

THE D.S. BROWN COMPANY

TERMS AND CONDITIONS

**These Terms and Conditions of Purchase (“Terms and Conditions”) are incorporated by reference into and constitute a part of the Purchase Order issued by The D.S. Brown Company (“DS Brown”) to the Supplier named therein Supplier. DS Brown and Supplier are sometimes referred to herein as a “Party” and collectively as the “Parties”. As used herein, “Agreement” means, collectively, the Purchase Order issued to Supplier by DS Brown and these Terms and Conditions, whether attached to the Purchase Order or provided separately by DS Brown and can be found on our website www.dsbrown.com.**

1. **Supplier Setup.** Prior to the payment by DS Brown of any Supplier Invoice (as hereinafter defined), Supplier must deliver to DS Brown the following: (i) Supplier’s written acceptance, by signature of an authorized representative of Supplier, of this Agreement, and (ii) evidence of Supplier’s compliance with the insurance requirements set forth in Section 13 below.

2. **Acceptance.** This Agreement shall be deemed satisfactory to and accepted by Supplier upon the earlier of (i) Supplier’s shipment of the goods subject to this Agreement (“Goods”) or (ii) Supplier’s written acceptance pursuant to Section 1 above. Any acceptance of this Agreement is limited to the acceptance of these Terms and Conditions and any additional or different terms contained in Supplier’s notice of acceptance, invoices, billing statements, acknowledgment forms or other related documents shall be of no force or effect and shall not become part of this Agreement unless they are specifically accepted in writing by both Parties.

3. **Changes.** Until the Goods are shipped by Supplier, DS Brown may at any time make changes in written, electronic or facsimile form, including without limitation, changes in specifications, methods of shipment, warranties, packing or time or place of delivery. If such changes result in an increase or decrease in cost, or time required for the performance of this Agreement, an equitable and reasonable adjustment shall be made in the price, delivery schedule or both. If such changes result in an increase in cost or time which is unacceptable to DS Brown, then DS Brown at its sole option may cancel its request for such changes. There shall be no changes or modifications by Supplier unless expressly consented to in writing by DS Brown.

4. **Modification and assignment.** To be effective, any modification of this Order must be in writing and accepted by Purchaser and Supplier. Supplier understands that Purchaser is purchasing for resale and seller consents to the assignment of all Purchaser’s rights and responsibilities (except purchaser’s obligation to pay the purchase price for the materials hereunder) to all persons and entities who purchase the materials from purchaser. Supplier shall not assign or subcontract this order without the written consent of the purchaser or agent nor shall supplier assign any monies due to become due to seller hereunder without the prior written consent of purchaser.

5. **Price Warranty.** Supplier warrants that the prices for the Goods hereunder are not less favorable than those extended to any other customer for the same or similar Goods in similar quantities. In the event Supplier reduces its price for such Goods during the term of this Agreement, Supplier agrees to reduce the prices under the Agreement correspondingly; however, nothing shall permit an increase in price without DS Brown’s express written consent. Supplier warrants that the price specified in this Agreement shall be complete and no additional charges shall be added without DS Brown’s express written consent.

6. **Cancellation.** DS Brown reserves the right to cancel this Agreement, in whole or in part at any time for any reason, upon written notice to Supplier. In the event of such cancellation, DS Brown, in addition to any other rights it may have under applicable law or other terms of this Agreement, shall have the right: (i) to refuse to accept further delivery of Goods; (ii) to return to Supplier at Supplier’s expense any Goods already delivered and to recover all payments made therefore and expenses incurred thereto; and (iii) to recover any advance payments to Supplier for undelivered or returned Goods.

7. **Inspection.** Supplier agrees to allow access to their facility for required contractual/regulatory inspection of Goods prior to shipment by DS Brown or appropriate government agency.

8. **Shipping.**

(a) **Timing.** Time is of the essence with respect to any delivery dates provided for in this Agreement. Supplier shall promptly notify DS Brown if it’s unable to ship timely. If it appears Supplier will not meet such schedule or if Supplier fails to meet such schedule, Supplier shall, upon request of DS Brown and in addition to any other rights or remedies provided to DS Brown by law or under this purchase order, ship via expedited routing necessary either to meet such schedule or to recover the maximum possible time lost by failure to ship or deliver on schedule, and the difference between the expedited routing and the purchase order routing cost shall be borne by Supplier. DS Brown shall have the right to

refuse any Goods untimely delivered and to cancel the balance of the Agreement for any part of the Goods due after untimely delivery of any installments.

(b) **Manner.** All Goods must be shipped in the manner specified by DS Brown and packaged so as to prevent any loss or damage.

(c) **Costs.** Supplier shall pay all charges for shipping, packing, storage, crating, boxing, labeling, custom duties, insurance, and taxes unless DS Brown expressly agrees in this Agreement to pay such charges. Any additional expense resulting from any delay, partial shipment, early shipment, change of routing or failure to comply with the terms of this Agreement shall be paid by Supplier.

(d) **Title and Risk of Loss.** All Goods are to be shipped F.O.B. destination specified in this Agreement unless expressly agreed upon in writing by an authorized employee of DS Brown and title to the Goods, as well as all risks of loss therefor, shall remain with Supplier until the Goods reach the directed point of destination specified in this Agreement. If DS Brown consents in writing to F.O.B. point of origin, title and risk of loss shall remain in Supplier until the Goods are received by the carrier designated by DS Brown.

(e) **Force Majeure.** DS Brown may, without penalty, delay delivery and/or acceptance occasioned by causes beyond its control, including, but not limited to, plant or supply chain shutdowns caused by strikes, lockouts, war, terrorism, weather emergencies, viral or other pandemic disease outbreaks, earthquakes, floods, fire and acts of God.

9. **Returns.**

(a) DS Brown, at its discretion at any time, may return to Supplier for full credit or replacement, at DS Brown’s option and at Supplier’s risk and expense, including transportation charges both ways, all or part of any Goods or shipments that is non-conforming, below sample or standard, defective or in breach of any warranties, expressed or implied, received late, containing excess quantities or which is in any other manner not in compliance with this Agreement. If agreed by DS Brown and Supplier, or if Supplier does not respond to a DS Brown return request within fifteen (15) days, DS Brown may destroy such Goods for credit, or dispose of such Goods by any other means. The prior acceptance of any similar Goods or shipments shall not be considered a waiver of DS Brown’s right to return all or any part of any subsequent Goods or shipments so made. DS Brown may impose a service charge of five percent (5%) for returns of Goods pursuant to this Section. Cure of nonconforming tender may be made only with the consent of DS Brown.

(b) Notice of defects in the Goods or of any other breach by Supplier under the terms of this Agreement will be considered made within a reasonable time, if promptly made after being discovered by DS Brown or after notification is given to DS Brown by its customers or the users of the Goods. The return of such Goods shall not relieve Supplier from liability for failure to ship conforming Goods under the Agreement or for liability with respect to warranties or conditions, express or implied.

(c) Resale, repackaging, or repacking for the purpose of resale or for use shall not be considered as acceptance of the Goods so as to bar DS Brown’s right to reject such Goods or to revoke acceptance.

(d) In addition to any other remedies available to DS Brown under this Agreement or applicable law, upon Supplier’s breach of this Agreement, DS Brown at its option and without liability to Supplier, may cancel any unshipped portion of any Goods and return prior deliveries to Supplier for payment or credit, at DS Brown option.

10. **Invoicing.**

(a) Supplier shall invoice (“Supplier Invoice(s)”) DS Brown for all Goods delivered by Supplier under this Agreement. Each Supplier Invoice shall conform with the terms of this Agreement and set forth: (a) the “Ship To” location; (b) line item costs; (c) the carrier; (d) the number of cartons, pallets or pieces, applicable; and (e) weight of the shipment. If Supplier fails to comply with any requirement of this Section, Supplier shall be liable for and reimburse DS Brown for any increased direct and indirect expense thereby incurred by DS Brown.

(b) All invoices are to be emailed to invoice@DSBrown.com.

11. **Payment.**

(a) **Payment by DS Brown.** Subject to Section 1 above, DS Brown shall pay Supplier within ninety (90) days after the later of (i) the date DS Brown receives a Supplier Invoice, or (ii) the date on which the Goods are received by DS Brown, or (iii) the date on which DS Brown requested delivery of the Goods.

(b) **Payment by Supplier.** All amounts due DS Brown under this Agreement shall be due and payable thirty (30) days after such obligation arises. If no Supplier Invoice(s) exist to allow deduction within said thirty (30) days, Supplier agrees to remit payment to DS Brown, unless DS Brown agrees otherwise

in writing. Any amounts payable to Supplier shall be subject to all claims and defenses of DS Brown, and DS Brown may deduct and set off against any such amounts all present and future indebtedness of Supplier to DS Brown.

12. **Limitation on Claims.** In no event shall DS Brown be liable for anticipated profits or for incidental or consequential damages. DS Brown’s liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from the performance or breach thereof shall in no event exceed the price allocable to the Goods which gave rise to the claim. Notwithstanding any provision to the contrary, Supplier agrees to bring any claim or dispute (including payment disputes) within one (1) year after the occurrence of the event giving rise to such dispute.

13. **Supplier Warranties.**

(a) Supplier agrees that DS Brown shall not be liable for the inspection or packaging of Goods before resale and that all warranties, representations and conditions, statutory, legal or otherwise and whether express or implied, shall survive inspection, installation, acceptance, and payment by DS Brown and DS Brown’s customers.

(b) Supplier represents and warrants to DS Brown, in addition to all warranties implied by law, that the Goods and their design, construction, assembly, production, shipment, sale, packaging, labeling, packing, advertising, instructions and warnings or lack thereof, shall, as applicable, (i) be of good quality, material, and workmanship and be merchantable, fit for their intended purpose, and free from any and all defects, including, without limitation, such defects that could create a hazard to life or property; (ii) not be and have not been subject to product liability claims, except as disclosed to DS Brown in writing; (iii) meet all applicable requirements of all applicable U. S. federal, state and local laws and regulations and of all applicable laws and regulations of jurisdictions outside the United States (collectively “Laws.”); (iv) not infringe or encroach upon DS Brown or any third party’s personal, contractual or proprietary rights, including, without limitation, patents, trademarks, copyrights, rights of privacy or publicity, or trade secrets; (v) conform to all applicable specifications and to all articles shown to DS Brown as samples; (vi) be well within any expiration date indicated on the packaging of the Goods; (vii) be and have been stored under proper conditions to preserve the quality of the Goods; and (viii) possess all performance qualities and characteristics claimed in advertisements or statements issued or authorized by Supplier. Approval by DS Brown of Supplier’s designs, materials or packaging shall not relieve Supplier from any obligations under any warranties, representations, conditions or guarantees.

(c) Payment for the goods under this purchase Order shall not constitute acceptance thereof.

(d) All materials shall be received subject to purchaser’s inspection and rejection. Defective material or material not in accordance with Purchaser’s specifications may be held for Supplier’s instructions and at its risk and expense. If instructions are not received within fifteen (15) days after notice of rejection, goods may be returned or sold for Supplier’s account, at Supplier’s expense.

(e) Supplier further represents and warrants that (i) the Goods are new and merchantable; (ii) the Goods are sold to DS Brown and free and clear of all encumbrances and liens; (iii) all manufacturer’s warranties are effective and enforceable by both DS Brown and DS Brown’s customers; and (iv) if required by Laws or legal precedent, the labels, packaging, instructions and warnings accompanying the Goods are multilingual and/or contain universally accepted pictographs or symbols and that Supplier, if necessary, will supply DS Brown with any and all instructions, warnings or safety sheets for said Goods as required by Law.

(f) Supplier’s warranties hereunder shall run to DS Brown, its successors, assigns and customers.

14. **Indemnity.**

(a) Supplier agrees to indemnify, defend and hold harmless DS Brown, its officers, directors, employees, agents, affiliates, successors and assigns (the “Indemnified Parties”) from any and all liabilities, costs and expenses (including reasonable attorneys’ fees) associated with any claims, complaint, charge, penalty, demand, injury, loss, or damage resulting from or in connection with (i) the breach of any representations or warranties by Supplier or the Goods; (ii) the failure of Supplier to comply with applicable Laws or the terms of this Agreement; (iii) the design, construction, assembly, production, shipment, sale, packaging, labeling, packing, advertising, instructions and warnings or lack thereof, of the Goods; and/or (iv) the alleged infringement of any patent, copyright, trademark, or trade name. This indemnification shall be in addition to the warranty obligations of Supplier set forth above Section 11.

(b) In the event of any claim, suit or proceeding against any Indemnified Party in connection with any of the foregoing, DS Brown agrees to timely notify Supplier of any such claim, suit or proceeding (but the lack of timeliness of such notice shall not affect Supplier’s obligations hereunder except to

the extent Supplier is actually prejudiced by such lack of timeliness). Supplier shall promptly, upon receiving notice of such claim, suit or proceeding, assume the defense of the Indemnified Parties at its sole cost, and (whether Supplier assumes such defense or for any reason fails or refuses to assume such defense) Supplier shall pay any and all sums which any Indemnified Party becomes legally obligated to pay as a result of such claim, suit or proceeding. Supplier further agrees to pay the reasonable costs and attorneys’ fees of any Indemnified Party to the extent necessary to enforce such Indemnified Party’s rights under this Agreement. DS Brown agrees to cooperate with Supplier in the defense or settlement of such claim, suit or proceeding, provided that Supplier shall obtain DS Brown’s prior written consent to any compromise, settlement or consent judgment which affects any Indemnified Party’s rights or interests. Notwithstanding the above, an Indemnified Party shall have the right, but not the obligation, to participate as it deems necessary in the handling, adjustment, or defense of any claim. If DS Brown reasonably determines that a defense or defenses are available to an Indemnified Party that are not available to Supplier and raising such defense or defenses would create a conflict of interest for the counsel defending the claim, the Indemnified Party will be entitled to retain separate counsel for the purpose of raising these defenses at Supplier’s expense.

(c) Notwithstanding the above, Supplier shall not enter into any settlement or compromise of the claim that would result in the admission of any liability by any Indemnified Party, any financial liability on the part of any Indemnified Party, or would subject any Indemnified Party to injunctive relief without first obtaining DS Brown’s written consent.

(d) Should Supplier fail to assume its obligations hereunder within thirty (30) days (or sooner if required to maintain a defense), including its obligation to diligently pursue and pay for the defense of any Indemnified Party within a reasonable time, Supplier hereby agrees that the Indemnified Party shall have the right, but not the obligation, to proceed on the Indemnified Party’s own behalf to so defend itself and to thereafter require from Supplier reimbursement and indemnification for any and all costs and expenses (including reasonable attorneys’ fees).

15. **Insurance.**

Subject to any additional or different arrangements agreed in writing by the Parties regarding insurance:

(a) Supplier shall at its sole expense obtain and maintain in effect product liability insurance as applicable to accidents or occurrences resulting in total or in part from the use, storage or condition of the Goods. Such coverage shall be in an amount and with a carrier satisfactory to DS Brown and such policy or vendor’s endorsement shall contain no exclusion, such as repacking or relabeling exclusions, to invalidate the coverage of DS Brown.

(b) Within thirty (30) days following commencement of this Agreement and prior to the payment of any Supplier Invoice, Supplier shall cause the insurer to furnish to DS Brown a certificate of insurance evidencing such insurance.

(c) Supplier agrees to continuously maintain such insurance for the period during which any party may, as a matter of law, be entitled to assert a claim against any Indemnified Party.

16. **DS Brown’s Property.** All tools, tooling, equipment, dies, gauges, models and other tangible personal property furnished by DS Brown to Supplier, fabricated or acquired by Supplier for the purpose of supplying Goods to DS Brown, or paid for by DS Brown, shall be and remain the sole and exclusive property of DS Brown. All DS Brown’s property will be plainly marked and otherwise adequately identified by Supplier as “property of DS Brown,” will, at Supplier’s expense, be safely stored (separate and apart from Supplier’s property wherever practicable), and will be kept free of all liens, claims, encumbrances and interests of third parties. Supplier will not substitute any property for any of DS Brown’s property, will not deliver or make available to any third party any of DS Brown’s property or goods developed, manufactured or created with the aid of any of DS Brown’s property, and will not use any of DS Brown’s property except in filling the orders of DS Brown. All DS Brown’s property, while in Supplier’s custody or control, shall be held at Supplier’s risk and will be kept insured by Supplier at Supplier’s expense in an amount equal to the replacement costs, with loss payable to DS Brown. Supplier will, at its expense, maintain all DS Brown property in good condition and repair. Upon the request of DS Brown at any time, Supplier will prepare all DS Brown’s property for shipment and deliver such property to DS Brown in the same condition as it was originally received by Supplier, reasonable wear and tear excepted. DS Brown shall have the right, at all reasonable times, upon prior notice, to enter Supplier’s premises to inspect any and all of DS Brown’s property and any property or goods manufactured, developed or created with the aid of any of DS Brown’s property.

17. **Technical Data.** All technical information designs, blueprints, drawings, specifications, engineering data or product know-how which is supplied to Supplier by DS Brown to facilitate or assist in the performance of this Agreement shall remain the sole and exclusive property of DS Brown. Supplier agrees to maintain such information in confidence and not to use, directly or indirectly, any

such information for its own benefit or the benefit of any other person. All such information shall be returned to DS Brown promptly upon its request, and Supplier will not retain any copies thereof.

18. **Confidentiality.** Supplier shall not, without first obtaining DS Brown’s written consent, disclose that fact that DS Brown has ordered the Goods covered by this Agreement and shall not, except as required for Supplier’s performance under this Agreement, disclose any of the details associated with this Agreement to any third party. Unless otherwise agreed in writing, no commercial or technical information disclosed or supplied by Supplier to DS Brown shall be deemed secret or confidential, and Supplier shall have no rights against DS Brown with respect thereto.

19. **Compliance With Law.** Supplier certifies that in its performance under this Agreement it will comply with all applicable Laws, as now in effect or as hereafter amended including but not limited to the Fair Labor Standards Act, the Foreign Corrupt Practices Act and the U.K. Bribery Act.

20. **Compliance with DS Brown’s Code of Conduct.** Including but not limited to Zero tolerance for Child Labor or forced labor. Right to Freedom of Association. Anti-discrimination, improper gifts / FCPA and protection of DS Brown’s intellectual property.

21. **Assignment.** Supplier may not assign this Agreement or engage any subcontractor to perform this Agreement without the written consent of DS Brown.

22. **Choice of Law and Jurisdiction.** This Agreement shall be interpreted and enforced under and in accordance with the internal laws of the State of Ohio and the Parties shall exercise any right or remedy thereunder exclusively in, and hereby consent to the exclusive jurisdiction of, the courts of the State of Ohio and the United States District Court in Toledo, Ohio. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if and to the extent applicable.

24. **Survival.** Notwithstanding any legal presumption to the contrary, the covenants, conditions, representations, indemnities, and warranties contained in this Agreement, shall survive inspection, delivery, acceptance, payment and termination and shall be binding upon the Parties and their successors and permitted assigns.

25. **Miscellaneous.**

(a) All work performed by Supplier and all materials used in connection with this Agreement shall be at the risk and expense of Supplier until delivered and accepted by DS Brown.

(b) Any and all taxes, fees, imposts or stamps, required by state, federal, local governments, or any such governmental authority in the selling, transferring, or transmitting of Goods to DS Brown shall be paid and assumed by Supplier.

(c) This Agreement and any applicable schedules and exhibits represent the entire and integrated agreement between the Parties with respect to the sale and purchase of Goods and supersede all prior negotiations, representations or agreements, written or oral. No changes or modifications to this Agreement are permitted, and no waiver of any rights under this Agreement are enforceable, unless made in writing as an addendum hereto and signed by both Parties.

(d) If any provision(s) of this Agreement shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining provision(s) thereof. DS Brown’s waiver of any term or condition of this Agreement shall not be deemed a continuing waiver, and DS Brown’s failure to demand cure of or cancel or rescind an order as a result of a prior breach by Supplier shall not be deemed a waiver by DS Brown of the right to demand cure of or cancel or rescind an order as a result of any subsequent breach. The rights set forth in this Agreement are cumulative and in addition to those otherwise provided by law and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

26. **Attorney’s Fees.** In the event DS Brown retains the services of an attorney for the purposes of enforcing any of its rights under this Agreement or seeking redress for a breach of any of Supplier’s obligations hereunder, then, in addition to all other rights and remedies available to DS Brown under this Agreement or otherwise, Supplier shall reimburse DS Brown for all such fees.