

Terms and Conditions of Sale – Hobart Filler Metal

1. **Acceptance.** Hobart Brothers LLC (“Hobart”) is selling its products (“Products”) and the customer purchasing from Hobart is referred to as (“Purchaser”). These terms and conditions of sale (“Terms”), any Hobart quotation, acknowledgment or invoice and all documents incorporated by specific reference herein or therein (“Hobart Documents”) and together with these Terms, the (“Agreement”), constitute the complete terms governing the sale of Products. HOBART 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 Hobart clicks on an “ok,” “I accept,” or similar acknowledgment. Commencement of any work by Hobart or Purchaser's acceptance of delivery of the Products 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 Hobart 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 Hobart; (b) Hobart Document terms; (c) these Terms. These terms apply to all sales of Hobart products listed at www.hobartbrothers.com and those included in Hobart’s filler metals catalog. Sales of products by Hobart Welding Products (such as welding equipment) are subject to separate terms of sale set forth at [Terms of Sale | HobartWelders](#).
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 the Purchaser. Quotations are made subject to approval of Purchaser’s credit. Hobart may refuse orders and has no obligation to supply Products unless Hobart issues an order acknowledgement or upon the shipment of Products.
3. **Prices and Payment Terms.** Prices are in U.S. Dollars and are subject to change without notice. All accepted purchase orders (“Orders”) are subject to Hobart’s price in effect at time of order shipment. 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, and Purchaser is responsible for those Fees. If Hobart is subsequently required to pay any Fees, Purchaser shall fully defend and indemnify Hobart, therefore. International sales are tax-exempt. If a domestic Purchaser claims tax-exempt status, proper documentation must be provided at or before time of Order submission. Should Hobart choose to extend credit to the Purchaser, Purchaser shall remit payment in full within 30 days from the date of Hobart’s invoice or delivery of Product, whichever is earlier. Overdue invoices will incur interest at the rate of 1.5% per month, or at the maximum rate allowable by applicable 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 Hobart for all associated costs incurred by Hobart, including reasonable attorney fees and court costs. The minimum order is \$50.00 net for all shipments, except for purchases by governmental entities, in which case the required order minimum is \$100 per shipment. Requests for product or educational literature or warranty documentation are not subject to the foregoing minimum order requirements. Non–standard products are subject to minimum order quantities and lead times as specified by Hobart.
4. **Minimum Annual Sales Threshold** – U.S. Distributors - less than \$50,000 of combined annual purchases across the ITW Welding portfolio of brands will no longer be eligible for discounted pricing for any ITW Welding product. These U.S. Distributors will receive a List Price until annual purchases exceed the minimum threshold. Discount eligibility will be reviewed on a calendar year basis.
5. **Credit Approval.** All shipments are subject to credit approval by Hobart. Hobart may invoice Purchaser and recover for each shipment as a separate transaction. If, in Hobart’s sole judgment, Purchaser’s financial condition is or becomes unsatisfactory, then Hobart 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.
6. **Cancellation or Modification.** Once Hobart 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 Hobart’s consent. In such event, the

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 sales items or non-standard Products.

7. **Inspection / Non-Conforming Shipments.** The Purchaser may inspect Products for a period of 15 business days after delivery (“Inspection Period”). The Purchaser must notify Hobart in writing of any nonconforming Products within the Inspection Period and afford Hobart a reasonable opportunity to inspect such Products and cure any nonconformity. If the Purchaser fails to provide Hobart such written notice within the Inspection Period, Purchaser will be deemed to have accepted the Products. The Purchaser may not return any Product without Hobart’s prior written authorization. Any return request must be made within six months of original purchase from Hobart. Hobart will only consider standard, non-custom, non-special Products that are neither obsolete nor discontinued for returns. Each return authorized by Hobart is subject to a restocking charge of 20%. All Returned Products must be in a new, salable condition to be considered for any credit upon return. The Purchaser will be responsible for all costs associated with returns of Products and will bear the risk of loss, unless Hobart 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 the Purchaser’s order, and the stated price per item will continue to apply.
8. **Delivery.** Hobart anticipates the use of common carriers for shipment of Products. Unless otherwise agreed upon by the parties in writing, all Products will be shipped FOB Shipping point (US sales). International shipments will follow Intl Chamber of Commerce Incoterms 2010 regulations. Shipping dates are approximate and are based upon prompt receipt of all necessary information from the Purchaser. Hobart may ship items in a single or multiple shipment. Title to the Products and risk of loss shall pass to the 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. The Purchaser must notify Hobart and the delivering carrier within five (5) business days from receipt of Products, of any damage or shortage, and afford Hobart a reasonable opportunity to inspect the Products. Hobart Brothers will continue to support Third Party Billing (TPB) and collect freight transactions when requested by the customer, however, these sales will be FOB carrier. Hobart Brothers assumes no responsibility for goods once delivered to the carrier and it will be the customer’s responsibility to file a claim if necessary. 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. Hobart will provide any information necessary to assist Purchaser in filing any such claims. To report damage to UPS, Purchaser must report the damage on the UPS delivery slip when signing for deliveries. UPS is under no obligation to honor any claims for damage not reported on the delivery slip. For questions, please contact Hobart’s Transportation Department at 937-332-5023. Intl – ExWorks or FCA shipment freight damage from departure port to destination port, please contact your agent who has arranged the ocean/air shipment for you and report your claim. - CPT/CIP shipments-contact your Hobart Brothers coordinator to work with forwarder/carrier for claim.
9. **Freight.** Hobart’s freight & handling charges for truck shipments have a minimum **\$85** fee. Hobart shall prepay the shipping costs for any shipments to a single destination within the contiguous United States that meet one of the following requirements: (i) Order of at least one full pallet of any product (single part number) plus add-ons, (ii) Order of at least 3,000 pounds in weight for any combination of filler metal Products in any diameter or package, or (iii) Order of at least 500 pounds in weight of stainless steel, aluminum, hard-surfacing, and special maintenance products plus add-ons. For Canada distributor shipments please refer to document number ITW-FP011518 (last page). **PARCEL POLICY** – Hobart will add a \$10.00 packaging charge to all parcel orders that are PAD (freight prepaid, but added to Hobart’s invoice), TPB (Third Party Billed) or for all parcel orders COL (collect). Parcel is defined as UPS, FedEx, air or other non-palletized shipments requiring extra packaging.

10. **Educational Discount.** An educational discount is extended to chartered non-profit educational institutions when sold by an authorized HOBART distributor. This discount cannot be combined with any other special pricing being offered and *effective 10/1/24*, only applies to a qualified list of products as follows (all packages and diameters):

SMAW			
Hobart® 610	Hobart® Pipemaster Pro-60	Hobart® 335A	Hobart® 447A
Hobart® 14A	Hobart® 418	Hobart® 7018XLM	Hobart® 24
FCAW			
FabCO® Excel-Arc 71	FabCO® Triple 7	Fabshield® 21B	Fabshield® XLR-8
GMAW			
HB-28	Quantum Arc™ 6		
ALUMINUM			
MaxalMig® 4043	MaxalMig® 4943	MaxalMig® 5356	
MaxalTig® 4043	MaxalTig® 4943	MaxalTig® 5356	
MCAW			
FabCOR® Edge XP	FabCOR® 86R		
Stainless Solid Wire			
308L HiSil	309L HiSil	316L HiSil	
Stainless Stick Electrodes			
Sterling® AP 308/308L	Sterling® AP 309/309L	Sterling® AP 316/316L	

Educational Discount prices can be found within our Customer Portal at [Partners Extranet - Login \(itwwelds.com\)](https://itwwelds.com/PartnersExtranet/Login).

The two ways to obtain the educational discount are:

1) ****Preferred Method**** Drop ship qualified products directly to the educational institution **OR** provide a copy of the school Purchase Order at time of order and ship direct to the distributor. Mark your purchase order “Educational Discount Applies”. For orders drop shipped within the United States, a 250-lb. freight policy will apply for educational orders. For orders drop shipped into Canada, Hobart standard Freight Policy and Drop Ship Policy apply. For Hawaii and Alaska, contact HOBART Customer Service for shipping options.

2) For items shipped from your stock, email a copy of your HOBART invoice AND the school’s Purchase Order or invoice to traci.corrigan@hobartbrothers.com. Upon review of materials, a credit for those products eligible for the educational discount price adjustment will be issued to the distributor. Credit must be requested within 90 days of the school’s purchase order date.

11. **Product Warranty.** Hobart warrants that it will convey the Products free and clear of all liens, security interests and encumbrances created by, through or under Hobart. Hobart further warrants that for a period of 12 months from the date of placement with the common carrier, unless otherwise specified in a specific Product warranty statement (the “Warranty Period”), the Products will be free from substantial defects in material and workmanship, provided the Products are used, stored, and maintained properly and in accordance with Hobart’s instructions and documentation. The warranty against defects does not apply to rust or other issues that result from exposure after the Product is placed with the carrier. Purchaser is solely responsible for (i) its welding operations and quality control and (ii) selecting the proper product, including type and classification of filler metals, for Purchaser’s application. Hobart highly encourages consulting the American Welding Society’s filler metal classifications to inform your buying decisions.

In the event of a breach of the warranties set forth above (the “Warranties”), Hobart will, at Hobart’s option and as Hobart’s sole liability and Purchaser’s sole remedy, repair or credit Purchaser’s account for, any Product that fails to conform to the Warranties, provided that (i) during the Warranty Period, Hobart is promptly notified in writing upon discovery of such failure with a detailed explanation of any alleged deficiencies; (ii) Hobart is given a reasonable opportunity to investigate all claims; and (iii) Hobart’s examination of such Product confirms the alleged deficiencies and that the deficiencies were not caused by accident, misuse, neglect, abuse, or improper usage. No Products may be returned to Hobart until Hobart has issued a Return Goods Authorization sheet (“RGA”). When requesting to return a

Product pursuant to the Warranties, Purchaser must provide Heat and/or Lot numbers as well as the full operating parameters of the application. Returned Products hereunder must be in a condition suitable for weld testing and evaluation by Hobart; failure to do so will result in a waiver of any warranty claim. EXCEPT AS SET FORTH HEREIN, HOBART MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE).

12. **Limitation of Liability and Remedies.** HOBART WILL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST Hobart, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON HOBART'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. IN NO EVENT WILL HOBART'S LIABILITY IN CONNECTION WITH THE AGREEMENT OR THE SALE OF HOBART'S PRODUCTS EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS AS TO WHICH THE CLAIM IS MADE.
13. **Training.** All users of the Products are required to read and adhere to the applicable user manuals and safety instructions. The purchaser shall indemnify Hobart 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. Hobart may provide Purchaser with training upon request, provided, however, any training provided by Hobart will not affect Purchaser's obligations set forth above.
14. **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 Hobart's Products, Hobart 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 Hobart believes to be reliable, but they are not guaranteed.
15. **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 Hobart and all rights therein (collectively, "Intellectual Property") will remain the property of Hobart and will be kept confidential by Purchaser in accordance with these Terms. The 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 Hobart upon request from Hobart. 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 Hobart's Products purchased from Hobart.
16. **Use of Trademarks and Trade Names.** Purchaser shall not use, directly or indirectly, in whole or in part, Hobart's name, or any other trademark or trade name that is now or may hereafter be owned by Hobart (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 Hobart in writing. Purchaser hereby acknowledges Hobart'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 Hobart. 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 Hobart with respect to any efforts of Hobart to protect, defend or enforce its rights to the Trademarks. Should the Purchaser cease being an authorized customer of Hobart for any reason, Purchaser shall immediately discontinue any formerly permitted use of Hobart's name or the Trademarks.
17. **Confidential Information.** All information furnished or made available by Hobart to Purchaser in connection with the subject matter hereof shall be held in confidence by Purchaser. The Purchaser agrees not to use (directly or indirectly),

or disclose to others, such information without Hobart'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 Hobart; or (c) is legally made available to Purchaser by or through a third party having no direct or indirect confidentiality obligation to Hobart with respect to such information.

18. **Audit.** Unless agreed to in writing by an officer of Hobart, neither Purchaser nor any Purchaser representative, may examine or audit Hobart's cost accounts, books or records of any kind or any matter, or any other data that Hobart, in its sole discretion, considers confidential or proprietary.
19. **Infringement and Indemnification.** Except as set forth below, Hobart 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 Hobart's proprietary Product to Purchaser as such pertains to the subject matter of the Agreement (each, a "Claim"); provided, however, (a) Purchaser supplies Hobart written notice of such Claim immediately after the Purchaser has notice of such Claim, (b) Purchaser cooperates with Hobart in the defense and settlement of such Claim; and (c) Purchaser allows Hobart the right to defend and settle such Claim at Hobart's expense. If a suit or claim results in any injunction or order that would prevent Hobart 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 Hobart, otherwise cause Hobart to be unable to supply such parts or Products, Hobart may do one or more of the following: (i) secure an appropriate license to permit Hobart 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 Hobart cannot reasonably accomplish the actions specified in subsections (i) – (iii), then in Hobart's sole discretion, Hobart may discontinue selling the part or Product without any further liability to Purchaser. Notwithstanding the foregoing, Hobart 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 Hobart, or (3) any part or Product or process that is designed or specified by Purchaser.
20. **Hobart Employees.** Hobart 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 Hobart or such Hobart employees.
21. **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, including import/export laws, labor laws and anti-corruption laws.
22. **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 venture's or as agents for one another or as authorizing either party to obligate the other in any manner.
23. **Force Majeure.** Hobart 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 Hobart'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 Hobart to perform.
24. **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 Hobart's prior written consent. Any attempted assignment will be void. Hobart 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.

25. **Waiver.** In the event of any default by the Purchaser, Hobart may decline to ship Products. If Hobart elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, Hobart's actions will not constitute a waiver of Purchaser's default or any other existing or future default or affect Hobart's legal remedies.
26. **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.
27. **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.
28. **Survival.** Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products, will remain in effect until fulfilled.
29. **Severability.** If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.
30. **Integration and Modification.** The Agreement constitutes the entire agreement between Hobart and Purchaser with respect to the Products 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.

ITW Welding North America Canadian Filler Metal Freight Policy

The following freight policy pertains to all filler metals shipped on regularly scheduled shipments. All shipments are FOB, shipping point. All shipments under minimum order quantities are subject to actual freight charges. This policy supersedes all current freight policies and is effective on January 15, 2018. This policy is for Canadian distributors.

Minimum Order Size	Product Requirements	Add-on Potential	Zone 1	Zone 2	Other
One full Pallet	Any filler metal product in a single diameter or package	Yes	Prepaid	+.05/lb. charged on invoice	Zone 1 + actual cost of freight
Orders >3,000 lbs.	Any combined filler metal product in any diameter or package	Yes	Prepaid	+.05/lb. charged on invoice	Zone 1 + actual cost of freight
Orders >500 lbs.	Any stainless, aluminum, hardsurfacing and special maintenance product in any diameter or package	Yes	Prepaid	+.05/lb. charged on invoice	Zone 1 + actual cost of freight

	Province	Location
Zone 1 Identification	Manitoba	Winnipeg
	Ontario	All
	Quebec	Hull, Montreal, Shawinigan, Chicoutimi, Rimouski, Quebec City, Saint-Georges, Sherbrooke, Rouyn-Noranda
	New Brunswick	Bathurst, Edmundston, Moncton, Fredericton, Saint John, and Saint-Basile
	Nova Scotia	Dartmouth, Halifax
	Prince Edward Island	Charlottetown, Summerside
Zone 2 Identification	British Columbia	Kelowna, Prince George, Vancouver, Langley, Victoria, Nanaimo, Vernon
	Alberta	Red Deer, Calgary, Edmonton, Lethbridge, Grand Prairie
	Saskatchewan	Regina, Saskatoon
	Quebec	Baie-Comeau, Sept Iles
Other	Yukon Territories	Whitehorse
	British Columbia	Kitimat
	Newfoundland	All

Freight Policy