

**DIBA INDUSTRIES, INC.**  
**PURCHASE TERMS AND CONDITIONS**

**General:** Seller agrees to provide the goods (the “Goods”) in accordance with the applicable purchase order, scope of work and with these Terms and Conditions. Upon acceptance of a purchase order or upon shipment of Goods, Seller shall be bound by the provisions of this Agreement, including all provisions set forth on the face of any applicable purchase order, whether Seller acknowledges or otherwise signs this Agreement or the purchase order, unless Seller objects to such terms in writing prior to shipping Goods. This Agreement may not be added to, modified, superseded or otherwise altered, except by writing signed by an authorized Diba Industries, Inc. (“Diba”) representative. Facsimile signatures shall be deemed to be originals.

**Delivery:** Delivery of Goods shall be made pursuant to the applicable purchase order. Time is of the essence in delivering products and services on the dates set forth under this contract. Supplier will at its own expense ship by express or air shipment or by the most expeditious means if the delivery schedule is endangered for any reason other than fault by Diba Industries. In the event Seller fails to deliver the Goods within the time specified, Diba may, at its option, decline to accept the Goods and terminate the Agreement. Acceptance of Goods shall not be deemed a waiver of Diba’s right to hold Seller liable for any loss or damage resulting from failure to ship within agreed upon terms. Diba shall be reimbursed in full for all merchandise returned. No additional charge will be allowed for packing, crating, freight, express or cartage unless specified on the purchase order. Diba’s purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.

**Risk of Loss:** Title to the Goods shipped under a purchase order shall pass to Diba in accordance with the shipping terms specified on the face of the purchase order. In the event shipping instructions are not provided, the applicable shipping terms shall be FOB, Destination, Freight Collect, using Diba specified carriers. Notwithstanding anything in the foregoing to the contrary, title to and risk of loss of Goods shall pass to Diba only upon receipt of the same by Diba, and any rightful rejection or revocation of any Goods by Diba shall immediately shift the risk of loss of such Goods, wherever located, to Seller.

**Substitutions; Variations in Quantity; Cancellation:** Orders accepted by Seller may not be cancelled or changed prior to shipment, except with written consent. Unless otherwise agreed in writing, Seller shall not substitute components, materials, finished goods or accessories for those ordered.

**Warranty and Disclaimers:** Seller warrants that product supplied hereunder shall, at the time of delivery to Diba, conform to the published specifications of Seller and to be free from defects in material and workmanship under normal use and service.

**Inspection:** Diba shall have a reasonable time after receipt of Goods and before payment to inspect them for conformity hereto, and Goods received prior to inspection shall not be deemed accepted until Diba has run an adequate test to determine whether the Goods conform to the specifications hereof. Use of a portion of the Goods for the purpose of testing shall not constitute an acceptance of the Goods. If Goods tendered do not wholly conform to the provisions hereof, Diba shall have the right to reject such Goods. Nonconforming Goods will be returned to Seller freight collect and risk of loss will pass to Seller upon Diba’s delivery to the common carrier.

**Payment:** Terms of payment, unless otherwise agreed in writing or on the purchase order, are net 30 days from invoice date, in U.S. dollars. Diba may set off any amount owing at any time from Seller to Diba or any of its affiliates against any amount payable at any time by Diba in connection herewith.

**Taxes:** All sales, use, excise, gross receipts, and other similar taxes are the responsibility of the Seller, and the Seller shall promptly pay or reimburse Purchaser for payment of any such taxes on demand. Unless expressly indicated otherwise on the face of the purchase order, the purchase order price shall be deemed to include such taxes.

**Confidentiality:** Seller will acquire knowledge of Diba confidential information in connection with its performance hereunder and agrees to keep such information in confidence during and following termination or expiration of this Agreement. Seller agrees to limit its internal distribution of Diba confidential information to Seller's Assistants who have a need to know, and further agrees not to use such information except in the course of performing hereunder and will not use such information for its own benefit or for the benefit of any third party.

**Termination by Buyer:** Diba shall have the right for and at its convenience to terminate an order in whole or in part at any time, and from time to time, by written notice effective upon receipt by Seller, even though Seller is not in breach of any obligation hereunder. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Diba's instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to the purchase order. In the event of such termination, Seller shall be paid an amount in settlement to be mutually agreed upon by the parties which shall cover Seller's reasonable costs of performance incurred prior to termination in connection with the items for which the order is terminated plus a reasonable profit based upon such costs. However, said payment shall not exceed the price specified on the order for such items. In no event shall the Seller be entitled to recover incidental or consequential damages. Seller shall advise Diba, in writing, of Seller's claim, if any, for termination costs within ten (10) days after receipt of the notice of termination.

**Force Majeure:** Diba shall not be liable for any failure to perform including failure to take delivery of the Goods as provided caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action and accident. In the event Diba is so excused, either party may terminate the Agreement and Diba shall at its expense and risk, return any Goods received to the place of shipment.

**Severability:** If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**No Waiver:** Diba's failure at any time to insist upon strict performance of any provision of this agreement or to take advantage of any right hereunder shall not be construed as a waiver of such performance or right.

**No Assignment:** This Contract is not transferable or assignable by either party except with the written consent of the other party having first been obtained.

**No Liens:** Seller warrants that the product sold herein is free and clear of any and all liens.

**Entire Agreement:** This Agreement is the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Seller.