

DBR INDUSTRIES, LLC (DBR) - TERMS AND CONDITIONS

1. **ACCEPTANCE.** Customer has read and understands these terms and conditions and agrees that Customer has accepted any and all terms and conditions contained herein or an attachment hereto. Any additional or contradictory terms or conditions contained in any acknowledgment, invoice, purchase order, change or other communication, oral or written, heretofore or hereafter furnished by Customer is hereby objected to by DBR, and shall be of no force or effect.
2. **SCOPE.** DBR agrees to sell, and the Customer agrees to purchase, the products and services set forth on the quotation, sales order and/or invoice in accordance with the specifications set forth therein.
3. **CHANGES.** No changes in the products or services shall be made unless evidenced by a written agreement signed by both parties hereto. Except for such written agreement, no oral, verbal, or written modifications, including subsequent purchase orders or change orders, shall bind either party hereto.
4. **PRICES.** DBR shall invoice the Customer for the prices contained on the sales order, and such payments shall be made based on the schedule set forth in the sales order. All prices are F.O.B. shipping point unless otherwise provided in the sales order and/or invoice. In the event payment is not made within stated payment terms, there shall be a one percent (1%) monthly service charge on any balance over the stated payment terms.
5. **TAXES.** Prices on the specified equipment or parts are exclusive of all city, state and federal excise taxes including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by the Customer. Out-of-state customers receiving products or services must pay state and local taxes where applicable.
6. **CLAIMS.** Claims for corrections from Customer must be made in writing to DBR within ten (10) days of receipt of the product, and if a claim is not made within said time period, the products shall be deemed accepted.
7. **CANCELLATION.** Orders are not subject to cancellation or hold-up on delivery except with DBR's written consent, and only upon such terms that will compensate DBR for its loss from such cancellation or hold-up on delivery.
8. **INSPECTION AND ACCEPTANCE.** Within five (5) days of the receipt of shipment of products, Customer shall inspect the products with regard to the defects, quantity, and identity. In case defects, shortages or excess quantities are found during such inspection, Customer shall notify DBR immediately but not later than ten (10) days after receipt of the products. The failure to provide said notice within the ten (10) day period shall be deemed acceptance of the products by Customer. Upon receipt of notice, DBR shall have the right to inspect and investigate to determine the validity of the defect, shortage or excess. To the extent DBR determines that there is a defect, shortage or excess for which DBR is responsible hereunder, then in such case DBR may correct or replace the products to conform with the Specifications at the expense of DBR, or correct the shortages or excess as further defined below. In such case, DBR agrees to arrange for transportation and sufficient insurance to protect the products in transit, as well as the transportation of the repaired or replaced products from DBR's facility, and such reasonable costs of such shorting, rework or return including a return for analysis of the products shall be borne by DBR.
9. **DELIVERY.** Delivery of the product shall be F.O.B. shipping point at DBR's designated facility unless otherwise set forth in the sales order and/or invoice, and Customer shall be responsible for goods lost, damaged or delayed in transit, as well as all delivery and transit costs and expenses. Failure of risk of damage or loss for whatever reason shall be upon Customer, and Customer assumes any and all liabilities, expenses and obligations regarding transportation, insurance, or any damage or loss to the products in transit. DBR will use reasonable efforts to deliver within stated delivery dates, but DBR makes no representation or guarantee that such delivery dates will be satisfied. DBR shall not be responsible for any failure or delay in performance of any of its obligations, including, but not limited to delivery within stated delivery dates.
10. **NO WARRANTY.** NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE MADE BY DBR IN CONNECTION WITH ANY PRODUCT OR SERVICES.
11. **DISCLAIMER.** DBR shall not be responsible for any damage or injury resulting to or caused by any products or services for any reason, including without limitation, by reason of installation by Customer, improper storage, unauthorized service, alteration of the product or services, neglect or abuse or the use of the product in a manner inconsistent with its design. DBR shall not be liable for any delays or losses caused by DBR's error, unless such delays and losses are caused by willful misconduct of DBR. The Customer acknowledges and agrees that if the Customer identifies specific applications for the use of DBR's products or services, DBR shall not be responsible for any deviations from the applications or nondisclosure of Customer of any additional information, including, but not limited to Customer's failure to properly install the products. If design and specifications are specified by the Customer, the parties agree that Customer is exclusively responsible for design and specification plans. DBR shall not be responsible for the correctness or adequacy of any design details, plans, or material not furnished by DBR. The parties further agree that DBR shall not be responsible for any products which have been modified or integrated with other products not designed or selected by DBR.
12. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL DBR BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS OR PROFITS, EVEN IF DBR IS ADVISED, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. THE LIABILITY OF DBR, WHETHER IN CONTRACT, TORT, OR OTHERWISE, AND ANY AND ALL DAMAGES IMPOSED UPON DBR SHALL IN NO EVENT EXCEED THE AMOUNT CUSTOMER HAS PAID TO DBR. FURTHERMORE, IN THE EVENT THAT ANY PRODUCT SHALL BE MANUFACTURED AND/OR SOLD BY DBR TO MEET CUSTOMER'S PARTICULAR SPECIFICATIONS OR REQUIREMENTS, DBR SHALL NOT BE LIABLE FOR ANY FAILURE TO MEET PARTICULAR SPECIFICATIONS OR REQUIREMENTS, OR ANY CLAIM FOR INFRINGEMENT OF ANY PATENT, ARISING FROM THE CUSTOMER'S PARTICULAR SPECIFICATIONS OR REQUIREMENTS FOR THE PRODUCT. THE REMEDIES OF CUSTOMER SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER REMEDIES.
13. **INDEMNIFICATION.** Customer shall indemnify and hold DBR, its officers, employees, directors, representatives, shareholders, agents, successors and assigns harmless against any and all losses, claims, damages, judgments, liabilities, or expenses, including, without limitation, reasonable attorney fees and expenses, incurred by DBR as a result of or arising out of Customer's breach of these terms or any obligation to DBR; any claim by any third party against DBR for any errors, omissions, defects, or any and all claims regarding the product and services sold to Customer; actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright by reason of the design, manufacture, construction or use of the product or services being sold hereunder, including infringement arising from compliance with the specifications of the products or services, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Customer's action; any act or omission of Customer or its agents, employees, representatives or subcontractors, including without limitation, any act of Customer described in Section 11 above. Customer shall promptly notify DBR of any suit filed against it or its customers on account of any such indemnification obligation of Customer hereunder, and at DBR's option, Customer may assume the sole responsibility for the defense of such action at Customer's sole expense. DBR may be represented by their own counsel in any such suit at the expense of Customer, however, no settlement shall be entered into on behalf of DBR without DBR's prior consent in its sole discretion.
14. **ACKNOWLEDGMENT OF CUSTOMER.** Customer hereby acknowledges and covenants that it has all trademark, trade name and all intellectual property rights with respect to the products, Specifications, or any other items or materials being provided to Seller hereunder. Furthermore, Customer shall pay all royalties and license fees necessary for the enjoyment of rights to any inventions, machines, processes, or devices which may be applied to or incorporated in any products being sold hereunder, either in the construction or use after completion.
15. **DEFAULT.** In the event that Customer fails to pay any amount due to DBR, or otherwise breaches any obligation or covenant contained to DBR, DBR may, in its discretion, in addition to other remedies to which DBR may be entitled without affecting an election of remedies, cancel or terminate all obligations to Customer upon notice to Customer, or suspend performance by DBR until Customer pays for such charges or amounts. Furthermore, in the event of a cancellation or termination by DBR, DBR shall be entitled to any and all damages under the Uniform Commercial Code, including without limitation Sections 2-708, 2-710, and 2-711, including, without limitation, lost profits, and all other expenses and losses incurred by DBR.
16. **GOVERNING LAW/VENUE.** In all respects, the parties agree that they shall be subject to, and governed by, the laws of the State of Ohio. In the event that any legal proceeding is commenced or arises, said legal action shall be commenced and filed in Stark County, Ohio, or the federal court with jurisdiction over Stark County, Ohio. Customer hereby knowingly and irrevocably waives any objection on the grounds that improper jurisdiction or venue to an action in said courts, and agrees that effective service of process may be made upon Customer by mail at the last known address of the Customer.
17. **CONFIDENTIALITY.** The Customer acknowledges that DBR possesses certain confidential or proprietary information of DBR, and of DBR's customers, including, without limitation, designs, data, ideas, drawings, specifications, trade secrets, formula, technical experience, financial data, financial information, and other valuable, confidential and proprietary information, which may be disclosed to Customer or for which Customer may have access, for Customer's performance for DBR. At all times thereafter, Customer agrees not to disclose to any person, firm, or entity any Confidential Information. Furthermore, DBR retains exclusive ownership of all of its Confidential Information, and Customer obtains no license or other rights thereto. DBR shall also have exclusive rights to any improvements, modifications, or variations of its products or services, including, without limitation, any and all patent, copyright, trademark, trade name, or other intellectual property rights. The Customer hereby agrees that if Customer breaches this section, DBR shall incur irreparable injury and harm and money damages would be an insufficient remedy, and as such, and in addition to all other remedies, DBR shall be entitled to seek injunctive relief restraining Customer from further breach of this section.
18. **NON-ASSIGNMENT.** Customer may not assign or delegate its obligations under this order without DBR's prior written consent, however, DBR may assign or subcontract its obligations hereunder without Customer's consent.
19. **MODIFICATION/WAIVER.** These terms may not be changed or modified orally, but may be amended in writing only by the duly authorized officers of both DBR and Customer. A party's failure to insist on compliance or enforcement of any provision herein shall not affect the validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision herein by that party or any other party.
20. **SEVERABILITY.** Any legally invalid provision herein shall be considered severable, and the invalidation of any such provision shall not impair the obligations of the parties to comply with all other unaffected provisions hereof.
21. **PARAGRAPH HEADINGS.** Paragraph headings have been inserted herein for convenience of reference only. If there is any conflict between such headings and the text herein, the text shall control.
22. **FORCE MAJEURE.** DBR shall not be responsible for any acts or omissions, nor for events beyond its reasonable control (hereinafter referred to as "Force Majeure"), including but not limited to Acts of God, changes of laws or regulations or other acts of government, labor disputes, strikes, riots, mobs, fires, floods, wars, embargoes, impossibility to obtain necessary material, labor, machinery, or transportation.