

**DMI COMPANIES INC.**  
**PURCHASE ORDER TERMS AND CONDITIONS**

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These Terms and Conditions are part of any purchase order to which they are attached, which they accompany or which incorporates them by reference. The purchase order along with these Terms and Conditions are collectively referred to as the “Purchase Order.” The Purchase Order constitutes an offer from the entity specified on the Purchase Order, namely DMI Companies, Inc., or an applicable subsidiary or affiliate (“DMI”) to the supplier named in the Purchase Order (“Supplier”). All of the goods, articles and services covered by the Purchase Order shall be referred to hereinafter as the “Goods.”

**1. ENTIRE AGREEMENT:** This Purchase Order, including the terms and conditions hereof, constitutes the full and final agreement between DMI and Supplier. Supplier’s acceptance of all the provisions in the Purchase Order must be without any additions, deletions or modifications. Any provisions of Supplier’s documents accepting or relating to the Purchase Order which are different from, or additional to, the provisions of the Purchase Order, irrespective of materiality shall be excluded from any contract resulting from the Purchase Order, unless and to the extent a duly authorized representative of DMI expressly agrees in writing to their inclusion in such contract. Supplier’s acknowledgement of the order or delivery by Supplier of the Goods ordered hereunder or commenced performance by Supplier of the services ordered hereunder shall be deemed an acceptance by Supplier of this Purchase Order and its terms and conditions.

**2. ORDER CHANGES:** DMI shall have the right at any time before the delivery or performance date specified in the Purchase Order to make changes in quantities, in specifications, in delivery or performance schedules and locations and in methods of shipment and packaging. If such changes cause an increase or decrease in the costs for the Goods or in the time required for delivery or performance, Supplier shall promptly notify DMI and, at DMI’s sole discretion, such changes will be withdrawn or the parties will make an equitable adjustment in the prices or the delivery or performance date, as appropriate. No claim by Supplier for such adjustment shall be valid unless a written request is submitted to DMI in such reasonable detail as DMI may require within ten (10) days from date of Supplier’s receipt of such change. Nothing in this clause shall relieve Supplier from proceeding without delay in the performance of this Purchase Order as changed.

**3. INVOICES:** Supplier shall issue, on the date of shipment, a separate invoice for each shipment made against the Purchase Order. Supplier shall send original invoice and bill of lading to the “Invoice to” address noted on the face of this Purchase Order. The invoice must show the Purchase Order number and shall separately list the items invoiced, quantities, unit prices, and taxes. The purchase price shall

include all charges and expenses in connection with the delivery or performance of the Goods or services unless specifically excluded, in which case the amount thereof must be invoiced separately and must be supported by copies of paid freight bills. Except as otherwise indicated herein, Supplier shall pay all excise, customs or other duties or taxes. All applicable sales, and goods and services taxes, where applicable, shall be indicated separately on Supplier’s invoices. All such invoices shall show the Purchase Order number, case or container number and contents of each package separately. Unless provided to the contrary in the Purchase Order, payment terms shall be 2% fifteen (15) days, net forty-five (45) days. For purposes of calculating the invoice due date, the date of receipt of Supplier’s invoice that meets the requirements of this Purchase Order, the date of receipt of the Goods, or the date any corrected invoice is received by DMI (whichever is later) shall be the first day, and the invoice shall be deemed to have been paid on the date of DMI’s check or electronic transfer.

**4. PRICING:** The prices specified in the Purchase Order shall include without limitation all applicable taxes, freight, packaging, loading, crating, transportation, insurance, handling and all other charges, whether similar or dissimilar, unless otherwise indicated on the face of this Purchase Order. If no price is specified in the Purchase Order, the Goods shall be billed at the last price last charged or quoted to DMI by Supplier or the prevailing market price, whichever is lower. No charge in addition to the prices agreed upon will be allowed without the prior written consent of DMI, and the Purchase Order must not, without prior written authorization from DMI, be filled at higher prices than specified in the Purchase Order. Supplier certifies that the prices charged for the Goods covered by the Purchase Order comply with all applicable laws, rules, regulations and ordinances.

Supplier further agrees and represents that the prices specified in this order do not exceed current selling prices for the same or substantially similar articles, and for comparable quantities, and that such prices are not in excess of the maximum prices permitted by any applicable government laws or regulations existing on the date of this order. Any extra handling charges incurred due to the failure of Supplier to fill this order as per instruction will be billed back to Supplier. Any tax, tariff,

assessment, duty or similar charge which is imposed by any governmental authority upon or on account of the Purchase Order or the Goods designated in the Purchase Order is included by Supplier in the prices for the Goods and shall be paid by Supplier, unless designated otherwise in the Purchase Order. In the event that the Purchase Order provides that DMI shall bear any tax, assessment, tariff or duty, Supplier shall separately itemize such charges on its invoice(s).

**5. PACKAGING & SHIPPING:** All shipping containers for the Goods shall be packed, packaged and shipped to (a) ensure safe arrival at DMI's designated destination; (b) comply with the requirements of common carriers; and (c) if DMI has agreed in writing to pay for shipment, secure the lowest transportation costs.

**6. DELIVERY OF GOODS:** All deliveries are F.O.B. the location designated in the Purchase Order by DMI. In every circumstance, title and all risk of loss shall remain with Supplier until the Goods have been received at the location designated by DMI and accepted by DMI. Prior to passage of title and risk to DMI, Supplier shall hold the Goods without risk or expense to DMI. Time is of the essence with respect to all provisions of the Purchase Order. The Goods must be received by DMI within the time specified for delivery or performance in the Purchase Order, failing which, DMI reserves the right to purchase such Goods elsewhere and charge Supplier with any loss incurred. In addition to remedies for breach of contract, DMI has the unconditional right to reject and return, without liability and at Supplier's expense, any Goods received later than the specified date(s) for delivery or performance. Despite anything in this Purchase Order, timely delivery or completion is of the essence and Supplier shall advise DMI immediately when Goods cannot be delivered in the quantities shown at the times specified in the delivery schedule or of any anticipated delays and the reasons for such delays.. Supplier shall enclose with each box, package or container, a shipping notice showing the contents, the name of Supplier and the purchaser order number.

**7. RIGHT OF INSPECTION; RECISSION:** DMI is under no duty to inspect the Goods upon receipt. All Goods received shall be subject to DMI's inspection and rejection and to the inspection of any Federal, Provincial, Territorial, State or Local government or agency, the permission of which is required to use the Goods. Supplier shall provide all reasonable assistance to any authorized representative of DMI or any government or agency for the inspection of Goods. Supplier shall notify DMI in advance and in writing of all changes in raw materials, feed stocks, processing operations, material specification or other changes which will in any way affect the quality of any goods or services delivered under this Purchase

Order. Supplier shall bear the cost of delivery and inspection of defective, non-conforming, or otherwise rejected Goods. Such Goods shall be held for thirty (30) days for Supplier's instructions and at Supplier's risk, and where Supplier so directs, shall be returned at Supplier's expense. Where Goods are rejected, any allowance for price of those Goods shall be deducted from payments made in respect of total shipments. Retention or inspection of the Goods by DMI and payment of the purchase price thereof shall not constitute an acceptance of the Goods and shall not serve as an acknowledgement that the merchandise complies with the terms and conditions hereof. Rejected or revoked Goods remaining in DMI's possession after said thirty (30) day period may be sold for Supplier's account, destroyed or otherwise disposed of by DMI, at DMI's sole discretion. Supplier shall remit to DMI the price paid by DMI for any rejected or revoked Goods, together with all costs of transportation, shipping, unpacking, examining, repacking, reshipping, storing and other like expenses related to the rejected or revoked Goods. If requested by DMI, Supplier agrees to promptly replace any rejected or revoked Goods.

**8. INSURANCE:** Supplier shall maintain insurance coverage as required by applicable law and, at its own expense until the goods and or services are complete and delivered, the following insurance: (a) insurance on its own plant and equipment for the full insurable value thereof, (b) comprehensive General Liability insurance including Products Liability (occurrence form) for limits not less than \$1,000,000 Bodily Injury and Property Damage, (c) Umbrella/Excess Liability Coverage for limits not less than \$1,000,000, and (d) Employers Liability Coverage for limits not less than \$1,000,000 each accident. At DMI's request, Supplier shall provide DMI with proof of such coverage. Supplier shall name DMI as an additional insured with respect to performance under this Purchase Order and Supplier shall, at DMI's request, furnish DMI a certificate of insurance evidencing said coverage.

**9. WARRANTIES BY SUPPLIER:**

(a) **General.** Supplier warrants that all Goods and services covered by this Purchase Order, including their packaging and labeling, are (i) merchantable and pass without objection in the trade, (ii) safe and fit for the ordinary purposes for which the Goods are used, (iii) fit and sufficient for the particular purpose intended by DMI, (iv) free from all defects in design, workmanship, and material, (v) able to run without variation and be of even kind, quality and quantity within each unit and among all units, and (vi) in strict conformance with the specifications, samples, drawings, designs or other descriptions upon which this Purchaser Order is based. Supplier further warrants that all services shall be rendered in a good and workmanlike manner by skilled personnel;

**(b) Infringement.** Supplier warrants that (i) it has good and marketable title to the Goods and services to be provided, (ii) the Goods will be delivered free of any security interest, lien or encumbrance, and (iii) neither the supply of any Goods to DMI, the provision of any services to DMI, the ordinary purposes for which the Goods are used, nor the use of those Goods or services by DMI, its officers, directors, agents, representatives, parents, subsidiaries, successors and assigns shall constitute an infringement of any patent, invention, trademark, copyright or similar proprietary interest belonging to any third party.

If DMI, its officers, directors, agents, representatives, parents, subsidiaries, successors or assigns is not permitted to continue use of the Goods or services as a result of any such infringement, Supplier agrees to refund the full purchase price in respect of such Goods or services without prejudice to DMI's right to claim damages from Supplier.

**(c) Good Manufacturing Practices.** All Goods are produced using highest standard manufacturing practices and that Supplier and all employees and agents strictly adhere to all applicable laws, regulations and prohibitions of applicable jurisdictions, including, without limitation, those promulgated by the U.S. Federal Trade Commission and the Environmental Protection Agency.

**(d) Nonconformity.** If, any time prior to one (1) year from the date of delivery of the Goods or substantial completion of the services, it appears that the Goods or services or any part thereof do not conform to the warranties in Subsection (a) above, and DMI so notifies Supplier, Supplier shall promptly correct such nonconformity to the satisfaction of DMI. If any Goods which fail to meet the specifications are intermixed with Goods in DMI's or any carrier's storage or transportation equipment, Supplier shall, at no cost to DMI, (i) remove and replace all such affected Goods, (ii) clean, repair, or replace, as required by DMI, any of DMI's or carrier's equipment damaged by such Goods. If Supplier fails to remedy such nonconformity promptly, DMI shall have the option of doing so at Supplier's expense. Any payments made by DMI hereunder shall not relieve Supplier from responsibility under this warranty.

**(e) Survival; Miscellaneous.** The foregoing warranties shall survive delivery or performance, and shall not be deemed waived either by reason of DMI's acceptance of the Goods or by payment for them. The above warranties are not intended to be exclusive or to replace other warranties of quality that may be given in connection with the purchase of the Goods, whether written or oral, express or implied. No warranty disclaimer or limitation as to damages or remedies, whether contained in printed conditions that may appear on the Supplier's invoice or otherwise, shall be valid or effective unless and to the extent contained in written instrument separate from any purported disclaimer or limitation and signed by a duly authorized representative of DMI in advance of delivery or performance of the Goods covered by

the Purchase Order. These warranties shall run to DMI, its affiliates, successors, assigns, customers and the user of the products ordered herein.

**10. INDEMNITY:** Supplier will indemnify, defend, and hold DMI, its affiliates and their respective officers, directors, employees and agents, as well as DMI's customers, harmless from and against any and all allegations asserted or damages, liabilities, losses, costs or expenses (including reasonable attorneys' fees) sought in any claim, action or proceeding connected with any of the following (collectively, "Claims"): (a) infringement or misappropriation of any proprietary right in connection with the Goods; (b) death of or injury to any person, damage to any property, or any other damage or loss resulting or claimed to have resulted, in whole or in part, from any actual or alleged quality or other defect in the Goods, or actual or alleged failure of the Goods to comply with any express or implied warranties, or any claim of strict liability in tort relating to the Goods; (c) violation of any federal, state or local laws, regulations, including without limitation occupational health and safety and environmental regulations, ordinances or administrative orders or rules of any jurisdiction in which the Goods are produced or delivered; (d) defect involving the packaging, labeling, packing, shipping and/or invoicing of the Goods; or (e) failure to comply with any provisions of this Purchase Order; provided, however, that Supplier shall not be liable to DMI hereunder to the extent DMI's damages are determined to result from DMI's gross negligence or willful misconduct in the handling, storage, preparation or distribution of the Goods. This indemnity shall survive delivery and acceptance of Goods or services and shall apply without regard to whether the Claims, damages, liabilities or expenses is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. DMI may set off any amount owed to it by Supplier against any sum payable hereunder by DMI to Supplier.

**11. TITLE:** All Goods, and any inventions (whether or not patentable), works of authorship, trade secrets, ideas, concepts, trade names and trade/service marks (collectively "Inventions") created or prepared for DMI, shall belong exclusively to DMI, Supplier hereby assigns all Inventions to DMI and its assigns, except for any works for hire which do not require an assignment to vest ownership in DMI. DMI shall have the right, at DMI's option and expense, to seek protection by obtaining patents, copyright registrations, trademark registrations, and/or other recordations, registrations, and filings related to proprietary or intellectual property rights. Supplier agrees at no charge to execute, and to cause its employees to execute, such documents including such further assignments, applications, and conveyances and to supply information as DMI shall request, in order to permit DMI to protect, perfect, register, record and maintain its rights in the

Inventions and effective ownership of them throughout the world.

**12. CONFIDENTIALITY:** Supplier shall not disclose any confidential information of DMI to any third party except as required to perform its obligations. The terms and existence of this Purchase Order and everything supplied in connection with it by DMI shall be held in confidence by Supplier. Supplier shall not publicly announce or disclose this Purchase Order or its contents without DMI's prior written consent. Supplier shall not use DMI's name in any way, including without limitation, a general or sample listing of Supplier's customers, without DMI's prior written consent. Any violation of this paragraph shall be deemed a material breach.

**13. CANCELLATION:** DMI reserves the right to cancel this Purchase Order in whole or in part in respect of Goods covered by this Purchase Order and not shipped or performed prior to such cancellation, without incurring liability, by notice in writing to Supplier, before such shipment or performance, unless the Goods were specifically manufactured for DMI. In the latter case, provided Supplier is not otherwise in default, DMI shall refund to Supplier the direct costs incurred by Supplier to perform its obligations up to the date of cancellation. Supplier shall, unless otherwise directed, cease work and follow DMI's directions as to disposal of work in progress and finished goods. The foregoing paragraph states DMI's entire liability for termination. DMI may also, without prejudice to its other rights and remedies, cancel this Purchase Order if (a) Supplier becomes insolvent or bankrupt, (b) Supplier ceases to carry on its business in the ordinary course, (c) a trustee, manager or liquidator is appointed in respect of all or a part of the assets or business of Supplier, or (d) Supplier defaults on its obligations hereunder. Notwithstanding any cancellation, DMI agrees to fulfill any separate stocking or supply agreements with Supplier in accordance with such terms thereof; provided however that DMI's liability shall be limited strictly to that which is provided in the stocking or supplier agreement.

**14. INDEPENDENT CONTRACTORS:** Except as specifically and expressly provided herein, the parties shall be considered independent contractors for the purposes of the Purchase Order. Except as specifically and expressly provided herein, the relationship between DMI and Supplier shall not be that of partners, agents, or joint venturers for one another, and nothing in this Purchase Order shall be deemed to constitute a partnership, agency agreement, or joint venture between them for any purpose whatsoever.

**15. LIMITATION OF LIABILITY:** DMI's entire liability for any claim, loss, expense, or damage under any Purchase Order shall in no event exceed the sum actually due by DMI to Supplier for the Goods under a duly accepted and

performed Purchase Order. The foregoing limitations apply to all causes of action and claims of any kind arising out of or related to the Purchase Order including, without limitation, breach of contract, negligence, misrepresentation, or any other tort. Supplier acknowledges and accepts the reasonableness of the foregoing limitations of liability. All references to DMI shall include its affiliates, officers, directors, shareholders, and employees.

**16. FORCE MAJEURE:** Neither DMI nor Supplier shall be liable for failure to execute this Purchase Order in the event of force majeure, provided the party invoking force majeure notifies the other party in writing within ten (10) days of becoming aware of the event of force majeure. DMI shall not be bound to purchase the Goods or services or to accept late delivery if Supplier is unable to make delivery or completion as scheduled due to an event of force majeure.

**17. ASSIGNMENT:** Supplier may not subcontract or delegate, nor may it assign or transfer to any third party or parties, its obligations under the Purchase Order without prior written consent of DMI.

**18. INVALIDITY:** The invalidity of any provision of the Purchase Order shall not affect the validity of any other provisions thereof.

**19. CHOICE OF LAW:** Any dispute or claim hereunder shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania without reference to its choice of law provisions.

**20. SUPREMACY OF TERMS:** If Supplier is party to a formal supply or stocking agreement with DMI, then such agreement's terms and conditions are incorporated herein by reference; if any such terms conflict these Terms and Conditions, the terms of the formal supply agreement will prevail over these terms and conditions with regard to the Goods purchased hereby. No statement or writing by Supplier, including Supplier's invoice, shall alter or supersede these Terms and Conditions.

**21. NOTICES:** Any notices or other communication (other than invoices or payments) required or permitted to be given to DMI by Supplier pursuant to the Purchase Order shall be delivered, either by overnight courier, or sent by first class mail, certified, to the addresses set forth in the Purchase or to a different address which shall have been previously furnished in writing by DMI. Such notice shall be deemed served at the time delivered or, if mailed, three (3) business days after the date mailed.

**22. REMEDIES; WAIVER:** DMI shall have all the rights and remedies specified in the Purchase Order in addition to those specified in the Uniform Commercial Code as adopted in the Commonwealth of Pennsylvania, and any other remedy allowed by law or in equity. All such rights and remedies are cumulative. DMI's waiver of or failure to exercise any applicable right or remedy in response to a breach of any provision in the Purchase Order by Supplier or its agents shall not constitute a waiver or any subsequent breach of the same provision or any other provisions of the Purchase Order. No right or remedy of DMI shall be deemed to have been waived unless such waiver is in writing and signed by a duly authorized representative of DMI.

**23. COMPLIANCE WITH LAWS:** Supplier shall comply with all applicable legislation, and, where applicable, all provisions required thereby to be included herein are hereby incorporated herein by reference.