or the amount of 200 PLN (whichever amount is greater).
- 11.7** The following Goods are not returnable:
- Made-to-order goods or specially manufactured Goods
  - Sell-off Goods
  - Goods in the phase of withdrawal from the offer,
  - Software
- 11.8** After expiration of 1 year from the date of shipment, the returns of Goods are not accepted.

## 12. GENERAL REMARKS

The subject of the Seller's business activity is the production and sale of welding equipment, welding materials and equipment for cutting. Our objective is to satisfy the needs of our customers and to even exceed their expectations. The customer may ask Lincoln Electric for advice or information regarding the application of our products in its particular case. We respond to the questions of our customers based on the best information that we have at the moment, however Lincoln Electric is not able to guarantee this kind of advice and is not responsible for such information or advice. For practical reasons, we also can't be responsible for updating or correcting information or advice that was once provided, as well as for providing information of this type or extending or changing the warranty in respect to our products. Lincoln Electric is a responsible manufacturer, but the selection and use of the products sold by Lincoln Electric is entirely under the control of the customer and the customer is responsible for it. Many of the

variables outside of Seller's control affect the results of use of the Goods manufactured and delivered by Lincoln Electric.

### **13.COMPLIANCE WITH THE LAW**

The Buyer is obliged to comply with all applicable laws and regulations with respect to the business activity conducted by the Buyer in cooperation with Lincoln Electric and in connection with the sale or marketing of the products of Lincoln Electric, including among others: all “anti-corruption regulations” which prohibit the direct or indirect transferring of financial benefits and personal benefits to the members of government, public officials, state-owned enterprises, political parties, political party officials, or to relatives or associates of such officials, in connection with obtaining or maintaining business benefits or improper business advantage.

The Buyer obliges not to engage in the sale of Lincoln Electric products to entities from countries, which in the light of US export control regulations are considered “prohibited” (currently they include: Cuba, Iran, North Korea, Sudan and Syria), with the intent to export to these countries or use in nuclear weapons, chemical weapons, biological weapons, rockets or rocket missiles.

### **14.CONDUCT OF ACTIVITY IN LINE WITH THE PRINCIPLES OF ETHICS**

The Buyer acknowledges that company Lincoln Electric approved Code of Corporate Conduct and Ethics, available under the address [www.lincolnelectric.pl](http://www.lincolnelectric.pl) and that it implements the Principles counteracting human trafficking and slavery at each stage of its supply chain. The Buyer undertakes to abide by the above Principles and advocate them in the course of contacts with Lincoln Electric and in relation to the sale and marketing of all the products of Lincoln Electric Company.