



The #1 Name in Safety & Industrial Supplies



DiVal Safety Equipment, Inc. • 1721 Niagara Street • Buffalo, New York 14207 • Tol 800.343.1354 • Tel 716.874.9060

DiVal is devoted to the safety of your employees and committed to the bottom line of our partners.

DiVal Safety Equipment, Inc. – Terms and Conditions of Sale

1. Agreement and Acceptance. These terms and conditions of sale (“Terms”) govern the sale of the products and/or services specified on the front of this document, in any quote or invoice, on any purchase order, or on any order form (collectively “Deliverables”) by DiVal Safety Equipment, Inc. (“DiVal”) to the buyer named thereon (“Buyer”). Buyer and DiVal may be referred to individually as a “Party” and collectively as the “Parties.” DIVAL’S DELIVERY OF DELIVERABLES TO BUYER AND BUYER’S ACCEPTANCE OF THE DELIVERY OF DELIVERABLES SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS BY THE PARTIES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE SALE OF DELIVERABLES BY DIVAL TO BUYER SHALL NOT BE GOVERNED BY ANY TERMS OR CONDITIONS SET FORTH ON BUYER’S ORDER OR ANY OTHER AGREEMENT. THESE TERMS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES REGARDING THE SUBJECT MATTER CONTAINED HEREIN, AND SUPERSEDE ANY AND ALL PRIOR OR CONTEMPORANEOUS WRITTEN OR ORAL COMMUNICATIONS, UNDERSTANDINGS, AND AGREEMENTS OF THE PARTIES. NO ADDITIONS OR MODIFICATIONS OF THESE TERMS SHALL BE EFFECTIVE UNLESS MADE IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BOTH PARTIES.

2. Orders; Changes to Orders. Buyer may, from time to time, submit to DiVal an order for Deliverables (each, an “Order”). Each Order shall, at a minimum, specify the quantity of each type of Deliverables, the proposed delivery date(s), the proposed delivery site(s), and shipping instructions. DiVal may, within seven (7) business days after receiving an Order, accept or reject the Order by providing proper notice to Buyer. If an Order has not been accepted by DiVal after seven (7) business days, the Order shall be deemed rejected. Buyer acknowledges and agrees that upon acceptance of an Order, Buyer shall be bound to purchase the quantity of Deliverables specified in the Order and shall be required to take delivery of all such Deliverables within the time period specified in the Order. DIVAL’S ACCEPTANCE OF AN ORDER IS EXPRESSLY CONDITIONED ON THE BUYER’S ACCEPTANCE OF THESE TERMS. At any time, DiVal may make changes to the design or composition of Deliverables that, in its judgment, do not materially change the form, fit, function or quality of the Deliverables. Changes in design or composition made at the request of Buyer shall be at Buyer’s risk and responsibility, at the expense of Buyer, and shall be paid for upon receipt of DiVal’s invoice. DiVal will not incur any liability for reasonable delay in shipment of Deliverables attributable to Buyer’s change to the design or composition of Deliverables.

3. Shipping; Title; Risk of Loss. DiVal shall use commercially reasonable efforts to deliver all Deliverables within the time period specified in the Order. Deliverables shall be delivered F.O.B. DiVal’s facility unless otherwise agreed to by DiVal. DiVal will select the shipping carrier unless otherwise agreed to by DiVal. Title to Deliverables and risk of loss shall transfer to Buyer immediately upon delivery to the shipping carrier. All shipping costs shall be borne by Buyer unless specified otherwise. DiVal shall not be liable for shipment delays, or any loss or damage to Deliverables while in transit, and all claims therefore shall be made immediately by Buyer to the shipping carrier.

4. Acceptance. Deliverables shall be deemed accepted by Buyer unless Buyer provides DiVal with proper notice of its rejection of Deliverables within seven (7) business days after delivery to Buyer. All returns are subject to DiVal’s Merchandise Return Policy.

5. Prices and Taxes. The price of Deliverables shall be DiVal’s price in effect for Deliverables at the time the Order is accepted. DiVal specifically rejects any price of Deliverables specified by Buyer on any Order or on any other order form submitted by Buyer to DiVal. Buyer shall pay all federal, state, and local taxes or other charges imposed by law in connection with the sale and/or shipment of Deliverables.

6. Payment Terms; Retained Security Interest. DiVal shall provide an invoice to Buyer on or before shipment of Deliverables. All invoices are due and payable within the agreed upon terms of the invoice. Any amounts owed by Buyer and not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month from the original due date until paid in full or, if lesser, the highest rate permitted under applicable law. Buyer shall be liable for and shall reimburse DiVal for DiVal’s actual costs and expenses incurred in connection with the collection of any amounts owed to DiVal or enforcement of DiVal’s rights, including, without limitation, attorney’s fees, court costs, and disbursements. Buyer hereby grants DiVal a security interest in the Deliverables to secure the payment of

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same until the entire purchase price has been paid in full. Without restricting the generality of the foregoing, Buyer also hereby grants to DiVal a purchase money security interest in the Deliverables (including, but not limited to, a purchase money security interest in inventory) together with all replacements thereof, and all accessories and parts related thereto (collectively the "Inventory"). A security interest and a purchase money security interest are likewise granted in the proceeds of sale of the Inventory. Buyer hereby authorizes DiVal to do whatever DiVal may deem necessary to preserve, to perfect or continue its aforesaid security interests including, without limitation, filing financing and related statements under the Uniform Commercial Code.

7. **Default; Indemnification.** If Buyer shall fail to pay all or any part of the sums due or to become due to DiVal, fail to comply with these Terms, fail to keep or perform any of Buyer's obligations, become insolvent or become a party to any insolvency proceeding or receivership, or become a judgment debtor, at DiVal's option, any sum due or to become due to DiVal may become immediately due and payable in full. Buyer shall indemnify and hold harmless DiVal from and against each and every loss incurred or suffered by DiVal which are or are claimed to be in any manner, directly or indirectly, in whole or in part, caused, contributed to or occasioned by reason of Buyer's, its employees', agents' or representatives' default or breach of any representation, warranty, obligation or covenant of Buyer contained in any Order, or Buyer's performance or failure to perform hereunder, or its negligence, whether active or passive, and, without limiting Buyer's liability, the foregoing shall include injury to or death of any person or persons and damage to or loss of property. Concurrently, or in the alternative, DiVal may, at its option, in addition and without prejudice to its other lawful rights and remedies and without any liability to the Buyer, (i) defer further shipments of Deliverables until each default has been corrected to DiVal's satisfaction, or (ii) elect not to make any further shipments of Deliverables, and/or (iii) exercise any other remedies available under applicable law. Waiver of any default shall not be a waiver of any other subsequent default. No course of conduct, nor any delay of DiVal in exercising any rights, nor DiVal's acceptance of a payment from Buyer with knowledge of an existing default or breach, shall waive any rights of DiVal or be deemed a modification of any Order. DiVal shall not be liable to Buyer for any loss, liability, damage, claim, or expense (including attorneys' fees and expenses) (collectively "Losses") arising out of or resulting from (a) any act or omission of any third party which manufactured Deliverables ("Third Party Manufacturers") and/or (b) any Deliverables produced by Third Party Manufacturers, except, in either case, to the extent such Losses are proven to result directly from the gross negligence or willful misconduct of DiVal.

8. **Warranties.** The Deliverables may be covered by a separate written warranty provided by the manufacturer of the Deliverables, a copy of which, if applicable, will be provided by DiVal to Buyer. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SUCH A SEPARATE WRITTEN WARRANTY, ALL DELIVERABLES ARE PURCHASED AND SOLD "AS IS" AND "WITH ALL FAULTS," AND DIVAL MAKES NO REPRESENTATIONS OR WARRANTIES RELATED TO DELIVERABLES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND THAT THE WARRANTIES IN THIS SECTION 8 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO DELIVERABLES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

9. **Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THESE TERMS TO THE CONTRARY, DIVAL'S SOLE LIABILITY ON ANY CLAIM, WHETHER IN TORT, CONTRACT, WARRANTY, OR OTHER LEGAL OR EQUITABLE THEORY, ARISING OUT OF OR RELATED TO DIVAL'S BREACH OF THESE TERMS OR THE SALE OR USE OF DELIVERABLES, SHALL BE LIMITED TO REIMBURSEMENT OF BUYER'S ACTUAL COST OF DELIVERABLES GIVING RISE TO THE CLAIM. FURTHER, IN NO EVENT SHALL DIVAL BE LIABLE FOR INDEMNIFICATION OF THE BUYER OR ANY THIRD PARTY OR FOR ANY OTHER DAMAGES WHATSOEVER, WHETHER DIRECT OR INDIRECT, ARISING OUT OF OR RELATED TO DIVAL'S BREACH OF THESE TERMS OR THE SALE OR USE OF DELIVERABLES. NOTWITHSTANDING ANYTHING IN THESE TERMS TO THE CONTRARY, IN NO EVENT SHALL DIVAL BE LIABLE TO THE BUYER OR ANY OTHER PERSON FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR LOSSES, OR THE LIKE (INCLUDING, WITHOUT LIMITATION, LOSS OF USE OF DELIVERABLES, LOSS OF PROFITS, OR LOSS OF GOODWILL), EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER DIVAL HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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10. Support Services. All services provided in connection with Deliverables, if any, will be provided by the manufacturer under a separate Services Agreement between Buyer and manufacturer.

11. Training. DiVal may provide training for certain Deliverables, the provision, form, duration, and content of which will be at DiVal's sole discretion.

12. Software License. Certain Deliverables may require the use of software. Except as otherwise agreed to in writing by DiVal, a license to such software is granted directly by the manufacturer of the Deliverables.

13. Compliance with Laws; Recalls. Buyer shall comply with all laws, rules and regulations, and government orders and ordinances that are in any way related to Deliverables. If Buyer is directed by DiVal or any governmental authority to assist in any suspension of supply or recall of Deliverables for any reason, Buyer must cooperate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall.

14. Force Majeure. Failure by DiVal to perform any of its obligations under these Terms as a result of a cause beyond such DiVal's reasonable control (each, a "Force Majeure Event") shall not be deemed a breach of these Terms. DiVal shall not be subject to any damages for failing to perform as a result of a Force Majeure Event.

15. Confidentiality. All manufacturing processes, designs, formulas, data, or other technical information of DiVal, the manufacturer, or any of their affiliates relating to Deliverables or services related to Deliverables shall remain DiVal's, manufacturer's, or their affiliates' confidential information and property, and Buyer shall not have any rights thereto, nor any rights to disclose such items or information to any third party. Nothing in these Terms or an Order shall be construed (by implication, estoppel or otherwise) as granting, or as an undertaking by DiVal to subsequently grant, to Buyer any license, right, title or interest in or to any present or future patent, patent application, know-how, copyright, trademark, trade secret or other proprietary right.

16. Miscellaneous. DiVal and Buyer are acting hereunder as independent contractors. These Terms and Orders are not assignable by Buyer. Any assignment made in contravention of this Section 16 shall be void in all respects. The waiver by either Party of any of its rights or remedies or of any breaches by the other Party under these Terms in a particular instance shall not be considered as a waiver of the same or different rights, remedies, or breaches in subsequent instances. No amendment or waiver of any provision of these Terms shall be effective unless made in writing and signed by both Parties. These Terms shall be interpreted and enforced exclusively under the laws of the State of New York, exclusive of any conflict of laws principles, and the Parties shall exercise any right or remedy thereunder exclusively in, and hereby consent to the exclusive jurisdiction of, the courts in Erie County, New York. If any provision in these Terms is found to be invalid, illegal, or unenforceable, then the remainder of these Terms shall not be affected, and shall remain in full force and effect.

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