



## Standard Terms & Conditions of Sale

### Contact Details:

Deks North America, Inc.  
2700 West Roosevelt Road  
Chicago, IL, USA 60608  
Phone: +1 312-219-2110  
Fax: +1 773-823-7141  
Email: [deksusa@deks.com.au](mailto:deksusa@deks.com.au)

These Standard Terms & Conditions of Sale (hereinafter, these "**Terms**") apply, without exception, to the purchase and sale of products and/or related services ("**Products**") offered by Deks North America, Inc. and its affiliates (hereinafter, "**us**," "**we**," or "**Deks**"), through or on Deks' websites, [www.deksus.com](http://www.deksus.com) (the "**Site**"), via telephone, or otherwise. These Terms, along with Deks' Terms of Use located at [www.deksus.com/terms-of-use](http://www.deksus.com/terms-of-use), which is incorporated herein by reference ("**TOU**"), Deks' Privacy Policy located at [www.deksus.com/privacy-policy](http://www.deksus.com/privacy-policy) which is incorporated herein by reference ("**Privacy Policy**"), the Deks Order Confirmation delivered to you upon submission of your purchase order ("**Order Confirmation**"), and any other additional guidelines, terms, and agreements of Deks that are applicable to such Products ("**Other Agreements**"), constitute, the entire integrated agreement (collectively, the "**Agreement**") between the purchaser of such Products ("**you**" or "**Customer**," which, together with Deks, shall be referred to herein as the "**parties**") concerning such Products and supersede and replace all prior communications, understandings and/or agreements (whether written or oral) between the parties with respect thereto. Other documents, including any documents, forms, or other terms or conditions provided heretofore or hereafter by Customer to Deks, are not part of the Agreement. These Terms are hereby incorporated in any and all oral or written contracts, obligations, understandings, commitments, leases, licenses, purchase orders, bids or other agreements, arrangements and/or transactions between or among you and Deks, including, without limitation, in connection with any Products purchased by you as of or subsequent to the date hereof.

**YOU ACKNOWLEDGE AND AGREE THAT THESE TERMS SHALL BE REQUIRED TO CONSUMMATE THE SALE OF ANY PRODUCTS AND THAT NO OTHER INVOICE AND PURCHASER ORDER SHALL BE ACCEPTABLE OR EFFECTUATE THE SALE OF ANY PRODUCT HEREUNDER. ANY VARIATION FROM THESE TERMS CONTAINED IN YOUR ACCEPTANCE OF THE PURCHASED PRODUCTS OR ANY INVOICE OR PURCHASE ORDER PREPARED BY YOU ARE HEREBY REJECTED AND SHALL HAVE NO EFFECT AND NOT BE BINDING ON DEKS.**

**BY REGISTERING FOR AN ACCOUNT, CLICKING "I ACCEPT" (OR SIMILAR PHRASING), OR BY PURCHASING OR PLACING AN ORDER FOR OUR PRODUCTS, YOU ACCEPT AND AGREE TO BE BOUND AND ABIDE BY THE AGREEMENT. PLEASE READ THESE TERMS AS WELL AS THE TOU, PRIVACY POLICY, ORDER CONFIRMATION, AND OTHER AGREEMENTS CAREFULLY PRIOR TO PURCHASING ANY PRODUCTS OR SERVICES THAT ARE AVAILABLE ON THE SITE OR OTHERWISE.**

**YOU MAY NOT ORDER OR OBTAIN PRODUCTS FROM THE SITE, VIA TELEPHONE, OR OTHERWISE IF YOU (A) DO NOT AGREE TO THESE TERMS, THE TOU, PRIVACY POLICY, AND**



## Standard Terms & Conditions of Sale

**ANY APPLICABLE OTHER AGREEMENTS, (B) ARE NOT AT LEAST 18 YEARS OLD, OR (C) ARE PROHIBITED FROM ACCESSING OR USING THE SITE OR ANY CONTENTS, GOODS, OR SERVICES THEREIN BY APPLICABLE LAW.**

**YOU HEREBY REPRESENT THAT YOU (A) HAVE READ, UNDERSTOOD, AND ACCEPTED THE AGREEMENT, (B) WILL BE FINANCIALLY RESPONSIBLE FOR YOUR USE OF THE PRODUCTS, (C) ARE AT LEAST 18 YEARS OLD, AND (D) MAY OTHERWISE ENTER INTO AND FORM BINDING CONTRACTS UNDER APPLICABLE LAW. YOU AFFIRM THAT IF YOU PLACE AN ORDER ON BEHALF OF AN ORGANIZATION OR COMPANY, YOU HAVE THE LEGAL AUTHORITY TO BIND ANY SUCH ORGANIZATION OR COMPANY TO THE AGREEMENT.**

**IF YOU CHOOSE NOT TO ACCEPT THE AGREEMENT, DO NOT REGISTER FOR AN ACCOUNT, CLICK "I ACCEPT" (OR SIMILAR PHRASING), OR PURCHASE OR ORDER OUR PRODUCTS.**

### **PURCHASE TERMS AND CONDITIONS**

#### **Order Acceptance:**

You agree that your order is an offer to buy, under these Terms, all Products listed in your order. All orders must be accepted by Deks or we will not be obligated to sell such Products to you. Deks may choose not to accept orders at our sole discretion, even after we send you an Order Confirmation or other confirmation email, receipt, or statement with your order number and details of the Products you have ordered.

#### **Pricing:**

As consideration for the purchased Products and the limited warranty set forth herein, Customer agrees to pay Deks the purchase price set forth on the Order Confirmation together with all applicable sales taxes, use taxes, excise taxes, export duties and tariffs (collectively, the "**Taxes**"), and all freight, handling, or shipping charges ("**Freight**"). In the event that fabrication of the purchased Products has not commenced within ninety (90) days following the date on the Order Confirmation, for whatever reason, the price for the Products will be subject to re-pricing to reflect any increase in labor, materials, and/or other costs between such date and the date on which fabrication is completed. Customer agrees and acknowledges that all prices, discounts, and promotions posted on the Site are subject to change without prior notice to Customer. The price charged for any ordered Products will be the price in effect at the time the order is placed and will be set out in your Order Confirmation. Except as otherwise provided herein, price modifications shall not apply to orders placed prior to such changes. Unless expressly stated otherwise, prices for all Products are in the form of US Dollars. Posted prices do not include Taxes or charges for Freight. All such Taxes and charges will be added to your order total, and will be itemized in your shopping cart and in your Order Confirmation. To the extent permissible under law, you are responsible for any applicable Taxes, whether or not they are listed on your Order Confirmation. Deks strives to display accurate price information, however we may, on occasion, make inadvertent typographical errors, inaccuracies, or omissions related to pricing and availability. Deks reserves the right to correct any errors, inaccuracies, or omissions at any time and to cancel any orders arising from such occurrences. Unless expressly stated otherwise in writing, quoted prices are estimated strictly ex the Deks' premises and are fixed for a period of thirty (30) days from the date of the publication of the quotation as amended from time to time. Deks' minimum sale is \$25.00 per order.

### **Promotions:**

Deks may offer from time to time promotions on the Site that may affect pricing and that are subject to terms and conditions in addition to these Terms. If there is a conflict between the terms for a promotion and these Terms, the promotion terms will govern.

### **General Payment Terms:**

Terms of payment will be as set forth herein unless otherwise modified by us in our sole discretion. Deks will invoice you for Products supplied on an Order Confirmation and payments are to be made direct to Deks, strictly net, without any deduction or discount other than as stated in these Terms, the relevant Order Confirmation, or other written notice from Deks. Payment shall be made within thirty (30) days of the date of the Order Confirmation. Where there is more than one outstanding Order Confirmation, payments received by Deks will be applied to Products supplied to you in accordance with the date they are supplied, earliest first, as determined by Deks, in its sole discretion. Interest is payable on all overdue accounts calculated on a daily basis at the annual rate of 5% above the base interest rate determined by reference to the monthly average yield of 90-day Bank Accepted Bills as from the due date for payment until payment is received by Deks.

You represent and warrant that (a) the payment information you supply to us, if applicable, is true, correct, and complete, (b) you are duly authorized to use such payment information for the purchase, (c) charges incurred by you will be honored by your credit card company or bank, and (d) you will pay charges incurred by you at the posted prices, including Freight charges and all applicable Taxes, if any, regardless of the amount quoted at the time of your order. We may store and continue billing your payment method (e.g., credit card) even after it has expired, to avoid interruptions in your Products and to use to pay other Products you may buy. Deks shall have the absolute right to offset any amounts due to Deks from Customer against any amounts due to Customer from Deks.

### **Product Delivery:**

Unless otherwise agreed in writing by an authorized representative of Deks, Products will be delivered to Customer's premises Ex-Works. In all events, the following shall apply:

- A. All Freight and other delivery-related costs and expenses shall be the responsibility of Customer;
- B. All shipments will be made to Customer's premises Ex-Works, with title and risk of loss passing to the Customer upon the Products being delivered to the common carrier;
- C. In no event shall Deks assume any responsibility or be liable to Customer or Customer's customer for any loss, damage, cost, or expense caused by any delay or damage in shipment or delivery;
- D. Shipping and delivery dates are estimates only and cannot be guaranteed;
- E. Availability or delivery dates for the supply of Products are estimates only, but the Deks will use its reasonable efforts to adhere to any such estimates;
- F. If Deks is delayed by any circumstance or event then it may suspend or extend the delivery time for the whole or any part of the Products and will not be liable to Customer for any loss or damage arising from any such delay;
- G. Any special delivery instructions must be received by Deks in a timely manner to enable Deks to comply with such instructions and any failure by Deks to comply by reason of non-

- receipt of special delivery instructions will not entitle Customer to terminate any purchase order;
- H. Deks reserves the right to deliver the Products in whole or by instalments, as well as to deliver prior to the date for delivery and in such event Customer must not refuse to accept delivery of the Products;
  - I. Any failure on the part of Deks to deliver instalments within any specified time does not entitle Customer to terminate a purchaser order with regard to the balance remaining undelivered;
  - J. All claims for damage occurring during shipment shall be directed to the carrier and are not the responsibility of Deks; and
  - K. Delivery by Deks to the carrier shall constitute delivery to Customer.

### **Purchase Money Security Interest:**

Customer hereby grants to Deks a purchase money security interest in and first lien upon any and all Products delivered to Customer by Deks hereunder as security for the payment when due of any and all sums payable to Deks by Customer hereunder and hereby consents to Deks' filing of one or more UCC financing statements with respect to such collateral. Further, Customer agrees to take all such further action and to execute, deliver, and file or deliver all such further instruments or documents as Deks may reasonably request in order to perfect and preserve its first lien and security interest in the collateral. Customer acknowledges that these Terms constitute a security agreement. A security interest (including, where applicable, a purchase money security interest) is taken in all Products previously supplied by Company to Customer (if any) and all products that may be supplied in the future by Company to Customer, securing the performance by Customer of Customer's obligations under these Terms. Customer must ensure that no security interest is created, exists or subsists over the Products (including any replacement part or other item that is incorporated into any Product), in Customer's possession or control prior to the title to the Products passing to Customer other than a security interest arising under these Terms. Customer must assist Deks to complete the registration of any financing statement in respect of the Products, and will do all things and provide all information necessary to enable Company to perfect Deks' security interest in the Products and complete any financing change statement. The security interest attaches on the date of delivery of the Products and not at any later date.

### **Inspection and Claims:**

Promptly upon receipt of the Products, Customer shall inspect the Products for damages, shortages, or discrepancies. All claims for damage incurred during shipping and delivery shall be governed by the terms set forth in the Product Delivery section above. All claims for discrepancies or shortages must be made promptly, and in no event more than three (3) business days after receipt of the Products. Customer waives and forever relinquishes any claims based upon shortages or discrepancies not asserted in writing within such three (3) business day period.

### **Insurance:**

From and upon such time that title and risk passes to Customer, Customer must take out and maintain insurance with a reputable insurer covering damage to and destruction, loss and theft of the Products for not less than their purchase price. If requested by Deks, Customer must provide Deks with evidence that such insurance is in place.

### Defaults Affecting Products:

If (a) the Products are not paid for in accordance with these Terms or any other written agreement between Deks and Customer; (b) Deks receives notice of, or reasonably believes that a third party may attempt to levy execution against the Products; or (c) in the opinion of Deks, any other event occurs which is likely to adversely affect Customer's ability to pay for the Products (including but not limited to the appointment of a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator, trustee or similar person (each an "insolvency representative") to Customer's undertaking), then Deks may at any time thereafter, without notice to Customer and without prejudice to any other rights which it may have against Customer do any or all of the following:

- (i) Terminate any Order Confirmation relating to the Products without incurring any liability at law or in equity;
- (ii) Decline to deliver Products or any balance of Products due under an Order Confirmation;
- (iii) Stop the delivery of any Products in transit;
- (iv) Cease to perform any of its obligations owed to Customer;
- (v) Recover from Customer the contract price of all Products transported and for any expenses incurred by Deks in relation to the sale of Products, such as Freight, insurance, handling, storage; or
- (vi) With or without possession, sell the goods by public auction or private sale in any manner and apply the proceeds after deduction of expenses and enforcement in or towards reduction of all monies due and owing by Customer to Deks.

In any of the circumstances referred to above, Customer authorizes Deks by itself, its agents or representatives at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and at all necessary time(s), to remain in and on any premises where the Products are located in order to collect the Products, without being guilty of any manner of trespass until all the Products are collected and Customer indemnifies Deks for all expenses it incurs in exercising its rights under this clause.

### Order Cancellation:

Customer may cancel an order by providing written notice of cancellation to Deks prior to shipment of the Products. However, special order items may not be cancelled except as authorized in writing by an authorized representative of Deks. In the event Customer cancels an order, Customer nevertheless agrees to pay Deks for all costs and expenses incurred by Deks in connection with such order through the close of business on the day on which Deks receives the cancellation notice. All such costs and expenses shall be due and payable to Deks on demand and/or will be subject to Deks' absolute right of offset.

### Return of Products:

Except for any Products designated on the Site as non-returnable or non-refundable or other special orders (as determined in our discretion), we will accept a return of any applicable Products that are (1) defective, (2) shipped in error, or (3) ordered in error (all as further set forth below), for a credit or refund (as further set forth herein) of your purchase price less the original shipping and handling costs, provided such return is made within thirty (30) days of shipment, such Products are returned in their original condition, and subject to the terms and conditions contained herein. To return any Products, you must contact Customer Support at deksusa@deks.com.au or 855-252-2081 before shipping such Products to obtain a Returned Goods Authorization (RGA) number. No returns of any type will be accepted without contacting Customer Support and obtaining a RGA number. In Deks' sole discretion, certain Products may be returned for credit. All such Products shall be subject to factory inspection, and may be rejected if not found to be in their original condition. All returned Products must be shipped with Freight charges pre-paid by customer. Products that are obsolete, as determined in Deks' sole discretion, or that were specially ordered shall not be returnable. Customers wishing to return materials for credit shall pay Deks' restocking fee on returned merchandise.

### Return of Defective Products:

Defective or failed Products must be held at Customer's premises until authorization has been granted by Deks to return such Products. Products returned for warranty inspection must be returned with Freight pre-paid by Customer.

### Products Shipped in Error:

Customer must notify Deks promptly of any Products shipped in error in accordance with the Inspection and Claims section above. Conditioned upon timely notice in accordance therewith, Products found to be shipped in error shall be returned to Deks via the method of shipment or carrier as advised by Deks, and at Deks' expense. Customer will be reimbursed for cost of such Products, plus the actual Freight charges that were incurred by Customer due to a shipping error by Deks.

### Products Ordered in Error:

Products ordered in error (subject to Deks' agreement that such Products were ordered in error in its sole discretion) may be returned for credit, but only if such Products are returned promptly, are not obsolete, and are found to be in their original condition. All such Products must be returned Freight pre-paid, and Customer shall pay Deks' restocking fee. Special orders cannot be returned.

## **MODIFICATION AND AVAILABILITY OF PRODUCTS**

---

Deks may, at any time, delete, modify, or supplement any of the Products without prior notice. Deks reserves the right, for any reason, at its sole discretion, to terminate, change, suspend, or discontinue any aspect of the Products. Deks may also impose limits on certain features of our Products or restrict your access to all or part of any of the Products without notice or penalty.

## **LIMITED WARRANTY, LIABILITY, AND INDEMNIFICATION**

---

### **Limited Warranty:**



## Standard Terms & Conditions of Sale

THE LIMITED WARRANTY SET FORTH IN THIS SECTION (THIS "**LIMITED WARRANTY**") GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.

SUBJECT TO THE TERMS SET FORTH HEREIN, DEKS HEREBY WARRANTS THAT DURING THE WARRANTY PERIOD (DEFINED BELOW) THE PRODUCTS PURCHASED FROM DEKS ON THE SITE OR OTHERWISE WILL, IN NORMAL AND INTENDED USE AND SERVICE, BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP.

OUR RESPONSIBILITY FOR DEFECTIVE PRODUCTS IS LIMITED TO REPAIR OR REPLACEMENT AS SET FORTH IN THIS LIMITED WARRANTY. NEITHER ANY PERFORMANCE OR OTHER CONDUCT, NOR ANY ORAL OR WRITTEN INFORMATION, STATEMENT, OR ADVICE PROVIDED BY US OR ANY OF OUR SUPPLIERS, AGENTS, OR EMPLOYEES WILL CREATE A WARRANTY, OR IN ANY WAY INCREASE THE SCOPE OR DURATION OF THIS LIMITED WARRANTY.

### Who May Use This Limited Warranty?

This Limited Warranty extends only to Customer and the original end-user (if such original end-user is someone other than Customer). As such, this Limited Warranty does not extend to any subsequent or other owner, transferee, or beneficiary of the Products.

### What Does This Limited Warranty Cover?

During the Warranty Period, this Limited Warranty covers defects in materials and workmanship in Products purchased from Deks on the Site or otherwise.

### What Is The Period Of Coverage Under This Limited Warranty?

This Limited Warranty starts on the date set forth on the Order Confirmation to Customer for the warranted Products and lasts for twelve (12) months thereafter (the "**Warranty Period**").

### How Do You Obtain Warranty Service?

Customer or original end-user must provide notice of covered defects in writing to Deks during the Warranty Period and within thirty (30) calendar days following Customer's or original end-user's discovery of such defect (the "**Notice Period**").

### What Does This Limited Warranty Not Cover?

Notwithstanding anything herein to the contrary, this Limited Warranty does not cover any of the following, each of which are hereby expressly excluded therefrom:

- A. Defects that are not discovered during the Warranty Period;
- B. Defects that are not reported to Deks in writing within the Notice Period;
- C. Usual and customary deterioration or wear resulting from normal use, service, and exposure;
- D. Any Products that are transported outside of the United States;
- E. Any shortages or discrepancies, all of which shall be exclusively governed by the Inspection and Claims section of these Terms set forth above;

- F. Any claims for loss, damage, cost, or expense caused by any delay or damage in shipment or delivery damage, all of which shall be exclusively governed by the terms set forth in the Product Delivery section above;
- G. Shipping or other costs incurred to return the Products to Deks for warranty inspection;
- H. Damage to persons or property other than the Products, or for any incidental, consequential, or special damages.
- I. Any defect and/or any loss, damage, cost, or expense incurred by Customer, original end-user, or any third party to the extent the same arise out of, relate to or result, in whole or in part, from any one or more of the following:
  - (1) Theft, vandalism, accident, war, insurrection, fire or other casualty;
  - (2) Defects or damage caused by Customer, original end-user, or any third party;
  - (3) Exposure to corrosive, chemical, ash, smoke, fumes, or the like;
  - (4) Any Products that have been altered, modified, or repaired by Customer, original end-user, or any third party without Deks' prior written consent;
  - (5) Failure to perform any preventative maintenance;
  - (6) Storage;
  - (7) Combination or use of the Products with any products, materials, processes, systems, or other matter not provided or authorized in writing by Deks;
  - (8) External causes such as accidents, abuse, or other actions or events beyond our reasonable control; or
  - (9) Any misuse of the products, including any use of the Products not in conformity with product manuals or contrary to product warnings.

Resolution of Warranty Claims:

In the event Deks is notified of a warranty claim in conformity with the notice requirements set forth above, Deks shall, with the full cooperation of Customer and/or original end-user (which shall include, without limitation, return of the Products for warranty inspection if requested by Deks), immediately undertake an investigation of such claim. To the extent Deks determines, in its sole discretion, that the warranty claim is covered by this Limited Warranty, Deks will, as Customer and original end-user's sole and exclusive remedy and at Deks' option, either:

- A. Ship replacement products to Customer or original end-user; or
- B. Ship repaired product(s) to Customer or original end-user.

Deks shall not be responsible to Customer or original end-user for the cost of dismantling any defective Products or installing replacement Products, all of which shall be and for all purposes remain the sole responsibility of Customer and original end-user.

Customer's Responsibility to Deks Concerning Original End-Users:

Customer warrants and represents that if it resells any Products or incorporates any Products into its own merchandise for the purpose of sale, Customer will:

- A. In all instances causes such purchaser to be bound by, and agree to, this Limited Warranty as set forth herein, including all terms and limitations thereof;
- B. Properly affix all warning labels to all Products;



- C. Provide the applicable Deks product manuals to such purchasers.

Disclaimer of Implied Warranties:

CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT: (I) THIS LIMITED WARRANTY SET FORTH HEREIN IS AN INTEGRAL PART OF THE AGREEMENT PURSUANT TO WHICH THE PRODUCTS WERE PURCHASED; (II) CUSTOMER (FOR ITSELF AND ON BEHALF OF THE ORIGINAL END-USER, IF APPLICABLE) HAS ACCEPTED THIS LIMITED WARRANTY AS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY DEKS TO CUSTOMER AND ORIGINAL END-USER WITH RESPECT TO THE PRODUCTS; AND (III) THIS LIMITED WARRANTY IS REFLECTED IN THE PURCHASE PRICE FOR THE PRODUCTS. DEKS MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, WITH RESPECT TO ANY PRODUCTS, GOODS, OR SERVICES SOLD OR PROVIDED TO CUSTOMER PURSUANT TO THE AGREEMENT OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE, ALL OF WHICH ARE EXPRESSLY HEREBY DISCLAIMED.

**Limitation on Liabilities and Damages:**

THE REMEDIES DESCRIBED ABOVE ARE YOUR SOLE AND EXCLUSIVE REMEDIES AND OUR ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THIS LIMITED WARRANTY OR THE AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL DEKS BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, COVER, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE, ANTICIPATED PROFITS, BUSINESS OR SALES, ANY LOSS OF GOODWILL OR REPUTATION, OR THE COSTS OF SUBSTITUTE GOODS OR PRODUCTS, EVEN IF DEKS OR AN AUTHORIZED REPRESENTATIVE THEREOF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE (INCLUDING OUR PARENT, SUBSIDIARIES, AND AFFILIATES, AND OUR AND THEIR OFFICERS, DIRECTORS, MANAGERS, AGENTS, AND EMPLOYEES) ARE NOT LIABLE, AND YOU AGREE NOT TO HOLD US RESPONSIBLE, FOR ANY DAMAGES OR LOSSES RESULTING DIRECTLY OR INDIRECTLY FROM:

- A. YOUR USE OF OR YOUR INABILITY TO USE OUR PRODUCTS;
- B. SUSPENSION OR OTHER ACTION TAKEN WITH RESPECT TO THE PRODUCTS OR BREACH OF ANY OF THESE TERMS; OR
- C. YOUR NEED TO MODIFY PRACTICES, CONTENT OR BEHAVIOR OR YOUR LOSS OF OR INABILITY TO DO BUSINESS, AS A RESULT OF CHANGES TO THE AGREEMENT.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL THE TOTAL LIABILITY OF DEKS TO YOU OR ANY THIRD PARTY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE) ARISING FROM THE AGREEMENT OR YOUR PURCHASE OR USE OF THE PRODUCTS EXCEED, IN THE AGGREGATE, THE LISTED PURCHASE PRICE PAID BY YOU FOR THE PRODUCTS YOU PURCHASED PURSUANT TO THE TERMS HEREUNDER.



## Standard Terms & Conditions of Sale

Some jurisdictions do not allow the exclusion of damages, so such exclusions may not apply to you. The limitation of liability set forth above shall only apply to the extent permitted by applicable law.

### **Limitation on time to file claims:**

TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THE AGREEMENT OR YOUR USE OF OUR PRODUCTS MUST BE COMMENCED WITHIN SIX (6) MONTHS AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

### **Indemnification:**

You agree to indemnify and hold harmless Deks, its affiliated companies and their respective officers, directors, employees, managers, agents, successors, and assigns ("**Indemnified Parties**") from and against any claim or demand (including reasonable attorneys' and experts' fees and costs) made by any party due to or arising out of your (a) breach of the Agreement, (b) improper use of the Products, (c) breach of any law or the rights of a third party, or (d) failure to strictly comply with your obligations to Deks concerning original end-users or any representations made by you to such original end-user. Deks shall promptly notify you in writing of any threatened or actual claim or demand and reasonably cooperate with you to facilitate the settlement or defense thereof. You shall have sole control of the defense or settlement of any claim or demand, provided that Deks, at our option and expense, may participate and appear on an equal footing with you. You shall not settle any claim or demand without the written consent of the Indemnified Parties, with such consent not to be unreasonably withheld or delayed.

## **INTELLECTUAL PROPERTY**

---

Certain Products or the documentation from Deks provided therewith may contain trademarks, trade names, content, features, functionality, video, audio, images, displays, works of authorship, text, files, photos, designs, and other material of Deks ("**Deks Content**"). Deks Content and all intellectual property rights thereto are protected by United States and international copyright, trademark, patent, trade secret and other proprietary or intellectual property laws and Deks or its licensors is and shall at all times remain the sole and exclusive owner of the Deks Content and all intellectual property rights thereto. Deks hereby grants you a limited, revocable, nonsublicensable license to reproduce and display the Deks Content (excluding any software code) solely for your personal use of our Products. Except as expressly authorized by Deks, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, distribute or create derivative works based on the Products or the Deks Content, in whole or in part. Any rights not expressly granted herein are reserved by Deks.

The name "Deks" and all other Deks marks, logos, product and service names, designs, and phrases that we use in connection with our Products are trademarks, service marks, or trade dress of Deks or its affiliates or licensors. You may not use such marks without the express written prior permission of Deks. Other company, product, and service names and logos used and displayed through or on the Products may be trademarks or service marks of their respective owners who may or may not endorse or be affiliated with or connected to Deks and may not be used by you without permission. Any use of such marks, or any others displayed on through the Products, will inure solely to the benefit of their respective owners.

## MISCELLANEOUS

---

### **Catalogues:**

Particulars in leaflets, catalogues, drawings, brochures and other printed material of Deks are illustrations only and form no part of these Terms and are not and will not become binding on Deks.

### **Factoring:**

Customer acknowledges and agrees that Deks has or may, at any time and at Deks' absolute discretion, enter into factoring arrangements with third parties regarding Products sold by Deks to Customer and that Deks for that or any other purpose may assign its right to receive payment for such Products. Customer further acknowledges and agrees, if directed in writing by Deks, to make payment directly to a third party and payment made to such third party in accordance with the written direction of Deks will be the only means of satisfying the debt owed to Deks for the relevant Products.

### **Modification and Waiver:**

Deks may, modify, add or remove any portion of the Agreement from time to time, in its sole discretion with or without notice to you, by posting such changes on the Site. Once posted such changes shall come into full force and effect. In addition to other forms of acceptance, use of the Products constitutes acceptance of the Agreement, including continued use after such changes are posted. It is your responsibility to check periodically for changes to the Agreement. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver and shall not be deemed a waiver of any other term of the Agreement or of the same circumstance or event upon any recurrence thereof.

### **Force Majeure:**

Deks shall not in any event be liable for any failure in performance hereunder to the extent such delay or failure is caused by an event that is beyond the reasonable control of Deks, including but not limited to fire, flood, earthquake, explosion, war, acts of terrorism, strike, embargo, government requirement, civil or military authority, acts of God, equipment failure or shortages of labor, fuel, materials or equipment. Deks shall notify Customer of such condition or occurrence as soon as is reasonably possible.

### **Governing Law:**

By purchasing any of the Products, you agree that the Agreement and your use of the Products shall be governed exclusively by the laws of the State of Illinois, USA without regard to conflict of laws principles, regardless of your location when purchasing the Products. These Terms are entered into and performed in State of Illinois, USA. These Terms do not give rise to personal jurisdiction over Deks, either specific or general, in jurisdictions other than Illinois.

### **Dispute Resolution:**

The parties shall attempt to resolve any disputes through good faith business negotiations or facilitative mediation in Chicago, Illinois. Except as otherwise determined by Deks, in its sole discretion, all disputes or claims arising out of or relating to the Agreement shall be settled by arbitration, to be conducted by a single arbitrator in Chicago, Illinois, by and in accordance with the then effective commercial rules of the American Arbitration Association; provided that the arbitrator

shall not have authority to issue injunctions. The proceedings shall be conducted only in the English language. Judgment upon the award may be entered in any court having jurisdiction thereof. Other legal proceedings, if any, shall be initiated and maintained in Chicago, Illinois. The parties expressly submit to the exclusive personal jurisdiction and venue of these forums and courts and waive any objection on the grounds of personal jurisdiction, venue, or *forum non conveniens*.

### **Attorneys' Fees and Costs:**

If any litigation or other court action, arbitration, or similar adjudicatory proceeding is commenced by any party to enforce its rights under the Agreement against the other party, all fees, costs and expenses, including, without limitation, cost of arbitration, reasonable attorneys' fees and court costs, incurred by Deks, if it is the prevailing party in such litigation, action, arbitration or proceeding, shall be reimbursed by you; provided, that if Deks prevails in part, and loses in part, the court, arbitrator or other adjudicator presiding over such litigation, action, arbitration or proceeding shall award a reimbursement of the fees, costs and expenses incurred by Deks on an equitable basis.

### **Notices:**

Any notice to Deks must be in writing and must be sent via email and by registered mail or overnight courier pursuant to the contact information set forth at the beginning of these Terms. Any notice to you shall be given by email or mail to the email or mailing address provided to you during registration or checkout, or as subsequently updated by you, or via posting on the Site, any of which you agree shall be sufficient notice to you. Notice shall be deemed to have been given to you upon twenty-four (24) hours after it has been sent or at the time the information was posted on or through the Site. If you change your address, you are responsible for notifying us of such change.

### **Severability:**

If any provision of the Agreement is held by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, then such provision shall be enforced to the maximum extent permissible so as to affect the intent of the Agreement, and the remainder of the Agreement shall continue in full force and effect.

### **No Partnership:**

No partnership, joint venture, franchisor-franchisee, or agency relationship is intended or created by the Agreement.

### **Assignment:**

You may not assign or transfer the Agreement or your obligations hereunder in whole or in part, whether by operation of law or otherwise, without Deks' prior written consent. In the event of a permitted transfer, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. To the extent any novation is required for Deks to assign the Agreement, you hereby appoint the officers of Deks as your attorney-in-fact to execute all documents necessary to consummate such novation. Deks may assign or transfer the Agreement or its obligations hereunder in whole or in part, whether by operation of law or otherwise, without obtaining your consent.

### **Survival:**

All provisions in the Agreement regarding representations and warranties, indemnification, disclaimers and limitations on liability shall survive any termination of the Agreement.

**Language:**

If a translation of the Agreement into any other language is required by law, the English version will prevail to the extent that there is any conflict or discrepancy in meaning between the English version and any translation thereof. If the Agreement is provided to you in a language other than English, Deks does so solely for your convenience.

**Last modified December 13, 2019**