

TERMS AND CONDITIONS OF SALE

1. **ORDER PLACEMENT.** All goods and services furnished by DEISTER CONCENTRATOR, ("DEISTER") are provided pursuant to these Terms and Conditions ("Terms and Conditions") whether provided following an order placed electronically, verbally, or on paper, whether the order is placed directly through DEISTER or through a DEISTER representative, and whether the order is placed following Buyer's review of DEISTER's catalog or website, or following receipt of a Quotation only, or following the exchange of other documents (the catalog, website, Quotation, and all other documents, hereafter, jointly, the "Quotation"). **Acceptance by DEISTER of Buyer's order is expressly conditioned upon Buyer's acceptance of these Terms and Conditions, including those on the face of the Quotation, and any provisions of Buyer's order in conflict with these Terms and Conditions are expressly rejected. Buyer acknowledges that no representation or warranty other than those contained in this document have been made or relied upon. No additions or modifications shall be valid unless confirmed in writing by DEISTER. DEISTER IS NOT BOUND TO FURNISH ITS GOODS OR SERVICES EXCEPT IN ACCORDANCE WITH THESE TERMS AND CONDITIONS.**

2. **PRICE/DELIVERY/DELAY.** Prices for goods shall be those in effect on the date of invoice unless otherwise provided by the Quotation or agreed to in writing by DEISTER. Unless otherwise provided on the face of the Quotation or agreed by DEISTER in writing, price and delivery terms shall be F.O.B. shipping point. Unless otherwise agreed in writing, DEISTER will select the route and manner of shipment, reserves the right to make delivery in installments, when necessary, and if so to invoice each installment separately, and to expect payment for each installment within DEISTER's selling terms. All risks of loss or damage shall pass to Buyer at the place and time such goods are placed into the possession of the carrier or shipper, in accordance with the previously referenced F.O.B. shipping point term. Buyer shall be responsible for obtaining and paying for insurance to cover any loss to Buyer. Buyer shall pay DEISTER for the full contract price in the event of loss of the goods. If Buyer fails to accept delivery according to the agreed upon delivery schedule, DEISTER may cancel any then remaining balance of the order. Such cancellation, if elected by DEISTER, shall be in addition to, and not in lieu of, any other rights or remedies which DEISTER may have at law or equity. Prices are good for only quantities indicated. If shipment or any other act or condition affecting payment for the goods or any part of them shall be delayed on account of Buyer, payment shall be due as if shipment had been made, a reasonable storage charge may be made, and such storage shall be at the risk of Buyer. DEISTER shall not be liable for any direct, indirect, consequential, special, or incidental losses or damages to Buyer or to any third parties resulting from DEISTER's delay in shipment regardless of cause, including but not limited to those causes set forth in the Force Majeure section of this document.

3. **CHANGES IN SPECIFICATIONS OR DESIGN.** If Buyer requests any change in quantity, specification or design relating to any goods or services, or changes of delivery date and/or schedules, such proposed change shall be subject to the terms and conditions of this Quotation and must be approved in writing to be binding upon DEISTER.

4. **ACCEPTANCE.** Goods furnished or services performed by DEISTER will be deemed to have been finally accepted thirty (30) days after receipt by Buyer, unless lawfully rejected within such period by written notice to DEISTER, setting forth all of the defects upon which the rejection is claimed. Claims for factory damage or shortages shall not be considered unless made in writing within thirty (30) days after receipt of the goods or services and accompanied by reference to our bill of lading and invoice numbers. Buyer's claims for damage or shortage in transit must be filed by Buyer against carrier, and not against DEISTER. Defective goods shall be held for DEISTER's inspection or disposition.

5. **CANCELLATION.** Buyer may cancel its order for goods prior to their completion by immediate payment to Seller of Seller's cost of manufacture and its anticipated profit for the goods. Cost of manufacture shall include the cost of all materials or services relating to Seller's order, and which cannot be cancelled, and all cost incurred in cancelling a n y material or services which can be cancelled. Anticipated profit shall be determined in Seller's sole discretion. Seller may retain without cost all material and partially completed goods on cancelled orders, provided it pays for them as indicated herein.

6. **DEISTER PROPERTY.** All photographs, samples, descriptions, drawings, or intellectual property provided by DEISTER to Buyer shall remain the property of DEISTER and shall only be used by Buyer to market DEISTER products to third parties. All such property shall be returned to DEISTER upon demand.

7. **TAXES.** Prices do not include any federal, state or local taxes. Any applicable excise, import, sales, use or similar taxes, whether federal, state, provincial or local, and any transportation and other charges shall be the responsibility of and be paid by Buyer and, if paid by DEISTER, Buyer agrees to reimburse DEISTER for any such payment and further agrees that DEISTER may add any such payments to the purchase price of the goods.

8. **PAYMENT/CREDIT/SECURITY.** Payment shall be due prior to shipment unless adequate credit remains on an account in good standing, in DEISTER's sole discretion. All orders received are subject to credit approval. Buyer agrees to submit from time to time to DEISTER those items reasonably requested to establish or update Buyer's credit. DEISTER shall be entitled to charge interest on past due accounts at a rate of 1.5% per month (18% annually). Whenever DEISTER, in good faith, deems itself insecure, it may, without prejudice or waiving any other rights or remedies it may have at law or equity, cancel any outstanding orders with Buyer and/or hold production/shipment of any unfilled orders; modify or revoke its extension of credit to Buyer; and take any other steps permitted by law and necessary or desirable to secure DEISTER with respect to Buyer's payment of goods and services furnished or to be furnished. Buyer will pay DEISTER's actual costs of collection, including but not limited to court costs, litigation expenses, and reasonable attorney's fees, incurred for collection of any delinquency. Buyer shall have no right to offset against amounts owed to DEISTER.

9. **LIMITED WARRANTY/REMEDY.** All DEISTER products are warranted to be free of actual defects in material and workmanship. However, no claim shall exist under this warranty unless the defect is reported to DEISTER in writing within one (1) year of shipment from DEISTER's facility. Further, DEISTER's warranty is limited to replacing or repairing, at DEISTER's option, F.O.B. DEISTER's facility, any part which, upon DEISTER inspection, is found to have a defect in material and/or workmanship. DEISTER in no event shall be liable for indirect or consequential damages arising out of the manufacture or sale of DEISTER products. Components purchased by DEISTER from others for inclusion by DEISTER in its products shall be warranted only to the extent of the warranty, if any, made

by the supplier of said component. No warranty is made by DEISTER, express or implied, that DEISTER products are fit for any customer's particular purpose, including that the DEISTER products will not infringe any patent or other proprietary rights.

Services performed by DEISTER will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the industry currently practicing under similar conditions. Buyers agree that any claim arising out of DEISTER's services must be commenced in Court within one year after substantial completion of the services, or else it shall be forever waived. Further, DEISTER's entire liability for any services shall not exceed the lesser of the price of the services, or adjustment or correction of the services.

APART FROM THE ABOVE EXPRESS WARRANTY, THERE ARE NO WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

DEISTER expressly reserves the right to substitute materials in the products described in the catalogs and any supplements thereto; however, this shall not apply to special order products and/or custom products where DEISTER is advised in writing of specific material requirements and agrees in writing to comply with the requests for such specific materials.

10. **INDEMNIFICATION.** Buyer shall defend, indemnify and hold DEISTER harmless from and against any and all claims, liabilities, loss, costs, damage or expense (including reasonable attorneys' fees) of any kind or nature whatsoever relating to the performance by DEISTER hereunder, including without limitation, claims made for product liability, property damage, or personal injury (including death), whether such claims are premised on contract or on tort (including, without limitation, strict liability). This indemnity provision shall not apply where such damage or injury is attributable solely to the negligence of DEISTER, its employees or agents.

11. **FORCE MAJEURE.** DEISTER will not be liable for any inability to perform its obligations to Buyer, or for any delay in the performance of its obligations to Buyer, when such delay or inability to perform is directly or indirectly caused by or in any manner arises from: fires; floods; accidents; riots; p a n d e m i c s , acts of God; governmental interference; embargoes; terrorism; strikes; labor difficulties; shortages of labor, fuel, power, materials or supplies; transportation or supply chain delays; any existing or future laws or acts of any Federal or any State government (including specifically, but not exclusively, any orders, rules or regulations issued by any official or agency or any such government) affecting the conduct of DEISTER's business; or any other cause or causes (whether or not similar in nature to any of those specified above) beyond DEISTER's control, including but not limited to modifications to the fabricating specifications requested by the Buyer subsequent to commencement of production by DEISTER.

12. **NO WAIVER.** The failure of DEISTER upon knowledge of any default or violation by Buyer of any of the Terms and Conditions of this Quotation, or any sales agreement entered hereafter, to enforce its rights or remedies shall not be construed as a waiver of such default or violation, or of any provision hereof, or of any of its rights or remedies.

13. **LIMITATION ON LITIGATION / ATTORNEY FEES.** Any controversy or claim of Buyer arising out of or related to any transaction with DEISTER must be commenced in Court within one (1) year after any goods have been shipped from DEISTER's facility, or DEISTER has concluded the services in question, or it shall be forever waived. Further, in the event of any dispute with Buyer, including but not limited to any dispute involving these Terms and Conditions, DEISTER shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys' fees, for any claim on which it substantially prevails.

14. **ENTIRE AGREEMENT/LAW AND FORUM/SEVERABILITY.** Except as otherwise agreed in writing or if another writing incorporates these terms thereby making these terms supplemental to such writing, this constitutes the entire agreement between DEISTER and Buyer, superseding all prior Quotations and understandings, oral or written. All such previous communications are hereby abrogated and withdrawn, and no stipulations, representations, or agreements by DEISTER, or its officers, agents, or employees shall be binding upon DEISTER unless reduced to writing and attached to and incorporated by reference herein, and no local, general, or trade custom shall alter or vary the terms hereof.

15. **JURISDICTION.** Any questions, disputes, controversies, or litigation between DEISTER and Buyer, including but not limited to disputes concerning the validity, interpretation, or effect of the Quotation, or interpretation and enforcement of the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Indiana, and the exclusive venue for resolving any such questions, disputes, controversies, or litigation shall be a state or federal court located in Allen County, Indiana. If any provision of this Quotation is determined invalid under applicable law, such invalidity shall be limited to such provision without invalidating the remainder of the other Terms and Conditions hereof; and if any provision of this Quotation is found to be ambiguous or in conflict with any other provision of this Quotation, such ambiguity or conflict shall be resolved in the manner which provides the greatest protection and limitation of liability to DEISTER.

16. **LIMITS OF LIABILITY.** In no event shall DEISTER be liable for any punitive damages or legal fees or any special, indirect, or consequential damages (including but not limited to loss of use or loss of profit) that arise out of its provision of goods or services to Buyer.