



Terms and Conditions of Sale

1. Acceptance. Bernard Welding and Tregaskiss (together "Bernard") are selling products ("Products") and/or services ("Services") and the customer purchasing from Bernard is referred to as ("Purchaser"). These terms and conditions of sale ("Terms"), any Bernard quotation, acknowledgment or invoice and all documents incorporated by specific reference herein or therein ("Bernard Documents") and together with these Terms, the ("Agreement"), constitute the complete terms governing the sale of Products and Services. BERNARD HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER'S BUSINESS FORMS OR IN PURCHASER'S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. No site usage agreement or any other click through agreement on a website will have any binding effect whether or not Bernard clicks on an "ok," "I accept," or similar acknowledgment. Commencement of any work by Bernard or Purchaser's acceptance of delivery of the Products and/or Services will manifest Purchaser's assent to the Agreement. Additional or different terms applicable to a particular sale may be specified in the body of a Bernard Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized officer of Bernard; (b) Bernard Document terms; (c) these Terms.

2. Quotations. Quotations are only valid in writing and for 30 days from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Purchaser. Quotations are made subject to approval of Purchaser's credit. Bernard may refuse orders and has no obligation to supply Products or Services unless Bernard issues an order acknowledgement or upon the shipment of Products or commencement of Services.

3. Prices and Payment Terms. List and net pricing are available to Purchaser upon request. Prices are in U.S. Dollars and are subject to change without notice. All purchase orders ("Orders") are accepted subject to Bernard's price in effect at time of order. Prices do not include any sales, use, value-added or other taxes, import duties, license fees or like charges ("Fees") related to the sale, importation or use of Products or Services, and Purchaser is responsible for those Fees. If Bernard is subsequently required to pay any Fees, Purchaser shall fully defend and indemnify Bernard therefor. Terms of payment are 30 days net from the date of Bernard's invoice. Overdue invoices will incur interest at the rate of 1.5% per month, or at the maximum rate allowable by governing law. Purchaser's inspection rights herein will not affect the payment terms. Under no circumstances will Purchaser have a right of set-off. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify Bernard for all associated costs incurred by Bernard, including reasonable attorney fees and court costs. Minimum order is \$50.00 net for domestic shipments. Non-standard or custom Products or Products which cannot be configured online will be subject to minimum order quantities and lead times as specified by Bernard. **Please contact Bernard's Customer Service Department for details on our Educational Discount Program, including Program details and requirements.**

4. Credit Approval. All shipments are subject to credit approval by Bernard. Bernard may invoice Purchaser and recover for each shipment as a separate transaction. If, in Bernard's sole judgment, Purchaser's financial condition is or becomes unsatisfactory, then Bernard may, without prejudice to any of its other remedies: (a) defer or decline to make any shipments except upon receipt of satisfactory security or cash payments in advance; and/or (b) terminate any or all of Purchaser's purchase orders.

5. Cancellation or Modification. Once Bernard has accepted a purchase order or begun taking actions with respect to a purchase order, Purchaser cannot cancel or modify that purchase order except with Bernard's consent. In such event, Purchaser will be liable for cancellation or modification charges and all costs incurred for the order or in connection with the cancellation or modification. No cancellations



will be permitted for any non-standard or custom Products, or Products which cannot be configured online.

6. Inspection / Non-Conforming Shipments. Purchaser may inspect Products for a period of 15 business days after delivery ("Inspection Period"). Purchaser must notify Bernard in writing of any nonconforming Products within the Inspection Period and afford Bernard a reasonable opportunity to inspect such Products and cure any nonconformity. If Purchaser fails to provide Bernard such written notice within the Inspection Period, Purchaser will be deemed to have accepted the Products. Purchaser may not return any Product without Bernard's prior written authorization and, in any event, returns may not include non-standard or custom Products or Products which cannot be configured online. Any return authorized by Bernard must be made in accordance with Bernard's return policies. Purchaser will be responsible for all costs associated with returns of Products and will bear the risk of loss, unless Bernard agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale. Any variation in quantities shipped over or under those ordered (not to exceed 10%) will constitute compliance with Purchaser's order, and the stated price per item will continue to apply.

7. Delivery. Bernard anticipates use of common carriers for shipment of Products. Unless otherwise agreed upon by the parties in writing, all Products will be shipped FCA Bernard's facility (Incoterms 2020). Shipping dates are approximate and are based upon prompt receipt of all necessary information from Purchaser. Bernard may ship items in a single or multiple shipment. Title to the Products and risk of loss shall pass to Purchaser upon shipment in accordance with the applicable shipping term. Purchaser assumes all risk and liability for loss and use or misuse by third parties who acquire or use the Products illicitly after delivery. Purchaser must notify Bernard and the delivering carrier within 5 days business days from date of receipt of Products, of any damage or shortage, and afford Bernard a reasonable opportunity to inspect the Products. Any loss occasioned by damage or shrinkage in transit will be for Purchaser's account and claims for such loss must be made solely against the carrier.

8. Warranty. Bernard's Products shall, from the date of delivery and for the period set forth below, be free from defects in material and workmanship. **The Warranty against defects does not apply to: (1) consumable components or ordinary wear items; (2) use of the Products with equipment, components or parts not specified or supplied by Seller or contemplated under the Product documentation; or (3) Products which have not been operated, maintained, and repaired pursuant to Product documentation provided by Bernard.**

PRODUCT	WARRANTY PERIOD
Bernard® BTB Semi-Automatic Air-Cooled MIG Guns	1 year Lifetime warranty on straight handles, straight handle switches, and rear straight strain relief
Bernard® W-Gun™ or T-Gun™ Semi-Automatic Water-Cooled MIG Guns	180 days
Bernard® TGX® Chassis and Bernard TGX® Ready To Weld MIG Guns	90 days
Tregaskiss® Robotic MIG Guns and Components	1 year
Tregaskiss® Automatic MIG Guns	1 year



Tregaskiss® TOUGH GUN® Reamer When factory-equipped with Lubricator When both (i) factory-equipped with Lubricator and (ii) used only with Tregaskiss® TOUGH GARD™ Anti-Spatter Liquid	1 year 2 years when factory equipped with Lubricator 3 years when both (i) and (ii)
Tregaskiss® Robotic Peripherals (Clutch, Sprayer, Wire Cutter, Arms)	1 year

9. Service Warranty. Bernard warrants the Services shall conform to any mutually agreed upon specifications or statements of work. Purchaser's sole remedy, and Bernard's sole liability, for a breach of the foregoing warranty is for Bernard, at its option, to re-perform the Services or credit Purchaser's account for such Services.

10. Limitation of Liability and Remedies. BERNARD WILL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST Bernard, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON BERNARD'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. IN NO EVENT WILL BERNARD'S LIABILITY IN CONNECTION WITH THE AGREEMENT OR SALE OF BERNARD'S PRODUCTS OR SERVICES EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE.

11. Training. All users of the Products are required to read and adhere to the applicable user manuals and safety instructions. Purchaser shall indemnify Bernard for all costs incurred with respect to claims for personal injuries and property damage in connection with the use of Products by any person without property training. Bernard may provide Purchaser with training upon request, provided, however, any training provided by Bernard will not affect Purchaser's obligations set forth above.

12. Product Use. Purchaser is solely responsible for determining if a Product is fit for a particular purpose and suitable for Purchaser's method of application. Accordingly, and due to the nature and manner of use of Bernard's Products, Bernard is not responsible for the results or consequences of use, misuse or application of its Products. All physical properties, statements and recommendations are either based on the tests or experience that Bernard believes to be reliable, but they are not guaranteed.

13. Ownership of Intellectual Property. All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Purchaser by Bernard and all rights therein (collectively, "Intellectual Property") will remain the property of Bernard and will be kept confidential by Purchaser in accordance with these Terms. Purchaser has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to Bernard upon request from Bernard. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use Bernard's Products or receive the Services purchased from Bernard.

14. Use of Trademarks and Trade Names. Purchaser shall not use, directly or indirectly, in whole or in part, Bernard's name, or any other trademark or trade name that is now or may hereafter be owned by Bernard (collectively the "Trademarks"), as part of Purchaser's corporate or business name, or in any way in connection with Purchaser's business, except in a manner and to the extent authorized herein or otherwise approved by Bernard in writing. Purchaser hereby acknowledges Bernard's ownership of the Trademarks and the goodwill associated therewith. Purchaser shall not infringe upon, harm or contest the validity of any Trademarks. Purchaser shall be entitled to use the Trademarks only in connection with the promotion or sale of the Authorized Products pursuant to the terms of the Agreement. Purchaser shall reproduce the Trademarks exactly as specified by Bernard. Purchaser



shall not use the Trademarks in combination with any other trademarks or names. Purchaser agrees that it will not register or attempt to register any Trademark or any colorable imitation thereof (including any non-English language variation thereof), or use such Trademarks for any products or for any purposes other than those set forth in the Agreement. Purchaser shall not at any time during or after termination of the Agreement use in its business any other trademark that is similar to or in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Purchaser shall provide reasonable cooperation to Bernard with respect to any efforts of Bernard to protect, defend or enforce its rights to the Trademarks. Should Purchaser cease being an authorized customer of Bernard for any reason, Purchaser shall immediately discontinue any formerly permitted use of Bernard's name or the Trademarks.

15. Confidential Information. All information furnished or made available by Bernard to Purchaser in connection with the subject matter hereof shall be held in confidence by Purchaser. Purchaser agrees not to use (directly or indirectly), or disclose to others, such information without Bernard's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Purchaser of any obligation herein; (b) Purchaser can show by written records was in Purchaser's possession prior to disclosure by Bernard; or (c) is legally made available to Purchaser by or through a third party having no direct or indirect confidentiality obligation to Bernard with respect to such information.

16. Audit. Unless agreed to in writing by an officer of Bernard, neither Purchaser nor any Purchaser representative, may examine or audit Bernard's cost accounts, books or records of any kind or any matter, or any other data that Bernard, in its sole discretion, considers confidential or proprietary.

17. Infringement and Indemnification. Except as set forth below, Bernard agrees to defend and indemnify Purchaser against any claims, costs, damages, liability and expenses resulting from actual patent, trademark or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign that may arise from the sale of Bernard's proprietary Product to Purchaser as such pertains to the subject matter of the Agreement (each, a "Claim"); provided, however, (a) Purchaser supplies Bernard written notice of such Claim immediately after the Purchaser has notice of such Claim, (b) Purchaser cooperates with Bernard in the defense and settlement of such Claim; and (c) Purchaser allows Bernard the right to defend and settle such Claim at Bernard's expense. If a suit or claim results in any injunction or order that would prevent Bernard from supplying any part or Product falling under the Agreement, or if the result of such a suit or claim would, in the reasonable opinion of Bernard, otherwise cause Bernard to be unable to supply such parts or Products, Bernard may do one or more of the following: (i) secure an appropriate license to permit Bernard to continue supplying those parts or Products; (ii) modify the appropriate part or Product so that it becomes non-infringing; (iii) replace the appropriate part or Product with a non-infringing but practically equivalent part or Product; or (iv) if Bernard cannot reasonably accomplish the actions specified in subsections (i) – (iii), then in Bernard's sole discretion, Bernard may discontinue selling the part or Product without any further liability to Purchaser. Notwithstanding the foregoing, Bernard shall have no liability or duty to defend and indemnify Purchaser against any Claim relating to: (1) the use of any part or Product, (2) the combination of any part or Product with any other part or product not supplied by Bernard, or (3) any part or Product or process that is designed or specified by Purchaser.

18. Bernard Employees. Bernard sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Purchaser documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on Bernard or such Bernard employees.



19. Compliance. Purchaser agrees to comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Purchaser's obligations hereunder and Purchaser's use of the Products and Services, including import/export laws, labor laws and anti-corruption laws.

20. Relationship of the Parties. Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint venturers or as agents for one another or as authorizing either party to obligate the other in any manner.

21. Force Majeure. Bernard will not be responsible for failure to perform in a timely manner under the Agreement when its failure results from events beyond its reasonable control (an event of "Force Majeure"), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of Bernard's employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable Bernard to perform.

22. Assignment; Binding Effect. No assignment of any rights or interest or delegation of any obligation of Purchaser under the Agreement or Purchaser's purchase order may be made without Bernard's prior written consent. Any attempted assignment will be void. Bernard may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.

23. Waiver. In the event of any default by Purchaser, Bernard may decline to ship Products or provide Services. If Bernard elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, Bernard's actions will not constitute a waiver of Purchaser's default or any other existing or future default or affect Bernard's legal remedies.

24. Bankruptcy. If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of involuntary bankruptcy, has a receiver appointed or has its assets assigned, the other party may cancel any unfulfilled obligations hereunder.

25. Limitation of Actions/Choice of Law/Litigation Costs. Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of the state of Illinois and litigated exclusively in a state or federal court located in Cook County, Illinois. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. If either party commences litigation or mutually agreed upon alternative dispute resolution concerning any provision of the Agreement, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorney's fees in such litigation or mutually agreed upon alternative dispute resolution, provided that if each party prevails in part, such fees will be allocated in the manner as the court or arbitrator determines to be equitable in view of the relative merits and amounts of the parties' claims.

26. Survival. Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.

27. Severability. If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.

28. Integration and Modification. The Agreement constitutes the entire agreement between Bernard and Purchaser with respect to the Products and Services covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.

Effective: March 1, 2021