

Terms and Conditions of Sale

1. **FOB POINT / PRICES:** Products are sold F.O.B. point of origin. Any taxes are in addition to the prices and may be invoiced later.
2. **SHIPPING SCHEDULE:** The shipping schedule is our current estimate of delivery dates and we agree to use reasonable efforts to comply with the schedule.
3. **WARRANTY:**

(a) Any D-M-E trademarked or tradenamed product or part thereof manufactured by or for us which, under normal operating conditions in the plant of the Buyer thereof, proves defective in material or workmanship, as determined by our inspection, within 12 months from the date of shipment will be replaced or repaired free of charge to Buyer.

This warranty is contingent upon the following conditions: that we promptly receive notice of the defect; that Buyer establish that the product has been properly installed, maintained, and operated within the limits of related and normal usage as specified by us; and that, upon our request, Buyer will return to us at our expense the defective product or part thereof.

(b) The terms of this warranty do not in any way extend to any product or part thereof which have a life, under normal usage, inherently shorter than 12 months.

(c) The conditions of actual production in each end user's plant vary considerably. Therefore, descriptions of the production or performance capabilities of any product or software materials are estimates only and are not warranted.
4. **EXCLUSIONS OF WARRANTIES:** THE WARRANTIES TO REPAIR OR REPLACE DEFECTIVE PRODUCTS OR PARTS AS SET FORTH IN PARAGRAPH 3, AND ANY ADDITIONAL WARRANTY EXPRESSLY STATED TO BE A WARRANTY AND SET FORTH IN WRITING AS PART OF THESE TERMS HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
5. **LIMITATION OF REMEDIES AND LIABILITIES:** UNDER NO CIRCUMSTANCES SHALL WE OR ANY AFFILIATE OF OURS HAVE ANY LIABILITY WHATSOEVER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWSOEVER CAUSED OR ARISING (INCLUDING CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), such as, but not limited to, loss of profit or revenue; loss of use of the product, part thereof; cost of capital; cost of replacement equipment; or claims resulting from contracts between Buyer, its customers and/or suppliers. Unless expressly provided for herein, in no event shall we or any affiliate of ours assume responsibility or liability for (a) penalties, penalty clauses or liquidated damages clauses of any description, (b) certifications or (c) indemnification of Buyer or others for costs, damages or expenses arising out of or related to the product or part thereof.
6. **CANCELLATION:** Unless otherwise agreed, Buyer may cancel all or any part of the order by written notice received by us before our completion of the order or applicable portion of the order. On receipt of such notice, all work on the order or part thereof canceled will be stopped as promptly as is reasonably possible. Buyer will then be invoiced for and will pay to us a cancellation charge. For completed items, the charge will be equal to their established prices. For items not completed, the charge will be equal to our full cost plus a premium in addition to a charge for any packing and storage and less a credit for the balance of the material as scrap.
7. **PAYMENT TERMS:** Payment is due in accordance with any applicable progress, advance or other agreed upon payment schedule, or, if no such schedule has been agreed to, upon Acceptance as specified in Paragraph 8, but in no event later than 30 days from the date of invoice. No cash discount is provided. If, in our judgment, Buyer's financial condition changes, we may stop work until financial arrangements satisfactory to us are made.
8. **ACCEPTANCE OF PRODUCT:** Each such product shall be deemed to be accepted within seven days after delivery of the product to the Buyer, unless we receive written notification of rejection for cause from Buyer within the seven day period.
9. **PATENT INDEMNITY:** We shall defend any suit or proceeding brought against Buyer and pay all costs and damages awarded against Buyer provided that:
 - (a) The suit or proceeding is based upon a claim that the product or part thereof is an infringement of any claim of a presently existing U.S. patent;
 - (b) The claim of infringement is not based, directly or indirectly, upon (i) the manufacture, use, or sale of any product furnished by us which has been modified without our consent; or (ii) the manufacture, use, or sale of any combination of a product furnished by us with products not furnished by us; or (iii) performance of a patented process using a product furnished by us or production thereby of a patented product; and,
 - (c) We are notified promptly and given information and assistance (at our expense) and the authority to defend the suit or proceeding. We shall not be responsible hereunder for any settlement made without our written consent nor shall we be responsible for costs or expenses incurred without our written consent. If our product is adjudicated to be an infringement and its use in the U.S. by Buyer is enjoined, we shall, at our own expense, either:
 - (i) procure for Buyer the right to continue using our product;
 - (ii) replace it with a noninfringing product;
 - (iii) modify it so it becomes noninfringing;
 - (iv) remove the product or part thereof and refund Buyer's net book value and transportation costs attributable to it.

The foregoing states our entire liability with respect to any patent infringement by our products or any parts thereof. To the extent that our product or any part thereof is supplied according to specifications and designs furnished by Buyer, Buyer agrees to indemnify us in the manner and to the extent set forth above insofar as the terms thereof are appropriate.
10. **FORCE MAJEURE:** We shall not be liable for any delay in performance or nonperformance which is due to war, fire, flood, acts of God, acts of third parties, acts of governmental authority or any agency or commission thereof, accident, breakdown of equipment, differences with employees or similar or dissimilar causes beyond our reasonable control, including but not limited to, those interfering with production, supply or transportation of products, raw materials or components or our ability to obtain, on terms we deem reasonable, material, labor, equipment or transportation.
11. **ACCEPTANCE OF ORDERS:** Buyer agrees that all orders, including any arising from our Proposal, shall include these terms and conditions only, notwithstanding any different or additional terms that may be embodied in Buyer's order. All orders are subject to our acceptance and we reserve the right to reject orders as, in our sole judgement, mandated by business conditions. We reserve the right to not proceed with any order until all necessary information is received from Buyer.
12. **MERGER CLAUSE:** This Agreement entirely supersedes any prior oral representations, correspondence, proposal, quotation, or agreement. This writing constitutes the final and total expression of such agreement between the parties, and it is a complete and exclusive statement of the terms of that agreement.
13. **ASSIGNMENT:** Neither party may assign this Agreement without the written consent of the other party, except that we may assign this Agreement to a third party that acquires substantially all of our assets or we may assign the flow of funds arising out of this Agreement.
14. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.