



## TERMS AND CONDITIONS OF SALE DEHN, Inc., Fort Pierce, FL 34945

**SCOPE OF AGREEMENT.** All shipments, services, sales and quotations between DEHN, Inc. and the purchaser ("Purchaser") are subject to the terms and conditions of sale contained herein ("Terms and Conditions"), and receipt by Purchaser of the Terms and Conditions without immediate written objection thereto and/or acceptance by Purchaser of an order of Merchandise, as hereunder defined, which is confirmed or accompanied by the Terms and Conditions, shall constitute an acceptance by Purchaser of the Terms and Conditions. The Terms and Conditions shall govern any such order and all future business transactions between DEHN, Inc. and Purchaser relating to the design, manufacture, purchase and sale of goods manufactured by DEHN, Inc. ("Merchandise"), even in cases where the Terms and Conditions are not expressly re-agreed upon.

**ACCEPTANCE.** All orders become effective only when accepted by DEHN Inc.'s written acknowledgment at Fort Pierce, Florida.

**SCHEDULING.** The shipping date specified herein is approximate and is based upon prompt receipt of all necessary information. DEHN Inc. shall not be liable for any delay in the performance of orders or contracts or in the delivery of shipment of Merchandise or for any damages suffered by Purchaser by reason of such delay when such delay is, directly or indirectly, caused by, or in any manner, arising from fires, floods, accidents, riots, acts of God, war, governmental interference or, embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, transportation delays, or any other cause or causes (whether or not similar in nature to any of these herein before specified) beyond the control of DEHN Inc.

**CANCELLATIONS.** An order placed with and accepted by DEHN, Inc. can be cancelled by Purchaser only with the prior written consent of DEHN, Inc. and only upon terms that will indemnify DEHN, Inc. for all losses incurred by DEHN, Inc. associated with Purchaser's cancellation, including but not limited to, the costs already incurred by DEHN, Inc. in performance of its contractual duties, any profits which DEHN, Inc. would have received had the contract been completed. If Purchaser makes an assignment for the benefit of creditors, if a petition or other proceeding, voluntary or involuntary, is filed by or against Purchaser under applicable bankruptcy, reorganization or other insolvency laws, if Purchaser generally becomes unable to pay its debts as they become due, or if Purchaser fails to remit payment to DEHN, Inc. for the Merchandise in accordance with the terms hereof, DEHN, Inc. may, at its option, cancel a delivery of undelivered Merchandise or any confirmed orders effective immediately by giving Purchaser written notice of such cancellation.

**DELIVERY.** Unless otherwise agreed to in writing, delivery of the Merchandise hereunder shall be made F.O.B. DEHN Inc.'s dock, freight collect. Risk of loss shall pass to Purchaser when Merchandise is delivered to carrier. In the event that shipment is deferred at the request of Purchaser, Purchaser agrees to pay a delayed delivery storage fee at the rate of 1 ½% of the net invoice value of the shipment per month beyond the normal shipping date.

**ACCEPTANCE.** Purchaser shall have a reasonable time, not to exceed ten (10) days following receipt of the Merchandise by Purchaser, to give written notice to DEHN, Inc. of any claim that the Merchandise is defective or nonconforming, provided that a reasonable inspection should have revealed such defect or nonconformity. If Purchaser shall fail to give such notice within such time period, the Merchandise shall be deemed to conform to the terms of the order, and Purchaser shall be deemed to have accepted the Merchandise.

**TAXES.** Any and all sales, manufacturer's taxes and or charges levied or imposed by governmental authority, foreign or domestic, upon any merchandise sold or contracted to be sold shall be paid by Purchaser and added to the purchase price unless appropriate tax exemption certificates are supplied to DEHN Inc. in form satisfactory to DEHN Inc.

**PAYMENTS.** Terms of payment are as specified in our offer and are subject to approval by our credit department at the time of receipt of order. Delinquent payments are subject to service charge on the unpaid balance equal to the lower of 1 ½% per month or the maximum rate permitted by law until all amounts are paid in full. If the financial responsibility of Purchaser becomes unsatisfactory to DEHN Inc., or Purchaser is in default to DEHN Inc. under any order, DEHN Inc. may require payment in cash before shipment of goods.

**PATENTS.** On Merchandise manufactured to Purchaser's specifications, Purchaser shall indemnify and hold harmless DEHN Inc. against any claims, damages, liabilities, costs and expenses (including attorney's fees) arising out of or resulting from actual or alleged infringement of patent, copyright, trademark or other proprietary rights, or claim of unfair trade or unfair competition arising from or occasioned by the use, possession, sale or delivery of any Merchandise sold by DEHN Inc.

**CONFIDENTIALITY.** All specifications, drawings, sketches, models, samples, designs, technical information or data, written, oral or otherwise furnished by or on behalf of DEHN, Inc. shall remain the property of DEHN, Inc. and shall be returned (together with all copies) promptly upon DEHN, Inc.'s request. Such information shall be treated as confidential, and shall not be used disclosed or reproduced by Purchaser, except as required in the course of performance hereunder. Purchaser's obligations of confidentiality hereunder with respect to each item of confidential information shall extend for a period of five (5) years from the date of DEHN, Inc.'s acceptance of the order to which the items of confidential information in question pertain; provided, however that Purchaser's obligations of confidentiality hereunder with respect to any such items of information which rise to the level of a trade secret (as defined under applicable law) shall remain in full force and effect for so long as such information

remains a trade secret under applicable law. For purposes hereof, the confidentiality obligations embodied herein do not extend to any information which, at the time of disclosure, (i) is already known or independently developed by Purchaser; (ii) is in the public domain through no wrongful act of Purchaser; or (iii) is received by Purchaser from a third party who was free to disclose such information. The parties acknowledge that the rights of DEHN, Inc. hereunder are in addition to those rights DEHN, Inc. may have under common law or applicable statutes for the protection of trade secrets.

**INTELLECTUAL PROPERTY.** All rights in all designs, drawings, models, sketches, copyrightable works, trademarks, service marks, trade dress, trade secrets, patents, information, inventions, ideas, processes and materials developed by DEHN, Inc. prior to or independently of Purchaser's accepted order for the Merchandise shall remain the sole property of DEHN, Inc., whether or not presented, disclosed or delivered by DEHN, Inc. to Purchaser.

**DEFAULTS, TERMINATION.** If Purchaser should default in the fulfillment of any obligation or condition hereunder, and such default is not cured within thirty (30) days after written notice from DEHN, Inc. specifying the nature of such default, then DEHN, Inc. shall have the right to terminate an accepted order by giving notice of termination to Purchaser. Such right of termination shall be in addition to, but not in lieu of, any other remedies that may be available to DEHN, Inc. at law or in equity.

**WARRANTY.** DEHN Inc. warrants to the original Purchaser of any new Merchandise that the Merchandise is free from defects in material and workmanship under normal use and service for a period of five (5) years from the date of delivery. The obligation of DEHN Inc. under this Warranty is limited, in its exclusive option to repair, replace (F.O.B. Fort Pierce, FL.) or issue credit for parts or materials which prove to be defective. All costs incurred by Purchaser, including labor and shipping costs, shall be the sole responsibility of Purchaser. DEHN Inc. shall not be responsible for any damage or lack of performance resulting from: (a) defects due to accident, negligence, alteration, modification, faulty installation, abuse or misuse by Purchaser or Purchaser's agents or employees; (b) attempted or actual dismantling, disassembling, service or repair by any person, firm or corporation not specifically authorized in writing by DEHN Inc.; (c) defects caused by or due to handling by carrier, or incurred during shipment, transshipment or other moves. Any claim of defect must be reported promptly in writing to DEHN Inc.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED ON THE PART OF DEHN INC., INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, AND ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGES ARISING FROM ANY BREACH THEREOF. DEHN INC. NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON, FIRM OR CORPORATION TO ASSUME ANY LIABILITY OR OBLIGATION IN CONNECTION WITH THIS SALE ON ITS BEHALF AND PURCHASER ACKNOWLEDGES THAT NO REPRESENTATIONS EXCEPT THOSE MADE HEREIN HAVE BEEN MADE TO PURCHASER.

**RETURNS.** No Merchandise may be returned to DEHN Inc. without DEHN Inc.'s prior written permission, which permission may be withheld by DEHN Inc. in its sole discretion. All return shipments are to be via prepaid freight. Returns are subject to a 20% restocking fee. Product must be returned in new and unused condition and is subject to inspection by DEHN, Inc.

**SECURITY TITLE.** Security title and right of possession to the Merchandise sold hereunder shall remain with DEHN Inc. until all payments hereunder (including deferred payments whether evidenced by notes or otherwise) shall have been made in cash, and the Purchaser agrees to do all acts necessary to perfect and maintain such security rights and title to DEHN Inc.

**INDEMNIFICATION.** Purchaser shall defend, indemnify and hold DEHN, Inc. harmless from and against all claims, liabilities, costs and expenses including, but not limited to, those related to any personal injury or property damage, arising from in connection with the possession, handling, processing or use of the Merchandise by Purchaser or others. DEHN, Inc. may participate in the defense of any such claim for the further protection of its own interests.

**ASSIGNABILITY.** Purchaser may not assign these Terms and Conditions, by operation of law or otherwise, without express prior written consent of DEHN, Inc.

**ARBITRATION.** All controversies or claims arising out of or relating to the sale contemplated hereby or the performance or breach thereof shall be settled by Arbitration in the State of Florida in accordance with the Commercial Arbitration Rules of the American Arbitration Association, unless otherwise specified in writing by the parties.

**LIMITATION OF LIABILITY.** DEHN INC. WILL NOT UNDER ANY CIRCUMSTANCES, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF OR DAMAGE TO ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF PURCHASER'S CUSTOMERS. IF FOR ANY REASON THE FOREGOING PROVISIONS SHALL BE INEFFECTIVE, DEHN INC.'S LIABILITY FOR DAMAGES ARISING OUT OF ITS MANUFACTURE OR SALE OF MERCHANDISE, OR USE THEREOF, SHALL NOT IN ANY EVENT EXCEED THE FULL PURCHASE PRICE.

**GENERAL.** This order shall be governed by the laws of the State of Florida. If any part hereof is contrary to, prohibited by, or deemed invalid under applicable laws or regulations, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated and shall be given effect so far as possible. The waiver by either party of any breach of any of the terms and conditions contained herein shall not be construed as a waiver of any subsequent breach of the same or any other term or condition.