



## General Terms & Conditions of Sale

Rev: October 7, 2022

- 1. GENERAL.** These terms and conditions ("**Seller's Terms and Conditions**") shall apply to any agreement between Seller and Buyer for the sale of goods ("**Goods**"), services ("**Services**") or a combination of both Goods and Services by DDD Works, LLC /dba Dare Devil Display Works ("**Seller**"). These "Seller's Terms and Conditions" shall be incorporated into, and deemed a material part of the following documents: (a) any bid, quote, response to a request for quote, letter, proposal, Scope of Work or any other form of offer for the sales of Goods and Services ("**Proposal**") by Seller to a Buyer ("**Buyer**"); (b) any form of order acknowledgement by Seller to Buyer for Goods or Services ("**Order Acknowledgement**"); (c) any invoice or similar document submitted by Seller for the sale of Goods or Services ("**Invoice**"); and (d) any Contract between Seller and Buyer. As used herein, "**Contract**" shall include any agreement between Buyer and Seller, written or oral, reflecting the business terms applicable to Buyer's purchase of Goods or Services from Seller, including without limitation, a Proposal, purchase order, other sales document, Order Acknowledgement or Invoice. These Seller's Terms and Conditions shall supersede and replace any terms and conditions offered by Buyer or any conflicting terms in any documents provided by Buyer, and the Seller's Terms and Conditions shall be the only terms and conditions applicable to Buyer's purchase of Goods and Services. These Seller's Terms and Conditions shall not be modified or changed without Seller's prior written consent, which may be provided or withheld in Seller's sole discretion. Seller specifically and expressly objects to and rejects any terms and conditions or other provisions in Buyer's purchase orders, printed forms, correspondence or any other writings or oral representations which are different from, inconsistent with or in addition to these Seller's Terms and Conditions. Buyer's efforts to change these Seller's Terms and Conditions or the terms set forth on any Contract shall constitute a material alteration of Seller's offer and shall not be binding on Seller. Receipt of Buyer's purchase order for Seller's Goods or Services or Seller's initiation of any work to manufacture and supply the Goods or Services shall constitute acceptance by Buyer of these Seller's Terms and Conditions. Notwithstanding any prior custom, practice or course of dealing between Buyer and Seller or generally within the industry, Seller may insist on strict adherence to these Seller's Terms and Conditions.
- 2. PRICE.** The Goods or Services and other items covered by any Contract shall be sold and invoiced at the price or prices on the Contract. Unless otherwise specified in writing, prices are subject to change upon at least fifteen (15) days written notice from Seller. The prices set forth in any Proposal provided by Seller shall expire, at Seller's option, fifteen (15) days from the date on the Proposal or issuance of Seller's offer. If Seller has not received written acceptance from Buyer of Seller's Proposal or offer at the stated prices within such fifteen (15) day period, Seller reserves the right at Seller's sole discretion to adjust its prices for such Goods & Services. Unless otherwise specified in writing, prices provided by Seller do not include federal, state, provincial, municipal or local sales, value-added, goods and services, excise, use or other taxes now in effect or hereafter levied by reason of a Contract. All such taxes shall be paid by Buyer. If Seller pays any such taxes or assessments, Buyer shall, upon demand, reimburse Seller for such amounts. Unless otherwise agreed in writing by the parties, Buyer shall be responsible for all tooling costs.

**3. PAYMENT TERMS, PAYMENTS & PAYMENT DEFAULT.**

3.1 Payment Terms. Unless other terms to the contrary are agreed to in writing by Seller, a deposit of fifty percent (50%) of the compensation due under the Contract plus any tooling costs required to complete the Contract, is due at the time of Buyer's approval of the Contract or Proposal and must be received by Seller prior to any materials being purchased or any work being performed. The remaining fifty percent (50%) of the compensation due under the Contract will be billed upon shipment of Goods or performance of Services and will be due fifteen (15) days from the invoice date. Unless other terms to the contrary are agreed to in writing by Seller, payment terms are net fifteen (15) days from the invoice date, which is customarily the same date as the date of shipment of Goods or completion of performance of Services. All payments shall be made in United States currency.

3.2 Late Payment Fees. Seller may impose a late fee of one percent (1%) of the outstanding balance of any Contract, per month, that remains outstanding after thirty (30) days from date of invoice.

3.3 Disputed Invoices. Buyer shall not withhold or delay payment of any invoice on the grounds that a dispute exists. If a dispute exists, Buyer shall pay the undisputed portion of the invoice in full and shall notify Seller in writing of the disputed amount on or before the due date of the invoice ("Due Date"), including a detailed explanation and all necessary documentation needed to review the disputed amount. Buyer shall be deemed to have waived the right to dispute an invoice if such notice is not given by the Due Date or if a supporting explanation or documentation is not provided. In the event Buyer cannot substantiate its basis for the disputed invoice to Seller's satisfaction within thirty (30) days of providing notice, Buyer shall remit the withheld and disputed portion within five (5) days following the expiration of such thirty (30) day period.

3.4 Payment Default. Whenever reasonable grounds for Buyer's insecurity arise with respect to full and timely performance by Buyer, Seller may demand assurance of Buyer's full and timely performance. Seller may, upon making such demand, suspend manufacture, production, performance, shipment and/or deliveries of Goods or Services. If within the period stated in such demand, Buyer fails or refuses to agree to such different terms of payment and/or fails or refuses to give adequate assurance of full and timely performance (as determined by Seller), Seller may: (a) by notice to Buyer, treat such failure or refusal as a repudiation by Buyer of the portion of the transaction not then fully performed, whereupon Seller may cancel all further manufacturing, production, performance, shipment and/or deliveries, and any amounts remaining unpaid under such Contract shall immediately become due and payable, or (b) produce, perform or make shipments or deliveries under reservation of a security interest, and demand prepayment against tender of the Goods or Services. In addition, Seller may charge interest on any unpaid or overdue amounts (including judgements), up to the maximum amount permissible under applicable law, from the date such amount was due until such amount, plus interest, is paid in full. Buyer agrees to pay all costs and expenses of collection, including reasonable attorney's fees, incurred by Seller if Buyer fails to pay any amounts, obligations or indebtedness when due. Any extension of credit made to Buyer in connection with any sale of Goods and/or Services hereunder shall be deemed to have been made by Seller.

**4. DELIVERY, TRANSPORTATION AND RISK OF LOSS.**

4.1 Delivery Date. The delivery date provided by Seller or Buyer shall be deemed only an approximate date of delivery unless the parties have expressly and mutually agreed in writing that a particular delivery date is

to be a definitive date. Otherwise, time is not of the essence with respect to Seller's obligations under a Contract, and Seller may deliver the Goods or Services within a reasonable time prior to or after the delivery date. **Seller's delivery date is dependent upon Buyer's timely acceptance or delivery to Seller of such information or materials necessary in order for Seller to manufacture and ship the Goods or provide the Services, including but not limited to designs, artwork, labels, sketches, specifications, product samples (collectively, the "Approvals") and product inventory (collectively, the "Product") for use in manufacturing the Goods or performing the Services. Any delay in accepting or supplying the Approvals or Product shall extend the delivery date. After acceptance or supply of the Approvals and Product, any alterations called for shall be at the expense of Buyer and shall extend the delivery date.** If Buyer fails or refuses for any reason whatsoever to take delivery of Goods at the designated time or place of delivery, then Buyer shall be responsible for all reasonable, packing, shipping or other transportation costs or charges and storage fees resulting from such failure or refusal to accept delivery. Such costs, charges and fees shall be in addition to the price of the Goods.

4.2 Shipping Terms. The shipping terms will be determined by the specific need and request of Buyer and will be duly stated in the Contract. Unless otherwise agreed in writing by the parties, all Goods herein sold by Seller to Buyer within the United States, including to a "ship to" location in the United States, shall be sold, transported and delivered, as determined by Seller, pursuant to one of the following two alternative methods under section 2-319(1) of the Uniform Commercial Code: (a) F.O.B. Destination. Under this method, Seller shall (i) select the method, routing and agency of transportation, (ii) add the cost of such transportation and delivery to the Invoice, and (iii) retain title and bear the risk of loss, damage or other indicia of ownership until delivery is made to Buyer's designated destination. (b) F.O.B. Origin Seller's Facility. Under this method, (i) all transportation and delivery charges shall be borne by Buyer directly, and (ii) all risk of loss and damage, as well as title to such Goods, shall shift to the Buyer upon placement of the Goods on Seller's dock, ready for shipment. Upon request, under this method (b), Buyer shall be given the right to select the method, routing and agency of transportation. For the avoidance of all doubt, Buyer shall be the exporter and importer of record in respect of all cross-border transiting of the Goods.

4.3 Cross-Border "SHIP TO" Sales. Unless otherwise agreed in writing by the parties, all Goods sold by Seller to Buyer from the Seller's location in the United States, country "A", to a "ship to" location in a different country "B" shall be sold, transported and delivered, as determined by Seller, to Buyer CPT (Carriage Paid To) the "Ship To" location (Intercoms® 2020). Title to (ownership of) the Goods shall transfer to Buyer at the same time as the risk of loss under such Intercoms® 2020 rule, upon delivery to the first carrier. For the avoidance of all doubt, Buyer shall be the exporter and importer of record in respect of all cross-border transiting of the Goods into country "B" (and any country of transit and final destination other than country "A"). Buyer must comply with all applicable customs, trade and export laws, and shall indemnify, defend and hold harmless Seller and Indemnified Parties in accordance with Section 14 hereof from and against all Claims and Damages resulting from any breach or violation of such laws, including, to the extent applicable, the diversion of the Goods contrary to applicable law. Subject to the applicable Intercoms® 2020, Buyer shall be responsible for processing all registrations and importation permits to import the Goods into any country of transit and the country of final destination, and shall comply, prior to importing the Goods, with all applicable laws and other requirements in respect thereof.

4.4 Other Shipping Expenses. Any excess packing, expedited shipping or other transportation costs or charges resulting from Seller's agreement to comply with Buyer's transportation or delivery requests shall be

in addition to the charges set forth above. (a) If the Goods are to be shipped pursuant to Buyer's shipping instructions and Buyer fails to provide Seller with such shipping instructions by the seventh (7<sup>th</sup>) day after Seller has notified Buyer that the Goods are ready to ship, or (b) if Buyer fails to confirm its acceptance to take delivery or arrange for shipment of the Goods by the seventh (7<sup>th</sup>) day after Seller has notified Buyer that the Goods are ready to ship, Seller may ship the Goods to Buyer at Buyer's expense as Seller deems appropriate and reasonable and shall add the cost of such transportation to the invoice. If Seller so ships the Goods, Buyer shall bear the risk of loss and damage to the Goods and title to (ownership of) the Goods shall transfer to Buyer at the same time as the risk of loss based on Seller's chosen method of Shipment.

4.5 Unclaimed Materials or Products. Unless otherwise agreed to by the parties in writing, any Goods held by the seller in Storage for more than thirty (30) days after the agreed date of delivery may be sold, scrapped and or destroyed by Seller, as determined by Seller, without recourse to Seller, and without relieving Buyer of the obligation to pay for the Goods and any associated costs, charges, and storage fees. In the alternative, Seller shall have the right to invoice and ship the Goods to Buyer and to recover reasonable costs, charges and storage fees up to the date of shipment. When Goods are to be exported by Seller, Buyer shall, at its sole expense, furnish to Seller with each order all consular and customs declarations, certificates and licenses and shall accept all liability and responsibility.

5. **INSPECTION**. Buyer shall inspect the Goods and/or Services within ten (10) days after the Goods arrive at the designated delivery destination or the performance of the Services at the place of performance. Buyer must accept any tender of the Goods or Services by Seller that are substantially in conformity with the specifications for the Goods or Services considering standard industry tolerances and the terms hereof, subject to Buyer's remedies set forth in Section 8 below. Buyer will be deemed to have accepted tender of the Goods or Services if Buyer fails to so inspect, or fails to give Seller written notice of rejection, within such ten (10) day period, which notice shall describe in reasonable detail the rejected Goods or Services and the non-conformities or defects upon which Buyer's rejection is based.
6. **WARRANTIES**. Seller warrants that (a) all Goods which are manufactured by Seller will, at the time of delivery and for a period of sixty (60) days thereafter, materially conform to Seller's specifications, subject to standard industry variations and tolerances (including without limitation, variations in raw materials, artwork, dimensions, weight, straightness, scannability, composition, mechanical properties, and color); (b) all Services performed by Seller shall be performed in accordance with the agreed upon specifications of Seller, subject to standard industry tolerances; and (c) all Goods which are manufactured by Seller will, at the time of delivery, be free of any liens and encumbrances of any third parties. THIS WARRANTY IS IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ALL SUCH OTHER WARRANTIES ARE EXPRESSLY AND SPECIFICALLY EXCLUDED. SELLER MAKES NO WARRANTY WITH RESPECT TO GOODS OR THEIR COMPONENTS WHICH ARE NOT MANUFACTURED BY SELLER. Final determination of the suitability of the Goods and Services for Buyer's use and purposes is the sole responsibility of Buyer (in the time frame set forth in Section 5), and Seller shall bear no responsibility for such suitability. Notwithstanding the foregoing, the parties further understand and agree that the warranties set forth in this Section 6 shall not apply to the extent that Buyer or its agents (including freight carriers), employees, representatives or independent contractors have, through act of omission: (i) abused or damaged the Goods or Services; (ii) misused the Goods or objects upon which the Services were performed; (iii) improperly stored the Goods by exposing them to unreasonable heat, humidity or ambient conditions or

stored the Goods in a manner or allowed any other condition or act to cause the Goods or Services to fail to meet the warranties set forth in this Section 6.

- 7. DEFAULT BY BUYER/TERMINATION BY SELLER.** Buyer shall be in default if: (a) Buyer breaches any of its obligations hereunder, and (i) fails to remedy such breach within ten (10) days of such breach; or (ii) such breach reasonably results in actual or imminent harm or damage to Seller or Seller's business interests, as determined by Seller in its reasonable judgement; (b) Buyer takes any action in respect of liquidation, winding up, or an assignment for the benefit of creditors or has a receiver, trustee, monitor or liquidator appointed for all or substantially all of its property; or (c) Seller, in its reasonable judgment, determines that Buyer is refusing or is unable to pay Seller in full on a timely basis for the Goods or Services as they become due, that Buyer is otherwise no longer able to meet Seller's credit requirements or that Buyer is refusing or unable to pay in full on a timely basis its other creditors. For avoidance of doubt, Buyer's failure to pay any amount when due to Seller shall constitute a breach of this Agreement. Upon a default by Buyer, Seller shall have the right to immediately terminate or withdraw any Contract, or shall have all available remedies at law. Further, unless otherwise agreed in writing by Seller and notwithstanding subsection (a) above, Seller may, in the exercise of reasonable judgment under the circumstances, terminate or withdraw any Contract and any of its obligations thereunder with or without cause upon written notice to Buyer.
- 8. REMEDIES AND DISCLAIMERS.** Inasmuch as the value of the Goods sold hereunder may be substantially disproportionate to the value of the products to be used in conjunction therewith, and, for the express purpose of limiting the liability of and remedies against Seller to an extent which is reasonably proportionate to the commercial value of the contemplated transactions, Buyer and Seller hereby specifically and expressly agree to the terms and provisions set forth in this Section 8 with regard to disclaimers and limitations on Seller's liability in the event of a default by Seller. In accordance with Section 5 above, all claims for shortages or alleged defects in quality shall be deemed waived unless made within ten (10) days of Buyer's receipt of Goods or completion of Services. In no event shall any such claim entitle Buyer to relief if such claim is made after Goods have been used, processed or transferred by Buyer. Defective or non-conforming Goods shall be held by Buyer for Seller's prompt inspection. TO THE GREATEST EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WHATSOEVER SHALL SELLER BE RESPONSIBLE OR LIABLE TO BUYER OR TO ANY THIRD PARTY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF PROFITS OR LOSS OF GOODWILL) REGARDLESS OF (A) WHETHER EITHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES AND (B) THE LEGAL THEORY UPON WHICH SUCH CLAIM IS BASED, INCLUDING, BUT NOT LIMITED TO, THEORIES BASED ON WARRANTY, CONTRACT, NEGLIGENCE, PRODUCTS LIABILITY, UNJUST ENRICHMENT, TORT OR RELIANCE. THE PARTIES HEREBY FURTHER AGREE THAT SELLER'S CLAIMS ARISING OUT OF BUYER'S FAILURE TO PAY IN FULL AND ON TIME FOR CONFORMING GOODS AND SERVICES, PURSUANT TO THE PAYMENT TERMS SET FORTH HEREIN, SHALL BE DIRECT DAMAGES AND NOT CONSTITUTE CONSEQUENTIAL DAMAGES. SELLER'S LIABILITY AND BUYER'S REMEDIES UNDER THESE SELLER'S TERMS AND CONDITIONS ARE HEREBY LIMITED TO SELLER'S CHOICE OF ONE (1) OF THE FOLLOWING REMEDIES, AS APPLICABLE: (a) THE REPAIR OF ANY DEFECTIVE OR NON-CONFORMING GOODS; (b) RE-PERFORMANCE OF THE NON-COMPLYING SERVICES; (c) THE REPLACEMENT OF ANY DEFECTIVE OR NON-CONFORMING GOODS WITH CONFORMING GOODS AT THE DESIGNATED DELIVERY DESTINATION; (d) THE REFUND OF THE PORTION OF THE PURCHASE PRICE ACTUALLY PAID BY BUYER FOR THAT PORTION OF ANY GOODS OR SERVICES PROVIDED THAT ARE DEFECTIVE OR NON-CONFORMING; OR (e) THE GRANTING OF A REASONABLE ALLOWANCE TO BUYER ON ACCOUNT OF SUCH DEFECTS OR NON-CONFORMITIES. THE

ABOVE SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER, ALL OTHER REMEDIES BEING EXPRESSLY WAIVED, AND BUYER SHALL BE ENTITLED TO NO OTHER REMEDIES, REGARDLESS OF THE LEGAL THEORIES BASED ON WARRANTY, CONTRACT, NEGLIGENCE, PRODUCTS LIABILITY, UNJUST ENRICHMENT, TORT OR RELIANCE, EXCEPT AS PROVIDED HEREIN. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE ACTUALLY PAID BY BUYER WITH RESPECT TO THAT PORTION OF THE GOODS OR SERVICES WHICH ARE DEEMED TO BE DEFECTIVE OR NOT IN COMPLIANCE WITH SELLER'S WARRANTY OBLIGATIONS TO BE DEFECTIVE OR NOT IN COMPLIANCE WITH SELLER'S WARRANTY OBLIGATIONS HEREUNDER. Replacement of defective or non-conforming Goods, repayment of the purchase price for the Goods or the granting of an allowance to Buyer under subsections (c), (d) or (e) of this Section 8 will be made only upon return of defective or non-conforming Goods to Seller, which Goods shall not be returned until Seller has consented thereto and has delivered to Buyer written shipping instructions. Under no circumstances shall Buyer be permitted to set off or credit any amounts due and owing to Seller under these Seller's Terms and Conditions or under any Contract unless Seller has agreed to such in writing. Any claim or cause of action by Buyer for breach of Seller's obligations hereunder must be brought within one (1) year from the date of Seller's tender of the subject Goods or Services to Buyer.

9. **FORCE MAJEURE DELAYS.** Seller's obligations hereunder shall be excused and Seller shall have no liability to Buyer for the failure to perform under these Seller's Terms and Conditions or under any Contract due to any of the following and during the period when any of the following conditions exists: (a) strikes, work stoppages, or other labor troubles, difficulties, disruptions or disturbances of any kind; (b) fires, floods, earthquakes, inclement weather, explosions or other natural or man-made disasters or acts of God; (c) riots, war, sabotage, foreign or domestic terrorism (including cyber-terrorism or cyber-attacks), act of a public enemy, national emergency, epidemic, pandemic, disease outbreak, quarantine or shelter in place restrictions or other disturbances of the peace; (d) breakdowns, shutdown, destruction, or failure of any kind of Seller's equipment or facilities necessary for performance hereunder arising from any cause whatsoever, or accidents at Seller's facilities; (e) transportation embargoes or delays, reductions, shortages, curtailment, disruption or cessation of supplies, materials, equipment, facilities, power, utilities, labor transportation, fuel or other factors of production or performance; (f) increases in the price of supplies, materials (including, but not limited to , the price of raw materials), equipment, facilities, power, utilities, labor transportation, fuel or other factors of production or performance or in the inability to obtain such items as a reasonable commercial price; (g) actions, legislation, regulations, rules or orders of any government or governmental agency (including executive orders and proclamations), or Seller's voluntary or involuntary participation in any plan of general public interest, any of which adversely affect manufacture, production, performance, shipment and/or deliveries hereunder; (h) delays of other suppliers or subcontractors; (i) any other cause beyond the reasonable control of Seller, whether or not similar to the causes or occurrences enumerated above; or (j) the escalation or worsening of any of the foregoing. In the event of any such delay or failure in performance, Seller shall have such additional time within which to perform its obligations hereunder as may reasonably be necessary under the circumstances. In the event of the occurrence of any of the above affecting Seller's ability to perform, seller shall have the right to negotiate new pricing for the Goods and Services. Further, Seller shall also have the right, to the extent necessary in Seller's reasonable judgement, to apportion fairly among its customers (including Seller's own production operations, and subsidiaries and affiliates), in such manner as Seller may consider equitable, the Goods and Services then available for shipment, delivery or performance.

**10. WEIGHT AND PIECE SHIPPING TOLERANCES.** Unless otherwise expressly set forth in any Contract executed by Seller, Seller shall be entitled to a plus or minus tolerance of fifteen percent (15%) based on weight or number of pieces or other unit of measurement of Goods requested by Buyer under each transaction.

**11. CONFIDENTIAL INFORMATION AND INVENTIONS.**

11.1 Non-Disclosure.

11.1.1 Applicability. Each Party (the "Receiving Party") understands that the other Party (the "Disclosing Party") or its representatives has disclosed or may disclose information relating to its products, concepts, finances, business, marketing plans, customers, operations, technology, or software. "Proprietary Information" refers to any such information (including all originals, copies, notes, analyses, digests, and summaries) which: (a) is disclosed in writing and marked as confidential at the time of disclosure or (b) is disclosed in any manner such that a reasonable person would understand the nature and confidentiality of the information or (c) sets forth information relating to a Party's suppliers, pricing, volumes, or customers. Proprietary Information shall not include any information which: (i) is or becomes generally known or available by a person or entity other than the Receiving Party, without breach of this Agreement, (ii) was in Receiving Party's possession or known by it prior to receipt from the Disclosing Party, as demonstrated by Receiving Party's data or written information, (iii) was rightfully disclosed to Receiving Part by a third party who, to the best of Receiving Party's knowledge, was not prohibited from so disclosing, or (iv) was independently developed without the use of any Proprietary Information of the Disclosing Party.

11.1.2 Prohibitions. Except for the specific rights granted by this Agreement, neither party shall use or disclose to any individual or other third party (other than the Receiving Party's employees or contractors with a need to know) any Proprietary Information including any Seller know-how, technical information, business information, experience or knowledge reasonably related to the transactions that are not part of any Contract whether transmitted in writing, orally or electronically, including initial or preliminary discussions, to the extent the same is or are secret, confidential or proprietary, including without limitation: Seller's (a) confidential manufacturing plans, processes, procedures, operations, reports, drawings, manuals, equipment layouts and configuration; (b) confidential product plans, prototypes, samples, formulae and specifications and information related to confidential project designs, marketing, advertising, quality, costs, configurations and uses; (c) confidential customer and vendor lists and information, business plans, sales volumes, profitability figures, financial information or other economic of business information; and (d) confidential computer software, firmware, data, databases, networks, security procedures, or other confidential information related directly or indirectly to computer systems or networks. The Receiving Party shall use commercially reasonable degree of care to protect the Proprietary Information which shall mean at least that degree of care to which the Receiving Party subjects its own Proprietary Information. Promptly after requested by the Disclosing Party originals and copies of all Proprietary Information and all information, records and materials developed therefrom by the Receiving Party. Each party may only disclose the general nature, but not the specific terms, of this Agreement without the prior consent of the other party; provided, either party may provide a copy of this Agreement (or other wise disclose its details) in connection with any

financing transaction or due diligence inquiry, but only if the recipient agrees to keep this Agreement and its details confidential.

11.1.3 Permitted Disclosures. Nothing herein shall prevent a Receiving Party from disclosing all or part of the other's Proprietary Information: (a) to an affiliate (as such term is defined under the federal securities laws of the United States of America) of the Disclosing Party; (b) as necessary pursuant to the lawful requirement of a governmental agency or when disclosure is required by due legal process; provided that prior to any such disclosure, it uses reasonable efforts to notify the Disclosing Party in writing of such requirement to disclose; or (c) to the extent disclosure is reasonably necessary for, and contemplated by, the performance of the Services including, but not limited to, disclosures by Seller to Providers.

11.2 Inventions. Unless otherwise agreed to by the parties in writing, all (a) drawings, data, specifications, designs, patterns, molds, tools, samples and other items prepared by Seller; and (b) discoveries, inventions or improvements made by Seller, pursuant to Buyer's purchase of Goods or Services, shall be the sole and exclusive property of the Seller. This provision includes any and all discoveries, inventions or improvements related to any process, machine, manufacture or composition of matter related to the Seller's business, whether of a patentable nature or not, and any and all know-how, ideas, methods, systems, or plans useful in the Seller's business (**the "Inventions"**) that any employee or independent contractor of Seller has made or conceived or hereafter may make or conceive at any time. All such Inventions shall be the sole and exclusive property of Seller, and Buyer shall cooperate, if necessary, in assisting Seller to obtain all documentary evidence confirming Seller's ownership including, but not limited to, applications for patents.

11.3 Prior Non-Disclosure Agreement. If Buyer and Seller have previously negotiated a separate Non-Disclosure Agreement ("NDA"), any such NDA shall remain in effect and binding in accordance with its own terms and shall not be impacted by this provision.

**12. DEFAULT BY SELLER/TERMINATION BY BUYER.** Buyer may terminate any Contract upon written notice to Seller if Seller breaches any of its obligations thereunder in any material respect and fails to remedy such breach within forty five (45) days from receipt by Seller of Buyer's written notice of Seller's breach. Buyer may not cancel or terminate a Contract for convenience for the purchase of Goods or Services hereunder. Buyer shall, in the event of cancellation or termination of a Contract for any reason by either party, pay Seller on demand the full purchase price for all completed work for Buyer's order(s) or in reasonable anticipation of Buyer's needs for Goods or Services, all other costs (including work-in-progress and raw materials) incurred up to the date of cancellation or termination, all lost profits due to the cancellation or termination, and all other reasonable cancellation or termination charges.

**13. INSTALLMENT DELIVERIES.** Seller shall be entitled to make deliveries of Goods or perform Services in installments unless otherwise agreed to by the parties in writing. Seller may render a separate invoice for each installment, which invoice shall be paid when due, without regard to subsequent deliveries or performance. Each installment shall be deemed a separate sale. Delay in delivery or performance of any installment shall not relieve Buyer of its obligations to accept delivery or performance of remaining installments.

**14. INDEMNIFICATION.** Each party (the “Indemnifying Party”) agrees to indemnify, defend, and hold harmless the other party and its affiliates, and their respective shareholders, members, officers, directors, managers, agents, employees, successors and permitted assigns (collectively, the “Indemnified Parties”) from and against all third party claims, actions, demands, suits and causes of action (“Claims”) involving: (a) reasonable, actual, out-of-pocket and direct damages to real or physical personal property, or (b) personal injury, including death, along with reasonable attorneys’ fees and disbursements (collectively, “Damages”), but only to the extent such Claims cause Damages resulting from (i) any grossly negligent act, grossly negligent omission or willful misconduct on the part of the Indemnifying Party, its employees, independent contractors or agents, in connection with performance under these Seller’s Terms and Conditions or any Contract, (ii) a breach by the Indemnifying Party, its employees, independent contractors or agents, of any covenant, warranty, representation or any other obligation set forth in these Seller’s Terms and Conditions or any Contract, (iii) a breach or violation of law, governmental rules or regulations by the Indemnifying Party, its employees, independent contractors or agents, or (iv) in the case of Buyer as Indemnifying Party, from Claims based on infringement or violation of intellectual property rights of a third party caused by a customization, design or specification required or provided by Buyer to Seller. Notwithstanding the above, Buyer hereby agrees that Seller shall not be liable for any claims resulting from a recall of any products which are contained within the Seller’s Goods or in which Seller’s Goods have been incorporated; and the parties acknowledge, understand and agree that such Claims are not part of the basis of the bargain in the transactions anticipated hereunder.

**15. DISPUTE RESOLUTION AND GOVERNING LAW.**

15.1 Arbitration. Seller and Buyer shall, in good faith, first attempt to resolve any dispute, controversy or claim arising out of or relating to the Contract and/or the Seller’s Terms and Conditions of Sale (collectively, a “Dispute”) by face-to-face negotiations in Bentonville, Benton County, Arkansas or online video conference at Seller’s election. If any such Dispute is not resolved within thirty (30) days after such negotiations begin (or at such later date, if the parties agree to continue negotiations), such Dispute shall be subject to binding non-appealable arbitration held in Bentonville, Arkansas by one (1) independent mutually agreed upon arbitrator in accordance with the applicable portions of Arkansas Code of Civil Procedure relating to arbitration, as then in effect. The arbitrator will have authority to award relief under legal or equitable principles, including interim or preliminary relief, and to allocate responsibility for the costs of the arbitration and to award recovery of attorney’s fees and expenses in such a manner as is determined to be appropriate by the arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having personal and subject matter jurisdiction. Each party will submit to the personal jurisdiction of the Federal and State courts in Bentonville, Arkansas.

15.2 Continued Performance. The fact that the dispute resolution procedures specified in this Section have been or may be invoked will not excuse either party from performing its obligations under this Agreement. During the resolution of any such dispute all parties will continue to perform their respective obligations in good faith, subject to any rights to terminate this Agreement that may be available to either of them under this Agreement.

15.3. Governing Law. These Terms and Conditions of Sales shall be governed by and interpreted under the laws of the State of Arkansas.

**16. SUBCONTRACTING.** (A) These Seller's Terms and Conditions and any Contract or any of the duties or obligations hereunder or thereunder may be performed by and/or assigned, subcontracted or delegated to, in whole or in part, and all rights hereunder or thereunder against Buyer and any interests herein or therein may be enforced or assigned to, in whole or in part, Seller or any one or more of Seller's present or future subsidiaries, affiliates, joint ventures, transferees, assignees, subcontractors or delegees (**collectively, "Subcontractors"**), without the consent of Buyer. (B) The waiver by Seller of any terms, conditions, or provisions hereof or of any Contract shall not be construed to be a waiver of any other term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach by Buyer of the same term, condition or provision. (C) Neither these Seller's Terms and Conditions nor any Contract, nor any of Buyer's rights, interests, duties or obligations hereunder or under any Contract may be assigned, subcontracted or delegated by Buyer except with the prior written approval of Seller in each instance. (D) The entire understanding and agreement of the parties with respect to the transactions contemplated herein are contained in these Seller's Terms and Conditions and in any Contract. Any prior understandings, agreements and representations, oral or written, shall be deemed Superseded hereby. No changes, modification or discharge of the parties' obligations hereunder shall be effective unless signed by both parties. (E) Stenographic and clerical errors, whether in mathematical computations or otherwise, made by Seller in any Contract shall be subject to correction. (F) Any clause required by any applicable law, order, or administrative regulation, to be included in a contract of the type evidenced by any Contract, shall be deemed to be incorporated therein. (G) The remedies and rights reserved to Seller herein shall be cumulative with, and in addition to, all other rights and remedies provided in law or equity. The remedies and rights reserved to Buyer herein shall be the Buyer's sole and exclusive rights and remedies available to Buyer hereunder. (H) Nothing in these Seller's Terms and Conditions is intended to benefit any person or entity other than Seller and Buyer (and their respective permitted assignees and their respective Indemnified Parties solely with respect to Claims under Section 14 above), and neither party will owe any duty to such person or entity. These Seller's Terms and Conditions and any Contract, and the rights, interests, duties and obligations hereunder and thereunder, shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. (I) If any provision of these Seller's Terms and Conditions or any Contract shall be adjudicated to be invalid or unenforceable, such provision shall be deemed amended to delete therefrom the portion thus adjudicated to be invalid or unenforceable. All remaining portions shall be deemed enforceable. (J) In the event that Buyer determines that it needs to give notice to Seller of its alleged breach of its obligations hereunder or of any action or demand arising hereunder, or otherwise in accordance with these Seller's Terms and Conditions, Buyer shall give notice to Seller by using certified mail or a reputable overnight service to: DDD Works, LLC, 1603 N. 35<sup>th</sup> St., Rogers, AR 72756, Attn: Chief Executive Officer.

**17. CLAIMS WITH RESPECT TO GOODS.** If Buyer requests or directs Seller to include any claims (whether express or implied) on or with the Goods, including without limitation, claims about Buyer or products which are contained within the Goods or in which the Goods have been incorporated, including without limitation, claims related to: (i) the product's sustainability or recyclability, or the product's or Buyer's environmental impact, (ii) the product's health benefits or safety, (iii) the product's nutritional information, ingredients or composition, or (iv) the usage of the product or its performance, features, price or effectiveness (**collectively, "Product Claims"**), Buyer agrees to assume full responsibility for such Product Claims and to indemnify, defend and hold harmless Seller and its Indemnified Parties from and against all Product Claims involving Damages, to the extent such Claims cause Damages resulting from any Product Claims or the products with respect to which such Product Claims relate, in accordance with Section 14 hereof.

## **18. RECEIPT & STORAGE OF BUYER'S PRODUCT.**

18.1 Receipts and Tender. Each receipt or tender of Buyer's product ("**Buyer's Product**") at Seller's facility will be evidenced by a written receipt in a form agreed to by the parties, signed by Seller or Subcontractor and the inbound or outbound carrier, as the case may be, showing the kind and quantity of Buyer's Product received by, or tendered to Seller. Seller's responsibility for Buyer's Product will commence only after Seller, its Subcontractors, or its authorized agent has signed a receipt for those Buyer's Product. Each signed receipt will evidence Seller's acceptance of delivery of Buyer's Product covered by that receipt in apparent good order and condition, unless otherwise noted on the face of the receipt, without any obligation on Seller's part to conduct an inspection of the Buyer's Product, unless otherwise instructed by the Buyer to do so and upon the understanding that Seller will be compensated for any costs or charges incurred in connection with such inspection. Seller or Subcontractors will have up to two (2) hours from the time driver signs in to complete loading and/or unloading of appointed, palletized trailers or containers of Buyer's Product, with the exception of spotted (dropped) trailers or containers which may take longer than two (2) hours. Seller or Subcontractors will have up to six (6) hours to unload appointed floor loads, or up to one (1) business day (24 hours) for dropped containers. Seller shall not be liable for demurrage or detention, delays in unloading inbound cars, trailers or other containers, or delays in obtaining and unloading cars, trailers or other containers for outbound shipment. These Seller's Terms and Conditions will prevail in all circumstances over any inconsistent provision in a receipt, any bill of lading, any other shipping document, or inconsistent term and/or condition contained in any other document or instrument.

18.2 Tender of Buyer's Product . Buyer will initially deliver to Seller, and from time to time replenish, supplies of Buyer's Product, components, packaging, and/or other materials being provided from Buyer in such amounts and sufficient timing as will enable Seller to efficiently and effectively perform the Services agreed upon in the Contract. All such Buyer's Product so delivered by Buyer shall remain the property of Buyer and shall be disposed of in accordance with the Seller's Terms and Conditions. Seller or its Subcontractors shall not acquire title to or any interest in any of the Buyer's Product, except that Seller shall have a general warehouseman's lien to secure payment of all amounts due under the Contract.

18.3 Buyer's Product Availability. Any Buyer's Product, components, packaging, and/or other materials being provided from Buyer which are required for Services (production, assembly, kitting, etc.) to be conducted and completed by Seller, must be received by Seller at least one (1) week in advance of the scheduled production start date unless otherwise indicated and set forth in the Contract (Scope of Work).

18.4 Proper Marking. Buyer agrees that all Buyer's Product delivered to Seller and/or tendered for storage shall be shipped for delivery to Seller or Subcontractors properly marked and packaged in a safe, secure and appropriate manner to prevent spillage and damage in the course of shipping and handling, and shall be labeled and packaged in accordance with all applicable laws and regulations. Buyer will furnish to Seller, at or prior to delivery, a manifest showing marks, brands and/or sizes to be kept accounted for separately, and other Services desired. accurate receiving, accounting and reconciliation of the Buyer's Product. Buyer agrees that all inbound Buyer's Product will be marked with labels or other markings which provide product code(s), lot codes, sell by dates, quantity per receiving unit, quantity per inbound shipping load and quantity per inbound shipping container.

**18.5 No Buyer's Product Consigned.** The bill of lading and other shipping documents for Buyer's Product shipped to Seller or its Subcontractors pursuant to the Contract will show Buyer as named "consignee," with Seller as the "in care of" party. Seller shall not be named as shipper, carrier or consignee of any Buyer's Product accepted for shipment; or if so incorrectly named, Buyer shall provide a written notification to the carrier (with copy to Seller) that Seller is a "warehouseman" for purposes of the shipment and has no beneficial title or interest in the Buyer's Product. Buyer agrees that, if Seller is incorrectly named as "shipper," "carrier," and/or "consignee" and Buyer fails to notify the carrier as provided in this subsection: (a) Seller shall have the right to refuse acceptance of such Buyer's Product or their shipment or non-shipment; and (b) Buyer agrees to indemnify and hold Seller harmless from and against any liability or expense to Seller for unpaid transportation charges, including undercharges, demurrage, detention or other charges of any kind, arising from such Buyer's Product or their shipment or non-shipment, where Seller is incorrectly designated as "shipper," "carrier," and/or "consignee."

**18.6 Hazardous Materials.** Buyer hereby represents and warrants to Seller that it has and will continue to disclose to Seller, prior to tendering of any Buyer's Product to Seller, any and all potential health, safety, and/or environmental hazards that may be associated with transportation, storage or handling of the Buyer's Product, including without limitation, any Hazardous Materials (defined below). If as a result of a quality condition of Buyer's Product which Seller had no notice at the time of acceptance, the Buyer's Product is a hazard to the facility, to other property or other persons, Seller may, after providing Buyer an opportunity to take back the hazardous Buyer's Product, dispose or sell such Buyer's Product in the manner and to the fullest extent provided by applicable law; provided, however, nothing contained in the Contract or Seller's Terms and Conditions shall require Seller to sell such Buyer's Product. Seller may dispose of such Buyer's Product without recourse to Seller for their lost value or other liability whatsoever to Seller. Pending Buyer retrieval, a sale or other disposition, Seller may remove the hazardous Buyer's Product from their facility or Subcontractors' facilities to another location without notice to Buyer and shall incur no liability whatsoever by reason of such removal.

**18.6.1 Hazardous Materials Defined.** "Hazardous Materials" shall mean and include, without limitation, any other chemical, material, substance, or waste, exposure to which is prohibited, limited or regulated by any governmental or regulatory authority or by Environmental Laws.

**18.6.2 Environmental Laws Defined.** "Environmental Laws" shall mean and include, without limitation, all federal, state and local laws, statutes, ordinances, regulations, rules of common or civil law judicial or administrative order, consent decree or judgement relating to the regulation and protection of human health, safety, the environment and natural resources now or in the future in effect, and/or to any chemicals, materials, "pollutants," "contaminates," "toxic chemical," "hazardous materials," "extremely hazardous substances," "restricted hazardous wastes," "toxic substances," "toxic pollutants," or words of similar import.

**18.7 Refusal of Buyer's Product.** Seller reserves the right to refuse to accept any Buyer's Product tendered by Buyer that, in Seller's sole discretion constitute unacceptable or previously undisclosed hazards, or may cause contamination or damage to Seller's or Subcontractors' facilities or other Buyer's Product stored at such facilities. Unless otherwise expressly provided herein, Seller may also refuse to accept any Buyer's Product which are classified as "Hazardous Materials."

18.8 Access to Facilities. Seller will use various owned, leased or Subcontracted facilities to perform any Services, which require the use of such facilities. Buyer representatives will have access to the facilities for inventory and inspection purposes during normal business hours upon reasonable advance request to Seller. If the Services do not require the use of the facilities, this Section shall not establish any right by Buyer to use such facilities Seller may utilize the facilities to serve clients other than the Buyer that is party to the Contract.

18.9 Handling Services. Known and/or expected handling requirements and Services thereof will be included in price quotes and outlined in each Contract. Buyer is required to provide Seller detailed inbound shipping configuration (pallet, floor load, or other), packing specifications, handling requirements, temperature specifications or limitations (ranges), and any specific handling requirements of all Buyer's Product to be received or tendered to Seller. Standard handling services covered by the Contract include but are not limited to, the ordinary labor involved in receiving Buyer's Product at the Seller or Subcontractors' facilities dock door, placing Buyer's Product in storage or staging locations and conducting loading activities for outbound shipping. Other handling may constitute a special Service subject to additional or special charges.

18.10 Storage Services. Known and/or expected storage requirements and Services thereof will be included in price quotes and outlined in each Contract. Buyer is required to provide Seller detailed inbound product configuration and storage specifications or limitations (ranges) and any specific handling requirements of all Buyer's Product to be handled and stored. **Any unknown and/or unexpected storage requirements or requests from Buyer will require additional fees and charges beyond the price provided in the Contract.** Seller can not guarantee space availability for Buyer's unknown and/or unexpected storage needs.

18.11 Special Services. The services described in this Section shall be among the special services ("**Special Services**") for which there shall be special fees and charges. Seller shall have no obligation to provide any Special Services without advance Buyer agreement to any additional estimated fees and charges. Notwithstanding any failure or delay by Buyer to approve any additional estimated fees and charges, Seller's provision of any Special Services shall still entitle Seller to a reasonable charge therefor based on Seller's cost and customary margins. The following activities constitute Special Services which are subject to special fees and charges (if not already itemized in the Contract): (a) loading or unloading Buyer's Product from trucks at the facility ground level door (other than the loading and unloading at dock doors); (b) loading or unloading Buyer's Product from or into rail cars or vehicles other than trucks; (c) warehouse labor (regular and overtime) for services other than ordinary handling and storage; (d) loading or unloading of damaged Buyer's Product; (e) dunnage, bracing, packing materials and other special supplies; (f) communications expenses, including postage, fax, telegram and telephone, if such are incurred other than in the course of ordinary inventory reporting or, in at the request of Buyer, the subject communications are made by other than U.S. mail; (g) destruction of Buyer's Product (and certifications thereof) at Buyer request; (h) sortation and/or segregation (Sort & Seg) of Buyer's Product for quality checks, quality hold, product recall, or other similar reasons; (i) other special inventory related services requested by Buyer, including but not limited to, compiling of stock statements, reporting market weights, serial numbers or other data from packages, physical check of Buyer's Product at or from a facility other than during normal business hours of that facility. Any additional charges for any transfer, termination of storage and/or removal of Buyer's Product described in this Section or otherwise shall be invoiced by Seller, for which Buyer shall be responsible.

18.12 Transfer of Buyer's Product at Buyer Request. Instructions to transfer Buyer's Product on the books of Seller to any consignee or location not already included in the Contract are not effective until delivered to Seller in writing and accepted by Seller, and all charges up to the time transfer is made are chargeable to the Buyer. If the transfer involves rehandling of Buyer's Product, such rehandling will be invoiced by Seller for which the Buyer will be responsible.

18.13 Transfer of Buyer's Product at Seller Election. Seller reserves the right to move, at its expense, any Buyer's Product stored in one facility owned, leased, or Subcontracted to any other facility and/or perform Services as needed to perform Services.

18.14 Removal of Buyer's Product. Seller may, upon written notice to Buyer and any other person known by Seller to claim an interest in such Buyer's Product, require removal of any Buyer's Product by the end of the next succeeding storage month from the date of such written notice. If Buyer's Product is not removed before the end of the next succeeding month, Seller shall have the right to sell or dispose such Buyer's Product without recourse to Seller, in the manner and to the fullest extent provided by applicable law and recover from Buyer all such amounts associated with such sale, as are listed elsewhere herein; provided, however, nothing contained in the Contract or Seller's Terms and Conditions shall require Seller to sell such Buyer's Product.

18.15 Inventory Records. Seller shall maintain records of Buyer's Product received, showing quantities received and shipped, inventory on hand and damaged or lost Buyer's Product, plus any other information or records reasonably required by Buyer ("Buyer Information"). Information shall be available to Buyer for the earlier of: (a) termination of the Contract; or (b) a period of up to one (1) year in a from reasonably acceptable to Buyer, and Seller shall provide such reports on the foregoing as are reasonably requested by Buyer. After expiration of this 1 year period, Seller in its sole discretion may delete, discard or destroy such Buyer information, without notice to Buyer.

18.16 Physical Inventories. Seller shall periodically, conduct physical inventories and cycle counts of Buyer's Product on hand during the performance of the Contract. The frequency and/or cadence of physical inventories and cycle counts will be based upon the length of time of the contracted work, size of the project and the type of Services being provided. Unless otherwise agreed in writing by all parties, an hourly labor charge will apply for all physical inventories and/or cycle counts requested by Buyer.

18.17 Inventory Shortages and Overages. Inventory shortages and overages from any physical inventory or cycle count (collectively, an "**Inventory**") shall be reported to the Buyer as soon as possible. If, after such Inventory, there are shortages for unaccounted Buyer's Product for which Seller is found to be liable (subject to the "Loss Allowance" and other limitations set forth herein), Seller shall make payment to Buyer in accordance with Section 19 below.

## **19. LIMITATIONS OF LIABILITY:**

### **19.1 Certain Express Limitations.**

19.1.1 Notwithstanding anything to the contrary contained elsewhere in the Seller's Terms and Conditions, all freight claims ("**Freight Claims**") and warehouse claims ("**Warehouse Claims**") are subject to the express limitations of liability as set forth in, including without limitation, any

and all of the following: (a) these Seller's Terms and Conditions; (b) any applicable bill of lading or other document of carriage or storage; (c) the limits of liability set forth in any agreement limiting such liability between Seller and any of its Subcontractors, including their claims recovery procedures; (d) any released-value rates; and/or (e) any applicable insurance coverage of Seller and/or its Subcontractors; unless otherwise governed by the regulations, in effect at the time of such Freight Claim, implemented by the Federal Motor Carrier Safety Administration, Department of Transportation. The transportation services, if any, arranged by Seller shall be subject to all of the terms and conditions of the Uniform Straight Bill of Lading (long-version) as set forth in the National Motor Freight Classification ("NMFC") 100-X and successive issues. Buyer hereby certifies that Buyer is familiar with all the terms and conditions of this document, and such terms and conditions are hereby agreed to by Buyer, for Buyer and Buyer's respective customers, agents and assigns.

19.1.2 Seller's liability for any Freight Claim and/or Warehouse Claim while under the direct control of Seller or Seller's subcontracted carriers, warehousemen, brokers and/or freight forwarders shall be further limited to those subject to a "valid claim" as determined under the claims recovery procedures of such carriers, warehousemen, brokers and/or freight forwarders, and their respective insurers. Limits of liability and other requirements for claim processing on carrier, warehouseman, broker, and/or freight forwarder liability shall be applicable to any liability of Seller for any acts or omissions of Seller and/or any carrier, warehouseman, broker and/or freight forwarder causing such Buyer Los, Freight Claim and/or Warehouse Claim.

19.1.3 The actual dollar amount of liability, if any, of Seller or any of its Subcontractors for Buyer's Goods hereunder shall be further limited to the lesser of:

19.1.3.1 *For Freight Claims:* (a) Buyer's actual production/manufacture cost or actual purchase cost of the Buyer's Product, which are the subject of such Freight Claim; (b) the amount set forth in the relevant transportation Subcontractor's Rules Tariff; (c) the applicable limited liability provisions of the NMFC; (d) the amount recovered from any Subcontractor or its insurer for such Freight Claim; (e) \$100,000; and (f) the total dollar payment amounts received by Seller from Buyer during the twelve (12) month period prior to the date the cause of action for the Freight Claim; less: (i) any recovery for damaged, salvaged or recovered Buyer's Product sold or otherwise exchanged for value for the benefit of the Buyer less any related expenses; and (ii) any insurance recoverable by Buyer.

19.1.3.2 *For Warehouse Claims:* (a) Buyer's actual production/manufacture or actual purchase cost of the Goods, which are the subject of such Warehouse Claim; (b) the amount recovered from any Subcontractor or its insurer for such Warehouse Claim; (c) fifty cents (\$.50) per pound of such Goods for which any such Warehouse Claim is made; (d) \$100,000; and (e) the total amounts received by Seller during the twelve (12) month period prior to the date the cause of action for the Warehouse Claim; less (i) any recovery for damaged, salvaged or recovered Goods sold or otherwise exchanged for value for the benefit of Buyer less any related expenses; and (ii) any insurance recoverable by Buyer.

19.2 Logistics Services – Warehousing. In the event Seller and/or one of its Subcontractors has agreed to provide logistics services which include warehousing of any Buyer's Product hereunder, and Buyer's Product has, or should have, been delivered to Seller or its Subcontractors, neither Seller nor its Subcontractors shall be liable for any loss or injury to Goods stored however caused, unless such loss or injury resulted from the failure of the Seller or its Subcontractors to exercise such care in regard to them as a reasonably careful person owning similar goods would exercise under like circumstances; and neither Seller nor its Subcontractors are found legally liable for any loss or damage to Goods stored by Seller or its Subcontractors, Seller's and its Subcontractors liability hereunder shall be further limited to the lesser of the amounts set forth herein.

19.3 Loss Allowance. Without limiting the generality of any other liability limitation set forth in the Terms and Conditions, the amount of any Freight Claim and/or Warehouse Claim for which Seller and/or its Subcontractors may be liable shall be further reduced by a loss allowance of Twenty-Five Hundreths of One Percent (.25%) of the total manufactured cost in U.S. Dollars of Buyer's Product handled (i.e. throughput) by Seller and/or its Subcontractors (the "Loss Allowance"). For shipments that are signed as shipper load and count and/or on a sealed trailer where the seal is intact upon delivery, the Freight Claims will be held on the file to be settled using the Loss Allowance after a physical inventory of products in the warehouse.

19.4 Insurance; Shrinkage. Buyer shall be responsible for insuring the Buyer's Product against any and all such Freight Claim and/or Warehouse Claim resulting from any cause, including without limitation, fire, theft, flood, earthquake, terrorist act or other natural disaster. The amount of any Freight Claim or Warehouse Claim shall be further limited by the amount of any loss or shrinkage of Buyer's Product resulting from the intentional, wanton or reckless conduct of the Buyer or any of its agents.

19.5 Concealed Damage and Liability Exemptions; Returns. Seller and its Subcontractors shall not be liable under the Contract and the Seller's Terms and Conditions for any concealed damage or loss caused by an act constituting a force majeure event as set forth herein, the Buyer, its employees or agents, a carrier, any third party not a party to the Contract, one of Seller's Subcontractors, a public authority, or the nature of the Buyer's Product. Provided further, Seller shall not be liable for any costs associated with the return of refused products. Seller will bill Buyer for all freight and warehousing costs associated with such return.

19.6 Outbound Orders with Billing Terms Collect or Third Party. Seller is not responsible for loss or damage for outbound orders that are not routed by Seller, i.e. orders shipping as collect or third party where Seller did not contract a Subcontractor to carry the Buyer's Product, where the driver does not count or sign for ship quantity on the Bill of Lading.

**20. LEGAL RELATIONSHIP:** Nothing contained in these Seller's Terms and Conditions or any Contract hereunder shall create an association, partnership, joint venture, employee/employer or labor relationship or the relationship of principal and agent between Seller and Buyer. Neither Seller nor Buyer shall have any authority to bind the other in any way except as stated herein. It is expressly agreed that all of the personnel and employees that the parties may engage in performing their respective obligations under these Seller's Terms and Conditions and any Contract hereunder shall be directly hired by each of the parties in their capacity as employers and, in such capacity, each of the parties shall be solely responsible for any obligations and responsibilities towards its own personnel and employees, including without limitation, the payment to

said personnel and employees of any and all salaries, wages and benefits and the payment of all taxes, assessments, any other labor or social security obligations and any other obligations derived from any applicable laws. The Parties are not and shall not be deemed to be the employer of the personnel or employees of the other party and neither has nor shall be deemed to have the position of an intermediary on behalf of the other party. Each party agrees to assume full responsibility for and to indemnify, defend and hold harmless the other party and its Indemnified Parties from and against all Claims involving Damages, to the extent such Claims cause Damages resulting from any obligations or responsibilities of the Indemnifying Party towards its own personnel and employees (including without limitation, payment of any and all salaries, wages, benefits, taxes, assessments, any other labor or social security obligations or any other obligations under any applicable law) or any Claim that the Indemnifying Party's personnel or employees are statutory employees of the Indemnified Party, in accordance with Section 14 hereof.

**DDD Works, LLC**  
**dba/ Dare Devil Display Works**  
**1603 N. 35<sup>th</sup> Street**  
**Rogers, AR 72756**