



TERMS AND CONDITIONS OF SALE

Unless otherwise specifically agreed and signed by an authorized agent of Delta Material Services, LLC, a Delaware limited liability company (“DMS”), the following terms and conditions of sale (“Terms”) will apply to all orders (“Orders”) placed with DMS. In the following Terms, “Purchaser” means the entity or person who proposes to purchase Products from DMS. “Products” means those items Purchaser wishes to purchase from DMS.

ANY QUOTE OR SALES ORDER IS NEITHER AN EXPRESSION OF ACCEPTANCE OF ANY OFFER MADE TO DMS BY PURCHASER NOR A CONFIRMATION OF ANY CONTRACT OR AGREEMENT BETWEEN DMS AND PURCHASER; A QUOTE OR SALES ORDER IS AN OFFER OR COUNTER-OFFER TO THE PURCHASER TO CONTRACT ON THE TERMS SET FORTH HEREIN, AND SUCH OFFER OR COUNTER-OFFER EXPRESSLY LIMITS ACCEPTANCE BY PURCHASER TO THE TERMS SET FORTH HEREIN AND ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY PURCHASER ARE SPECIFICALLY REJECTED, UNLESS EXPRESSLY AGREED TO IN WRITING, SIGNED BY AN AUTHORIZED REPRESENTATIVE OF DMS.

1. Payment Terms. DMS will invoice for the Products on the date of shipment. Unless otherwise agreed in the Order, the charges invoiced to Purchaser by DMS, except for any amounts disputed by Purchaser, shall be payable by Purchaser within thirty (30) days of Purchaser’s receipt of each invoice. If Purchaser disputes the charges contained in an invoice issued pursuant to this Agreement, Purchaser shall, prior to the payment due date of such invoice, notify DMS of the dispute stating the reasons it believes the disputed amount was improperly invoiced. Purchaser shall pay the undisputed portion of such invoice by the due date, and the parties shall meet within ten (10) days of such notice in an effort to resolve the disputed amount.

2. Title and Risk of Loss. Unless otherwise specified in an Order, Products will be delivered EXW, DMS facility in Atlanta, Georgia (INCOTERMS 2020), unless expressly agreed to in writing by DMS.

3. Packaging; Acceptance. DMS shall package the Products in accordance with reasonable commercial practice for a one-way shipment by air or surface transportation, as applicable. Products shall be deemed accepted at time of delivery unless Purchaser notifies DMS of rejection within five (5) days after delivery of the Products. Purchaser’s acceptance of these Terms is conclusively presumed from Purchaser’s acceptance of all or part of the Products.

4. Delivery Dates. Delivery dates are given to the best of DMS’ knowledge based upon conditions existing at the time the Order is placed. DMS will endeavor to ship the Products by the estimated shipping date, but will not be responsible or liable for any delay or any damage arising therefrom.



5. Cancellation. Purchaser's Order may not be modified, cancelled or rescinded except in writing signed by both Purchaser and DMS.

6. Warranty. DMS warrants and covenants to Purchaser and its successor and assigns that DMS has, and in accordance with these Terms and the Order conveys to Purchaser, good and marketable legal title to the Products, and that the Products are free and clear of any and all liens. OTHER THAN THOSE WARRANTIES LISTED IN EXHIBIT A HERETO (TO THE EXTENT APPLICABLE) OR UNLESS EXPRESSLY STATED IN THE ORDER, DMS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT OR AIRWORTHINESS, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. PURCHASER AGREES THAT THE FOREGOING WARRANTY AND ANY WARRANTY SET FORTH IN THE ORDER CONSTITUTE THE PURCHASER'S SOLE REMEDY UNDER THIS AGREEMENT.

7. Limitation of Liability. IN NO EVENT SHALL DMS BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR BUSINESS INTERRUPTION) FOR ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NONPERFORMANCE OF THESE TERMS OR THE PRODUCTS PROVIDED HEREUNDER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF DMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL DMS' LIABILITY TO THE PURCHASER EXCEED THE VALUE OF THE ORDER UNDER WHICH THE LIABILITY ARISES.

8. Force Majeure. DMS will not be liable to the Purchaser, nor be deemed to be in default of an Order because of, any failure or delay in its performance due under the Order not occasioned by or based upon the fault or negligence of DMS and caused by acts of God, fire, floods, industry-wide strikes, work-to-rule actions, go-slows or similar labor difficulties, unavailability of equipment, materials, or services, due to industry-wide shortages, terrorist acts, wars, actions by a governmental authority, or any other similar, cause beyond a party's reasonable control.

9. Taxes. Except as otherwise specified, Product pricing does not include any sales, use, value added, excise or similar taxes applicable to the sale, delivery or use of any Product sold hereunder. Purchaser agrees to pay to DMS, in addition to the prices stated, the amount of any such taxes which may be imposed upon or payable by DMS.

10. Indemnification. Purchaser agrees to indemnify and hold harmless DMS and its employees, and affiliates, from and against all claims, liabilities, losses, damages, including all legal fees arising from or by reason of the following: (a) any injury or death allegedly caused by the use, sale,



transfer or alteration of the goods furnished hereunder; (b) any damage to or destruction of any property or injury to any person(s) caused by any act or omission, whether negligent or otherwise, of Purchaser; or (c) any tax liability incurred by Purchaser.

11. Export Compliance. Products offered hereunder and delivery thereof may be subject to the grant of an export license. Purchaser further agrees to comply with applicable export control regulations. Purchaser will not knowingly sell, transfer, export, or re-export Products in violation of any applicable export control laws or regulations promulgated and administered by governments of any country asserting jurisdiction over the parties or transactions involving the Products. Purchaser acknowledges that any such sale, transfer, export, or reexport may require an export license and that transfers to certain countries or entities are prohibited under applicable law. It is Purchaser's responsibility to obtain any necessary export licenses.

12. Governing Law. All matters arising from or relating to any Order shall be governed and construed in accordance with the laws of the state of New York, United States of America, without giving effect to any choice-of-law provision or rule (whether of the state of New York or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. The Federal or state courts situated in New York County, New York, United States of America, have exclusive jurisdiction over the resolution of all disputes that arise under any Order, and each party irrevocably submits to the personal jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to the parties' rights or obligations under any Order.

13. Assignment. Neither party may assign any of its rights or obligations under these Terms and the Order without the prior written consent of the other party; provided that DMS may assign this Agreement to any entity that directly or indirectly controls, is controlled by, or is under common control with DMS.

14. Waiver. The failure of a party to enforce any of the provisions of these Terms, or to require performance by the other party of any of the provisions in these Terms, is not a present or future waiver of such provisions and does not affect the validity of these Terms or the right of the party to enforce each and every provision of these Terms thereafter.

15. Entire Agreement. These Terms and the Order represent the entire agreement of the parties with respect to the subject thereof, and all quotations, proposals and representations or agreements made or entered into prior to or contemporaneously with this Agreement, whether verbal or written, are superseded and of no further force and effect.

16. Precedence. With respect to all Orders, DMS hereby objects to any terms and conditions proposed by Purchaser in any purchase order or otherwise that are different from or additional to these Terms.

EXHIBIT A

**ADDITIONAL WARRANTIES WHICH MAY BE APPLICABLE
BASED ON CONDITION LISTED IN ORDERS**

The following warranties are only applicable (i) to Products separately listed in an Order generated by DMS and (ii) based on and to the extent that the condition for such Products listed in an Order generated by DMS correlates to a condition listed below:

Condition Listed in Order	Applicable Warranty
As Removed (Repairable)	DMS warrants that the Product is repairable. Purchaser is responsible for any/all associated repair costs for the Product.
Serviceable, Repaired, or Inspected	DMS warrants that the Product is free from defects in material and workmanship for a period of six (6) months from the date of delivery of the Product to Purchaser.
Overhauled	DMS warrants that the Product is free from defects in material and workmanship for a period of twelve (12) months from the date of delivery of the Product to Purchaser. To the extent assignable, DMS shall assign to Purchaser any warranties relating to the Product, which DMS has received from the original equipment manufacturer or service provider.
New (Surplus)	DMS warrants that the Product is free from defects in material and workmanship for a period of eighteen (18) months from the date of delivery of the Product to Purchaser.
New (Factory)	DMS warrants that the Product is free from defects in material and workmanship for a period of eighteen (18) months from the date of delivery of the Product to Purchaser.

[End of Exhibit A]