

## Terms and Conditions of Sale

**1. Terms of Sale.** These terms and conditions of sale establish the rights, obligations, and remedies of you, as a buyer ("Buyer") and Dakotaland Manufacturing ("Seller") that apply to any order made by Buyer for the purchase of products and/or services from Seller ("Products"). The following terms and conditions, together with the terms, specifications and quantity set forth on Seller's quote ("Quote") and acknowledgement form for any order, constitute the entire agreement between Seller and Buyer (the "Agreement"). The terms and provisions of the Agreement shall control over any contrary provision of any other document, including Buyer's purchase orders and forms. Any objection to any item herein, including provisions which are in addition to or different from those contained in Buyer's forms, must be in writing and shall not be deemed timely unless received by Seller within two (2) business days from the date Buyer receives the acknowledgment of order from Seller. If Buyer makes timely objection to any term herein, Seller shall have the right to withdraw its acceptance and any acknowledgment of order it provided. Buyer's failure to object, as specified, will be deemed conclusive acceptance of all the terms and conditions of these terms and conditions. No acceptance by the Seller of any order shall be deemed to be an acceptance of any provision of the Buyer's purchase order form. No purchase order or written or oral agreement will modify an order, including these terms and conditions, unless specifically agreed to, in writing, by Seller.

**2. Price, Payment Terms, and Title.** The purchase price of the Products is as set forth in the quote or acknowledgment issued by Seller. Unless otherwise indicated, prices are stated in United States dollars and are exclusive of shipping, handling, shipping insurance, duties, and sales, use, excise or similar taxes. Export packaging or any other special handling requested by Buyer will be at Buyer's expense.

Buyer acknowledges that the pricing of the Products has been set based on the agreed allocation of risks contained in these terms and conditions. If, notwithstanding the provisions of these terms and conditions, a court of competent jurisdiction determines that other terms and conditions apply to an order, then Seller shall have the right to either (i) modify the prices (including retroactively) according to the additional level of risk and responsibility that the different terms and conditions require Seller to undertake; or (ii) cancel the order any time after such a determination without liability for the termination other than for the Products already delivered on these terms and conditions.

Unless different credit terms have been extended to Buyer in writing by Seller, payment must be made at the time of order. Seller reserves the right to modify or withdraw credit terms at any time without notice. If Buyer fails to fulfill the terms of payment, Seller may defer further shipments to Buyer or, at its option, cancel the unshipped portions of Buyer's orders. Buyer agrees to pay interest on all past due invoices at the lesser of 18% per annum, compounded monthly, or the highest contractual rate allowable under the law.

Until full payment of all obligations of the Buyer for an order, Seller reserves the title (but not the risk of loss) to all Products furnished under that order. If the Buyer defaults in payment or performance or becomes subject to insolvency, receivership or bankruptcy proceedings or makes an assignment for the benefit of creditors, or without the consent of Seller voluntarily or involuntarily sells, transfers, leases or permits any lien or attachment on the Products, Seller may treat all amounts then or thereafter owing by Buyer to be immediately due and payable and Seller at its election may repossess Products for which Buyer has not paid in full. In the event of repossession of Products under this section, Buyer agrees that Seller may enter the premises where the Products may be located and remove them without notice and without being liable to Buyer for such repossession. Buyer will not set off invoiced amounts or any portion thereof against sums that are due or may become due from Seller, its parents, affiliates, or subsidiaries. Buyer grants Seller a security interest in all Products for which title has passed (including all after-acquired Products) that Seller sells Buyer and all proceeds of Products (including but not limited to all products in which Products are incorporated and any funds and products that Buyer receives in exchange for Products). Buyer consents to Seller's execution of any documents to evidence and perfect this security interest, and agrees to execute the same if requested by Seller.

**3. Delivery and Risk of Loss.** Unless otherwise agreed in writing, all deliveries of Products will be FOB from Seller's facility. Seller is not responsible for shippers or carriers. Seller will arrange shipment, but Seller is not liable for damage during shipment. Buyer expressly acknowledges and agrees that **SHIPMENTS MUST BE INSPECTED BY BUYER FOR DAMAGE PRIOR TO SIGNING ACCEPTANCE FROM SHIPPER**

**OTHERWISE BUYER WAIVES RIGHTS.** If Buyer signs the shipper's acceptance form and damage is later claimed, Buyer releases and holds Seller harmless. Charges for shipping may not reflect net transportation costs paid by Seller. Buyer shall reimburse Seller for all costs of storage and handling incurred by Seller after the date that Seller is prepared to make shipment.

Delivery and shipping dates are approximate and represent Seller's best estimate of the time required to make delivery or shipment. Time is not of the essence with respect to the transactions covered by these terms and conditions, except with respect to Buyer's obligation to make all related payments. Seller's obligations under these terms and conditions will be dependent upon Seller's ability to obtain necessary raw materials and components. Seller shall have the right to make partial deliveries and ship in advance of shipping date.

**4. Acceptance.** Acceptance shall occur, if not before, when Buyer fails to reject within five (5) days after delivery of the Products. Buyer may rightfully reject only when a reasonable inspection shows that the Products fail to conform substantially to the specifications for the Products. Buyer waives any right to revoke acceptance. Buyer's remedies for any nonconformity detected after acceptance are limited to those expressly provided in these terms and conditions for breach of warranty.

**5. Specially Manufactured Goods.** On any order of specially manufactured goods, an over-run or under-run of 5% of the quantities specified shall be considered fulfillment of such order. Buyer shall pay in accordance with the units shipped. To the extent Buyer provides specifications to Seller with respect to the Products, Buyer represents that it has the legal right and authority to use such specifications and shall indemnify Seller for any loss, damage or injury, including reasonable attorney fees, suffered by Seller if such right to use such specifications is challenged.

**6. Limited Warranty.** Seller warrants to each original Buyer of Products that Products, at the time of delivery to the Buyer, conform to specifications referenced or set forth in the Quote, provided that no warranty is made with respect to any Products, component parts, or accessories manufactured by others but supplied by Seller. Seller's obligation under this warranty for any Product proved not to be as warranted within the applicable warranty period is limited to, at its option, replacing the Product, refunding the purchase price of the Product, or using reasonable efforts to repair the Product during normal business hours at any authorized facility of Seller. All costs of transportation of any Product claimed not to be as warranted and of any repaired or replacement Product to or from such service facility shall be borne by Buyer. Seller may require the return of any Product claimed not to be as warranted to one of its facilities as designated by Seller, transportation prepaid by Buyer, to establish a claim under this warranty. The cost of labor for removing a Product and for installing a repaired or replacement Product shall be borne by Buyer. Replacement parts provided under the terms of this warranty are warranted for the remainder of the warranty period of the Products in which they are installed to the same extent as if such parts were original components. Warranty services provided under these terms and conditions do not assure uninterrupted use of Products; Seller shall not be liable for damages caused by any delays involving warranty service.

EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, SELLER PROVIDES PRODUCTS AS-IS AND MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCTS, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THEIR MERCHANTABILITY, THEIR QUALITY, THEIR NONINFRINGEMENT, OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS.

**7. LIMITATION OF LIABILITY.** IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL DAMAGES, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, STATUTORY DAMAGES, EXEMPLARY OR PUNITIVE DAMAGES, LOSS OF PROFITS, LOSS OF REVENUE, LIQUIDATED DAMAGES, OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO A PRODUCT SHALL IN NO CASE EXCEED \$10,000 OR THE PURCHASE PRICE OF THE PRODUCT FROM WHICH THE CLAIM OR CLAIMS ARISE, WHICHEVER IS LESS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY WHETHER SELLER'S LIABILITY ARISES OR RESULTS FROM BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE,

GROSS NEGLIGENCE, MALICE, OR INTENTIONAL CONDUCT), STRICT LIABILITY, BY OPERATION OF LAW, OR OTHERWISE.

**8. Cancellation and Return of Products.** Orders shall not be subject to cancellation or modification either in whole or in part without Seller's written consent and then only with terms that will reimburse Seller for all applicable costs incurred by virtue of the sale, including costs of purchased materials, engineering costs and a reasonable allowance for profit. Seller's written consent must be given in advance of Buyer's return of Products for credit. Seller reserves the right to cancel any sale of Products without liability to Buyer (except for refund of monies already paid), if the manufacture or sale of the goods is or becomes technically or economically impractical or may reasonably cause Seller to potentially violate a legal requirement or a third party's rights.

**9. Collection Fees.** Buyer agrees to pay any and all costs and expenses incurred by Seller as a result of Buyer's default or to collect any unpaid balance due by Buyer to Seller, including interest on the unpaid balance, but not to exceed the maximum rate allowed by law, TOGETHER WITH ALL ATTORNEYS' FEES AND EXPENSES incurred by Seller, whether or not suit is actually filed. Buyer shall not cancel any order for delay in delivery until five (5) days after written notice of such intention has been received by Seller. Buyer shall accept any conforming goods shipped by Seller during such five-day period.

**10. Force Majeure and Delay.** Seller shall not be liable for any failure to perform or delay in performing its obligations resulting directly or indirectly from or contributed to by any acts of God, acts of Buyer or those under Buyer's control, acts of government or other civil or military authorities, priorities, strikes, or other labor disputes, fires, accidents, floods, epidemics, war, riot, embargoes, delays in transportation, lack of or inability to obtain raw materials, components, labor, fuel or supplies, or other circumstances beyond Seller's reasonable control ("Force Majeure Event"). If Seller elects, the time for performance shall be extended by a period of time equal to the time lost because of any delays caused by reasons of a Force Majeure Event. Should Seller be prevented from completing Buyer's order or any part thereof because of any Force Majeure Event, then Buyer agrees promptly upon request and upon receipt of invoice therefor, to pay Seller for any Product or Products then completed. Seller reserves the right to apportion its production among its customers as it may determine.

**11. Changes in Material.** Seller shall have the right to change or substitute material equal to or superior to that originally specified.

**12. Intellectual Property Rights.** As between Seller and Buyer, unless otherwise agreed in writing, Seller will own and hereby reserves and retains all right, title, and interest in and to all copyrights, patents, trademarks, trade secrets and other intellectual property rights related to the Products, in each case including any derivatives, enhancements and/or modifications thereto. Buyer will not (i) de-compile or reverse engineer the Products; (ii) modify, create derivative or collective works from, or in any way otherwise exploit the Products, in whole or in part; or (iii) remove from the Products any copyright notices, disclaimers or other indicia of ownership or restrictions on use. Seller may use or incorporate any feature of the Products developed for Buyer for use in other applications and may sell any such feature to other customers without limitation.

**13. Compliance with Laws and Instructions.** Buyer shall comply with all laws and regulations applicable to Products, including but not limited to all safety, handling and applicable import and export laws and regulations. Buyer shall provide all information requested by Seller relating to Seller's voluntary or mandatory compliance with any law or regulation, and Buyer shall indemnify Seller for any losses incurred by Seller arising from Buyer's failure to provide the information requested by Seller.

**14. Waiver.** No waiver of any provision of these terms and conditions (or any right or default hereunder) shall be effective unless in writing and signed by an authorized representative Seller. Any such waiver shall be effective only for the instance given, and shall not operate as a waiver with respect to any other rights or obligations under these terms and conditions or applicable law in connection with any other instances or circumstances.

**15. Choice of Law.** These terms and conditions shall be governed by and construed in accordance with the laws of the State of South Dakota, without reference to its choice of law rules.

**16. Waiver of Jury Trial.** To the extent allowed by applicable law, Buyer and Seller agree that a trial of any

lawsuit related to these terms and conditions will be to a judge and not a jury.

**17. Assignment.** Buyer may not assign or transfer, or any of its rights and/or obligations in the Agreement, without Seller's prior written consent.

**18. Severability.** If any provision of these terms and conditions is determined to be illegal, invalid, or unenforceable, the validity and enforceability of the remaining provisions of these terms and conditions will not be affected and, in lieu of such illegal, invalid, or unenforceable provision, there will be added, as part of these terms and conditions, one or more provisions as similar in terms as may be legal, valid and enforceable under applicable law.