

DSM&T Company, Inc. Standard Terms and Conditions of Sale as Seller

1. **Binding.** Seller shall not be bound or obligated to any order, goods or services of Buyer until Seller officially acknowledges to Buyer in writing of receipt and confirmation of Buyer's intent and all information of Buyer's requirements, including; supplier sources, Buyer's supplied materials, drawings, specifications, tooling, proprietary information or materials and Buyer's financial solvency.
2. **Condition.** Seller will build buyer's products to buyer's specifications. Determination of the suitability of the material to the use contemplated is the user's responsibility.
3. **Minimum Order.** Seller's minimum orders that will be accepted and release to production and / or services is \$1,000. Minimum order dollar amount is negotiable.
4. **Surcharge.** If applicable, due to unexpected market conditions, raw material of copper, PVC plastics, Plasticizers, and components made from copper and zinc fluctuate beyond our control. When this occurs, our invoice to you will include a surcharge to cover the difference in the price quoted and the time in which the order is shipped.
5. **Buyer Supplied Material.** Orders that requires Buyer to supply materials to Seller, Buyer will schedule its materials, components or tooling to be received by Seller three-to-four (3 to 4) weeks prior to Seller commencing work on the order. All Buyer's supplied materials are to be sent to Seller in clearly marked packages, accompanied with packing slip of items or components. BUYER'S PACKING SLIP IS TO INCLUDE: (1) reference to Buyer's Purchase Order, (2) reference to Seller's Sales Order, (3) number of packages Buyer is sending to Seller, (4) complete description, reference documents, drawings, specification sheets of materials or components, (5) material is to be kitted in like kits and material grouping, (6) Buyer is to supply to Seller enough material to complete the order, an attrition amount equal to five percent (5%) is to be sent to Seller to allow for manufacturing efficiencies, (7) Buyer's supplied material is to be free of defects, (8) Buyer supplied materials that are received or result in Seller's production shortages, Buyer agrees to pay Seller the entire order amount.
6. **Price.** Shipping allowances and prices are subject to change by Seller with a 30 day notice. Increases in labor, freight and material costs before completion of contract plus applicable overhead may be invoiced to Buyer. Premium time as required by Buyer will be invoiced as and extra item. Any and all applicable fuel surcharges shall be added to the price quoted for the goods which are subject of this order (or proposal) and shall be invoiced to Buyer as an extra item. All deliveries by DSM&T trucks with orders under \$2,500 will be charged \$100. and orders and deliveries over \$2,500 will be charge \$75.
7. **Delivery or Performance.** Unless otherwise specified on the face hereof, all deliveries are FOB point of shipment. Shipment will be made in accordance with instructions issued by Seller. Upon delivery of goods to carrier, Buyer assumes risk of all loss and damage resulting from any cause whatsoever. Shipping, delivery or performance dates are approximate and are not guaranteed. Seller reserves the right to ship and invoice for a quantity of goods which may vary up to ten percent (10%) over or under the quantity specified and Buyer agrees to accept delivery and pay for such revised quantity and consider the shipment to be complete. Partial deliveries shall be accepted by the Buyer and paid for at contract prices and terms.
8. **Force Majeure.** Seller shall not be liable for any delay or other failure of performance due to causes beyond its reasonable control including without limitation, acts of God; acts of Buyer; acts of military or civil authorities; government regulations, orders, directives and / or restrictions; fire or other casualties; strikes; lockouts; weather; epidemic; war; riot; delays in transportation or car shortages; or inability to obtain necessary labor, materials, components, equipment, services, energy or utilities through Seller's usual and regular sources at usual and regular prices. In any such event Seller may, with notice to Buyer, at any time and from time to time without further liability to Buyer, (a) postpone its performance under this contract, (b) make partial performance or cancel all or any portion of this contract, or (c) allocate available quantities among its customers in any manner which Seller deems reasonable. Cancellation of any part of this contract shall not affect Seller's right to payment for performance of any other part hereof.
9. **Warranty.** All of the materials and / or equipment furnished hereunder are furnished by suppliers to Seller and therefore are warranted by Seller only to the extent of the original manufacturer's express warranty to Seller. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR PURPOSE AND SUPERSEDES AND EXCLUDES ANY ORAL OR WRITTEN WARRANTIES OR REPRESENTATIONS, MADE OR IMPLIED, IN ANY MANUAL, LITERATURE, ADVERTISING, BROCHURE OR OTHER MATERIALS. DSM&T warranties its product of material or workmanship for 1 year from the date of shipment / Manufacture Date Code, or Internal Documents of the product.
10. **Warranty – Returned Merchandise.** All materials and / or equipment furnished by Seller to Buyer which requires rework or replacement REQUIRES a Return Materials Authorization (RMA) prior to any returns of products to DSM&T. Once the goods or items have been received and inspected and a cause determined, if applicable a Credit or Replacement will be authorized.
11. Over stock or change of mind of Buyer does not constitute a return of merchandise to Seller and Seller is only obligated to honor the warranty that is expressed.
12. **Limitation of Seller's Liability.** Seller's liability on any claim of any kind, including negligence with respect to the goods or services covered hereunder, shall in no case exceed the price of the goods or services or part hereto, which gives rise to the claim. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGES IN THE NATURE OF PENALTIES.
13. **Limitation of Actions.** Any action for any loss or damage with respect to the goods or services, which are the subject of this contract, must be commenced by Buyer within one (1) year after Buyer's cause of action has accrued.
14. **Indemnification and Waiver.** Buyer shall exonerate, indemnify, hold harmless, and defend the Seller from all loss, cost, liability, damage or expense sustained or incurred, directly or indirectly, by the Seller, in connection with any and all claims asserted against Seller with respect to the goods, or services which are the subject of this contract, arising in whole or in part out of Buyer's or Buyer's customers (a) failing to follow specification, instructions, warnings or recommendations furnished by Seller, (b) failing to comply with all applicable legal requirements, including, but not limited to, the Occupational Safety and Health Act of 1970, as amended; (c) misusing or making misrepresentations as to the goods; (d) being solely or contributory negligent, and/or (e) incorporating the goods into or providing designs, plans, specifications or other instructions which infringe or are alleged to infringe any patent, trademark, copyright or other intellectual property right. As used in paragraph 7, the term "Seller" shall include Seller, its officers, directors, agents, employees, subcontractors, parents, subsidiaries, divisions or affiliates. Each party shall exonerate, indemnify, hold harmless, and defend the other from any other loss, cost, and liability, damage or expense sustained or incurred by the other party, in connection with any and all claims asserted against the other, with respect to the goods or services which are the subject of this contract, arising out of any other conduct, behavior, representations or other tortuous conduct or activities of the indemnifying party.
15. **Interruption Fees.** Should Buyer fail to fulfill its requirements to Seller which results in an interruption or stoppage of production and / or services, Buyer will be charged a fee of (\$ to be negotiated) as a separated line item, at which time the product and / or services will be rescheduled by Seller to a later date that is available to restart the order. Buyer agrees to pay such fees to Seller and waive all rights and does not hold Seller obligated to Buyer or its customers for any harm or damages that Buyer or its customer may incur.
16. **Cancellation Fee.** Buyer may cancel this contract only upon written notice to Seller and payment of reasonable cancellation charges, including (1) the price for goods and services completed prior to Seller's receipt of such notice; (2) all costs previously incurred in connection with uncompleted goods or services together with reasonable profit thereon; and (3) the expenses incurred by seller by reason of such cancellation.
17. **Taxes.** All taxes and other charges imposed by federal, state, local or foreign governments on the manufacture, sale, shipment, import, export or use of the goods (other than income taxes) shall be paid by Buyer. Buyer shall defend, indemnify and hold harmless Seller from and against all liabilities for such taxes or charges and attorney's fees or costs incurred by Seller in connection therewith.
18. **Advice and Assistance.** Upon request, Seller in its discretion may furnish as an accommodation to Buyer technical advice or assistance regarding the goods or services. Seller assumes no obligation or liability for the advice or assistance given or results obtained, which shall be at Buyer's sole risk
19. **Buyer's Material.** All of Buyer's tooling, goods and other property in Seller's possession shall be fully insured by Buyer and buyer releases Seller from all liability for loss or damage to such materials caused by acts other than Seller's negligence or otherwise. Whenever one (1) year has elapsed since the completion of any order from Buyer requiring the use of such materials, Seller may make any use or disposition of such materials without any liability to Buyer.
20. **Seller's Proprietary Rights.** Seller shall be the sole owner of all drawings, inventions or improvements made by or for Seller in connection with the performance of this contract. Buyer shall not reproduce any drawing furnished by Seller. Buyer shall not use or disclose any of seller's trade secrets or confidential information, whether or not designated as such, except as required in connection with the use or resale of the goods or services covered by this contract.
21. **Security Agreement; credit and collection.** To secure payment of all sums due hereunder or otherwise, seller shall retain a security interest in the goods delivered hereunder and this contract shall be deemed a security agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect such security interest. Seller is relying upon Buyer's representation of solvency and if Seller at any time believes that Buyer is insolvent or that Buyer's credit is impaired, or if Buyer shall fail to make payment when due which payment is not cured within ten (10) days after receipt of notice of the same from seller, Buyer shall be in material breach hereof and Seller may without liability to Buyer, withhold performance hereunder, change the payment terms and / or repossess goods theretofore delivered. Title to the goods covered by this contract shall remain in Seller until payment in full is received. In extending any credit hereunder, seller may charge Buyer finance, service, or late charges in an amount not greater than allowed by law, and if Buyer fails to pay according to the terms of the contract, Seller may make such charges and may also collect the amount unpaid with Buyer being liable to seller for all costs of collection including attorney's fees.
22. **Miscellaneous.** This contract constitutes the entire agreement between Buyer and Seller relating to the goods or services which are the subject hereof. No modifications shall be binding upon the Seller unless in writing signed by Seller's duly authorized representative. No waiver by Seller of default by Buyer shall be deemed a waiver of any subsequent default. The captions used herein shall have no substantive significance. The invalidity, illegality or unenforceability of any one or more provisions hereof shall in no way affect or impair the validity, legality or enforceability of the remaining provisions hereof, which shall remain in full force and effect. This contract may not be assigned by the Buyer without the prior written consent of the Seller.