



D&W Fine Pack LLC
Standard Terms and Conditions

D&W Fine Pack LLC (the “**Seller**”) agrees to provide the buyer (the “**Buyer**”) its products and/or services (collectively, the “**Products**”) only on the terms and conditions set forth below (these “**Terms and Conditions**”). Any additional terms and/or conditions proposed by Buyer that are inconsistent with or in addition to the Terms and Conditions are expressly rejected and shall be void and of no effect, unless expressly agreed to in writing by Seller, notwithstanding Seller’s commencement of performance and/or delivery. Acceptance of delivery of any shipment hereunder shall constitute acceptance by Buyer of Seller’s Terms and Conditions.

1) Purchase Order Requirements:

a. Orders. All orders for Products (“**Order(s)**”) shall be placed and directed in writing to Seller’s customer service department. All Orders shall include the following information: (i) Buyer’s name, (ii) D&W Fine Pack Product number, (iii) price of Product ordered, (iv) quantity of Product ordered, (v) Buyer purchase order number, (vi) requested delivery date and (vii) delivery address and phone number.

b. Delivery: Quoted delivery dates are good faith estimates only, and shall in no way guarantee delivery on any specific date.

c. Lead time: Orders for stock Products, as defined by Seller’s published stock Product list, are generally available to ship within 8 business days of Order acknowledgement by Seller, however, there is no guarantee that such Products will be shipped in such time period.

d. Minimum Order Requirement. Minimum order requirements can vary by order and products, please contact the Seller regarding any minimum order requirements (a “**Minimum Order**”).

2) Payment Terms:

a. Any and all invoices are due in full, without set-off, in cash using readily available United States funds within thirty (30) days from date of shipment by Seller, unless otherwise agreed to in writing by Seller.

b. Any invoice amount not paid in full by its due date shall accrue a service charge of the lesser of (i) 1.5% per month; and (ii) the highest rate permitted by law, until paid in full. Accrued and unpaid service charges shall be added monthly to the outstanding invoice balance (and service charges shall accrue on the service charges so added), to the maximum extent permitted by applicable law.

c. Buyer shall reimburse Seller for all collection costs, including without limitation, reasonable attorneys’ fees and costs, paid or incurred by Seller in collecting amounts due by Buyer to Seller.

d. Terms of sale are subject to approval of Seller’s Credit Department. Seller reserves the right to require suitable security from Buyer, or advance payment before making shipments or to hold future orders for past due payments.

3) Pricing: Prices of Products are subject to change without notice. Seller’s published prices are in effect at the time of Order acknowledgement. Buyer must notify Seller of any discounts, rebates, allowances, promotional programs, or other adjustments within 90 days of the invoice.

4) Taxes: Seller’s prices do not include any applicable sales, use, excise and other taxes applicable to an Order. Any such taxes shall be paid by Buyer when due. If Seller pays any such taxes, Buyer shall reimburse Seller upon demand.

5) Freight: Freight arrangements and associated expenses shall be based on negotiated terms between Buyer and Seller. For shipments outside the continental United States, transportation charges will be prepaid and allowed to port of embarkation via the least expensive routing as determined by Seller, in Seller’s sole discretion, considering packaging and shipping costs as well as actual transportation. Shipments requiring expedited service shall be subject to additional shipping charges to be paid by Buyer.

6) Buyer Pickup: All shipments that are FOB Seller’s dock shall require a dock appointment to be made no less than 48-hours prior to the pickup date. The Buyer’s representative shall be responsible for the count and inspection of all Products. Any shortages, damage, or loss shall be Buyer’s responsibility once the driver or Buyer’s representative, as the case may be, acknowledges receipt of such Products. Pickup orders shall comply with the Minimum Order, if any. Buyer pick-up shall follow the standard lead time (as defined in Section 1).

7) Product Return Policy:

a. No Obligation. Buyer acknowledges that Seller has no obligation to accept returns of any Products sold to Buyer. Seller, at its sole discretion, may authorize the return of unused Products within 90 days from the date of original invoice; provided, however, that such return of Products cannot be made without a prior written consent from Seller.



- b. Credit. Upon Seller's consent and Seller's receipt and acceptance of returned Products, Seller shall issue Buyer a credit in the amount of the price of the Products, less a 25% restocking charge, and if such return is arranged by Seller, the cost of return freight. Any credit shall be issued to original Buyer only;
- c. Discontinued Items. Seller shall not accept returns of obsolete or discontinued Products;
- d. Time for Claims. In accordance with Section 12(c) below, Buyer shall waive any and all claims for defects unless such claim is made within 60 days from date of original invoice.

8) Deferment or Cancellation of Orders: Orders may not be cancelled or delayed without the prior written consent of Seller. Buyer shall reimburse Seller for any deferment fees incurred by Seller. Orders for stock Products, as defined by Seller's published stock Product list, may be cancelled in writing within 48 hours of shipment without penalty to Buyer.

9) Specially Manufactured Products:

- a. Lead Times; Minimum Order. Lead Times and any Minimum Order for non-stock or specially manufactured Products vary by Product;
- b. Returns. Non-Stock or special order Products may not be returned without the express prior written consent of the Seller;
- c. Cancellation. In the event Buyer cancels an Order for non-stock or specially manufactured Products, Buyer shall be responsible for and purchase all inventory of such Products, including all raw materials acquired by Seller to fulfill the order, work in process and finished goods. Further, Buyer shall reimburse Seller for any and all expenses incurred with the Order, including but not limited to expenses for tooling, time, drawings, samples, special order materials in transit or in production and reasonable profits.

10) Warranty:

- a. Warranty. Seller warrants to the original Buyer that each Product delivered shall meet the published specifications for that Product or any contractually agreed upon specifications.
- b. Warranty Limitation. EXCEPT AS SET FORTH IN SECTION 10(a) ABOVE, SELLER HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES TO THE BUYER WITH RESPECT TO THE PRODUCTS, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THE WARRANTY OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. BUYER ACCEPTS FULL RESPONSIBILITY FOR THE SELECTION AND USE OF THE PRODUCTS TO ACHIEVE INTENDED RESULTS.
- c. Non-Binding; No Reliance. No representation or warranty concerning the Order shall be binding unless confirmed by Seller in writing. Acceptance of the Order is made only upon these Terms and Conditions. Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations and warranties which are not so confirmed. Any advice or recommendation given by Seller to Buyer as to the storage, application or use of the Products which is not confirmed in writing by Seller shall be followed or acted upon entirely at the Buyer's own risk. Except as provided by Seller in advance in writing, Buyer shall make no warranty or guaranty, orally or in writing, concerning the Products.
- d. Buyer's Remedy. Subject to the provisions contained in Sections 11(a) and 11(c) herein, Buyer's sole and exclusive remedies and Seller's only obligations for breach of the warranty set forth in Section 10(a) shall be either (i) repair of the nonconforming Products; or (ii) the replacement of nonconforming Products, such remedy to be determined in Seller's sole discretion. For Buyer to receive warranty service, Buyer must give Seller written notice of the nonconformity within 90 days and Seller must determine that the nonconformity did not arise due to accident, misuse, abuse, neglect, improper handling, or other conditions beyond Seller's commercial control or fault. In addition, Buyer must receive shipping instructions from Seller prior to returning the nonconforming Products to Seller's facilities. If this remedy of replacement is adjudged to have failed of its essential purpose, Seller's total liability will be to refund the portion of the purchase price paid to Seller by Buyer for the nonconforming Products.
- e. Buyer Misuse. If Buyer transports, handles, stores, assembles, or uses, incorporates, integrates or includes the Products into or as part of Buyer's product or products in any improper manner or in a manner other than in accordance with best manufacturing practices or fails to have properly trained personnel with respect to the transportation, handling, storage, assembly, usage, incorporation, integration or inclusion of the Products, the applicable warranties set forth in these Terms and Conditions shall be void.

11) Limitation of Liability

- a. Limitation. Seller's liability for damages shall not exceed the payment, if any, received by Seller for the Product furnished which is the subject of claim or dispute. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, COLLATERAL OR SPECIAL DAMAGES, including but not limited to loss of profits or revenues, damage to or loss of the use of Products, loss of work in process, downtime, damage to property, claims of



third parties, including personal injury or death suffered as a result of provision or use of the Products of failure of Seller to instruct or warn, or to adequately instruct or warn, about the safe and proper use of the Products, whether or not Seller has been advised of the potential or risk for such liability and damages. Buyer's limitation of liability and remedies provided herein shall be Buyer's sole and exclusive remedy and no other course of action may be maintained. Buyer further covenants and agrees to indemnify and hold Seller harmless from and against any and all liability and damages, losses, costs or expenses, including attorneys' fees and court costs, which Seller hereinafter may incur, suffer or be required to pay to third parties relating to, arising out of, or occurring in connection with the use of the Product;

b. Assumption of Risk. Buyer assumes all risk and liability for loss, damage, or injury to persons or property of Buyer or others arising out of the resale or use, either singly or in combination with other substances, or storage, transportation, or possession of any material sold hereunder.

c. Time For Claims. All claims of any nature hereunder against Seller shall be brought in writing within sixty (60) days from the date of original invoice. Buyer expressly agrees to such sixty (60) day period and waives any other statute of limitations which might apply by operation of law or otherwise. Buyer shall include a copy of the delivery carrier's receipt, indicating the damage or shortage and the disposition of the damaged material at the time the claim is made.

d. Setoff. Buyer shall have no right to set-off any claim Buyer may have against Seller against any invoice from Seller.

e. Seller's Right of Inspection. Buyer shall afford Seller's representative a reasonable opportunity to examine and test the Product or Products which are the basis for Buyer's claim. Seller may request Buyer to return to Seller, at Seller's cost, the Product upon which the claim is made in the same condition as when received by Buyer.

12) Title and Security Interest:

a. Liens. As payment for any sum due or to become due, Seller shall have a lien on all Buyer property in Seller's possession, including work in progress and finished work.

b. Security Interest. Seller hereby reserves, and Buyer grants to Seller, a purchase money security interest in the Products, and all proceeds from the sale thereof, until full payment is received for all amounts due and payable by Buyer. Upon request, Buyer shall execute and deliver to Seller security agreements and financing statements further evidencing Seller's security interest. Buyer authorizes Seller to file a financing statement(s) relating to the Products, without Buyer's signature thereon, as Seller may deem appropriate and appoints Seller as Buyer's attorney-in-fact for the limited purpose of executing (without requiring Seller to do so) financing statements in Buyer's name and performing other acts which Seller deems appropriate to perfect and continue its security interest and to protect and preserve the goods.

c. Title; Risk of Loss. Title to Product and risk of loss thereof shall pass to Buyer upon delivery to carrier at the shipping point, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder.

13) Force Majeure: The consequences, direct or indirect, of labor troubles, fire, accidents, floods, earthquake, hurricane, tornado, war, terrorism shortage of transportation, the failure, suspension or curtailment of production due to shortage of supply of raw materials, or other economic factors, government acts or requirements and any and all like or different causes beyond the control of the parties hereto (each a "Force Majeure Event") shall excuse performance by either party to the extent by which such performance is prevented thereby; provided, however, that Buyer shall not be excused with regard to shipments already delivered or in transit to Buyer. Seller may, during any period of shortage due a Force Majeure Event, allocate the available supply of material among its customers, its own departments or divisions in such a manner as may be deemed equitable in the sole discretion of Seller.

14) Assignability: Buyer may not directly or indirectly assign this Agreement without the express written consent of Seller, which consent may be withheld in the Seller's sole discretion. Any attempt to directly or indirectly assign this Agreement without the Seller's consent shall be null and void and have no further force or effect. No sale of any Products subject to these Terms and Conditions by Buyer to a third party will be effective to transfer the rights or obligations of these Terms and Conditions to the third party unless expressly agreed to in writing by Seller. Seller may assign or transfer this Agreement to any affiliate or purchaser of its business or of substantially all of its assets.

15) Accessorial Fees: All accessorial charges, unless caused solely by Seller, for freight services beyond normal pick up, transport, and delivery shall be paid by Buyer. These accessorial charges include, but are not limited to, Lumper, Detention, Layover and Redelivery Charges. Accessorial fees charged by any carrier to Seller will be billed back to Buyer, unless the parties otherwise agree in writing.

16) Governing Law: The laws of the State of Illinois will govern the validity, interpretation, construction and effect of this Agreement in all respects.

- Updated November 2017 -