

## DUNCAN CO. TERMS AND CONDITIONS OF SALE

### A. OFFER AND ACCEPTANCE

1. This document is an offer or counter-offer by Duncan Co. ("Seller") to sell the products to Customer ("Products") solely in accordance with these terms and any signed agreement between Seller and Customer, is not an acceptance of any offer made by Customer, even if received elsewhere by a salesperson, selling agent or representative of Seller, and is expressly conditioned upon Customer's assent solely to these terms. Each order from Customer shall be deemed to be an offer by Customer to purchase the Products solely pursuant to these terms. Acceptance, either by written acknowledgment or by shipment of Products, of any order placed by Customer does not constitute acceptance by Seller of any of the terms and conditions of those orders or of any request for quotation, except as to identification and quantity of Products involved. Seller objects to any additional or different terms contained in any order, request for quotation or other communication previously or hereafter provided by Customer. No additional or different terms or conditions will be of any force or effect. Seller may revoke its offer at any time before it is accepted by Customer. The terms contained in or incorporated into this document by reference and Seller's quotation or proposal comprise the entire agreement between Seller and Customer on the subject of the transactions described herein and there are no conditions to that agreement that are not so contained or incorporated, except that any confidentiality agreement that has been executed by and between the parties shall remain in effect according to its terms.

2. Absent any written or other prior acceptance of these terms and conditions, Customer's acceptance of the Products, or any part thereof, or payment for any of the Products shall constitute Customer's acceptance of these terms and conditions. No accepted offer may be altered by Customer except upon terms and conditions accepted by Seller in writing. No changes to this document will be binding unless set forth in writing and signed by Seller.

### B. WARRANTIES, DISCLAIMERS, REMEDIES, AND LIMITATIONS OF LIABILITY

1. Seller warrants that at the time of shipment it has title to the Products free and clear of any and all liens and encumbrances.

2. Seller makes NO WARRANTY as to Products or other products not manufactured by it; provided that as to Products or other products not manufactured by Seller, to the extent permitted by its contract with its supplier Seller shall assign to Customer any rights Seller may have under any warranty of the supplier thereof.

3. Seller's warranties as set forth in the Section B shall not be enlarged or affected by, and no other obligation or liability shall arise or grow out of Seller's rendering of technical advice or service in connection with Customer's order of any Products or other goods furnished hereunder.

4. Seller shall pass through any supplier or manufacturer warranty to Customer. Seller's entire obligation under this warranty shall be limited to repair or replacement of any warranted Products which prove to be defective within the warranty period specified in the manufacturer's warranty, or to refund of the purchase price in lieu of such repair or replacement, at Seller's option. Seller shall in all cases have the exclusive option as to which remedy, or combination

thereof, its shall provide hereunder with respect to such defective Products. Such remedy shall be Customer's exclusive remedy for any breach of such warranty. Seller shall have a reasonable time to repair or replace such Products. This warranty shall not apply to any Products which Seller determines to have been subjected to any conditions in excess of those established by applicable specifications, or otherwise have been the object of accident, misuse, neglect, or improper installation, improper testing, unauthorized repair, alteration or damage after shipment by Seller. Products which prove to be defective during the warranty period must be received by Seller not later than thirty (30) days after the termination of the warranty period. All transportation and insurance charges for shipment of such defective Products to Seller shall be paid by Customer. Such warranty subject to these additional conditions: (i) Seller is promptly notified in writing upon discovery by Customer that such Products have failed to conform to this agreement with a detailed explanation of any alleged deficiencies, (ii) such Products are returned to Seller, FOB Seller's Plant, and (iii) Seller's examination of such shall disclose to Seller's satisfaction that such alleged deficiencies actually exist and have not been cause by accident, misuse, neglect, alteration, improper installation, unauthorized repair, damage, or improper testing after shipment by Seller.

5. THESE WARRANTIES ARE THE ONLY WARRANTIES MADE OR WHICH MAY BE DEEMED TO HAVE BEEN MADE TO ANY PERSON BY SELLER. EXCEPT FOR SELLER'S WARRANTY OF TITLE TO THE GOODS, SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THE NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY OR OTHERWISE AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR OF PERFORMANCE, CUSTOM OR USAGE OF TRADE. THE REMEDIES SET FORTH IN THIS SECTION B SHALL BE THE EXCLUSIVE REMEDIES AVAILABLE TO ANY PERSON. SELLER SHALL NOT BE LIABLE TO ANY PERSON FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY DESCRIPTION, INCLUDING, BUT NOT LIMITED TO THOSE FOR PERSONAL INJURY, WHETHER ARISING FROM WARRANTY, CONTRACT, NEGLIGENCE OR OTHER TORT OR OTHERWISE.

6. No person has authority to bind Seller to any representation or warranty except those set forth in the Section B, or otherwise to alter the content of such Section.

7. Regarding claims from persons other than Seller, Customer, at its sole expense, will indemnify, defend, and hold Seller and its affiliates, successors, assigns, officers, directors, employees and agents harmless from and against any claim, demand, proceeding, or action for damages, liability, loss, cost, or expense, including amounts paid in settlement and attorneys' fees and court costs, arising out of, in connection with or based upon, the warranties and/or remedies offered by Customer that are different than those contained in the warranty of the Products provided by Seller, its supplier or manufacturer, as applicable.

### C. SELLER'S OBLIGATIONS

1. All sales are FCA Seller's Dock (per Incoterms 2010). Seller's sole obligation hereunder is to deliver the Products in good condition to the carrier at the point of shipment, which shall constitute delivery. The carrier shall be deemed to be Customer's Agent. All claims for damage and shortages must be filed with the carrier. Unless Customer reasonably conveys specific instructions with respect to method of shipment, Seller will exercise its own discretion with respect thereto.

2. All delivery dates are approximate. Seller shall not be liable to any person for any delay in delivery or for non-delivery, whether in whole or in part, caused by or otherwise materially related to occurrence of any contingency beyond the control of Seller, including, but not limited to, war (whether and actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or agency or subdivision thereto, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, materials, capital or machinery, technical failure, or, in general, any other contingency whatsoever, whether similar or dissimilar to those enumerated herein, where Seller has exercised ordinary care in the prevention thereof. If any contingency occurs, Seller may allocate production and delivers among its customers as Seller deems appropriate. If any delay in delivery pardonable under this Section C2 extends for longer than ninety (90) days beyond the due date for such deliver, Seller shall have the option to cancel such delivery upon written noticed to Customer of such intention This Section C2 shall not in any way be deemed to limit or preclude Seller from asserting Sections 2-613 or 2-615 of the applicable version of the Uniform Commercial Code (the "UCC") or other rule of the law as an excuse of Seller's delay or failure to perform pursuant to these terms.

3. All title to the Products and the risk of loss thereof, passes to Customer upon Seller's delivery of the Products to the carrier at the shipping point, whereupon Seller shall have no further obligation concerning delivery.

4. Seller reserves the option to deliver the Products in installments from time to time within the time of delivery herein provided.

### D. OBLIGATIONS OF CUSTOMER

1. All Seller's clerical errors are subject to correction. Customer shall pay the amount shown on each of Seller's invoices within the period specified thereon, or, if no payment terms are stated thereon, Customer shall pay the amount stated on the face hereof with thirty (30) days after the date of such invoice. Thereafter interest shall accrue on any unpaid amounts at the lesser of the monthly rate of 1.5% or the maximum amount allowed by law from the date the invoice becomes due according to its terms. Customer acknowledges that Seller may use the services of a collection service and an attorney to collect amounts overdue. In this event, Customer will be liable for all fees incurred by Seller, including collection service fees and attorney fees, costs and expenses arising out of the collection efforts. Seller may, in its sole discretion and at any time, demand payment in advance and may completely suspend its own performance and all preparation therefore until it receives such payment. In the event such payment is not received within the period

of time designated by Seller in such demand, Seller may at its election treat this agreement as repudiated by Customer. Seller shall not be obligated to assurance of performance, as provided in Section 2-609 of the UCC, prior to deeming itself insecure or treating the agreement as repudiated under this Section. If the Products or any part thereof are in transit at the time Seller deems itself insecure, Customer authorizes Seller to direct the carrier or any bailee having possession of the Products not to deliver the Products to Customer, regardless of the quantity of the Products in the possession of the carrier or bailee, and to the direct the carrier or bailee to redeliver the Products to Seller or any other person or entity, all a Customer's expense.

2. Unless otherwise specifically provided herein, the amount of any present or future sales, revenue, excise or other tax applicable to the Products or the manufacture or sale thereof, shall be added to the invoice price and shall be paid by Customer, or in lieu thereof, Customer shall provide Seller with a tax exemption certificate acceptable to the appropriate taxing authorities. Customer further agrees to pay any addition taxes arising from an ultimate use different from that indicated on the tax exemption certificate furnished to Seller which is considered taxable by such taxing authorizes.

3. In the event Customer for any reason cancels all or part of any order or orders placed hereunder, or in the event Seller for cause cancels all or part of any order or orders, Customer shall be liable to Seller for termination charges, which shall include a price adjustment based upon the quantity actually delivered, all costs (whether direct or indirect) incurred or committed to with respect to this agreement or order, as the case may be a reasonable allowance for prorated general expenses, and a reasonable allowance for anticipated profits. Costs of cancellation may represent 100% of the value of the order which is canceled depending upon the level of customization and the status of work-in-process regarding the order which was canceled. Such charges are in addition to any other remedies of Seller hereunder.

4. Customer acknowledges that the Products and the purchase of Products are subject to customs, import and export control laws and regulations of the United States and potentially other countries. Customer will comply with all applicable laws and regulations now or hereafter in effect, including, but not limited to, anti-corruption laws.

### E. RIGHTS AND REMEDIES

1. Seller shall have, without limitation, all of the remedies for any breach of this agreement which are conferred by the UCC and all other available remedies it may otherwise have at law and in equity.

2. Except as may otherwise be provided in Section B regarding remedies for breach of warranty, Customer's EXCLUSIVE REMEDIES for breach of this agreement shall be (i) in the event Customer rightfully rejects and properly returns the Products, or accepts non-conforming Products, repair or replacement (at Seller's exclusive option) of such rejected and returned or non-conforming Products, or, if such remedy fails of its essential purpose, or if Seller elects, refund of whatever portion of the purchase price Customer has paid for such Products; or (ii) in the event Seller repudiates or fails, whether in whole or in part to deliver and such failure is not excused by Section C2 or otherwise, cancellation of the undelivered or repudiated order and refund of whatever portion of the purchase

price Customer has paid for such Products, subject to Section D3 hereof.

3. Customer understands and agrees that the immediately preceding Section constitutes a waiver of all remedies for Seller's breach of this agreement except those set forth or referred to in such Section. SELLER SHALL NOT BE LIABLE, AND IT HEREBY DISCLAIMS ALL LIABILITY, FOR ANY CONSEQUENTIAL, CONTINGENT, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, USE, BUSINESS OR REVENUE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE LEGAL THEORY ASSERTED, INCLUDING WARRANTY, CONTRACT, NEGLIGENCE OR STRICT LIABILITY. SELLER'S LIABILITY FOR DIRECT DAMAGES WILL IN NO EVENT EXCEED THE PRICE PAID BY CUSTOMER FOR THE GOODS GIVING RISE TO THE CLAIM FOR DIRECT DAMAGES. NO PENALTY CLAUSE APPEARING IN ANY DOCUMENT WILL BE EFFECTIVE AGAINST SELLER UNLESS IT HAS BEEN EXPRESSLY ACCEPTED IN WRITING BY AN OFFICER OF SELLER.

#### F. GOVERNMENT CONTRACTS

1. Products provided by Seller are commercial off-the-shelf items as such term is defined in U.S. Federal Acquisition Regulations. Customer shall not resell the Products to any governmental authority or its respective agencies without Seller's prior written approval.

2. Unless otherwise separately agreed to in writing between Seller and Customer, no provisions required in any US government contract or subcontract related thereto shall be a part of this agreement or imposed upon or binding upon Seller, and this agreement shall not be deemed an acceptance of any government provisions that may be included or referenced in Customer's request for quotation, purchase order or any other document.

#### G. GENERAL PROVISIONS

1. These terms constitute the complete understanding between Seller and Customer, and may be modified, enlarged or rescinded only by a writing signed by the party to be charged thereby. No waiver by either party of its rights or remedies under this agreement shall be effective unless in a writing signed by the party to be charged thereby, and no such waiver shall operate as a waiver of such rights or remedies as to any other circumstances or transactions than to those set forth in such waiver, or, if not set forth therein, to which such waiver specifically relates.

2. Customer shall not assign any right, duty or interest in this agreement without the prior written consent of Seller and any attempted assignment shall be wholly void and totally ineffective for all purposes.

3. Any action by Customer for breach of this agreement must be commenced within 13 months after the cause of action has accrued.

4. All notices required or permitted hereunder shall be in writing and if sent by mail, shall be made by first class mail (correct postage paid), or, if not by mail, shall be actually delivered. If notice is given

by mail, such notice shall be deemed given upon mailing, or, if otherwise delivered, upon such delivery.

5. This agreement shall in all respects be governed by and interpreted in accordance with the laws of the State of Minnesota. The rights and obligations of the parties shall not be governed by the 1980 United Nations Convention for the International Sale of Goods.

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