

# D & D INDUSTRIES, INC.

## TERMS AND CONDITIONS OF SALE

1. **COMPLETE AGREEMENT: Acceptance** of the purchaser's order is subject to the terms and conditions contained herein. This document constitutes the full and final agreement of the parties and is not to be modified or amended by any prior or contemporaneous agreement, whether written or oral. No modifications of this agreement shall be in effect unless signed by the parties in writing, and no modification shall be affected by the acknowledgment or acceptance of purchase order forms containing different terms or conditions.
2. **NO WARRANTY:** THE EQUIPMENT OR MERCHANDISE SOLD BY (D & D INDUSTRIES, INC.) SELLER IS SOLD "AS IS" AND WITHOUT WARRANTY. SELLER NEITHER MAKES NOR ASSUMES ANY LIABILITY UNDER ANY WARRANTY, WHETHER CONTRACTUAL, STATUTORY, BY OPERATION OF LAW OR OTHERWISE. THE WARRANTIES DISCLAIMED HEREUNDER INCLUDE, BUT ARE NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE MERCHANDISE CONFORMS WITH ANY PLANS OR SPECIFICATIONS OF PURCHASER OR OTHERS, OR MEETS ANY REQUIREMENTS OF ANY FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS OR ORDINANCES, PERTAINING TO SAFETY OR INSURANCE REQUIREMENTS. THE EMPLOYEES OR REPRESENTATIVES OF SELLER ARE NOT AUTHORIZED TO MAKE ANY WARRANTIES. ANY SUCH STATEMENTS OF WARRANTY WILL NOT BE BINDING ON THE SELLER OR BE GROUNDS FOR ANY SUBSEQUENT CLAIM. IT IS THE PURCHASER'S RESPONSIBILITY TO INSPECT THE GOODS AND TO ASCERTAIN IF THE SPECIFICATIONS, DESCRIPTIONS AND CONDITION OF THE GOODS CONFORM TO THE PURCHASER'S REQUIREMENTS. SELLER STRONGLY RECOMMENDS PURCHASER'S ONSITE INSPECTION OF GOODS SOLD. THE SELLER SHALL NOT BE RESPONSIBLE FOR THE CONSEQUENCES OF PURCHASER'S FAILURE TO INSPECT THE GOODS FOR ANY INACCURACIES, INSUFFICIENCIES, OR OMISSIONS IN ANY DESCRIPTIONS AND/OR SPECIFICATIONS. ANY WARRANTY MADE BY A THIRD PARTY IS ONLY ENFORCEABLE AGAINST SUCH THIRD PARTY AND NOT AGAINST THIS SELLER.
3. **PURCHASER'S RESPONSIBILITY AND INDEMNITY:** The Purchaser is warned and acknowledges that it must contact the original manufacturer to obtain up-to-date installation and operation manuals and other information to ensure the safe installation and operation of the goods sold. Seller will not provide manuals or safety data sheets. It shall be Purchaser's responsibility to ensure that any goods purchased from Seller are installed and operated in a proper and safe manner. The Purchaser also acknowledges that it may have to install or change guards, safety warnings or other components to ensure that the goods or machines will conform to all laws, regulations, ordinances, codes, insurance requirements and industry standards. Purchaser expressly agrees as a condition of its purchase of the goods that it will indemnify and hold Seller harmless from any and all claims that may hereafter at any time be asserted by any subsequent owner or user of the goods sold hereunder or asserted by any agent or employee of such user or by any third party arising from any purported defect in the goods or by reason of the use of these goods. Purchaser agrees to defend, indemnify and hold harmless Seller from and against all suits, claims, costs, damages and expenses, including but not limited to, reasonable attorneys' fees, arising out of, or in connection with, the transportation, purchase, ownership, or use of the goods sold hereunder.
4. **TAXES: Prices** do not include any federal, state or local taxes, which are in addition to the purchase price and must be paid by the purchaser. All foreign duties and taxes are the responsibility of Purchaser. The failure of Seller to invoice such taxes does not excuse the Purchaser from responsibility for paying same. Purchaser agrees to indemnify and hold Seller harmless from any liability and expense by reason of Purchaser's failure to pay such taxes.
5. **SHIPMENT: Unless** otherwise stated, all equipment is sold at F.O.B. Seller's warehouse. All shipment dates shall be approximate. The seller shall not be liable for any loss, injury, damage or expenses resulting from any delay in shipment and/or delivery of any cause whatsoever.
6. **RISK OF LOSS:** Risk of loss shall pass to Purchaser at time of delivery of the goods to the carrier.
7. **DAMAGES: Seller's** liability with respect to goods sold to Purchaser shall be limited to refund of payment made if proven mechanically unsatisfactory or repairs may be made at Seller's option; providing machine has not been altered from its condition at the time of purchase, return freight shall be paid by Purchaser. This is not applicable to machines sold in "As Is" condition. In no event shall Seller be liable for incidental, special, or consequential damage, lost profits, or any expenses, including but not limited to shipping costs. Failure to give written notice of claim to Seller within thirty (30) days from the date of delivery or the date fixed for delivery (in the event of non-delivery) shall constitute a waiver by Purchaser of all claims in respect of such goods. The remedy provided will be the exclusive and sole remedy of the buyer and any right to consequential and incidental damages is excluded.
8. **QUOTATIONS: All** quotations are made for immediate acceptance and are subject to withdrawal or change at any time and without notice.