



DETROIT MANUFACTURING SYSTEMS, LLC AND ITS SUBSIDIARIES AND AFFILIATES

TERMS AND CONDITIONS OF SALE, NON-OEM SUPPLIER





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1. **Applicability.**

(a) These terms and conditions of sale (these “Terms”) are the only terms that govern the sale of the goods (“Goods”) and services (“Services”) by Detroit Manufacturing Systems, LLC or its affiliates (“Seller”) to the buyer (“Buyer”) identified in any Sales Confirmation (as defined below) which references these Terms. Notwithstanding anything herein to the contrary, if a written contract signed by both Parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract will prevail to the extent they are inconsistent with these Terms.

(b) The accompanying quotation or confirmation of sale (the “Sales Confirmation”) and these Terms (collectively, this “Agreement”) comprise the entire agreement between the Parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms. DMS’ offer to supply the Goods and Services, including the Sales Confirmation, is limited to the acceptance of these terms. In the event of any irreconcilable conflict between these Terms and the Sales Confirmation, the provisions of the Sales Confirmation will control but only to the extent necessary to resolve the conflict.

(c) Notwithstanding anything to the contrary contained in this Agreement, DMS may, from time to time change the Terms without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Terms, or the fees or any performance dates set forth in the Sales Confirmation. Continued acceptance of the Goods and Services constitutes Buyer’s acceptance of any changes to these Terms.

2. **Delivery of Goods and Performance of Services.**

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of finished Goods. DMS will not be liable for any delays, loss, or damage in transit unless different shipping terms are set forth in the Sales Confirmation. With respect to any parts or components which will be used in the finished Goods or Services (collectively “Subassemblies”), DMS will not be responsible for any delays, loss, or damages, which occur as a result of the failure to, upon schedules determined by DMS, deliver confirming Subassemblies by: (i) Buyer (directly or through its other vendors), or (ii) any designated vendor which DMS is required to purchase Subassemblies from.

(b) Unless otherwise agreed in writing by the Parties:

(i) DMS will deliver the Goods FOB to DMS’ dock (the “Delivery Point”);

(ii) Buyer will take delivery of the Goods within five (5) days of DMS’ written notice that the Goods have been delivered to the Delivery Point;



(iii) Buyer will be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point and will unload and release all transportation equipment promptly so DMS incurs no demurrage or other expense.

(c) DMS may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer will pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to DMS' notice that the Goods have been delivered at the Delivery Point, or if DMS is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods will pass to Buyer; (ii) the Goods will be deemed to have been delivered; and (iii) DMS, at its option, may store the Goods until Buyer picks them up, whereupon Buyer will be liable for all related costs and expenses (including, without limitation, storage, and insurance).

(e) DMS will use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates will be estimates only.

(f) DMS may use, dismiss, or replace various subcontractors with respect to the Goods and Services.

(g) With respect to the Services, Buyer will (i) cooperate with DMS in all matters relating to the Services and provide such access to Buyer's premises and such office accommodation and other facilities as may reasonably be requested by DMS to the extent the Services are to be performed on Buyer's site; (ii) respond promptly to any DMS request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for DMS to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as DMS may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. **Non-Delivery.**

(a) The quantity of any installment of Goods as recorded by DMS on dispatch from DMS' place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) DMS will not be liable for any non-delivery of Goods (even if caused by DMS' negligence) unless Buyer gives written notice to DMS of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of DMS for non-delivery of the Goods will be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for any non-delivery of Goods.



4. **Quantity.** DMS' pricing is valid only for the quantity listed in any Sales Confirmation and if no quantity is listed, a reasonable quantity as reasonably determined by DMS. If DMS delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer will not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and will pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.
5. **Change Orders.** In the event Buyer wishes to make any changes to the Goods and Services including, without limitation, any specifications or quantities, DMS will not be obligated with respect to any such change until a Change Order is executed by all Parties. The Change Order will set forth the nature of the change including any changes to price, delivery, or other matters.
6. **Title and Risk of Loss.** Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to DMS a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under MCL 440.9103 *et. seq.*
7. **Buyer's Acts or Omissions.** If DMS' performance of its obligations under this Agreement is prevented, delayed, or otherwise impacted in any manner by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, including, without limitation, with respect to any Subassemblies, DMS will not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.
8. **Inspection and Rejection of Nonconforming Goods.**
 - (a) Buyer will inspect the Goods upon receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies DMS in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by DMS. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
 - (b) If Buyer timely notifies DMS of any Nonconforming Goods, DMS will, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer will ship, at its expense and risk of loss, the Nonconforming Goods to DMS' facility. If DMS exercises its option to replace Nonconforming Goods, DMS will, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.
 - (c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to DMS.
9. **Price.**
 - (a) Buyer will purchase the Goods and Services from DMS at the price[s] (the "Price[s]") set



forth in the Sales Confirmation.

(b) Buyer agrees to reimburse DMS for all pre-approved travel and out-of-pocket expenses incurred by DMS in connection with the performance of the Services.

(c) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer will be responsible for all such charges, costs, and taxes; provided, however, that Buyer will not be responsible for any taxes imposed on, or with respect to, DMS' income, revenues, gross receipts, personal or real property, or other assets. DMS will be entitled to rely on Buyer's sales tax exemption certificate for all purposes.

10. **Payment Terms.**

(a) Buyer will pay all invoiced amounts due to DMS within 30 days from the date of DMS' invoice. Buyer will make all payments hereunder in US dollars. Buyer bears all risks associated with any loss or mis-delivery of any payments unless caused by DMS.

(b) Buyer will pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer will reimburse DMS for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which DMS does not waive by the exercise of any rights hereunder), DMS will be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Buyer fails to pay any amounts when due hereunder.

(c) Buyer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with DMS, whether relating to DMS' breach, bankruptcy, or otherwise.

11. **DMS'/Buyer's Items.** Any materials, machinery, equipment, tools, dies, jigs, fixtures, patterns, drawings, specifications, samples and other facilities, including any replacements thereof, furnished or obtained by DMS or used in conjunction with DMS' provisioning of the Goods or Services (collectively, "DMS' Items") will remain the sole and exclusive property of DMS. Any materials, machinery, equipment, tools, dies, jigs, fixtures, patterns, drawings, specifications, samples and other facilities, including any replacements thereof, furnished by Buyer to DMS or which DMS has purchased on behalf of Buyer and at Buyer's expense (collectively, "Buyer's Items") will remain the sole and exclusive property of Buyer; provided, however, that DMS will be given a license to use all Buyer's Items for the provisioning of the Goods and Services. All of Buyer's Items in the custody and control of DMS or DMS' authorized subcontractors or agents will be held at Buyer's risk and will be kept insured by Buyer. DMS will, at Buyer's expense, maintain all Buyer's Items in at least as good condition and repair as when originally received by DMS, reasonable wear and tear excepted. DMS does not provide any representations, assurances, warranties or conditions whatsoever (and whether express, implied, statutory or otherwise) with respect to Buyer's Items. Buyer will clearly identify Buyer's Items with Buyer's information prior to delivery to DMS.

12. **Limited Warranty.**

(a) DMS warrants to Buyer that for a period of 24 months from the date of shipment of the Goods, that such Goods will be free from material defects in Workmanship (as defined below). For the purpose of this Agreement, "Workmanship" means DMS' value-added assembly work



DMS performs to complete the assembly of Third-Party Products (as defined below) into the Goods. For the avoidance of doubt, “Workmanship” specifically excludes: (i) any matters relating to the manufacturing, assembly, and workmanship of any Third-Party Products and (ii) any obligation to inspect or determine whether the Third-Party Products conform to any specification.

(b) DMS warrants to Buyer that for a period of 24 months from the date of the performance of the Services, that such were materially performed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.

(c) Subassemblies or other products manufactured or provided by a third party (including Buyer, its vendors, or any third-party suppliers) (“Third-Party Products”) may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods or utilized in conjunction with the Services. Third-Party Products are not covered by the warranty in Section 12(a) and 12(b). To the extent assignable, DMS will assign any warranties governing the Third-Party Products to Buyer. For the avoidance of doubt, **DMS MAKES NO, AND SPECIFICALLY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. ALL IMPLIED WARRANTIES ARE DISCLAIMED TO THE FULLEST EXTENT OF THE LAW.**

(d) **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 12(A) AND SECTION 12(B), DMS MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. ALL IMPLIED WARRANTIES ARE DISCLAIMED TO THE FULLEST EXTENT OF THE LAW.**

(e) DMS will not be liable for a breach of the warranties set forth in Section 12(a) and Section 12(b) unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to DMS within thirty (30) days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, DMS is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 12(a) to examine such Goods and Buyer (if requested to do so by DMS) returns such Goods to DMS’ place of business at DMS’ cost for the examination to take place there; and (iii) DMS reasonably verifies Buyer’s claim that the Goods or Services are defective.

(f) DMS will not be liable for a breach of the warranty set forth in Section 12(a) and Section 12(b) if: (i) Buyer makes any further use of such Goods or Services after giving such notice; (ii) the defect arises because Buyer failed to follow DMS’ oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or use of the Services; or (iii) Buyer alters or repairs such Goods without the prior written consent of DMS.

(g) Subject to Section 12(e) and Section 12(f) above, with respect to any such Goods subject to a claim under the warranty set forth in Section 12(a), DMS will, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods



at the pro rata contract rate provided that, if DMS so requests, Buyer will, at DMS' expense, return such Goods to DMS.

(h) Subject to Section 12(e) and Section 12(f) above, with respect to any Services subject to a claim under the warranty set forth in Section 12(b), DMS will, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.

(i) **THE REMEDIES SET FORTH IN SECTION 11(G) AND SECTION 11(H) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND DMS' ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 11(A) AND SECTION 11(B), RESPECTIVELY.**

13. **Limitation of Liability.**

(a) **IN NO EVENT SHALL DMS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT; LOSS OF DATA OR DIMINUTION IN VALUE; OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT DMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. BUYER WILL INDEMNIFY AND HOLD DMS HARMLESS FOR ALL SUCH LOSSES OR DAMAGES INCURRED.**

(b) **IN NO EVENT SHALL DMS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL VALUE-ADDED SALES (AS DEFINED BELOW) PAID TO DMS FOR THE GOODS AND SERVICES SOLD HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. FOR THE PURPOSE OF THIS AGREEMENT "VALUE-ADDED SALES" MEANS THE AMOUNTS PAID TO DMS LESS THE PORTION OF SUCH AMOUNTS WHICH REPRESENT THE COST OF SUBASSEMBLIES OR OTHER PASS-THROUGH MATERIALS OR COSTS AS DETERMINED BY DMS USING ITS GENERAL ACCOUNTING PRINCIPLES.**

14. **Compliance with Law.** Parties will comply with all applicable laws, regulations, and ordinances with respect to the Goods and Services. Buyer will maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer will comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. DMS may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

15. **Termination.** In addition to any remedies that may be provided under these Terms, DMS may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for fifteen (15) days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these



Terms, in whole or in part; (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Buyer may terminate this Agreement with immediate effect upon written notice to DMS, if DMS: (y) has not otherwise performed or complied with any of these Terms, in whole or in part, and such nonperformance or noncompliance continues for a period of thirty(30) days after DMS' receipt of written notice setting forth the factual basis of such claim; (z) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Upon any such termination, Buyer will pay for, and take possession of: (i) all Good which are complete at the Price, (ii) all work in progress at a pro-rata portion of the Price, (iii) all Subassemblies or other goods and materials purchased in furtherance of the Goods or Services which have not yet become a Good or work in progress at DMS' cost.

16. **Waiver.** No waiver by either Party of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by the waiving Party. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. **Confidential Information.** To the extent the Parties have not entered into a separate confidentiality agreement ("Confidentiality Agreement"), which, if entered into, will control, Parties agree as follows:

(a) **Confidential Information Defined.** The term "Confidential Information" means all information disclosed in writing, visually, or orally by a Party (the "Disclosing Party") to the other Party (the "Receiving Party") that is information regarding the Goods or Services ("Purpose"). Notwithstanding the foregoing, Confidential Information does not include information which, as proven by clear and convincing evidence:

(i) was previously known to the Receiving Party free of any obligation to keep it confidential;

(ii) is or becomes publicly available by other than unauthorized disclosures by the Receiving Party;

(iii) is independently developed by the Receiving Party without the use of Confidential Information;

(iv) is received by the Receiving Party from a third party not subject to any confidentiality obligations; or

(v) compromises DMS' general knowledge, experience, and skill in providing any goods or services which DMS provides.

(b) **Obligations Regarding Confidential Information.** For a period of two (2) years after the later of the expiration, satisfaction, or termination of any Sales Confirmation, the Party receiving Confidential Information (the "Receiving Party") will:

(i) not, without prior written approval of the Disclosing Party, use the Confidential Information in any manner other than in the pursuit of the Purpose and in compliance with the terms of this Agreement;



(ii) restrict disclosure of the Confidential Information solely to its employees, officers, directors, agents, subcontractors, sub-suppliers, financial and legal representatives and advisors (“Employees and Representatives”) who have a need to know in order to accomplish the Purpose;

(iii) advise its Employees and Representatives who receive the Confidential Information of the obligation of confidentiality under this Agreement;

(iv) be responsible for the compliance by Employees and Representatives with this Agreement; and

(v) employ commercially reasonable security precautions and efforts (such precautions and efforts to be at least as secure as the precautions and efforts the Receiving Party takes to protect its own confidential information, but in any event, no less than reasonable care) to safeguard the secrecy and confidentiality of the Confidential Information, and to prevent unauthorized access, reproduction, disclosure, and/or use of any of the Confidential Information.

(c) **Return or Destruction of Confidential Information.** The exchanged Confidential Information will remain the property of the Disclosing Party and, upon request, the Receiving Party, within 48 hours of any request, the Receiving Party will return or destroy such Confidential Information provided, however that such Confidential Information may continue to reside in backup systems, not ordinarily accessible to the Receiving Party, and which will remain subject to the terms of this Agreement.

(d) **Judicial Disclosure.** In the event that a Receiving Party, is requested or required to disclose any Confidential Information, it is agreed that the Receiving Party, to the extent permitted by law, will provide the Disclosing Party with prompt notice of such request(s) so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

(e) **No Rights Conferred.** The disclosure of Confidential Information does not grant or conferring any right, including intellectual property rights, by license or otherwise in any Confidential Information disclosed.

(f) **No Restrictions on DMS’ Business.** Buyer acknowledges and agrees that DMS may provide similar Goods and Services to other customers. Nothing in this Section will restrict DMS from providing such Goods and Services to any other customer so long as DMS does not utilize Buyer’s Confidential Information. For the avoidance of doubt, any techniques, improvements, or knowledge or experience gained by DMS in its provisioning of Goods or Services pursuant to this Agreement will not constitute Buyer’s Confidential Information.

18. **Force Majeure.** DMS will not be liable or responsible to Buyer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond DMS’ reasonable control, including, without limitation, the following force majeure events (“Force Majeure Event(s)”): acts of God; flood, fire, earthquake, pandemic, or explosion; war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; government order, law, or actions; embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; strikes, labor stoppages or slowdowns, or other industrial disturbances; telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation



services, or inability or delay in obtaining supplies of adequate or suitable materials; price changes or fluctuations in the cost of materials used in the Goods, and other similar events. For the avoidance of doubt, Buyer's non-payment of any amounts due under this Agreement will not be a Force Majeure Event. DMS will give reasonable notice of the Force Majeure Event to Buyer, stating the period of time the occurrence is expected to continue. DMS will use commercially reasonable efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. DMS will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that DMS' failure or delay remains uncured for a period of thirty (30) days following written notice given by it under this Section 18, either Party may thereafter terminate this Agreement upon five (5) days' written notice.

19. **Assignment.** Buyer will not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of DMS. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

20. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever.

21. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

22. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision.

23. **Submission to Jurisdiction.** Any legal suit, action, or proceeding arising out of or relating to this Agreement will be instituted in the federal courts of the United States of America or the courts of the State of Michigan in each case located in the County of Wayne, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives jurisdiction and venue in all other forums.

24. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") will be in writing and addressed to the Parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving Party in writing. All Notices will be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

25. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. **Amendment and Modification.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each Party.



27. **Battle of the Forms.** The Parties agree that the “battle of the forms” provisions of Section 2207 of the Uniform Commercial Code as enacted in Michigan or similar provisions of any other potentially applicable law will not apply to these Terms and any Purchase Order, and in the event of any purported inconsistency between the Purchase Order and these Terms on the one hand and any acceptance by DMS on the other hand, the Purchase Order and these Terms will govern.

28. **Entire Agreement.** These Terms and the Sales Confirmation (including any documents or specifications set forth therein) and, if entered into, the Confidentiality Agreement, embody the entire agreement between Buyer and DMS and no negotiations, understandings, or agreements, verbal, collateral, or otherwise exist between Buyer and DMS except as set forth in these Terms and the Sales Confirmation. Each Party has the opportunity to review, negotiate, and amend this Agreement; therefore, no rule regarding strict construction shall apply against either Party.