



# SUPPLYING — DEMAND LLC —

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## **SD-ST-001: Seller's Terms and Conditions of Quotation and Sale**

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**Supplying Demand LLC (Seller) quotations, sales, and/or acceptance of Buyer's Purchase Order (Order) for Seller's Goods and/or Services is expressly conditioned upon Buyer's assent to all the below Terms and Conditions. Buyer's acceptance of Seller's Goods is also deemed by the Parties to be Buyer's assent to such terms.**

**1. General**

1.1. All Terms and Conditions of Quotation and/or Sale are as follows, except as specifically noted on the face of the Seller's Acknowledgment, Sales Order, or Quotation.

**2. Delivery, Delays, and Performance**

2.1. No liability shall result from delay in performance or non-performance of this Agreement directly or indirectly caused by fire, explosion, accidents, flood, labor trouble or shortage, war, act of regulation of any government, inability to obtain suitable material, equipment, fuel, power, transportation, or Act of God; pandemic, endemic; or arising from contingencies, happenings, or causes beyond the control of the parties affected. Quantities of Goods so affected by any such circumstances may be eliminated from the Order without liability, but this Agreement shall otherwise remain unaffected.

**3. F.O.B./Ex Works Point**

3.1. All sales are made for U.S. buyers F.O.B. (and for foreign buyers, EX WORKS, per Incoterms 2023) at Seller's facility in New Hampshire, U.S.A. Seller's liability ceases as to delivery and risk of loss ceases upon making delivery of the Goods purchased hereunder to carrier at said shipping point in good condition; the carrier acting as Buyer's agent.

**4. Assignment**

4.1. The Buyer shall not assign its Order or any interest therein or any rights thereunder without the prior written consent of Seller.

**5. Taxes**

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5.1. Buyer shall reimburse the Seller for all taxes, excises, or other charges which the Seller may be required to pay to any government (national, state, or local) upon the sale, production, or transportation of the Goods sold hereunder, and for international operations (export sales). Additionally, all taxes, licenses, duties, and governmental exactions by whatever name known which may be levied or assessed on, or account of the Goods sold hereunder, or their documents.

**6. Payments**

6.1. Payments shall be made to Seller in strict accordance with the agreed-upon payment terms. Each shipment shall be considered a separate and independent transaction. If performance by Seller or shipments are delayed by the Buyer, payments shall become due on the date when the Seller is prepared to make shipment and such payments shall be made based on the purchase price and the percentage of completion. Seller reserves the right to ship its Goods and make collection by sight draft with a Bill of Lading attached. For any Buyer's Purchase Order requiring a down payment or any other type of pre-payment, the lead time for the order will not begin until the payment is received in full by Supplying Demand LLC.

**7. Price**

7.1. Prices and terms are not subject to verbal changes or other agreements unless approved in writing by the Seller. Prices are based on costs and conditions existing on the date of quotation and are subject to change by the Seller before final acceptance. Orders received by the Seller must accurately reflect the appropriate written quotation. Orders received by Seller with pricing, goods, inspections, and/or services not on the quotation will be rejected and sent back to Buyer for revision or cancellation. Prices do not include export or special packaging, compliance testing, or inspection charges. Buyer shall have no right to access Seller's cost or pricing data or other books of records.

**8. Non-Waiver-Conflicting Terms and Conditions**

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8.1. Any failure at any time of Buyer or Seller to enforce any provision hereof shall not constitute a waiver of such provision, nor prejudice the right of Buyer or Seller to enforce such provisions at any subsequent time. Insofar as any terms and conditions of the Buyer's Order conflict with the Seller's terms and conditions contained herein, the latter shall govern, irrespective of whether the Buyer accepts the Seller's terms and conditions by written acknowledgement, by implication, or acceptance and payment of Goods ordered hereunder. Terms and conditions proposed by Buyer that are inconsistent with those stated herein are waived by Buyer.

**9. Proprietary Rights**

9.1. Any of Seller's data and its Goods furnished or acquired by Buyer providing confidential or proprietary information concerning Seller's trade secrets, such as, but not limited to, any formula, design, engineering drawings, device, or compilation of information, including Seller's manufacturing methods or processes, treatment and chemical composition of materials, and tooling shall be kept confidential by Buyer, and not disclosed to third parties without Seller's express written permission. Buyer shall not use such data, in whole or in part, or the Goods, to copy, redesign, reverse engineer, replicate, or manufacture (or enable manufacture by itself or any third party) the Goods, products similar thereto, or products derived therefrom without Seller's expressed written permission. The price for the Goods does not include any such data and information.

**10. Patent Data**

10.1. Seller warrants that the use or sale of its Goods will not infringe the claims of any United States patent governing the Goods themselves for a period of twelve months after the Goods are delivered to Buyer. Seller does not warrant against patent infringement by reason of the use of its Goods in combination with others or in the operation of any process. Buyer assumes liability for patent and copyright infringement when goods are made to Buyer's specifications. Buyer shall indemnify and hold Seller harmless from all damages and costs related to such infringement.

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10.2. All technical advice, specification data, recommendations, and services are rendered by the Seller free of charge and, while based on data believed to be reliable, they are intended for use by skilled persons at their own risk. Seller assumes no responsibility to Buyer for events resulting from or damages incurred from improper use. They are not to be taken as a license to operate under or intended to suggest infringement of any existing patent.

### **11. Disputes/Collection**

11.1. Should Seller initiate collection (in court or otherwise) against the Buyer by reason of Buyer's failure to make payment in accordance with Seller's payment terms or other disputed contract interpretation, then the prevailing Party in such action shall be paid all costs (including its reasonable attorney's fees) actually incurred in connection with such action, or any appeal therefrom, from the other party regardless of any otherwise applicable court schedule used in connection with the determination thereof. In any such action, the laws of the State of New Hampshire, U.S.A. shall apply, except for its internal conflict of laws provision. This contract excludes the application of the 1980 United Nations Convention for the International Sale of Goods. Any dispute between Buyer and Seller may be brought in any competent jurisdiction.

### **12. Acceptance**

12.1. Final acceptance or rejection of the Goods shall be made promptly as practical after the delivery to Buyer; however, unless earlier rejected, the Goods shall be deemed by the parties to be accepted within sixty (60) days after delivery to Buyer. Upon acceptance of each unit of Goods, Buyer waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. Any defect or non-conformance becoming apparent in the Goods after such acceptance shall be corrected under and subject to the conditions of the Article herein entitled Warranty.

### **13. Cancellation, Stop Work Orders**

13.1. Cancellations of an Order may be accepted with the specified written approval of the Seller and shall be subject to cancellation charges which will include all expenditures made and committed for the Order, with a reasonable allowance for prorated overhead expenses, profit, and cost for preparing, submitting, and negotiating Seller's termination claim.

### **14. Warranty**

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- 14.1. Seller warrants all Goods to be furnished under an Order to be free from defects due to faulty workmanship or material for the period of twelve months from the date of delivery to the Buyer.
- 14.2. Seller neither expressly nor impliedly warrants against defects in design, workmanship, and materials of parts or materials supplied by others and utilized by Seller in such Goods. Seller shall give the Buyer (insofar as it is assignable) the benefits of any express written warranties given to Seller by such manufacturer or other vendors. Seller shall have no obligation to process any warranty claim against such manufacturer and supplier for the benefit of the Buyer.
- 14.3. Seller neither expressly nor impliedly warrants, or makes any representation whatsoever, as to the service life of such Goods since conditions of usage and experienced service life are neither within the control of nor knowledge of Seller.
- 14.4. This warranty will apply only on the condition that:
- 14.5. Buyer delivers written notice of its claim under this clause to Seller within such warranty period, but not later than fifteen (15) days after discovery of the defect which is the basis for its claim.
  - 14.5.1. Buyer receives written return authorization from Seller to return the Goods. Buyer is required to then deliver such Goods to Seller at its plant, FOB or EX WORKS, as applicable, to New Hampshire, USA within thirty (30) days after such written return authorization.
  - 14.5.2. Seller determines (in its sole discretion) that such Goods are defective and have not been subject to accident, abuse, or misuse, and have been operated and maintained in accordance with the manufacturer's recommendations and specifications.
  - 14.5.3. The Goods have not been the subject of a replication (i.e., reverse engineering) program, either formal or informal, sponsored or supported by the U.S. Government or any other entity.

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- 14.6. The obligations and liabilities of Seller under this Warranty are expressly limited to the replacement or repair by Seller of such Goods and shall not include any removal, disassembly, failure analyzing fault isolation, inspection, retrofit, or reinstallation costs incident to such correction or replacement.
- 14.7. Buyer may affect warranty repairs of the Goods at its facility only with the Seller’s prior written approval. Seller will reimburse Buyer for such repair at labor rates to be mutually agreed upon, but not exceeding Seller’s own rates.
- 14.8. THE WARRANTY PROVIDED IN THIS ARTICLE 14, AND THE OBLIGATIONS AND LIABILITIES OF SELLER AND THE RIGHTS AND REMEDIES OF BUYER HEREUNDER, ARE EXCLUSIVE. SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL WARRANTIES AND LIABILITIES OF SELLER, AND ALL CLAIMS AND REMEDIES OF THE BUYER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY DEFECT IN ANY GOODS, INCLUDING WITHOUT LIMITATION, ANY (A) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, (C) RECOVERY BASED UPON TORT, WHETHER OR NOT ARISING FROM SELLER’S NEGLIGENCE, AND (D) ANY RECOVERY BASED UPON DAMAGED PROPERTY, OR OTHERWISE BASED UPON LOSS OF USE OR PROFIT OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WARRANTY SHALL NOT BE EXTENDED, ALTERED, OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY SELLER AND BUYER. IN THE EVENT THAT ANY PROVISIONS HEREOF SHOULD FOR ANY REASON BE HELD INEFFECTIVE, THE REMAINDER OF THIS WARRANTY SHALL REMAIN IN FULL FORCE AND EFFECT.

**15. Extent of Seller’s Liability**

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15.1. The seller will not have any liability for liquidated damages, penalties, fees, or for collateral, indirect, incidental, consequential, or special damages, including loss of profits or loss of use. The aggregate total liability of any damages under an Order shall in no event exceed the contract price of one of the Goods giving rise to the claim (or claims) or liability, whether resulting from delays in delivery or performance, breach of warranty, claims of negligent manufacturing, patent or copyright infringement, or otherwise. Buyer agrees to indemnify and hold harmless Seller from all claims by third parties which extend beyond the foregoing limitations of Seller’s liability.

**16. Buyer Furnished Material**

16.1. When a quotation or Order specifies that material is to be furnished by the Buyer, ample allowances shall be made by the Buyer for reasonable spoilage or scrap of the material to facilitate efficient, timely production by Seller.

**17. Export and Import Compliance**

17.1. Buyer and Seller (hereafter also known collectively as “Parties”) shall comply with the laws and regulations of the United States of America (USA) relating to exports and foreign transactions, including but not limited to, the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Regulation (EAR) (15 C.F.R. Parts 730-774), and the Export Administration Act of 1979, as amended (50 U.S.C. 2401 et. Seq.). In particular, the Parties shall not disclose any technical data, nor deliver, export, re-export, or re-transfer any Goods out of the USA, or to foreign persons or entities within or outside the USA, without the proper written authorization and/or licenses from the U.S. Government. Seller can require Buyer to supply end-use information. Buyer hereby indemnifies and agrees to hold Seller harmless from any costs, damages, penalties, attorney’s fees, and similar expenses of Seller due to Buyer’s breach (or threatened breach) of such obligation. The Parties shall reasonably cooperate with each other in obtaining all required export and import licenses, approvals, and/or notifications pursuant to such U.S. laws.

**18. Packaging**

18.1. Good commercial packaging is included. Specialty packaging must be quoted and accurately reflected in the Order.

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