



Diversified Wire & Cable, Inc

**Diversified Wire & Cable, Inc.
TERMS AND CONDITIONS OF SALE**

**ALL SALES BY Diversified Wire & Cable, Inc. ARE SUBJECT TO THESE TERMS AND
CONDITIONS OF SALE POSTED ON:**

WWW.DW-C.COM

EFFECTIVE JUNE 1, 2019

***ALL SALES OF GOODS OR SERVICES ARE SUBJECT TO THESE
TERMS AND CONDITIONS OF SALE***

1. **Acceptance and Acknowledgement of Terms and Conditions of Sale.** These Terms and Conditions of Sale apply to all sales of products, parts, supplies, materials or other personal property (“Goods”) and to all furnishing of labor or services including design or assembly Services (“Services”) from Diversified Wire & Cable, Inc. (“Seller”) to Buyer. Buyer agrees that these Terms and Conditions are incorporated by reference in and apply to every sale, purchase, request for proposal or quotation, specification, quotation, purchase order, invoice, release, requisition, work order, shipping instruction, shipping receipt or communication between Seller and Buyer, whether expressed verbally, in written form, digitally or electronically. All sales of Goods and Services from Seller to Buyer are subject to these Terms and Conditions of Sale.

2. **Notice to Buyer of Updates on WWW.DW-C.COM.** Seller will update or modify these Terms and Conditions from time to time on Seller's website, www.dw-c.com, and Buyer agrees to be bound by such updates and modifications, with or without actual notice. Any inconsistent terms in Buyer's communications, purchase orders or confirmations are expressly rejected and will not be binding on Seller. Any delivery of Goods or Services by Seller to Buyer shall constitute an acceptance by Buyer of these Terms and Conditions of Sale.

3. **Terms, Interest and Collection Costs:** The total purchase price is due and payable to Seller in cash on delivery, without setoff or other deductions or charges. To the extent permitted by applicable law, in the event Buyer elects to pay all or any portion of the total purchase price by credit card, Seller shall charge Buyer, and Buyer

shall pay Seller, an additional amount equal to the transaction or processing fee incurred by Seller in connection with such credit card transaction. The current fee structure is (i) 4% of the cost of the sale (including freight and taxes) will be charged to customers paying with American Express; and (ii) 3% of the cost of the sale (including freight and taxes) will be charged to customers paying with Visa, MasterCard, or Discover. Seller reserves the right to modify which types of credit cards are accepted, including the right to cease acceptance of all credit card payments, and to modify the fee structure from time to time, with or without notice. Seller may grant credit terms, net 30 days of Seller's invoice, but only in a writing signed by Seller and Buyer following Buyer's tender of a completed credit application. All sums not paid in cash on delivery shall be subject to interest or a late charge at the rate of 1.5% per month from the date payment is due. Where the applicable state law prescribes a maximum legal interest rate or late charge which is less than 1.5% per month, then Buyer shall pay interest at the maximum amount allowed by law. If it is necessary to place invoices relating to this purchase order in the hands of an attorney for collection, Buyer shall pay Seller its reasonable attorney's fees and costs incurred in the course of collecting payment.

4. **Taxes:** Taxes and fees of any nature are Buyer's responsibility and are not included in the quoted prices unless specifically agreed or quoted in writing by Seller. Without limiting the foregoing sentence and notwithstanding anything in the order or these Terms and Conditions to the contrary, Buyer acknowledges and agrees that: (i) the amount of any applicable customs duties or tariff(s) fluctuates frequently and is not known to Seller until Seller's receipt of an invoice from Seller's third party vendors/suppliers; (ii) all customs duties or tariffs paid by or imposed upon Seller in fulfilling an order for Buyer shall be Buyer's responsibility; and (iii) the amount of such customs duties or tariffs shall be billed to Buyer, due and payable to Seller on the terms set forth in Section 3 of these Terms and Conditions. Applicable state sales tax will be billed to Buyer unless Seller is supplied with appropriate tax exemption certificates prior to Seller's issuance of an invoice to Buyer.

5. **Freight:** Except as otherwise provided herein, Seller shall not be responsible for freight, transportation, incurrence, shipping, storage, handling, demurrage or similar charges. If such charges are by the terms of sale included in the price, any increase in rates becoming effective after the date hereof shall be for the account of the Buyer.

6. **Licenses and Permits:** Except as otherwise provided herein, all import permits and licenses and the payment of all United States import duties and customs fees shall be the sole responsibility of Buyer. Buyer agrees to be bound by any and all manufacturer's license agreements affecting software and firmware.

7. **Delayed Shipment:** The quoted time of delivery to a carrier is approximate and shall be extended for such time as may be reasonably necessary if Seller is prevented from making delivery at the quoted time by reason of any labor dispute, embargo, war,

damage to the plant of Seller or any supplier of Seller, inability to obtain labor materials, acts of God, or any other cause whatsoever beyond Seller's reasonable control.

8. **Cancellation for Delays In Shipment:** Buyer may not in any event cancel this order for any delays in delivery without giving at least 15 days prior written notice of intention to do so, and in no event after Goods have left point of shipment. Notwithstanding anything herein to the contrary, Buyer may not cancel orders for "final sale" or "noncancelable" items.

9. **Limited Warranty and Disclaimer of Implied Warranties:** SELLER MAKES, NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS SAME. NO EMPLOYEE OR AGENT OF THE SELLER IS AUTHORIZED TO OFFER ANY WARRANTY OR GUARANTY BEYOND THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT. SELLER ONLY WARRANTIES TO BUYER THAT THE GOODS, AT THE TIME OF SHIPMENT, ARE COMMERCIALY FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP AND ARE MATERIALLY IN ACCORD WITH THE SPECIFICATIONS SPECIFICALLY AGREED TO IN WRITING BY THE PARTIES HERETO. THE LIMITED EXPRESS WARRANTY SET FORTH HEREIN SHALL BE INEFFECTIVE AND SHALL NOT APPLY TO ANY GOODS SOLD BY SELLER TO BUYER THAT HAVE BEEN SUBJECT TO ALTERATION OR REPAIR, MISUSE, ABUSE, NEGLIGENCE, ACCIDENT, DAMAGE OR IMPROPER HANDLING, STORAGE, INSTALLATION OR MAINTENANCE.

10. **Extension of Manufacturer's Warranty:** On all Goods manufactured by parties other than Seller, the Seller will extend the same warranty it receives from such manufacturer to Buyer. This extension shall be limited to the warranty provided by the original manufacturer and shall not extend beyond the terms and conditions of the warranty issued by the manufacturer. The length of the warranty period will be the length established by the manufacturer of the Goods. At Seller's request, Buyer shall proceed exclusively and directly against the manufacturer.

11. **Waiver of Consequential Damages and Exclusive Remedy For Defective Goods or Services:** In no event shall Seller be liable for lost profits, lost revenue, consequential, incidental, exemplary, punitive or special damages arising out of or connected with the sales contract or the manufacture, sale, delivery or use of the Goods or Services. THE LIABILITY OF SELLER, IF ANY, AND ITS AGENTS AND EMPLOYEES, FOR ANY CLAIMS, COSTS, DAMAGES, LOSSES AND EXPENSES FOR WHICH THEY ARE OR MAY BE LEGALLY LIABLE, WHETHER ARISING IN NEGLIGENCE, TORT, CONTRACT, OR OTHERWISE, SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT OF THE GOODS, COMPLETION OF THE SERVICES, OR REFUND OF THE PURCHASE PRICE PAID FOR THE GOODS OR SERVICES, AS DETERMINED IN SELLER'S SOLE DISCRETION. Seller shall not be liable for any failure

to perform its obligations under the sales contract resulting directly or indirectly from or contributed by acts of God, acts of Buyer, acts of civil or military authorities, fires, strikes or other labor disputes, accidents, floods, epidemics, war, riot, delays in transportation, lack or inability to obtain raw materials, components, labor, fuel or supplies, or other circumstances beyond Seller's reasonable control.

12. **Inspection and Claims:** Buyer shall have 15 days from the date of delivery to inspect the Goods for defects and nonconformance and to notify Seller, in writing, of any defects, nonconformance, or rejection of the Goods. Claims for shipping damage, errors, or shortages must also be made in writing to Seller no more than 3 days after receipt of shipment. After these periods, Buyer will be deemed to have irrevocably accepted the Goods, if not previously accepted. After acceptance, Buyer shall have no right to reject the Goods for any reason or revoke acceptance. Claims for damage due to shipping must be made by Buyer to the freight carrier. Any portion of an order which is not filled and shipped as a result of a lack of inventory or for any other reason beyond the control of Seller, will nevertheless be retained as an order and delivered as soon as possible unless Seller notifies Buyer that the Goods cannot be delivered at a later date. In such event, Seller shall not incur any liability to Buyer as a result of its failure to deliver Goods.

13. **Defects and Nonconforming Deliveries:** If any portion of the Goods delivered to Buyer are defective, nonconforming or are otherwise not in accordance with contract specifications, then Seller shall have the right in its discretion either to repair or replace such defective Goods or to refund the portion of the purchase price applicable thereto. Buyer shall not return any Goods to Seller without Seller's prior written consent in a Material Return Authorization (MRA). Seller shall not be liable for the cost of returning Goods to Seller, processing, lost profits, lost revenue, injury to good will or any other special or consequential damages arising from or related to defective or nonconforming Goods. All returns approved by Seller must reference the original invoice number and the reason for return.

14. **Return of Conforming Goods.** No conforming Goods shall be returned to Seller without Seller's written consent in a Material Return Authorization. Buyer must contact Seller for such consent before returning any Goods. Non-warranty returns of Goods that are unused and are in resalable condition will be subject to Seller's return policies in effect at the time, including applicable restocking charges, transportation charges and other conditions of return.

15. **Inspection or Testing:** If an inspection or testing prior to delivery of the Goods has been agreed upon, the inspection or testing shall be made at Seller's warehouse or other source of supply before shipment of the Goods, and Buyer shall approve or reject the Goods promptly, and in any event before shipment. No claims will be entertained thereafter. In all other cases, Buyer shall give written notice to Seller of

any claim within 15 days of Buyer's receipt of the Goods, and Seller shall hereupon be afforded a reasonable opportunity to inspect the Goods.

16. **Invoice Disputes.** All invoice disputes must be submitted to Seller in writing within 30 days following the date of any such invoice. Thereafter, absent written notice prior to the expiration of 30 days from the invoice date, Buyer waives any and all rights it may have to dispute the validity, existence or amount of such invoice.

17. **Limitations on Causes of Action:** Any cause of action Buyer may have with respect to the purchase of any Goods or Services from Seller must be commenced within one year after Seller's delivery of the Goods or performance of the Services.

18. **Normal Variations:** Seller shall not be liable for normal variations in tolerance, dimensions, weights and quantity. Weights, sizes and quantities as determined at Seller's mill or other source of supply shall be conclusive.

19. **Technical Support:** Unless specifically provided on the quotation or invoice, this Agreement does not include any technical support or services of Seller in connection with the installation, testing, evaluation, or operation of the Goods.

20. **Delivery in Installments:** Unless otherwise expressly stated, Seller shall have the right to make delivery of the Goods in installments. All installments shall be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to pay for any installment when due shall excuse Seller from making further delivery. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining installments.

21. **Extension of Credit:** If by the terms of sale, credit is extended to Buyer, Seller reserves the right to revoke such credit if Buyer fails to pay for any Goods or Services previously delivered when due or if in the judgment of Seller there has been a material adverse change in Buyer's financial condition. Thereupon, Seller shall have the right to demand payment before further shipment of Goods or performance of further Services.

22. **Modification or Waiver:** This contract may not be modified or terminated orally. No claimed modification, termination or waiver of any of its provisions shall be valid unless in a writing signed by Seller's duly authorized representative or posted on Seller's website. No waiver by Seller of any of these Terms shall be deemed to constitute a waiver of any other Terms or a waiver of the same or any other provision with regard to portions of this transaction or future transactions. No waiver by course of conduct, custom, or usage can occur.

23. **Identification of Goods and Risk of Loss:** Identification of Goods under Section 2.501 of the Uniform Commercial Code shall occur at the moment this proposal

is signed by the parties or as soon thereafter as the Goods are identifiable and the risk of loss shall pass upon identification. Title to the Goods shall pass upon receipt of the Goods by Buyer.

24. **Buyer Grant of Security Interest to Seller:** Buyer hereby gives Seller a security interest in the Goods sold under this order to secure any portion of the purchase price not paid at the time of delivery. At the time of delivery of the Goods, or at Seller's request, Buyer shall execute a separate Security Agreement in such form as is required by Seller. Buyer authorizes Seller to file a UCC Financing Statement to perfect Seller's security interest in the Goods.

25. **Risk of Loss in the Event of Breach:** Breach of these Terms and Conditions shall have no effect upon the provisions controlling the risk of loss of the Goods contained herein.

26. **Seller Excused if Goods Destroyed:** If the Goods covered by this order are destroyed prior to the time the risk of loss passes to the Buyer, Seller shall be excused from performing its obligation under this order and the contract shall be voided. This provision shall apply whether or not the Goods are destroyed through the negligence of the Seller.

27. **Seller's Right to Assurance:** Whenever the Seller in good faith has reason to question the Buyer's intent or ability to perform, Seller may demand that Buyer give a written assurance of its intent and ability to perform. If a demand is made and no assurance is given within five days, Seller may treat this failure as an anticipatory repudiation of this order.

28. **Buyer's Representation of Solvency:** Buyer represents that it is not insolvent as that term is defined in Section 1.201(23) of the Uniform Commercial Code. If the Buyer becomes insolvent before delivery of the Goods, Buyer shall notify Seller. A failure to notify Seller shall be construed as a reaffirmation of Buyer's solvency at the time of delivery.

29. **Quotation Expiration** Written quotations from Seller are valid for a period of 30 days unless otherwise noted by Seller. Seller will have the right to withdraw any quote that has not been accepted by Buyer within the 30-day time period. Every order for Goods or Services is a special order, which must be submitted in writing by Buyer and must contain complete specifications, drawings or other relevant information.

30. **Cancellation of Orders for Goods** . Buyer cannot cancel orders for Goods except upon written notice to Seller no less than 15 days prior to the stated delivery date for the Goods. In no event may Buyer cancel an order after the Goods have left the point of shipment by Seller, or have been specifically manufactured by Seller. Seller may otherwise agree to the cancellation of an order for Goods as proposed by Buyer, in

Seller's sole discretion. Notwithstanding anything herein to the contrary, Buyer may not cancel orders for "final sale" or "noncancelable" items.

31. **Cancellation of Orders for Services.** Buyer may cancel orders for Services at any time upon written notice to Seller. In the event of Buyer's cancellation of an order for Services, Buyer shall compensate Seller for any Services performed through the date of cancellation in the amount of (a) any advance payment made by Buyer to Seller, (b) a prorated portion of the fees due for the work performed by Seller in performing the Services through the date of cancellation, or (c) hourly fees for work performed by Seller or Seller's agents as of the date of cancellation, whichever amount is greatest. Buyer shall pay Seller all expenses, fees, and other charges as Seller may have incurred through and up to, the date of cancellation, including, without limitation, the reimbursement of Seller for any charges it may have incurred for material costs or staffing expenses.

32. **Governing Law and Jurisdiction:** The Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. Each party hereto hereby irrevocably submits to the jurisdiction of the courts of the State of Michigan in Oakland County and the United States District Court for the Eastern District of Michigan for the purposes of any proceeding arising out of or related to the Agreement, or the subject matter hereof or thereof, brought by any other party. Provided, however, Seller has the option to file collection actions where Buyer is located. Buyer hereby waives and agrees not to assert by way of motion as a defense or otherwise in any such proceeding, any claim (i) that it is not subject to the jurisdiction of the above-named courts, (ii) that the proceeding is brought in an inconvenient forum, (iii) that it is immune from any legal process with respect to itself or its property, (iv) that the venue of the proceeding is improper or (v) that the Agreement or the subject matter hereof or thereof may not be enforced in or by such courts.

33. **Waiver of Jury Trial:** BUYER WAIVES ITS RIGHTS, IF ANY, TO A JURY TRIAL TO THE EXTENT PERMITTED BY APPLICABLE LAW WITH RESPECT TO ANY ACTION, CLAIM, SUIT, OR PROCEEDING ARISING OUT OF THESE TERMS AND CONDITIONS OF SALE TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW OR COURT RULE,

For Use with Contracts to be Signed by Buyer

Diversified Wire & Cable, Inc. "Seller"

By: _____

Its: _____

Dated: _____

_____, "Buyer"

By: _____
Its: _____
Dated: _____

Diversified Wire & Cable, Inc
Terms and Conditions of Sale
Effective June 1, 2020