

# Terms and Conditions

1. Offer, Governing Terms and Cancellation. This writing constitutes an offer or counter-offer by Dadsco ("Dadsco") to sell the products and/or provide the services described herein to the buyer to which it is directed ("Buyer") in accordance with these terms and conditions; this writing is not an acceptance of any offer made by Buyer, and it is expressly conditioned upon Buyer's assent to all of these terms and conditions. Dadsco objects to any additional or different terms or conditions contained in any request for quotation, purchase order or other communication previously, now or hereafter provided by Buyer to Dadsco. No such additional or different terms or conditions will be of any force or effect. When accepted by Buyer explicitly through issuance of an order or otherwise, or by Buyer's acceptance of products and/or services described herein, these terms and conditions shall constitute the entire agreement between Dadsco and Buyer with respect to the purchase and sale of such products and/or services. No order may be cancelled or altered by Buyer except upon terms and conditions acceptable to Dadsco, as evidenced by Dadsco's signed, written consent. In the event of such an approved cancellation by Buyer, Buyer shall pay a cancellation charge to Dadsco in accordance with Dadsco's then-standard policies. Any clerical errors in Dadsco's quotations, acknowledgements or invoices are subject to correction by Dadsco. Dadsco's rights and remedies hereunder shall be cumulative.

2. Prices and Payment. Unless otherwise stated in writing by Dadsco, all prices quoted by Dadsco are valid for a period of 30 calendar days after quotation date, so long as delivery is made within 180 calendar days after quotation date. Dadsco's terms are 50% when ordered and remaining balance before delivery, unless Dadsco requires payment in advance. Interest will be charged on past due amounts at the lesser of 18% per year or the highest rate permitted by applicable law from the due date until these amounts are paid by Buyer.

3. Installation, Maintenance, Service and Training. The price quoted on Dadsco's quotation does not include any on-site installation, maintenance, service or training unless specifically stated otherwise on the quotation. Upon Buyer's request, Dadsco will provide a separate quotation for such items.

4. Taxes and Other Charges. Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Dadsco and Buyer (collectively, "Taxes") shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Dadsco is required to pay any such Taxes, Buyer shall reimburse Dadsco therefor on demand. Dadsco, however, shall be responsible for net income taxes imposed upon it.

5. Drop/Same Day Shipments; Minimum Order Requirements. Drop shipments and same-day shipments, if they are available, are subject to Dadsco's then-standard charges for such services. Orders for less than Dadsco's then-standard minimum dollar order amount are subject to handling and documentation charges.

6. Delayed Shipment. Schedule changes are not allowed unless agreed to by Dadsco in writing. If for any reason beyond Dadsco's reasonable control (including without limitation Buyer's failure to give shipping instructions), products are not shipped within 15 calendar days after notification to Buyer that they are ready for shipping, Dadsco may store the products at Buyer's risk and expense, and Buyer shall pay handling, transportation and storage charges as imposed by Dadsco.

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7. Delivery, Claims and Force Majeure. Unless otherwise specified in writing by Dadsco, all shipments are made F.O.B. Dadsco's plant in Tupelo, Mississippi. Delivery of products to a carrier at Dadsco's plant shall constitute delivery to Buyer; and regardless of shipping terms or freight payment, Buyer shall bear all risk of loss or damage in transit. Unless otherwise expressly stipulated herein, Dadsco reserves the right to make delivery in installments; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. Claims for shortages or other errors in delivery must be made in writing to Dadsco within 10 calendar days after receipt of shipment. Failure to timely make such a claim shall constitute unqualified acceptance of the products and a waiver of all such claims by Buyer. Claims for loss of or damage to goods in transit must be made to the carrier, and not to Dadsco.

All delivery dates are approximate. Dadsco shall not be liable for any losses or damages resulting from any delay or failure to deliver due to any cause beyond Dadsco's reasonable control, including, without limitation, any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, flood, natural disaster, accident, strike, slowdown or other labor dispute, war, riot, act of terrorism, delay in transportation, machinery failure, or inability to obtain necessary labor, materials, manufacturing facilities, fuel or containers. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay.

8. Security Interest. In order to secure full payment of the purchase price and all other amounts due hereunder, Buyer hereby grants to Dadsco a first priority purchase money security interest in the products sold to Buyer by Dadsco. This security interest in particular products sold by Dadsco shall automatically expire upon payment in full of the purchase price of those products.

9. Changes. Dadsco may at any time make such changes in design and construction of products as Dadsco deems appropriate, without notice to Buyer. Dadsco may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority, or nonavailability of materials from suppliers.

10. Patents, Trademarks and Copyrights. Subject to the following paragraph, Dadsco will, at its own expense, defend any suits instituted by anyone against Buyer to the extent same allege that products manufactured and sold by Dadsco hereunder infringe any United States patent, trademark or copyright, provided that Buyer shall have made all payments then due hereunder, shall have given Dadsco immediate notice in writing of any such suit and transmitted to Dadsco immediately upon receipt all processes and papers served upon Buyer, and shall have permitted Dadsco through its counsel, either in the name of Buyer or in the name of Dadsco, to defend the same and given all needed information, assistance and authority to enable Dadsco to do so. If damages are finally awarded in such a suit, and to the extent such damages arise from a holding that Dadsco's products are infringing, Dadsco will pay such damages. Notwithstanding the foregoing, Dadsco shall not be responsible for any compromise or settlement made without its prior written consent. The foregoing states Dadsco's entire liability for infringement, and Buyer's exclusive remedy, and in no event shall Dadsco be liable for consequential damages attributable to an infringement.

As to any products Dadsco furnishes to Buyer manufactured in accordance with drawings, designs or specifications proposed or furnished by Buyer, Dadsco shall not be liable, and Buyer shall indemnify and hold harmless Dadsco from and against any and all losses, liabilities, damages, claims and expenses (including but not limited to Dadsco's reasonable attorneys' fees and other costs of defense) incurred by Dadsco as a result of any claim of patent, trademark, copyright or trade secret infringement, or infringement or any other proprietary rights of third parties.

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11. **Product Returns.** Products may not be returned to Dadsco for credit unless Dadsco's written permission and return merchandise authorization have been obtained by Buyer in advance; Dadsco may withhold such permission and authorization in its sole discretion. Any authorized returns must comply with Dadsco's policies then in effect, including as applicable payment of restocking charges. Authorized returns must be securely packaged in their original shipping containers, and shall be delivered to Dadsco F.O.B. Dadsco's plant.

12. **Warranties; Disclaimers.** Certain Dadsco products are covered by stand-alone warranty statements, and to the extent Buyer is purchasing such products, the provisions of those warranty statement(s) are incorporated herein. With respect to Dadsco products sold hereunder that are not covered by a stand-alone warranty statement, Dadsco warrants the products to be free from defects in materials and workmanship during the period expiring one year after the date such products are shipped from Dadsco. If within such warranty period any such product shall be proved to Dadsco's satisfaction to fail to conform to the foregoing warranty, the affected part will be repaired or replaced free of charge, F.O.B. Dadsco's plant. Such repair or replacement (whichever Dadsco determines, in its sole discretion, to provide) shall be Dadsco's sole obligation and Buyer's exclusive remedy hereunder, and shall be conditioned upon Dadsco's receiving written notice of any alleged defect within 10 calendar days after its discovery and Buyer's return of such product(s) to Dadsco, F.O.B. Dadsco's plant. Installation of replacement parts shall be performed by Buyer at its risk and expense. The foregoing warranty shall not apply to any defects caused by (i) any accident, fire, natural disaster, power surge, negligence, alteration, abuse or misuse occurring during or after shipment of the products from Dadsco, or (ii) improper installation, storage, use, maintenance or repair, or other acts or omissions, by persons other than Dadsco or its employees, agents or contractors. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND Dadsco EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

Any description of the products (whether in writing or made orally by Dadsco's employees or agents), specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying the products and shall not be construed as an express warranty. Any suggestions by Dadsco's employees or agents regarding use, application or suitability of the products shall not be construed as an express warranty unless confirmed to be such in a writing signed by an officer of Dadsco.

13. **No Consequential Damages; Limitations; Indemnity.** Except as otherwise expressly agreed in writing by Dadsco, Dadsco's liability with respect to the products sold hereunder or defects therein shall be limited to the warranty and remedy provided in Section 10 above. Dadsco's liability with respect to alleged infringement shall be limited as provided in Section 12 above. With respect to any other breaches of its agreement with Buyer, Dadsco's liability shall in no event exceed the purchase price of the products or services that are the subject of the breach. **Dadsco SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR UNDER OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY Dadsco, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.** Without limiting the generality of the foregoing, Dadsco specifically disclaims any liability for property damages, penalties, special or punitive damages, damages for lost profits or revenues, down-time, cost of capital, cost of substitute products, or for any other types of economic loss, or for claims of Buyer's customers or any third party for any such damages. **Dadsco SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL, INDIRECT AND CONTINGENT DAMAGES WHATSOEVER,** regardless whether Dadsco has been advised of the possibility of such damages.

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Buyer shall indemnify Dadsco against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) that Dadsco may sustain or incur as a result of any claim by Buyer, its successors or assigns or its customers, or any third party, arising out of or in connection with the products and/or services sold hereunder or their use, except to the extent said claims are based on product or service defects proven to have been caused by Dadsco's negligence.

14. **Software.** Dadsco's products may incorporate computer software program(s) and/or firmware (collectively, "Software"). Dadsco grants to Buyer a non-exclusive, non-transferable license to use any such Software solely for the operation of the products, for so long as Buyer owns the products. The Software is licensed for use in the United States or Canada. Buyer may not export the Software to any other country without Dadsco's prior written consent. No Software is being sold to Buyer. Buyer acknowledges that the Software, all hardware and Software designs, and any related user manuals and documentation ("Documentation") constitute intellectual property of Dadsco, and that Dadsco has and shall retain all ownership of and title to the Software, designs and Documentation. Buyer shall not modify, publish, translate, decompile, disassemble, reverse-engineer, derive the source code for, or create derivative works based upon, the Software. Except as may be provided in any stand-alone license document furnished by Dadsco (any such document is incorporated herein), Dadsco makes no warranty with respect to the Software. Without limiting the foregoing, Dadsco does not warrant that the Software will meet Buyer's requirements or that the operation of the Software will be error-free or uninterrupted, and Dadsco disclaims any and all liability on account thereof. Dadsco **DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO THE SOFTWARE.** Except as may be authorized in any stand-alone license document furnished by Dadsco, Buyer shall not copy the Software, and Buyer shall not in any event remove or alter any trademark, copyright or other notices, symbols or legends from the Software.

15. **Information; Tooling.** Any sketches, models or samples submitted by Dadsco shall remain the property of Dadsco, and shall be treated as confidential information by Buyer unless Dadsco has in writing stated a contrary intent. Buyer shall make no use or disclosure of such sketches, models or samples, or any design or production techniques revealed thereby, without the express, prior written consent of Dadsco. All tooling and other items utilized by Dadsco in manufacturing the products are and shall remain owned solely by Dadsco.

16. **Brochures.** Any and all brochures, warnings or the like concerning the products supplied hereunder are supplied as an aid to Buyer and are not represented to be accurate, complete or sufficient. Buyer will indemnify and hold harmless Dadsco against all liabilities and expenses (including without limitation attorneys' fees) arising out of the use of the products by Buyer, its customers or any third party in any case where Buyer fails to make available adequate warnings and instructions concerning the proper and normal use of the products.

17. **Governing Provisions.** These terms and conditions shall be governed by and construed according to the laws of Mississippi and the U.S. (without reference to principles of conflicts of laws). There are no conditions affecting this agreement that are not expressed herein. **THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**