

## DCE, INC.

### GENERAL TERMS AND CONDITIONS

These GENERAL TERMS AND CONDITIONS (these “**General Terms and Conditions**”) are made and entered into as of \_\_\_\_\_ (the “**Effective Date**”), by and between DCE, INC., a North Carolina corporation (“**DCE**”) and \_\_\_\_\_, a \_\_\_\_\_ [corporation/limited liability company] (“**Purchaser**”).

#### **STATEMENT OF PURPOSE**

Purchaser wishes to purchase from DCE certain Goods (as defined below), and DCE desires to sell the same to Purchaser, all on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the aforesaid Statement of Purpose, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

- Purchase Orders.** As and when Purchaser may require, Purchaser shall submit to DCE purchase orders (in a form approved in advance by DCE, which will be incorporated herein by reference) (each a “**Purchase Order**”) for the purchase of certain equipment, materials, articles, items or other products (“**Goods**”) by Purchaser. Specifications with respect to the Goods may include modifications to the same made by DCE, as specified in the Purchase Orders. All such Purchase Orders shall be subject to and governed by the terms and conditions of these General Terms and Conditions, as set forth herein. To the extent that the terms or provisions of a Purchase Order are ambiguous or are contrary to those of these General Terms and Conditions, the latter shall control in all respects.

A Purchase Order will be effective only when executed by both DCE and Purchaser. Each Purchase Order shall provide: (a) a description of the Goods to be purchased and any modifications to be made by DCE prior to delivery, (b) the schedule for delivery of the applicable Goods and (c) the purchase price, associated costs and payment terms.

- Scope.** Except as otherwise provided in a Purchase Order, the sale of any Goods by DCE to Purchaser during the term hereof will be governed by these General Terms and Conditions, which together with any applicable Purchase Order, and any exhibits attached hereto or thereto, form the agreement between Purchaser and DCE (the “**Purchase Agreement**”). Any term to the contrary, or any additional terms or conditions of purchase or sale, stated in any document provided to DCE by Purchaser with regard to the Goods (other than a Purchase Order accepted by DCE) shall be invalid and have no effect.
- Payment.** Purchaser shall pay to DCE the amount set forth in the applicable Purchase Order in the manner, and in accordance with the terms, provided in this Purchase Agreement. Any and all taxes imposed by federal, state or other governmental authorities on the sale, purchase, shipment, storage, use or consumption of the Goods

shall be paid, or reimbursed, to DCE by Purchaser, in addition to the amount listed (but whether or not listed) on the applicable Purchase Order.

4. **Failure to Pay.** If Purchaser fails to pay the amount set forth in a Purchase Order within the time specified by the same, DCE may, in its sole discretion, without prejudice to any other remedy available to DCE, at law or in equity, do any one or more of the following:
- (i) Postpone shipments;
  - (ii) Alter payment terms;
  - (iii) Terminate shipments; or
  - (iv) Charge interest on all overdue amounts at the rate of 1.5% per month, compounded monthly.

Further, Purchaser shall pay all of DCE's costs and expenses (including reasonable attorneys' fees) incurred directly or indirectly by DCE in the collection of any amount not paid when due under a Purchase Agreement. Purchaser may not hold back, delay or set-off any amounts owed to DCE in satisfaction of any claims asserted by Purchaser against DCE.

5. **Delivery.** Unless otherwise specified in a Purchase Order, (i) delivery terms shall be Ex Works (Incoterms 2010) DCE's facility in Mooresville, North Carolina and (ii) the Goods may be delivered in parts, or all in one shipment, as determined by DCE. DCE will use reasonable diligence to meet the scheduled shipment dates provided in the Purchase Order, which are estimates and not guarantees of when the Goods actually will be shipped. Purchaser's acceptance of delivery shall constitute a waiver of any claim relating to delay.
6. **Title.** Upon delivery of the Goods to Purchaser, the Goods shall become the property of Purchaser, subject to a reservation of a security interest herein granted to DCE. Any losses or damage thereto on and following delivery shall be borne by Purchaser. Purchaser shall obtain appropriate risk insurance for fire, theft and extended coverage, including vandalism, and at the request of DCE, such policy shall name DCE as an additional insured and otherwise recognize DCE's interest.
7. **Nonconformity.** Within ten (10) days after delivery of the Goods to Purchaser in accordance with this Purchase Agreement, Purchaser must give detailed written notice to DCE of any claim based upon the condition, quantity or grade of the Goods sold or of any claimed nonconformity with the Purchase Order. The failure of Purchaser to comply with this requirement shall constitute irrevocable acceptance by Purchaser of the Goods delivered and shall bind Purchaser to pay DCE the full price for such Goods.
8. **Security for Payment.** Purchaser hereby grants to DCE a purchase money security interest in the Goods to secure the payment of the purchase price of the Goods and all other amounts due to DCE from Purchaser at the time of delivery of the Goods and thereafter incurred or owed by Purchaser. Purchaser agrees to execute and deliver to

DCE such supplemental security agreements, financing statements and other documents as DCE may reasonably require to perfect, preserve and enforce such security interest. Purchaser shall not remove any Goods from the premises of Purchaser or permit any Goods to become subject to a lien in favor of any third party, until full performance of all obligations of Purchaser to DCE under, and with respect to, this Purchase Agreement, as applicable to those Goods.

9. **Warranty.** ANY AND ALL WARRANTIES WITH RESPECT TO THE GOODS ARE PROVIDED SOLELY BY THE MANUFACTURER OF THE APPLICABLE GOODS, THE TERMS AND CONDITIONS OF WHICH HAVE BEEN SUPPLIED TO PURCHASER BY DCE. DCE MAKES NO DIRECT WARRANTY WITH RESPECT TO THE GOODS, ALL WARRANTY OBLIGATIONS BEING THOSE OF THE MANUFACTURER; PROVIDED, THAT DCE WARRANTS THAT ANY MODIFICATION TO GOODS MADE BY DCE PURSUANT TO A PURCHASE ORDER WILL SUBSTANTIALLY CONFORM IN ALL MATERIAL RESPECTS TO THE SPECIFICATIONS DESCRIBED IN THE PURCHASE ORDER FOR THREE (3) MONTHS FOLLOWING THE DELIVERY OF SUCH GOODS TO PURCHASER (THE “**LIMITED WARRANTY**”). THE LIMITED WARRANTY DOES NOT COVER ANY GOODS THAT ARE NOT USED FOR THEIR INTENDED PURPOSE, OR IN ACCORDANCE WITH ACCOMPANYING DOCUMENTATION OR THAT HAVE BEEN ALTERED IN ANY WAY BY PURCHASER, ITS EMPLOYEES OR AGENTS OR BY ANY THIRD PARTY.
  
10. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE GOODS ARE PROVIDED “AS-IS” AND DCE DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT THERETO, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE. PURCHASER ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS PURCHASE AGREEMENT IN RELIANCE UPON ANY STATEMENT OR REPRESENTATION EXCEPT THOSE SPECIFICALLY SET FORTH HEREIN.
  
11. **Term.** This Purchase Agreement shall commence on the Effective Date and shall continue for the longer of (a) a period of one (1) year or (b) until the completion of any and all Purchase Orders accepted by DCE, unless earlier terminated in accordance with the terms hereof (the “**Initial Term**”).

Following the Initial Term, this Purchase Agreement shall continue in full force and effect until either party gives the other party written notice of termination of this Purchase Agreement at least ninety (90) days prior to the effective date of such termination, as specified in such notice.

12. **Termination on Default.** Notwithstanding the foregoing, DCE may terminate and cancel this Purchase Agreement, and suspend any further performance by DCE hereunder, if (i) any Goods have been delivered but not paid for by Purchaser in

accordance with the terms hereof (all amounts owed by Purchaser to DCE thereby becoming immediately due and payable, despite any other agreement to the contrary), (ii) any proceeding in bankruptcy, insolvency, receivership or liquidation are taken against Purchaser; (iii) Purchaser makes an assignment for the benefit of creditors or commits an act of bankruptcy or insolvency; (iv) Purchaser materially breaches any term of this Purchase Agreement or (v) DCE in good faith believes that the ability of Purchaser to pay or perform any provision of this Purchase Agreement is impaired.

**13. Remedies.**

- (a) DCE's Remedies. If Purchaser materially breaches this Purchase Agreement, DCE shall be entitled, in addition to any other remedy available hereunder, or at law or in equity, to recover all costs and expenses incurred by DCE in connection with enforcement of DCE's rights and interests hereunder including, without limitation, DCE's reasonable attorneys' fees, costs of labor applied to this Purchase Agreement, overhead, costs of any materials applied to or ordered for this Purchase Agreement and any charges imposed on DCE by any suppliers or subcontractors relating thereto. In the event of any breach by Purchaser of this Purchase Agreement, DCE shall have the right to repossess the Goods, with or without legal process.
- (b) Purchaser's Remedies. If DCE materially breaches this Purchase Agreement with respect to a particular Purchase Order, Purchaser's sole and exclusive remedy shall be to terminate this Purchase Agreement by written notification to DCE, and to receive a refund of the purchase price for that portion of the Purchase Order with respect to which there has been a material breach, if previously paid. Notwithstanding such termination, however, Purchaser shall immediately pay DCE any amounts owed to DCE with respect to all accepted Purchase Orders and other portions thereof, if not previously paid, and shall be entitled to receive such Goods from DCE in accordance with this Purchase Agreement.

**14. Confidentiality; Nondisclosure.**

- (a) Confidential Information. All proprietary or confidential information of a party (the "**Disclosing Party**"), whether written or oral, furnished to the other party (the "**Receiving Party**") in connection with this Purchase Agreement shall constitute "**Confidential Information**" for purposes hereof. Confidential Information includes, without limitation, any information that involves, or is related to, customer information/lists; financial and other business information; business plans or processes; inventions; marketing materials; models; designs; specifications; manuals; software or other computer related materials; proposals; charts; drawings; reports; third party confidential information; and any other confidential and proprietary information that is identified at the time of disclosure as confidential. Confidential Information shall also include the fact that the Purchase Agreement has been entered into by the parties and any of the terms, conditions or other facts with respect to the Purchase Agreement, including the status thereof. Confidential Information shall not include information that (i) is or

becomes part of the public domain, other than as a result of an impermissible disclosure by a Receiving Party, (ii) was in a Receiving Party's possession prior to it being furnished to a Receiving Party; (other than information subject to an obligation of confidentiality to, or for the benefit of, the Disclosing Party) or (iii) becomes available to a Receiving Party from a source other than the Disclosing Party (other than information from a source known by a Receiving Party to be subject to an obligation of confidentiality to, or for the benefit of, the Disclosing Party).

- (b) Limitation on Use of Confidential Information. The Receiving Party agrees, on its behalf and on behalf of its officers, employees, agents, contractors and other personnel ("**Personnel**"), that Confidential Information of the Disclosing Party shall (i) not be used by a Receiving Party or its Personnel for any purpose other than in connection with the Purchase Agreement, (ii) not be used by a Receiving Party or its Personnel to produce any product, offer any service or enter into any agreements other than through a transaction with the Disclosing Party, of any nature whatsoever, based in whole or in part on the Confidential Information and (iii) at all times, except with the specific prior written consent of the Disclosing Party, or as expressly otherwise permitted by the terms hereof, be kept confidential and not be disclosed by a Receiving Party or its Personnel to any other individual or entity. The Receiving Party agrees to diligently monitor each such Personnel and, upon request by the Disclosing Party, promptly confirm to the Disclosing Party those Personnel having had access to such Confidential Information.
- (c) Legal Requests for Confidential Information. If the Receiving Party or any of its Personnel become legally compelled to disclose any Confidential Information (whether by oral question, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), the Receiving Party shall promptly notify the Disclosing Party prior to such disclosure so that the Disclosing Party may seek an appropriate protective remedy and/or waive some of its rights under this Purchase Agreement. In the event that the Disclosing Party is unable to obtain such a protective remedy, the Receiving Party (i) will furnish only that portion of the Confidential Information that, in the opinion of its counsel, a Receiving Party is required to disclose and (ii) will exercise reasonable efforts to assist the Disclosing Party in obtaining assurances that confidential treatment will be accorded the Confidential Information disclosed.
- (d) Ownership of Confidential Information. Confidential Information shall remain the exclusive property of the Disclosing Party. The Receiving Party agrees that Confidential Information disclosed hereunder is being received subject to the Disclosing Party's ownership rights in such Confidential Information and to all relevant intellectual and/or proprietary rights of the Disclosing Party, including those under relevant laws governing patents, trademarks, copyrights, trade secrets and unfair competition.

(e) Remedies; No Waiver. Each party agrees that monetary damages would not be a sufficient remedy for any breach of this Section by the other party, and that such party shall be entitled to specific performance and/or injunctive relief as a remedy for any such breach. Such remedy shall not be deemed the exclusive remedy for any such breach of this Section but shall be in addition to all other remedies available at law or in equity.

15. Force Majeure. DCE shall not be liable for damages of any kind, caused by delays in shipment, delivery or any other nonperformance of this Purchase Agreement, directly or indirectly resulting from, or contributed to by, any circumstances beyond DCE's control, including without limitation acts of God, riots, wars or national emergencies, acts of terrorism, labor disputes of every kind however caused, embargoes, nondelivery by suppliers, inability to obtain supplies through normal sources, delays of carriers or postal authorities, or governmental restrictions, prohibitions or diversions. The occurrence of any such circumstance shall operate to extend DCE's time of performance hereunder for a period not less than the period of such delay. In the event of any such circumstance, DCE may allocate its deliveries among its customers as it may decide in its sole discretion.

16. Limitation on Damages. Any action by Purchaser under or relating to this Purchase Agreement or the Goods sold must be commenced within twelve (12) months after such cause of action has accrued. DCE's contractual liability for failure to fulfill its obligations hereunder or any other liability under or in connection with the Goods shall be limited to the amount of the purchase price of the applicable Goods.

DCE SHALL NOT BE LIABLE IN TORT, INCLUDING LIABILITY IN NEGLIGENCE OR STRICT LIABILITY, AND SHALL HAVE NO LIABILITY AT ALL FOR INJURY TO PERSONS OR PROPERTY, WITH RESPECT TO THE GOODS OR DCE'S PERFORMANCE HEREUNDER. EVEN IF DCE HAS BEEN ADVISED OF THE POSSIBILITY OF THE FOLLOWING, DCE SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR REVENUES RELATING TO THE SALE OR SERVICE OF THE GOODS OR OTHERWISE, LOSSES DUE TO DELAY IN SHIPMENT, FAILURE TO REALIZE EXPECTED SAVINGS, ANY CLAIM AGAINST PURCHASER BY A THIRD PARTY OR ANY OTHER COMMERCIAL OR ECONOMIC LOSSES OF ANY KIND.

17. Indemnification. Purchaser shall hold harmless and indemnify DCE and its subsidiaries, affiliates, directors, officers, employees and agents ("**DCE Parties**") from and against, and pay, any liability, obligation, loss, damage, fee, fine, penalty, action, claim, judgment, settlement, proceeding, cost, expense or disbursement of any kind or nature whatsoever (including without limitation all reasonable attorneys' fees) (hereinafter collectively referred to as "**Liabilities**") that may be imposed on, incurred by or asserted against any DCE Party by a third party arising out of the transactions contemplated by this Purchase Agreement. Notwithstanding the foregoing, Purchaser shall not be liable to any DCE Party for any portion of such Liabilities that resulted from DCE's fraud, bad faith or willful misconduct.

18. **Governing Law.** This Purchase Agreement shall be governed by the laws of the State of North Carolina, without reference to its conflict of laws provisions.
19. **Miscellaneous.** The terms and conditions stated herein constitute a contract between Purchaser and DCE and constitute, along with accepted Purchase Orders, the complete and exclusive statement of the terms and conditions of sale of the Goods. There are no other promises, conditions, understandings, representations or warranties of any kind with respect to the subject matter hereof. This Purchase Agreement may be amended, modified or supplemented only by a writing signed by DCE and Purchaser. The failure of DCE to enforce any right hereunder will not be construed as a waiver of its right to performance in the future. Any provision of this Purchase Agreement which is, or is deemed to be, unenforceable in any jurisdiction shall be severable from this Purchase Agreement in that jurisdiction without in any way invalidating the remaining provisions of this Purchase Agreement, and that unenforceability shall not make that provision unenforceable in any other jurisdiction. The rights that accrue to DCE by virtue of this Purchase Agreement shall inure to the benefit of its successors and assigns. All requests, instructions and notices from one party to the other must be in writing and may be given via certified mail or facsimile transmission to the address of the parties shown on the face of the Purchase Order. Neither the Uniform Law on the International Sale of Goods, the Uniform Law on the Formation of Contracts for the International Sale of Goods nor the Convention on Contracts for the International Sale of Goods applies to this Purchase Agreement.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties, on the day and year first written above, have caused this Purchase Agreement to be duly executed.

**“DCE”**

DCE, INC.

By: \_\_\_\_\_

Name:

Title:

**“Purchaser”**

[INSERT NAME]

By: \_\_\_\_\_

Name:

Title: