

MDM, INC.
STANDARD CONDITIONS OF SALE

1. Seller warrants that the products or materials (hereafter "products") delivered hereunder meet Seller's standard specifications for the products or such other specifications as may have been expressly agreed to herein. SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTY, EXCEPT AS PROVIDED IN CONDITIONS 3 AND 4 HEREIN. Buyer assumes all risk and liability resulting from use of the products delivered hereunder, whether used singly or in combination with other products.
2. No claim of any kind, whether as to products delivered or for nondelivery of products, and whether or not based on negligence, shall be greater in amount than the purchase price of the products in respect of which damages are claimed; and failure to give notice of claim within ninety (90) days from date of delivery, or the date fixed for delivery (in the case of nondelivery) shall constitute a waiver by Buyer of all claims in respect of such products. No charge or expense incident to any claims will be allowed unless approved by an authorized representative of Seller. Products shall not be returned to Seller without Seller's prior permission, and then only in the manner prescribed by Seller. The remedy hereby provided shall be the exclusive and sole remedy of Buyer and in no event shall either party be liable for special, indirect or consequential damages, whether or not caused by or resulting from the negligence of such party.
3. Seller warrants that the use or sale of the products delivered hereunder will not infringe the claims of any United States patent covering the products themselves; but does not warrant against infringement by reason of the use thereof in combination with other products or in the operation of any process.
4. Seller warrants that all products delivered hereunder were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.
5. No liability shall result from delay in performance or nonperformance, directly or indirectly caused by circumstances beyond the control of the party affected, including, but not limited to, Act of God, fire, explosion, flood, war, act of or authorized by any Government, accident, labor trouble or shortage, inability to obtain material, equipment or transportation, failure of usual source of supply, or failure of unusual transportation mode. Quantities so affected may be eliminated from the agreement without liability, but the agreement shall remain otherwise unaffected. Seller shall have no obligation to purchase supplies of product specified herein to enable it to perform this agreement.
6. If this agreement covers products that must necessarily be manufactured especially for Buyer and is suspended or terminated for any reason, Buyer will take delivery of and make payment for such products as have been completed and such as are in process on the date notice of suspension or termination is received by Seller; provided, that if Buyer for any reason cannot accept delivery of such products, it will make payment therefore as though delivery has been made and Seller will store such products for Buyer's account and at Buyer's expense.
7. If for any reason including but not limited to Force Majeure Seller is unable to supply the total demand for products specified herein, Seller may distribute its available supply among any or all purchasers, as well as departments and divisions of Seller on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.
8. If any Government action should place or continue limitations on the price provided for in this agreement such that it would be illegal or against public or Government policy for Seller to charge, assess or receive the full amount of or to increase such prices as determined by this agreement, then Seller shall have the option 1) to continue to perform under this agreement subject to such adjustments in prices that Seller may deem necessary to comply with such Government action; 2) to revise this agreement, subject to Buyer's approval, or 3) to terminate performance of the affected portions of the agreement without liability for any damages.
9. At Buyer's request, Seller may furnish such technical assistance and information as it has available with respect to the use of the products covered by this agreement. Unless otherwise agreed in writing, all such technical assistance and information will be provided gratis, and Buyer assumes sole responsibility for results obtained in reliance thereon.
10. Buyer acknowledges that it has received and is familiar with Seller's labeling, literature and Minimum Advertised Pricing Policies concerning the products sold hereunder and will forward such information to its employees who handle, process or sell such products and customers of such products, if any. Buyer and dealer customers agree that products sold hereunder will not knowingly be resold or given in sample form to persons promoting, using or proposing to use the products for purposes contrary to recommendation given by Seller or prohibited by law, but will be sold or given as samples only to persons, who in the opinion of Buyer, can handle, use and dispose of the products safely.
11. Buyer shall reimburse Seller for all taxes, (excluding income taxes) excises or other charges which Seller may be required to pay to any Government (National, State or Local) upon the sale, production or transportation of the products sold hereunder.
12. Seller may impose a late payment charge at a lawful rate on invoices not paid when due.
13. In the event Buyer fails to fulfill Seller's terms of payment or in case Seller shall have doubt at any time as to Buyer's financial responsibility, Seller may decline to make further deliveries except upon receipt of cash or satisfactory security. Buyer agrees to pay Seller's collection costs. In the event any legal action is necessary to enforce the terms of this agreement, attorney fees and legal costs shall be paid by the prevailing party.
14. This agreement is not assignable or transferable by either party, in whole or in part, except with the prior written consent of the Seller. Seller reserves the right to sell, assign, or otherwise transfer its right to receive payment under this agreement.
15. In addition to the Standard Conditions of Sale set forth herein, any Special Conditions of Sale set forth on the front of this invoice or in the current price list for the products shall apply and are incorporated by reference herein.
16. This document, along with documents specifically referred to herein, contains all of the terms and conditions with respect to the sale and purchase of the products sold hereunder. These terms and conditions supersede any of previous date and no modification thereof shall be binding on either party unless in writing and signed by both parties. No modification shall be effected by the acknowledgement or acceptance of purchase order forms stipulating different conditions. Unless Buyer shall notify Seller in writing to the contrary as soon as practicable after receipt of this document by Buyer, Buyer's acceptance of the products and payment therefore shall be equivalent to Buyer's assent to the terms and conditions hererof. Waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of any default by the other which may thereafter occur.
17. Any action to enforce this agreement, the terms of this agreement, or any action related to the relationship of the parties, shall be conducted in El Paso County, Colorado.