

Terms and Conditions of Sale (.Contract.)
with
Delmar Company (.Seller.)

1. Unless otherwise specified on the face hereof, all prices for goods covered hereunder (the "Goods") are on an F.O.B. shipping point basis. Delivery occurs, and title and risk of loss to the Goods passes, from Seller to "Buyer" at the shipping point. Prices are those contained in Seller's price list in effect at the Date of Sales Order Acceptance on the face hereof. Freight will be prepaid and allowed only upon express agreement of the parties. Where freight is not allowed, the amount will be added to the net amount of the invoice or will be charged separately. Buyer agrees to reimburse Seller for all taxes, excises or other charges that Seller may be required to pay to any government (federal, state or local) upon the sale, production or delivery of the Goods. Buyer will comply with U.S. export control and economic sanctions laws and will not export, re-export or otherwise transfer the Goods, or any technical information disclosed to Buyer concerning the Goods, in violation of these laws.
2. All Goods are payable in U.S. currency at Seller's Lakeville, Minnesota office, or at any other location designated in writing by Seller. Seller's credit terms require payment of each invoice be received by the applicable due date or a delinquency charge may be imposed on the unpaid amount.
3. Seller will use its reasonable best efforts to ship within time indicated, and Buyer agrees that no claim will be made for delays in shipment where Buyer, upon receipt of the Goods accepts them. On any rejection of the Goods by reason of delay in shipment, Buyer's exclusive remedy is limited to rejection and return of the Goods and a refund of purchase price. IN NO EVENT WILL BUYER HAVE ANY CLAIM FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST BUSINESS OR PROFITS.
4. Buyer will inspect the Goods promptly upon receipt. Buyer agrees that a 30-day period after receipt of the Goods is a reasonable time for inspection of the Goods and for discovery of any shortage or physical damage claims. Notice of any damage claim by Buyer must be given in writing within the 30-day period. Buyer further agrees that notice thereafter is not reasonable and that, without limitation, no defense, counterclaim or setoff may be asserted against Seller if Buyer has failed to give written notice within 30 days of receipt of the Goods. All claims relating to transportation of the Goods must be made directly to the carrier. Goods will not be accepted for return without first obtaining the prior written authorization of Seller.
5. Notwithstanding anything to the contrary herein (or on the face hereof), Seller has the right to require cash in advance before making shipment. If Buyer fails to fulfill any terms of any order, purchase or payment, or Seller has reasonable doubt, in its sole discretion, of the ability of Buyer to make payments when due, Seller may, at its option either defer any further shipments on any order until such default is made good or treat such default as a final refusal to accept any further shipments on any order and effect cancellation. Seller, however, has the right, even on such cancellation, to require payment for Goods manufactured pursuant to the order.
6. Seller warrants that, for the one (1) year period beginning at the time of delivery of the Goods to Buyer, the Goods will meet Seller's specifications in all material respects and will be free from defects in material and workmanship. Seller further warrants that it will convey good title to the Goods to Buyer. THE FOREGOING WARRANTIES ARE EXCLUSIVE, AND SELLER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, AND BUYER EXPRESSLY WAIVES, ANY OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDLESS OF WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ALLEGEDLY ARISING FROM ANY USAGE OR FROM ANY COURSE OF DEALING.
7. Buyer agrees to indemnify, defend, hold harmless, release and forever discharge Seller, its agents, servants and/or employees, from and against any and all claims, demands, damages, liabilities, suits, attachments, judgments, losses, penalties, fines, settlements and/or expenses, including attorneys' fees incident thereto, for personal injury (including illness or disease) or death of any person (including employees of Buyer) or for damage to or destruction of any property, resulting directly or indirectly from any and all wrongful or negligent acts or omissions of Buyer in its acts or omissions performed under this Contract, including the transportation of any and all Goods (by trucks, rail cars or otherwise) under this Contract. On behalf of Seller and its agents, servants and/or employees, and in their name, Buyer will handle and/or defend, at its sole expense, any claim or litigation in connection with this Contract. SELLER'S TOTAL LIABILITY ARISING FROM THIS CONTRACT FOR ANY CLAIMS OF ANY NATURE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE PURCHASE PRICE OF THE PORTION OF THE GOODS RELATED TO THE CLAIM. THIS CONSTITUTES SELLER'S MAXIMUM LIABILITY, EVEN IF THE GOODS HAVE BEEN PLACED BY AN END-USER OR USED IN OTHER PROJECTS. IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY LOST PROFITS OR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, CONTINGENT, EXEMPLARY OR PUNITIVE DAMAGES INCURRED BY BUYER.
8. Neither party will be in breach of its obligations hereunder to the extent that performance is prevented or delayed as a result of any of the following contingencies: (i) any cause beyond the reasonable control of the party concerned; (ii) labor disturbance, whether or not involving the employees of the party concerned or otherwise, and whether or not the disturbance could be settled by acceding to the demands of a labor group; (iii) compliance with a request or order of a person purporting to act on behalf of any government or governmental department or agency (including but not limited to EPA and OSHA); or (iv) shortage in raw material, transportation, power, manufacturing capacity, etc., from a party's then-contemplated source of supply. Whenever Seller's performance is affected by such a contingency, Seller may reduce deliveries in a manner that fairly apportions the consequences of the contingency among Seller's customers. Performance will be excused as provided above even though the occurrence of the contingency in question may have been foreseen or foreseeable at the time of contracting or may subsequently become foreseeable. Notwithstanding anything contained in this Contract to the contrary, whenever (in the sole but reasonable judgment of Seller) (i) Seller's performances made substantially more expensive by a contingency or (ii) Seller is unable to acquire from its then contemplated source of supply, on terms it deems reasonable, any material necessary for the manufacture of Goods, Seller may (aa) reduce or stop deliveries of the Goods and apportion as provided above and/or (bb) continue deliveries and immediately increase prices. If Seller increases the price of the Goods under this Section, Buyer need not purchase the Goods at the increase price. Quantities not purchased or sold due to the provisions of this Section need not be made up later. If any law, regulation, or other governmental action requires Seller to reduce any price in effect under this Contract or prevents Seller from increasing any price to the extent it wishes pursuant to its rights under this Contract, Seller may cancel the affected quantities of Goods from this Contract. Nothing in this Section will excuse Buyer from its obligations to make payments when due.
9. This Contract is governed as to all matters whatsoever, whether of validity, interpretation, obligation, or otherwise, exclusively by the laws of the state of Minnesota without regard to conflicts of law. Any action commenced regarding this contract of the Goods must be brought in the state or federal courts of Dakota or Hennepin Counties, Minnesota.
10. Seller's acceptance of Buyer's order is expressly made conditional on Buyer's assent to the terms and conditions set forth herein, notwithstanding the provisions contained in any purchase order, acknowledgment, acceptance or other document of Buyer. The terms and conditions contained in this acknowledgment constitute the entire Contract of sale and purchase of the Goods and may not be amended or otherwise altered, except by written instrument signed by the parties. In the event the terms in this Contract conflict with any competitive writing, the terms of this Contract govern. Notwithstanding any terms and conditions that may be contained in any purchase order, acknowledgment, acceptance, or other form of Buyer, and notwithstanding Seller's manufacture and delivery of the Goods, each delivery of Goods is deemed to be only on the terms and conditions contained in this acknowledgment except as they may be amended or otherwise altered in accordance with the preceding sentence.
11. Notwithstanding any of the other indemnities or releases contained in this Contract, Buyer will indemnify, defend and hold Seller, its parents, subsidiaries, affiliates, partners, co-venturers, and their respective directors, officers, employees and agents, harmless from and against any and all claims, demands, costs and expenses (including without limitation court costs, litigation expenses, and attorneys' fees) for infringement of any patent, copyright, or trademarks as a result of Buyer's, its subcontractor's or agents' use of any patented Goods or copyrighted processes, compositions, machines or articles of manufacture; provided that any indemnified party has the right to be represented by its own counsel and to participate in the defense of any action relating to the infringement in which the indemnified party may be a defendant.
12. Buyer acknowledges that it is familiar with proper procedures for the safe handling and use of the Goods, and that it will take all steps necessary to warn and /or inform its employees, contractors, agents and customers of the procedures. BUYER AGREES TO INDEMNIFY SELLER FROM ANY CLAIM OR LIABILITY WHATSOEVER STEMMING FROM, OR RELATED TO, BUYER'S FAILURE TO EMPLOY PROPER PROCEDURES, OR OTHERWISE TO COMPLY WITH THIS SECTION. ANY TECHNICAL ADVICE OR ASSISTANCE FURNISHED BY SELLER TO BUYER WITH RESPECT TO THE SELECTION OR USE OF THE GOODS DELIVERED TO BUYER HEREUNDER WILL BE GIVEN AND ACCEPTED AT BUYER'S SOLE RISK, AND SELLER WILL HAVE NO LIABILITY WHATSOEVER FOR THE USE OF, OR RESULTS OBTAINED FROM, SUCH ADVICE OR ASSISTANCE.