



## TERMS AND CONDITIONS OF SALE

**Controlling Terms and Conditions** - All purchases and sales of products (the "Products") and services (the "Services") between Buyer and Dillon Supply Company, Inc. (or any affiliate thereof, "DSC") shall be made pursuant to and on the price terms indicated in DSC's quote and/or order acknowledgment and shall be governed by these Terms and Conditions. These Terms and Conditions and DSC's quote and/or order acknowledgment shall constitute the entire agreement between the parties pertaining to the subject matter hereof, and shall supersede all prior or contemporaneous oral or written negotiations, agreements, understanding or representations with respect thereto. These Terms and Conditions shall supersede any conflicting provision contained in any purchase order of Buyer. Unless otherwise agreed in writing, nothing contained in any purchase order of Buyer shall in any way modify or add any provision to these Terms and Conditions. These Terms and Conditions may not be amended or any provision hereof waived in any way except by an instrument in writing signed by both parties. If DSC's quote is deemed an offer, Buyer agrees that its acceptance of such offer is expressly limited to provisions contained solely in these Terms and Conditions. Buyer's issuance of a purchase order shall solely be deemed to be an acceptance of these Terms and Conditions. If DSC's order acknowledgment is deemed to be an acceptance of Buyer's purchase order, DSC's acceptance of such purchase order is expressly made conditional on Buyer's assent to any additional and different terms contained herein, and failure by Buyer to specifically object to these Terms and Conditions in writing within twenty (20) days of receipt shall constitute an acceptance of these Terms and Conditions.

**Prices** - Prices displayed in all printed catalogs or printed promotional materials are effective as of the date of the publication and are subject to change without notification. Pricing as displayed on the DSC web site is the current price in effect. Prices shown are for product only and do not contain any shipping, handling, sales tax, or other applicable charges. Once an order is accepted by DSC, any cancellation of the order requires DSC authorization and may be subject to cancellation charges and restocking fees.

**Sales Tax** - Buyer shall pay, where applicable, any and all such charges, assessments, levies, taxes, value added taxes or other governmental charges of any nature whatsoever now or hereafter imposed by or under the authority of any law, rule or regulation with respect to the Products and Services sold or with respect to the ownership, manufacture, importation, transportation, installation, purchase, sale or use of the Products or Services related thereto, except for income taxes owed by the Seller. For clarity, all prices are exclusive of any of the items set forth in the immediately preceding sentence. In the event Customer provides to DSC a valid sales tax exemption certificate prior to order acceptance, DSC may elect not to collect tax with respect to such order; when placing an order, a customer shall indicate any and all items that are tax exempt.

**Shipping** - All products (in stock and special ordered) are shipped F.O.B. Shipping Point from a DSC warehouse, or drop shipped from one of DSC's vendors, with all costs imposed by the carrier related to the shipment paid by DSC. And charged to customer on customer's invoice. Shipping charges indicated in customer's quote and/or order acknowledgment are approximate. Final charges are applied at time of shipment. Receipts for freight charges will not be furnished. Handling Charges and other surcharges may be applied. Title and risk of loss pass to customer upon tender of shipment to the carrier. DSC will choose the appropriate carrier for each shipment, unless otherwise specified by Buyer. DSC does not accept liability for any loss arising from delay in delivery. If the product is damaged in transit, customer's only recourse is to file a claim with the carrier. If Buyer chooses freight collect, shipments will be F.O.B. Shipping Point using carrier designated by Buyer. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to DSC a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code in effect in the State of North Carolina.

**Payment Terms** - Payment in advance is required unless otherwise agreed by Seller. For customers with established DSC credit, payment terms are net 30 days from date of invoice. For purposes of payment, each order and shipment shall be considered a separate contract and Buyer shall not be entitled to set-off against payments owing any amounts owing or alleged to be owing from Seller to Buyer for adjustments, set-offs or claims hereunder. DSC accepts cash, checks to lock box, money orders, Visa, American Express, MasterCard, and ACH payments. No cash discounts are allowed for early payment.

All purchases paid for by credit card will be charged a 3% transaction fee, excluding any purchases made at [www.DillonSupply.com](http://www.DillonSupply.com). Debit/check card transactions are excluded from this fee. Delivery drivers are not authorized to collect cash or checks upon delivery of product to the Buyer. All COD accounts must be paid via a credit card before shipment from Seller to Buyer.

If Buyer's credit standing or financial condition becomes unsatisfactory to Seller in its sole discretion, or if Buyer breaches this agreement, Seller reserves the right to (a) require advance payments and /or C.O.D. terms, or (b) withhold shipments of Products or provision of Services in whole or in part, (c) recall goods in transit.

Buyer agrees to pay (a) interest on the unpaid portion of any past due invoices at the rate of one and one half (1.5%) percent per month, or the legal maximum allowed interest rate, if less, and (b) all reasonable and necessary costs and expenses incurred by Seller in collecting any amounts due and owing, including but not limited to reasonable attorney's fees and all litigation expenses.

**Product Returns/Cancellations** - Buyer shall inspect and examine all Products upon delivery thereof, and such Products shall be deemed accepted by Buyer. If product(s) are damaged or defective, Seller can submit a written notice specifically describing the purported defect or nonconformity of product(s) within seventy-two (72) hours of delivery. Failure to provide written notice within such time shall be deemed acceptance and waiver of any rights to return the product(s). Contact your DSC representative for instructions related to product returns. Returns require a DSC return material authorization ("RMA"). Proof of purchase will be required. Returns will be subject to a 25% of the purchase price restocking fee less taxes and S&H fees. Product(s) requested for RMA must be returned to the Buyer within thirty (30) days of delivery to complete return. Seller shall have the right to cancel or terminate any unfulfilled order or any part thereof in the event Buyer (a) threatens or files a petition for voluntary bankruptcy, (b) is threatened with or has filed against it a petition for involuntary bankruptcy, (c) has appointed on its behalf a receiver or trustee, (d) executes an assignment for the benefits of creditors, or (e) otherwise breaches these Terms and Conditions. For standard, stock items, if an order does not ship complete within two (2) weeks from the original delivery date, Buyer may cancel the order by written notice to Seller. Order cancellations outside of the two (2) week window require a 25% restocking fee less taxes and S&H fees. If the Buyer decides to cancel the order for any other reason, a 25% restocking fee less taxes and S&H fees will apply. Buyer is responsible in full for all process metal items once processing has begun. If the restocking fee remains due and owing more than thirty (30) days after Seller's notification of the same, Buyer agrees to pay, all costs and expenses of collection, including but not limited to, reasonable attorney's fees. If requested, Seller will inform Buyer whether an order contains standard, stock items only. All other items, considered Special or Non-Stock, are not refundable.

**Indemnification** - The customer agrees to defend, indemnify and hold harmless DSC and its affiliates from and against any and all claims or costs, including attorney's fee arising from or related to the customer's use of any products contained herein.

**Disclaimer and Limitation of Liability** - All products contained herein have been manufactured by an unrelated third party and as such are sold by DSC "as is". **DSC DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS OF USE FOR A PARTICULAR PURPOSE. DSC SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCURRED BY THE CUSTOMER OR A THIRD PARTY ARISING OUT OF THE PURCHASE OF THESE PRODUCTS. DSC'S LIABILITY IN ALL SUCH CIRCUMSTANCES SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE AFFECTED PRODUCTS IRRESPECTIVE OF THE NATURE OF THE CLAIM.**

**Force Majeure.** DSC shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, hurricanes, ice storms, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, or declared state of emergency, provided that, if the event in question continues for a continuous period in excess of sixty (60) days, Buyer shall be entitled to give notice in writing to Seller to terminate the affected purchase order.

**Governing Law and Venue.** All matters arising out of or relating to this purchase order are governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule (whether of North Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of North Carolina. Any legal suit, action or proceeding arising out of or relating to the sale of Products or any purchase order shall be instituted in the federal courts of the United States of America or the courts of North Carolina in each case located in Wake County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**Additional Notice** - Brass and Bronze piping products, purchased from DSC, unless specifically identified as being lead free, are not compliant with the 2014 Federal Safe Drinking Water Act. The use of these products in a potable water application constitutes a violation of U. S. A. Public Law 111-380, effective 1-4-2014.

**Manufacturer's Warranty** - Please contact your DSC representative with any questions relating to manufacturers' product warranties.