

# TERMS AND CONDITIONS OF SALE

All sales of products, equipment or consumables (“Products”) by Bernard or Tregaskiss (the “Seller”) to its customers (hereinafter the “Buyer”) are subject to the terms and conditions contained herein (the “Terms”). Buyer’s acceptance of the Terms shall be made by either (a) Buyer’s providing a purchase order for Products (an “Order”) to Seller or (b) Buyer’s receipt of any Products, whichever occurs first. Seller hereby rejects any additional or different terms or conditions proposed by Buyer.

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## TERMS OF PAYMENT

Buyer shall pay all invoices within 30 days of the invoice date unless otherwise specified by Seller. Seller reserves the right to require advance payment if Seller has not approved Buyer’s credit. Overdue invoices will incur interest at the rate of 1.5% per month, or at the maximum rate allowable by applicable law.

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## PRICES

Price in effect at time of Order will apply and is subject to change without notice. Quotations are only valid in writing and for 30 days.

All prices subject to applicable taxes.

All items are listed with single unit pricing unless noted in price sheet. Replacement items are sold in standardized package quantities.

List and Net pricing is available in Microsoft Excel format upon request.

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## MINIMUM ORDER

Minimum order is \$50.00 net for domestic shipments. Non-standard product will be subject to minimum order quantities and lead times as specified by Seller’s Customer Service.

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## CANCELLATION POLICY

In the event the Buyer requests cancellation of an Order, the Buyer shall be liable for cancellation charges equal to 25%-75% of the invoice total. No Cancellations allowed on “specials” or non-standard Orders.

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## RETURN MERCHANDISE POLICY

Seller’s Customer Service Department must pre-approve and issue Buyer a Return Merchandise Authorization for all Product returns.

Authorizations will be valid for 30 days from issue date. Freight charges to be prepaid by the Buyer.

Only product purchased within the last 6 months that is of current design in new, unused condition, and in unopened packages will be considered for return under Seller’s Return Merchandise Authorization.

Non-standard items are not returnable.

A restocking charge of 25% will be assessed on all returns.

Seller reserves the right to, at its sole election, repair, replace or credit Product that does not conform to Seller’s warranty as set forth herein.

Claims for shortages must be made within 10 days of Buyer’s receipt of shipment.

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## FREIGHT POLICY

Freight will be prepaid on all combined orders valued at \$500.00 distributor net or more for one order to one distributor destination within the contiguous United States or Canada. Should special handling be required, Buyer shall be liable for such costs.

Drop shipments are excluded for prepaid freight. See **Drop Shipments** below.

All shipments are FCA Origin Bernard or FCA Origin Tregaskiss (Incoterms 2010) unless otherwise mutually agreed upon by the parties in writing.

In the event that conflicting shipping terms are present on any document, the terms herein shall control. Title and risk of loss for Products shall pass to Buyer upon delivery in accordance with the applicable shipping term.

Should Seller agree in writing to arrange shipping, Seller reserves the right to choose the method of transportation and routing. Reasonable attempts will be made to honor Buyer’s requests for alternative arrangements. When an order does not qualify for prepaid freight, the freight charges will be charged to Buyer or sent collect with carrier account number provided.

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## DROP SHIPMENTS

A minimum order of \$50.00 is required for all drop shipments. Buyer is responsible for all freight charges regardless of the order value. TG-101-55 (55 gallon drums) of TOUGH GARD™ Anti-Spatter Liquid is excluded from this section.

Drop shipment requests outside of an Account Manager's territory will only be allowed with Account Manager's written approval.

In accordance with the Canadian Excise Tax Act, subsection 179(2), a drop shipment certificate must be provided in advance of product shipment to have the GST/HST tax removed for any product shipped from our Canadian warehouse to any location within Canada. In order for the GST/HST to be removed from your invoice, the goods being shipped from our warehouse to a third party must be exported and no additional value may be added to our product while it remains within Canada.

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## WARRANTY

Seller's Products specified below shall be free from defects in material and workmanship for the period specified below from the delivery to an authorized Buyer provided the Products are operated, maintained, and repaired properly and pursuant to Product documentation provided by the manufacturer. The Warranty against defects does not apply to: (1) consumable components or ordinary wear items; or (2) use of the Products with equipment, components or parts not specified or supplied by Seller or contemplated under the Product documentation.

Should there be a defect please refer to our Return Merchandise Policy.

PRODUCT	WARRANTY PERIOD
Bernard™ BTB (Best of the Best) 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™ Water-Cooled MIG Guns	180 days
Bernard™ TGX™ Chassis and Bernard TGX™ Ready To Weld MIG Guns	90 days
Tregaskiss™ TOUGH GUN™ Robotic MIG Guns and Components	1 year
Tregaskiss™ TOUGH GUN™ Automatic MIG Guns	1 year
Tregaskiss™ TOUGH GUN™ Reamer <ul style="list-style-type: none"><li>• When factory-equipped with Lubricator</li><li>• When both (i) factory-equipped with Lubricator and (ii) used only with Tregaskiss™ TOUGH GARD™ Anti-Spatter Liquid</li></ul>	1 year 2 years when factory equipped with Lubricator 3 years when both (i) and (ii)
Tregaskiss™ TOUGH GUN™ Robotic Peripherals (Clutch, Sprayer, Wire Cutter, Arms)	1 year
Tregaskiss™ Low-Stress Robotic Unicables (LSR Unicables)	2 years

Seller reserves the right to inspect any allegedly defective Product for the alleged deficiencies and that the deficiencies were not caused by accident, misuse, neglect, improper installment, unauthorized alteration or repair or improper testing.

In the event of a defect covered by the above warranty, Seller will, at its option, repair, replace or refund the purchase price of the defective Product. Product found not defective will be returned to Buyer at Buyer's cost after notification by Seller's Customer Service Department. Any TOUGH GUN Reamer component part replaced or repaired pursuant to the warranty herein shall be further warranted for a period of six months after delivery of the replacement.

EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE. SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR DAMAGES OF ANY KIND. INCLUDING, BUT NOT LIMITED TO ANY, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSS OF PRODUCTION OR LOSS OF PROFITS RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY DELAY, ACT, ERROR OR OMISSION OF SELLER.

Genuine Bernard™ and Tregaskiss™ parts must be used for safety and performance reasons or the warranty above shall not be valid. Warranty shall not apply if accident, abuse, or misuse damages a product, or if a product is modified in any way except properly and by authorized Seller personnel.

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## **EDUCATIONAL DISCOUNTS**

Seller will grant an additional 20% discount (off net) for approved educational institutions on the purchase of torches and consumables provided that no other promotional prices have been utilized. The Distributor must sell at no higher than cost.

A copy of the school's original purchase order must be submitted to Bernard/Tregaskiss Customer Service to obtain this discount. When the buyer places an order for direct shipment to a school the 20% discount will be computed on the original order/invoice. The Distributor will be responsible to provide the required documentation for each order.

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## **TRADEMARKS AND TRADE NAMES**

Each and every use of Bernard or Tregaskiss logos must be approved by Seller in writing and must be in the format supplied by the Seller's Marketing Department. The Bernard or Tregaskiss name or logo shall not, in any way, be attached to any other name unless prior authorization is received from the Bernard/Tregaskiss Marketing Department. All intellectual property rights embodied in or associated with the Products, including but not limited to: patents, trademarks, trade names, copyrights, trade secrets, trade dress, service marks, and designs are and shall at all times remain the sole and exclusive property of Seller. Upon notification, Buyer shall cease any previously authorized use of the above immediately.

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## **FORCE MAJEURE**

Seller shall not be held responsible for, nor be held liable for any loss or damage resulting from any delay or failure in performance of their obligations caused in whole or part by events beyond its reasonable control including but not limited to fires, strikes, floods, labor disputes, delays or failures of subcontractors, acts of sabotage, riots, accidents, delays of carriers or suppliers, voluntary or mandatory compliance with any governmental act, or regulation, acts of God or by public enemy, and acts or omissions of other causes beyond Seller's control.

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## **LIMITATION OF LIABILITY**

Seller shall not be responsible or liable for any damage resulting from improper storage, handling, or use of Product prior to placement in service, and will not assume any responsibility, expense or liability for unauthorized repairs. Buyer is solely responsible for determining if a Product is fit for a particular purpose and suitable for Buyer's method of application. Accordingly, and due to the nature and manner of use of Seller's Products, Seller is not responsible for the results or consequences of use, misuse or application of its Products.

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

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## **CONTACT**

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Website: [www.tregaskiss.com](http://www.tregaskiss.com)

Website: [www.bernardwelds.com](http://www.bernardwelds.com)

### **Customer Service**

Phone: 1-855-MIGWELD (644-9353) or +1-519-737-3000  
Fax Orders: +1-519-737-1530 or +1-708-946-6726

E-mail: [cs@itwmig.com](mailto:cs@itwmig.com)  
Toll Free Fax Orders: 1-877-737-2111 or 1-888-946-6726