



## THE WELLBOSS COMPANY TERMS AND CONDITIONS

### Applicable to All Purchases

The term "BUYER" as used in this document shall mean the person or entity purchasing the goods, materials, equipment or other services as described in the Purchase Order (the "Goods"). The term "SELLER" as used in this document shall mean **THE WELLBOSS COMPANY**. Collectively BUYER and SELLER are referred to as the "Parties" and individually as "Party". Any purchase order issued by BUYER shall operate as an acceptance of this Quotation and to the terms and conditions contained herein below.

**1. Entire Agreement:** This Purchase Order embodies the entire agreement between BUYER and SELLER for the sale of the Goods. The Parties shall not be bound by nor liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of this Purchase Order shall alter or amend the terms of this Purchase Order unless specifically incorporated herein. No changes, amendments, substitutions or modifications of any of the terms and conditions hereof shall be valid unless reduced to writing and signed by the Parties in accordance with Article 2 below. Any terms and conditions set forth in BUYER's purchase order documents shall be of no force or effect.

**2. Changes:** BUYER and SELLER, through their respective representatives may, at any time make, in writing, changes, including but not limited to changes in any one or more of the following: (1) Drawings or specifications; (2) Additions to or deletions from quantities ordered; (3) Delivery schedule; (4) Method of shipment or packing; (5) Place of delivery.

**3. Price and Payment:** All prices for the Goods are subject to change without notice and are conditioned upon BUYER's acceptance of the terms and conditions herein specified. If for any reason, other than SELLER's delay, shipment of all or part of BUYER's order is not made within thirty (30) calendar days from the date of BUYER's complete purchase order, then the unshipped balance may be invoiced at SELLER's List Prices in effect at the time of shipment. Where SELLER agrees to provide shipping of the Goods, all changes in transportation costs used by SELLER in computing prices and charges shown on this Purchase Order occurring after the date hereof will be for the BUYER's account. SELLER shall not be liable for any transportation charges incurred at destination such as spotting, switching, drayage, demurrage, pier unloading charges, etc. BUYER shall pay SELLER the amounts set forth in each SELLER invoice. Payment terms are net thirty (30) calendar days after receipt by BUYER of SELLER's invoice. Those provisions of this Purchase Order that by their very nature survive final acceptance under the Purchase Order shall remain in full force and effect after such acceptance and payment. For purchases either shipped or installed outside of the United States, payment is due prior to shipment or under financial arrangement approved by SELLER prior to shipment. A finance charge equal to 1½% per month (18% per annum) will be paid by BUYER on all invoices paid after thirty (30) calendar days. All remittances shall be in United States Dollars. In any event of any cancellation of the Goods by BUYER, BUYER agrees to pay SELLER thirty percent (30%) of the Purchase Price as a cancellation and restocking payment which the Parties deem in advance to be being reasonable.

**4. Delivery:** Unless otherwise agreed, delivery of products shall be made *ex works* SELLER's facility (INCOTERMS 2012). SELLER shall not be liable for any delays in performing its obligations regardless of whether such delays are caused by (i) SELLER's late performance, or any reasonably unforeseeable condition which is beyond SELLER's reasonable control and which could not be avoided by the exercise of ordinary diligence. Acts of God, such as storms or floods, named or numbered tropical storms and hurricanes as well as government priorities, acts of civil or military authorities, strikes, fires, epidemics, war or riot, work stoppages, accidents, casualties, inability to procure supplies and raw materials, delays in transportation, shortage of cars are examples of events which will be excusable for being beyond SELLER's reasonable control. For any delay, SELLER shall fulfill the following: (a) promptly after the discovery of the commencement of any excusable delay, SELLER shall provide BUYER with written notice of the cause and extent thereof as well as an estimate of the duration thereof; and, (b) promptly after the discovery of the cessation of the event causing such delay, SELLER shall provide BUYER with written notice of the actual delay incurred, upon receipt of which the date of delivery shall be extended for the time actually lost by reason of such delays. If delivery of any special items is delayed by BUYER for more than thirty (30) calendar days after completion, SELLER may invoice for such items and hold for BUYER's disposition for a reasonable period of time. BUYER shall make payment for such special items within thirty (30) calendar days from the date of invoice. To the extent SELLER's shipments are made in "single trip" non-returnable containers, SELLER makes no allowances for the return of any container. SELLER will not accept any material returned without SELLER's prior written permission. All returned material must be shipped to SELLER prepaid by BUYER. Collect shipments will not be accepted by SELLER.

**5. Title and Risk of Loss:** Except as otherwise provided for elsewhere herein, title to all Goods furnished by SELLER shall transfer to BUYER upon payment of all amounts due and owing to SELLER under this Purchase Order. Notwithstanding the foregoing, SELLER shall be responsible for and shall bear any and all risk of loss or damage to the Goods after loading onboard transportation to BUYER in accordance with the delivery provisions of this Purchase Order.

**6. Expediting:** The Goods furnished under this Purchase Order, including all warranty work, shall be subject to expediting by BUYER. BUYER's representatives shall be afforded reasonable access during normal working hours to SELLER's plants, and SELLER agrees to procure a similar right for BUYER, for expediting purposes with respect to SELLER's subcontractors and vendors. SELLER shall notify BUYER in writing of any actual or anticipated delays within a reasonable time period after discovery. Such notice shall include an estimated period of delay, cause, and corrective actions being taken. BUYER and its representatives agree to sign any documents needed prior to entry to the facilities of SELLER or its subcontractors and vendors.

**7. Quality Standards:** SELLER shall comply with the standards of quality specified by this Purchase Order. BUYER's authorized representatives shall be afforded reasonable access during normal working hours to plants of SELLER in order to monitor compliance with quality requirements. BUYER's right to inspect the Goods shall extend through the manufacturing process, the time of shipment and for a reasonable time after arrival at the final destination. BUYER and its

representatives agree to sign any documents needed prior to entry to the facilities of SELLER or its subcontractors and vendors.

**8. Warranties and Guarantees:** SELLER warrants that the Goods shall be free from liens and defects in title, and shall conform to the terms of this Purchase Order and the specifications applicable to the Goods. Details on the specifications applicable to the Goods can be found at <http://www.thewellboss.com/content/specifications>. All Goods shall be furnished subject to SELLER's standard manufacturing variations and practices. Unless the warranty period is otherwise extended, the conditions of which are provided elsewhere in this Purchase Order, the following warranty shall apply: if, at any time prior to three (3) months following the date of delivery to BUYER it appears that the Goods, or any part thereof, do not conform to these warranties or to the specifications applicable thereto, and SELLER is so notified in writing upon discovery and BUYER returns the Goods to SELLER at SELLER's manufacturing facilities in Houston, Texas, then SELLER shall promptly correct such nonconformity. Notwithstanding the foregoing, SELLER's warranty obligations shall not extend to any use by BUYER of the Goods in conditions more severe than the manufacturer's recommendations nor to any defects which were visually observable by BUYER but which are not promptly brought to SELLER's attention. SELLER's warranties and guarantees in this Purchase Order shall be conditioned upon (i) BUYER having first ensured that all of BUYER's personnel who will undertake any activities in handling or using the Goods having first undertaken and satisfactorily completed SELLER's training program in the use of the Goods, and (ii) BUYER handling and using the Goods fully in conformance with all of SELLER's instructions. Any failure of BUYER's personnel to have satisfactorily completed SELLER's training and having received a certificate from SELLER acknowledging such successful completion in the use of the Goods shall invalidate all warranties and guarantees regardless of whether they arise under this Purchase Order, under statute or at law. SELLER makes no other warranties or guarantees to BUYER, either express or implied and the warranties provided in this clause shall be exclusive of any other warranties including **ANY IMPLIED OR STATUTORY WARRANTIES OF FITNESS FOR PURPOSE, MERCHANTABILITY AND OTHER STATUTORY REMEDIES WHICH ARE INCONSISTENT WITH THIS CLAUSE ARE EXPRESSLY WAIVED**. The Parties acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not apply to any of the obligations of either Party, the services provided or to the sale of the Goods under this Purchase Order. Notwithstanding anything to the contrary contained elsewhere herein, SELLER's limitation of liability for any claim of defective Goods or services arising during the above warranty period shall be limited to the replacement of the claimed defective Goods or services subject always to BUYER first returning such claimed defective Goods or services to SELLER's manufacturing facility in Houston, Texas.

**9. Infringement:** SELLER shall, at its own expense, protect, defend and hold harmless BUYER under this Purchase Order against any claim, suit, or proceeding brought against BUYER which is based upon a claim, whether rightful or otherwise, that the Goods furnished by SELLER under this Purchase Order, constitutes an infringement of any patent and SELLER shall either (i) pay all damages and costs awarded against BUYER, resulting therefrom, or (ii) modify the Goods so that they are non-infringing. The indemnity is given upon the condition that BUYER shall promptly notify SELLER of any claim or suit or proceeding involving BUYER in which such infringement is alleged, and BUYER shall permit SELLER to completely control the defense or compromise of any such allegation of infringement, and BUYER shall render such reasonable assistance at SELLER's cost in the defense thereof as SELLER may require. BUYER warrants and represents that neither it nor any of its personnel, contractors, subcontractors (of all tiers), affiliated companies, agents or representatives shall take or attempt to take any steps to copy or reverse engineer the Goods or take any other action to infringe on SELLER's intellectual property rights in the Goods and BUYER agrees to protect, defend and hold harmless SELLER from and against any such actions to copy of reverse engineer the Goods.

**10. Assignment:** Neither Party to this Purchase Order shall assign, transfer or sublet the Purchase Order, any portion thereof or any of the obligations, benefits or interests contained therein or created thereby in any manner whatsoever without the prior written consent of the other Party; *provided, however*, SELLER shall be at liberty to assign this Purchase Order to any company that acquires or will acquire the controlling ownership interest in SELLER.

**11. Non-Waiver:** Failure by either Party to insist upon strict performance of any of the terms and conditions hereof, or failure to delay to exercise any rights or remedies provided herein or by law shall not release the other Party from any of the obligations contained in this Purchase Order and shall not be deemed a waiver of any right of the Parties to insist upon strict performance hereof or any of its rights or remedies set forth in this Purchase Order.

**12. Indemnities:** Notwithstanding anything to the contrary contained elsewhere herein, SELLER shall be solely responsible for and shall defend, protect, indemnify and hold harmless BUYER, BUYER's co-venturers, and their respective parents, subsidiaries and affiliated companies, any of their respective assignees and its and all of their respective officers, directors, employees and representatives (collectively "BUYER GROUP") from and against any loss, cost, liability, claim, suit, judgment, award or damage (including reasonable attorney's fees) in any case of illness, injury or death to the personnel of SELLER, SELLER's parent, subsidiary and affiliated companies, any of their respective assignees and its and all of their respective officers, directors, employees and representatives (collectively "SELLER GROUP") and in any case of loss or damage to the property of any member of SELLER GROUP arising out of or relating to the provision of the Goods or services under this Purchase Order and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF BUYER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT, GROSS OR**

**CONCURRENT NEGLIGENCE), BREACH OF WARRANTY, BREACH OF CONTRACT, BREACH OF DUTY OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY AND PRE-EXISTING CONDITIONS.**

Notwithstanding anything to the contrary contained elsewhere herein, BUYER shall be solely responsible for and shall defend, protect, indemnify and hold harmless all members of the SELLER GROUP from and against any loss, cost, claim, liability, suit, judgment, award or damage (including reasonable attorney's fees) in any case of illness, injury or death to the personnel of any members of the BUYER GROUP and in any case of loss or damage to the property of any members of the BUYER GROUP arising out of or relating to the provision of the Goods or services under this Purchase Order and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY SELLER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT, GROSS OR CONCURRENT NEGLIGENCE), BREACH OF WARRANTY, BREACH OF CONTRACT, BREACH OF DUTY OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY AND PRE-EXISTING CONDITIONS.**

Notwithstanding anything to the contrary contained elsewhere herein, BUYER shall be solely responsible for and shall defend, protect, indemnify and hold harmless all members of the SELLER GROUP from and against any loss, cost, claim, liability, suit, judgment, award or damage (including reasonable attorney's fees) on account of illness, injury or death to any person or entity not a member of the BUYER GROUP or the SELLER GROUP and for loss or damage to property any person or entity not a member of the BUYER GROUP or the SELLER GROUP arising out of, relating to the use of the Goods or services supplied under this Purchase Order and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF SELLER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT, GROSS OR CONCURRENT NEGLIGENCE), BREACH OF WARRANTY, BREACH OF CONTRACT, BREACH OF DUTY OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY AND PRE-EXISTING CONDITIONS.**

Notwithstanding anything to the contrary contained elsewhere herein, BUYER shall be solely responsible for and shall defend, protect, indemnify and hold harmless all members of the SELLER GROUP from and against any loss, cost, claim, liability, suit, judgment, award or damage (including reasonable attorney's fees) for any injury or death to any person or entity or for any loss or damage to property any person or entity arising out of, relating to or in connection with any pollution or contamination that is related to the use of the Goods or services supplied under this Purchase Order and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF SELLER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT, GROSS OR CONCURRENT NEGLIGENCE), BREACH OF WARRANTY, BREACH OF CONTRACT, BREACH OF DUTY OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY AND PRE-EXISTING CONDITIONS.**

**13. Insurances:** The indemnity obligations voluntarily assumed by the Parties under this Purchase Order shall be supported by liability insurance and shall have coverage of no less than \$10,000,000 per occurrence and which shall be primary to any other insurances provided by the indemnitee. SELLER agrees to have its underwriters name BUYER as additional assured and waive subrogation against all members of BUYER Group, but only to the extent of the risks for which SELLER has expressly agreed to assume responsibility and indemnify or release BUYER under this Purchase Order. BUYER agrees to have its underwriters name SELLER as additional assured and waive subrogation against all members of SELLER Group, but only to the extent of the risks for which BUYER has expressly agreed to assume responsibility and indemnify or release SELLER under this Purchase Order. Additional assureds shall be entitled to the full limits of all policies actually obtained, including excess or umbrella insurances. The limits and coverages of the said insurances shall in no way limit the liabilities or obligations assumed by the parties under this Paragraph. If it is judicially determined that the monetary limits of insurance required hereunder or the indemnities assumed under this Paragraph exceed the maximum monetary limits or scope permitted under applicable law, it is agreed that said insurance requirements or indemnities shall automatically be amended to conform to the maximum monetary limits or scope permitted under such law.

**14. Arbitration:** All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Purchase Order or the supply of the Goods or services under this Purchase order shall be decided by resort of either Party to arbitration utilizing a single arbitrator with no less than fifteen (15) years of experience in the manufacturing process in accordance with the Construction Industry Rules of the American Arbitration Association. The arbitration shall be held in Houston, Texas. The arbitrator shall be obligated to apply the choice of law as set forth in Article 15 of these terms and conditions and shall be prohibited from applying any other terms and conditions. The decision of the arbitrator shall be final, binding and enforceable in any court of competent jurisdiction and the Parties agree that there shall be no appeal from the arbitrator's decision except as provided for in the American Arbitration Association Appellate Procedures, then in effect. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding. The right to arbitrate shall survive the termination of the Purchase Order. The Parties acknowledge and agree that this Agreement includes activities in Interstate Commerce and that the Federal Arbitration Act, 9 U.S.C. §1 *et. seq.* shall control and apply to all arbitrations conducted hereunder, notwithstanding any state law provisions to the contrary.

**15. Choice of Law:** The laws of the State of Texas shall control the validity, construction and interpretation of this Purchase Order excluding any conflicts of laws principles which would direct the substantive law of another jurisdiction to apply.

**16. Independent Contractor:** In the supply of the Goods and services under this Purchase Order, SELLER's status shall be that of an independent contractor and the relationship of the BUYER and SELLER shall in no event be construed or interpreted as being that of principal and agent, master and servant, or employer and employee, and the employees of each party hereto shall not be deemed to be employees of the other party hereto for any purpose.

**17. Consequential Damages:** Notwithstanding anything to the contrary contained elsewhere herein, neither SELLER nor BUYER shall be liable to the other for any consequential, incidental, indirect or punitive damages of any kind or character, including, but not limited to, loss of use, loss of or delayed production, loss of hole, damages associated with blowout or wild well, loss of profit, loss of revenue (collectively "Consequential Damages") whenever arising under this Purchase

Order or as a result of, relating to or in connection with the Goods or services supplied under this Purchase Order, and no claim for Consequential Damages shall be made by either Party against the other Party or insurers **REGARDLESS OF WHETHER SUCH CLAIM IS BASED OR CLAIMED TO BE BASED ON NEGLIGENCE (INCLUDING SOLE, JOINT, ACTIVE, PASSIVE, CONCURRENT OR GROSS NEGLIGENCE), FAULT, BREACH OF WARRANTY, BREACH OF AGREEMENT, STATUTE, STRICT LIABILITY OR OTHERWISE.**

BUYER agrees to release, defend, protect, indemnify and hold harmless all members of SELLER GROUP from and against any Consequential Damages incurred, asserted or claimed by any member of BUYER GROUP against any member of SELLER GROUP arising out of, in connection with or related to the supply of the Goods or services under this Purchase Order **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF SELLER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT, CONCURRENT NEGLIGENCE) OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, AND INCLUDING PRE-EXISTING CONDITIONS.**

SELLER shall release, defend, protect, indemnify and hold harmless all members of BUYER GROUP from and against any Consequential Damages incurred, asserted or claimed by any member of SELLER GROUP against any member of BUYER GROUP arising out of, in connection with or related to the supply of the Goods or services under this Purchase Order **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF BUYER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT, CONCURRENT NEGLIGENCE) OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY AND INCLUDING PRE-EXISTING CONDITIONS.**

**18. Taxes:** The prices provided for herein are exclusive of any present or future Federal, State, Municipal or other sales or use tax with respect to the Goods or services provided, of any other present or future excise tax upon or measured by the gross receipts from this transaction or any allocated portion thereof or by the gross value of the Goods covered hereby, and of any present or future property tax or similar charge with respect to the Goods or services provided. If SELLER is required by applicable law or regulation to pay or collect any such tax or taxes on account of this transaction on the material or equipment or services covered hereby, then such amount of tax shall be paid by the BUYER in addition to the prices provided for herein.

**19. Termination:** This Purchase Order may be terminated by either Party upon providing ninety (90) calendar days prior written notice to the other Party; *provided, however,* that no such termination shall be effective as to any Goods and/or services until such Goods have been delivered to BUYER and the services completed. Notwithstanding the foregoing, the following clauses shall survive termination or completion of this Purchase Order - 1, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22 and 23.

**20. Export Control:** BUYER shall be responsible for determining all export licensing requirements and for obtaining all necessary export licenses and authorizations as required by the laws of the United States of America, including, but not limited to, all United States Export Administration Regulations (15 CFR §730-774), the International Traffic in Arms Regulations (22 CFR §120-130) and all other statutes and regulations in force and effect as controlled by the United States Commerce Department – Bureau of Industry and Security, the United States Defense Department – Directorate of Defense Trade Controls, the United States Census Bureau – Foreign Trade Division and the United States Treasury Department – Office of Foreign Assets Control, the United States Department of Defense, the United States Department of Commerce, the United States Department of the Treasury, and any other department or agency of the United States Government that imposes any obligations relating to the export of the Goods, materials and/or intellectual property, including those of any foreign governments (i.e. non-United States governments). BUYER shall also obtain a United States agent or freight forwarder to facilitate the export of any goods, and BUYER shall be solely and exclusively responsible for providing written authorization or power of attorney to its agent or freight forwarder so that BUYER's agent or freight forwarder can act on BUYER's behalf for the export of the goods, materials and/or intellectual property. Copies of the written authorization or power of attorney given by BUYER to BUYER's agent or freight forwarder must be delivered to SELLER as a condition to the transfer of any goods by SELLER to BUYER or BUYER's agent or freight forwarder. BUYER's agent or freight forwarder shall be listed on all export documents as the Principal Party in Interest and/or Exporter of Record, and BUYER and BUYER's agent or freight forwarder shall assume full responsibility for the proper handling, classification, and exporting of goods sold by SELLER to BUYER.

Notwithstanding anything to the contrary contained elsewhere herein, BUYER shall be responsible for filing for and obtaining all such export licenses and authorizations for all goods, materials and/or intellectual property relating to the sale of the goods by SELLER to BUYER and BUYER shall release, defend, protect, indemnify and hold harmless SELLER, SELLER's parent, subsidiary and affiliated companies, SELLER's contractors and subcontractors of all tiers and all of their respective officers, directors, managers, members, employees, representatives and agents from and against any loss, cost, claim, liability, suit, judgment, award or damage (including reasonable attorney's fees) on account of failing to file for and properly obtain all such export licenses and authorizations for all goods, materials and/or intellectual property relating to the sale of the goods by SELLER to BUYER.

**21. Severability.** If, in any legal proceeding, it is determined that any provision of this Purchase Order is unenforceable under applicable law, the unenforceable provision shall automatically be amended to conform to that which is enforceable under the law. In any event, the validity or enforceability of any provision shall not affect any other provision of this Purchase Order, and the Purchase Order shall be construed and enforced as if such provision had not been included.

**22. Third Parties.** Except as specifically provided for elsewhere in this Purchase Order, this Purchase Order shall not be construed to confer any benefit on any third party not a Party to this Purchase Order nor shall it provide any rights to such third party to enforce its provisions.

**23. Confidentiality.** BUYER's confidentiality obligations are as set forth in the Confidentiality and Non-Disclosure Agreement entered into by the Parties.