



DBK USA Inc. TERMS AND CONDITIONS OF SALE

1. Controlling Terms and Conditions.

Seller hereby objects to, and shall not be bound by, any term or condition on any document provided by Buyer's that is different from or in addition to these terms and conditions. Seller hereby agrees to sell to Buyer the products or services described or referred to on this form, at the prices indicated on this form only on the express condition that Buyer assents to the terms and conditions set forth both on the face and on the reverse side of this form. Buyer's acceptance is limited to the exact terms stated on this form, and any additional or different terms or conditions proposed by Buyer are hereby expressly rejected. If this document construed as an expression of acceptance or a confirmation of a verbal agreement, such acceptance or confirmation is expressly made conditional on the assent of Buyer to the terms and conditions stated on this form. No terms, conditions, description, price, quantity, or delivery schedule shall be changed, and no agreement or understanding in addition to or different from the terms and conditions stated on this form shall be binding upon in any way whatsoever Seller without the express written agreement from Seller's authorized representative. Any assenting action by Buyer hereunder or any acceptance of the products or services described or referred to in this form shall conclusively constitute assent by Buyer to the terms and conditions hereof and a representation that Buyer is solvent.

2. Quotations, Changes and Cancellations.

Quotations are valid and firm for fifteen days unless stated otherwise. Buyer may not, under any circumstances, or for any reason whatsoever, cancel its order or any part thereof unless Seller has received written notice of the cancellation more than thirty days prior to the shipping date last agreed upon by Seller for the order or the portion thereof being cancelled. In the event of any such cancellation or change of any order by Buyer, Buyer shall reimburse Seller for all costs and expenditures made or committed to be made by Seller up to the date of receipt by Seller of such written notice of the change or cancellation, including reasonable overhead and profits lost on the portion canceled.

3. Acceptance.

Buyer shall immediately and irrevocably accept products and services when tendered and shall, in case of damages or nonconforming products or services follow only the procedures and remedies outlined in the written warranty contained herein. Acceptance shall occur upon tender to Buyer. If Buyer refuses to receive such products and services when tendered, Seller may exercise any or all of the remedies afforded to Sellers by Section 2-703 et. seq. of the Uniform Commercial Code. Seller shall have no obligation to hold or resell such products for Buyer's account.

4. Representation of Solvency.

Buyer represents that, by placing an order with Seller order, it hereby acknowledges that it is not "insolvent" as such term is defined in Section 1-201(23) of the Uniform Commercial Code. In the event that Buyer becomes insolvent before delivery of products, it will notify Seller of such insolvency in writing. Failure to so notify Seller shall constitute a written reaffirmation of Buyer's solvency at the time of delivery.

5. Warranty

Unless a different period is expressly provided, Seller warrants for a period of twelve months, from the date of delivery that the products delivered hereunder will be of the kind and quality designated or specified herein, and shall confirm to the specifications set forth herein and shall be free from defects in materials or workmanship.

EXCEPT AS EXPRESSLY SET FORTH ABOVE, SELLER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR PURPOSE OR AGAINST INFRINGEMENT OR OTHERWISE. BUYER ASSUMES AND INCURS ALL RISK RESULTING FROM THE USE OF THE PRODUCTS SOLD HEREUNDER, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS.

Buyer shall inspect products delivered hereunder within thirty days after delivery of such products to the shipping destination. In the event the products sold hereunder fail to conform to the specifications set forth herein or are not free from defects in material or workmanship, and if Buyer shall notify Seller thereof within ten days after Buyer's discovery of such failure or defects, then Seller shall at Seller's sole and exclusive option issue appropriate credit or correct such failure or defect by repairing or replacing such products found in fact to be nonconforming or defective. Only after first obtaining and then observing such reasonable instructions as Seller may give in authorizing any return by Buyer, Buyer shall return by prepaid shipment, all allegedly nonconforming or defective products, subject to reimbursement by Seller of the cost of shipping, if such products found in fact found to be nonconforming or defective.

Any technical advice or recommendation made by Seller concerning uses and applications of the products sold hereunder are based upon information believed by Seller to be reliable. Such advice or recommendations are intended for use solely by persons having appropriate skill, know-how, and judgment in the selection, use, and applications of such products. Buyer hereby represents that it is not relying upon the skill or judgment of Seller to select or furnish suitable products for any use or application of such products intended or contemplated by Buyer.

Buyer expressly understands and agrees that any modification made by Buyer to the products sold hereunder are solely at the risk of Buyer and may result in loss of some or all of the agency approvals for such products.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ANY MODIFICATION MADE BY BUYER TO THE PRODUCTS SOLD HEREUNDER SHALL VOID ANY AND ALL WARRANTIES MADE BY SELLER, WHETHER EXPRESS OR IMPLIED.

6. Buyer's Remedies

The remedy of issuing appropriate credit or repair or replacement, as provided by the above warranty, shall be Buyer's sole and exclusive remedy for any breach of such written warranty or for the breach of any express or implied warranties arising under state law. Seller shall not be liable for any labor costs or other expenses in replacing a nonconforming or defective product nor for any incidental or consequential damages resulting from or contributed to by any defect in materials or workmanship, negligence in manufacture or design, or failure to warn. Seller makes NO WARRANTY with respect to any product that has been altered or subject to misuse, abuse or use for which it was not designed. Seller shall in no way be liable for any losses, costs, forfeitures, or damages (including, without limitation, loss of profits, liabilities of Buyer to its customers, employees, or third persons, and any incidental or consequential damages) whether direct or indirect and whether or not resulting from or contributed to by the default, negligence, whether manufacturing or design, or failure to warn on the part of Seller, its agents, employees, or subcontractors, which might be claimed as the result of, or use (with or without an active malfunction) or malfunctions of the products covered by the warranty.

THE EXTENT OF LIABILITY OF SELLER (EXCEPT AS TO TITLE) ARISING OUT OF THE SUPPLYING OF SAID PRODUCTS, OR THEIR USE, WHETHER ARISING FROM WARRANTY, CONTRACT, NEGLIGENCE OR OTHERWISE SHALL NOT IN ANY CASE EXCEED THE COST OF ISSUING APPROPRIATE CREDIT OR CORRECTING NONCONFORMITIES OR DEFECTS IN THE PRODUCT AS HEREIN PROVIDED AND UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD SPECIFIED HEREIN, ALL SUCH LIABILITIES SHALL TERMINATE. THE FOREGOING SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND THE SOLE AND EXCLUSIVE LIABILITY OF SELLER.

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, WHETHER BASED UPON LOST GOODWILL, LOST RESALE PROFITS, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, OR OTHERWISE AND WHETHER ARISING OUT OF ANY BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE.

Any demand for arbitration to assert a claim under the above warranty must be commenced within twelve months from the date of shipment by Seller of such products claimed to be nonconforming or defective.

7. Delivery and Force Majeure.

Each delivery shall stand as a separate sale and shall be subject to credit arrangements to the satisfaction of Seller or to payment in cash. If payments are not made in accordance with such arrangement or if at any time in the sole judgment of Seller, Buyer's credit standing has been impaired, Seller may withhold delivery of any goods hereunder until cash or credit arrangements satisfactory to Seller have been established. All delivery dates specified by Seller are approximate and are based on its best estimate and are subject to change without notice due to conditions beyond its reasonable control, including, without limitation, (i) acts of God, unforeseeable circumstances, acts (including delay or failure to act) of any governmental authority (de jure or de facto), war (declared or undeclared), riot, revolution, priorities, fires, strikes, explosions, floods, quarantine restrictions, sabotage, or epidemics, (ii) inability due to causes beyond Seller's reasonable control to timely obtain, at normal prevailing market prices, necessary and suitable labor, materials, components, manufacturing facilities, transportation, or instructions from Buyer, and (iii) any other cause beyond Seller's reasonable control. If, by reason of any such circumstances, Seller is unable to supply the total demand for the products to be delivered hereunder, Seller may make one or more partial deliveries of Buyer's order, or may distribute its available supply among any or all purchasers on such basis as it may deem appropriate without liability for any resulting failure of performance. In the event of any such delay or failure, the date of delivery shall be extended for a period equal to the time lost by such reason.

8. Payment, Title, and Risk of Loss.

Payment is to be made by Buyer in United States dollars or other medium of exchange acceptable to Seller, upon presentation of invoice to Buyer by Seller, subject to the terms and conditions of payment stated thereon. Prices are subject to change upon fifteen days' notice. Seller's prices are quoted F.O.B. Sellers facility. Buyer shall pay, or reimburse Seller for the cost of freight and insurance of the goods. Seller's prices do not include any sales, use, excise, value added, customs duties, or other similar taxes. Consequently, in addition to the price specified herein, the amount of any such present or future taxes applicable to the shipping destination, sale of the products by Seller hereunder or the sale or the use of the products by Buyer hereunder shall be paid by Buyer. Except as otherwise expressly provided herein, title to the products specified herein shall pass to Buyer upon delivery at Buyer's designated shipping destination, however, risk of loss shall pass to Buyer at the F.O.B. point. Cost of all return shipments for any reason whatsoever shall be borne by Buyer, with title passing to Seller at Buyer's shipping point of destination, and risk of loss passing to Seller upon delivery to it at its shipping destination.

Seller shall have no obligation to make any further shipments until Seller has received full payments for all prior shipments. Furthermore, Seller may suspend production until such payment is received.

9. Special Tooling.

In the event that Seller manufactures or purchase special tools, dies, or equipment in connection with Buyer's order, such tools, dies, and equipment, unless otherwise agreed to in writing by an authorized representative of Seller, shall remain the exclusive property of Seller, notwithstanding that a part of the cost thereof is included as a part of the price specified herein.

10. Information Disclosed by Seller.

Any knowledge or information that Seller shall have disclosed or may hereafter disclose to Buyer, or that may hereafter be acquired by Buyer, in connection with the products or services described herein, shall be conclusively deemed to be the confidential and proprietary information of Seller and shall not be disclosed by Buyer.

11. Information of Buyer.

Any knowledge or information which Buyer shall have disclosed or may hereafter disclose to Seller, or which may be acquired by Seller in connection with the products or services described herein, shall be deemed to be confidential or proprietary information of Buyer and shall not be disclosed by Seller or used by Seller except in fulfilling its obligations hereunder.

12. Patents, Trademarks, or Copyrights.

Buyer shall indemnify, defend and hold Seller harmless against any expenses, damages, costs or losses resulting from any suit or proceeding brought for infringement of patents, trademarks, or copyrights, or for unfair competition, arising from compliance with Buyer's designs or specifications or instructions.

13. Assignment.

Buyer shall not assign any interest herein or any rights of obligations hereunder without the written consent of Seller.

14. Compliance with Applicable Laws

Seller warrants that all products to be furnished hereunder were or will be produced, manufactured, and delivered in compliance with all applicable federal, state, and local laws and ordinances, and all lawful orders, rules, and regulations thereunder, including, but not by way of limitation, the applicable provisions of the Fair Labor Standards Act and the Occupational Safety and Health Act.

15. Revision

Seller reserves the right to revise these terms and conditions of sale at any time.

16. Waiver of Terms and Conditions

The failure of Seller in any one or more instances to insist upon performance of any of the terms and conditions contained herein, or to exercise any right or privilege hereunder, or the waiver by Seller of any breach by Buyer, of these terms and conditions of sale, shall not be construed as thereunder waiving such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no failure or waiver had occurred.

17. Dispute Resolution

All disputes, claims or questions arising out of or in any way connected with this Contract of Sale shall be resolved by binding arbitration conducted in Cincinnati, Ohio before the American Arbitration Association using the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitration panel may be entered in any court having jurisdiction thereof. The parties shall request that the American Arbitration Association appoint a panel of three arbitrators, one of whom shall possess knowledge of similar industrial products and their distribution.

18. Interpretation

The sole and exclusive provisions of this agreement are the terms and conditions of Seller, which shall control over any conflicting provisions in Buyer's order or otherwise. Such agreement and Seller's terms and conditions can be modified or rescinded only by a writing signed by an authorized representative of Seller. This agreement shall be construed as a contract made in the State of Ohio and shall be governed in accordance with the laws of the State of Ohio, without regard to choice of law provisions. This agreement constitutes the entire agreement between Seller and Buyer with respect to the products and services covered hereby and supersedes any prior or other agreements, written, or oral, between the parties.