

OS-100: Deist Seller Terms and Conditions .v9

1. Contract Formation.

1.1 Offer. Deist's proposal, quote, sales order and/or Deist's invoice quote (collectively, the "Proposal") constitutes an offer for the sale of goods (the "Goods") and includes all the terms and conditions contained herein (the "Terms and Conditions"). As used herein, the term "Deist" means Deist Industries, Inc., a Pennsylvania corporation, doing business under its own name and doing business under the trade names of "Bucks Fabricating", "Switch-N-Go", "AmeriDeck" and "Roll-offParts.com".

1.2 Acceptance. Any purchase order or other form of acceptance issued by the Buyer in response to a Proposal from Deist shall result in a contract for the purchase of the Goods at the price quoted in Deist' Proposal and shall be subject to these Terms and Conditions. Deist does not accept any terms contained in any purchase order or other documents issued by Buyer which are different from, conflict with, modify and/or add to these Terms and Conditions. Deist's execution of any document issued by the Buyer shall constitute only an acknowledgement of receipt thereof, and shall not be construed as an acceptance of any of the terms therein. Unless Buyer shall have set forth each specific objection to these Terms and Conditions in a separate writing signed and dated by Buyer and delivered to Deist contemporaneously with Buyer's purchase order or other acceptance document, Buyer shall be deemed to have accepted all of these Terms and Conditions. Buyer's issuance of a purchase order or other document which purports to reject some or all of these Terms and Conditions by virtue of Buyer's standard form language, or otherwise, shall not be sufficient objection. Where Buyer specifically objects to any of these Terms and Conditions, no contract shall be formed unless and until Deist agrees to accept in writing Buyer's proposed modifications to these Terms and Conditions.

1.3 Entire Agreement. The Proposal and these Terms and Conditions shall constitute the entire understanding and agreement (the "Contract") between Buyer and Deist. Any representation, promise, course of dealing, course of performance, custom or trade usage will not be binding upon either party. This Contract may not be amended or modified except by a writing executed by both parties.

2. Purchase and Sale. Subject to these Terms and Conditions, Buyer agrees to buy, and Deist agrees to sell, the Goods, for the purchase price specified in the Proposal. .

3. Taxes. Buyer shall be responsible for, and shall pay, any taxes (sales, excise, use, etc.) and any export or import duties which may be applicable to the sale and/or delivery of the Goods and to the performance of any warranty work on the Goods as may be required under Section 6.6. Buyer shall defend, indemnify and hold Deist harmless from any claim, loss, damage, liability or expense incurred with regard to the payment of any such taxes or duties.

4. Payment; Security Interest.

4.1 Generally. Buyer shall pay the purchase price, all applicable taxes, freight charges, and all other applicable charges in full, in U.S. Dollars, without any deduction for claims, set-offs or recoupment on account of this Contract or any other matter between the parties within the time periods set forth below in Section 4.2 and Section 4.3, below. Payment shall not be contingent upon use or upon field tests. If payment is delayed beyond the date on which it is due, interest shall accrue and be payable by Buyer on the unpaid balance at a rate of one and one-half percent (1 1/2%) per month.

4.2 Payment. Unless otherwise specified by Deist in the Proposal, the Buyer shall pay the purchase price within thirty (30) days from the date of delivery or the date of shipment, whichever is the earlier. If delivery or shipment is delayed by Buyer, Deist shall invoice the Buyer when the Goods are ready for delivery or shipment, whichever is the earlier. In such case, payment shall be due thirty (30) days from the date of the invoice, regardless of whether or when delivery or shipment of the Goods is actually made.

4.3 Security Interest. Buyer hereby grants to Deist a security interest in the Goods until all monies due Deist under this Contract are paid in full. Deist shall have the right to file financing statements and any other documents that may be necessary to evidence and perfect such a security interest in the Goods in any jurisdiction.

5. Delivery.

5.1 Date. Any delivery date stated in the Contract is approximate only and shall not constitute any guarantee of delivery on any particular date. Time shall NOT be of the essence of the Contract.

5.2 Terms. Unless otherwise specified by Deist in the Proposal: (1) delivery of the Goods shall be Ex Works Deist's factory, 3547 Perry Hwy. Hadley, PA 16130 (Incoterms 2010); and (2) any delivery terms specified in the Proposal shall be construed in accordance with Incoterms 2010.

5.3 Freight. Notwithstanding the provisions of Section 5.2, above, unless otherwise directed by the Buyer in writing or otherwise expressly specified in the Proposal, Deist shall arrange for carriage of the Goods. Buyer shall be solely responsible for the cost of carriage of the Goods, regardless of any delivery terms (including Incoterms) specified in the Proposal.

5.4 Risk of Loss; Title. Risk of loss shall pass from Deist to the Buyer in accordance with the delivery terms applicable to this Contract, as specified in Section 5.2, above. Title to the Goods shall pass from Deist to the Buyer upon the passage of risk of loss from Deist to the Buyer.

5.5 Delay in Performance by Deist. Deist shall not be responsible to Buyer or any third party for any damages resulting from any failure or delay in manufacturing, delivery or shipping due to any cause beyond Deist's reasonable control, including, but not limited to: (1) intervening legal requirements or governmental directives; (2) acts of God; (3) force majeure; (4) labor disputes; (5) delays caused by Deist's suppliers or vendors; or (6) war, terrorism, or similar disruptions.

5.6 Delay of Delivery or Shipment by Buyer. If delivery or shipment is delayed by Buyer, Deist may arrange for storage of the Goods at Buyer's sole expense. In such event, risk of loss to the Goods shall pass to Buyer upon placing the Goods in storage, unless risk of loss has already passed to the Buyer pursuant to the delivery terms applicable to this Contract, as specified in Section 5.2, above, in which case risk of loss shall remain with the Buyer. If storage of the Goods is at a location other than Deist's factory, Buyer shall be responsible for all storage, handling and other expenses actually incurred by Deist in effectuating the storage of the Goods. If storage of the Goods is at Deist's factory, Deist shall be entitled to collect from Buyer a storage charge of \$25.00 per day per unit. Deist shall not be obligated to deliver or ship the Goods until all storage charges and related expenses have been paid by the Buyer. Storage charges shall commence on the original due date for delivery and shall continue until shipment of the Goods to the Buyer. Deist shall have the right to invoice Buyer for storage charges on a weekly, bi-weekly, monthly or other periodic basis, at Deist's option. Payment on such invoices shall be due thirty (30) days from the date of the invoice. If Buyer delays delivery or shipment of the Goods for a period of more than ninety (90) days, or otherwise fails to take delivery of the Goods within ninety (90) days from the original due date for delivery, Deist may declare Buyer in default and exercise its remedies, as contemplated by Section 9, below.

6. Warranties.

6.1 Limited Warranty. For the benefit of the Buyer only, Deist warrants that all new Goods manufactured by Deist shall be free from defects in material and workmanship for the periods specified in Section 6.2, below. Deist' obligations under this limited warranty are conditioned upon Deist receiving written notice of any defects no later than the expiration of the applicable warranty period.

6.2 Length. Unless otherwise specified in the Proposal, the limited warranty set forth in this Section 6 begins on the date that risk of loss to the Goods passes to the Buyer and extends for the following periods for the items indicated: (1) Bucks Fabricating containers, three years; (2) Bucks Fabricating Paint Finishes, one year; (3) Bucks Fabricating hook plate and hook, lifetime; (4) Switch-N-Go components, one year; (5) Switch-N-Go products (systems and bodies), one year; (6) AmeriDeck components, one year; (7) AmeriDeck products (systems and decks), one year; (8) Roll-offParts.com products, one year; and (9) all other Goods, one year.

6.3 Alteration; Abuse. The limited warranty set forth in this Section 6 shall be void with respect to Goods which have been: (1) altered by Buyer or any third party; (2) repaired by other than Deist personnel or a Deist approved contractor; (3) subjected to misuse, abuse, neglect or accident; or (4) damaged by improper installation or application.

6.4 Exclusions. The limited warranty set forth in this Section 6 shall not apply to, and no warranty is given with respect to: (1) parts, accessories or components manufactured by others, including, but not limited to, belts, springs and electrical components; and (2) bearings and motors.

6.5 Exclusive Warranty. THE WARRANTY SET FORTH IN SECTION 7, BELOW, WITH RESPECT TO PATENT INFRINGEMENT, AND THE LIMITED WARRANTY SET FORTH IN THIS SECTION 6 ARE THE EXCLUSIVE WARRANTIES GIVEN BY DEIST WITH RESPECT TO THE GOODS AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, BOTH OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

6.6 Limitation of Remedies for Breach of Warranty. In the event of a breach of the limited warranty set forth in this Section 6, Buyer's sole remedy, and Deist's sole obligation, is limited to the repair or replacement of the Goods by Deist, at Deist's option. Such limitation shall apply regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort (including, without limitation, fraud, fraudulent misrepresentation, negligence and/or negligent misrepresentation), strict liability, statutory liability, indemnity or otherwise. The expense of freight to and from the repair site shall be the sole responsibility of Buyer. If the repair site is other than a Deist factory or a location designated by Deist, reasonable out of pocket expenses, including, but not limited to, travel and lodging for Deist's service personnel shall be the sole responsibility of the Buyer. Buyer shall be solely responsible for any costs associated with making the Goods accessible or otherwise available to Deist for the performance of repair work on, or the replacement of, the Goods. Unless otherwise agreed in writing by Buyer and Deist, Deist shall not be responsible for any back charges of any nature whatsoever.

6.7 Assignment of Third Party Warranties. If the Goods contain components which are manufactured by third parties (such as, but not limited to, power units and winches), and which carry a warranty from the manufacturer, Deist shall assign such warranties to Buyer, to the extent permitted by the terms of such warranties. Deist makes no representations or warranties with respect to any such warranties, and Buyer shall look solely to the third party manufacturer for the performance of such warranties. Nothing in this Section 6.7 shall be construed as imposing any warranty obligations upon Deist which are different than, or greater in scope than, those assumed by Deist in Sections 6.1 through 6.6, above, and Section 7, below.

7. Patent Infringement.

7.1 Warranty. Deist warrants that the Goods, and any part of the Goods which are manufactured to Deist's design, shall be delivered free of any rightful claim of infringement of any United States patent.

7.2 Obligation to Defend. Upon prompt written notification by Buyer of any claim of patent infringement, Deist shall defend or settle any claim of patent infringement at Deist's sole cost and expense. Buyer shall provide any information and assistance requested by Deist in providing such defense.

7.3 Remedies. Deist shall pay all damages and costs awarded against Buyer incurred as a result of a breach of the warranty contained in this Section 7. In the event that the use of the Goods or parts is enjoined or in the event Deist decides to defend or settle a claim of patent infringement, Deist shall at its sole expense and option, either: (1) procure for Buyer the right to continue using such Goods or parts; (2) replace the Goods or parts so that they are non-infringing; or (3) remove the Goods or parts and refund the purchase price, less reasonable depreciation for any period of use. The remedies set forth in this Section 7.3 shall constitute the sole and exclusive remedies of the Buyer in the event of a breach of the warranties contained in this Section 7.

7.4 Exclusions. The warranty set forth in this Section 7 shall not apply to: (1) any Goods or parts specified by Buyer or manufactured to Buyer's design; (2) any Goods or parts altered or modified by Buyer; or (3) the use of any Goods in conjunction with any other product, not manufactured by Deist. With respect to the Goods described in this Section 7.4, Deist assumes no liability for patent infringement and Buyer shall defend, indemnify and hold Deist harmless from any claims, liability, damages or expenses, including reasonable attorneys' fees, as a result of any patent infringement claims arising therefrom.

8. Limitation of Damages.

8.1 Exclusion of Certain Damages. In no event shall Deist or Deist's employees, officers, directors, representatives, affiliates and/or agents be liable for consequential, incidental or punitive damages incurred by Buyer or any third party in connection with any matter arising out of or relating to this Contract, or the breach thereof, regardless of whether such damages are characterized as arising out of breach of warranty, tort (including, without limitation, fraud, fraudulent misrepresentation, negligence and/or negligent misrepresentation), contract, strict liability, statutory liability, indemnity or otherwise. Such limitations shall apply regardless of whether Deist has been advised or otherwise made aware of the possibility of such damages arising. For purposes of this Section 8.1, consequential damages include, but are not limited to: (1) Buyer's lost production, sales and/or profits; (2) Buyer's loss of use of the Goods and/or any other equipment; (3) Buyer's cost of capital; or (4) any claims of customers of the Buyer against Buyer or Deist.

8.2 Limitation on Amount. Notwithstanding any other provision of this Contract, the total liability, in the aggregate, of Deist and Deist's employees, officers, directors, representatives, affiliates and agents to Buyer or any third party claiming through or under Buyer for any claims, losses, damages, or costs arising out of or relating to this Contract, or the breach thereof, shall not exceed the total consideration received by Deist from Buyer under this Contract. This Section 8.2 shall apply regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort (including, without limitation, fraud, fraudulent misrepresentation, negligence and/or negligent misrepresentation), strict liability, statutory liability, indemnity or otherwise.

9. Termination for Default. Deist may terminate this Contract if Buyer: (1) becomes insolvent; (2) is unable to meet its obligations as they become due or admits such in writing; (3) enters bankruptcy or has a receiver or trustee appointed for it; (4) fails to timely make payments under this Contract or under any other obligation of Buyer to Deist including, but not limited to, any storage charges and expenses due under Section 5.6, above; (5) fails to provide Deist with adequate assurance of due performance within fifteen (15) days of Buyer's receipt of Deist's written demand therefor; or (6) delays delivery or shipment of the Goods for a period of more than ninety (90) days, or otherwise fails to take delivery of the Goods within ninety (90) days from the original due date for delivery. Any such termination shall be effectuated by Deist giving the Buyer a written declaration of default and notice of termination. Upon such declaration of default and notice of termination, Deist shall have all remedies available to Deist under this Contract and at law, including, without limitation: (1) the right to recover from Buyer Deist's expenses, as provided in Section 11.10, below; (2) the right to recover from Buyer the purchase price of the Goods; (3) the right to re-sell the Goods to a third party (for which Deist's declaration of default and notice of termination shall be considered sufficient notice of Deist's intent to re-sell the Goods to a third party) and to recover the difference between such sales price and the purchase price under this Contract from the Buyer; (4) the right to recover storage charges and expenses due under Section 5.6, above; and (5) the right to recover interest from the Buyer, as provided in Section 4.1, above. If Buyer has made a deposit on the Goods and/or has made progress payments on the Goods, upon a declaration of default by Deist, Deist shall be entitled to retain any such deposit and/or progress payments and apply such amounts against any damages incurred by Deist as a result of Buyer's default. All remedies shall be cumulative and the exercise of any particular remedy shall not be considered either an election of remedies or an exhaustion of such remedy.

10. Credit Verification. Deist reserves the right to perform a review of Buyer's creditworthiness following acceptance of Deist's Proposal by Buyer. Notwithstanding any other provision of this Contract, Deist shall not be obligated to perform the Contract if Buyer's creditworthiness is unsatisfactory to Deist, in Deist's sole discretion. In such case, Deist shall not be obliged to proceed with the performance of this Contract, and Deist may cancel this Contract at any time without any liability to Buyer, unless and until the Buyer shall have agreed to such terms of payment and such security therefor as is satisfactory to Deist, in Deist's sole discretion.

11. Other Provisions.

11.1 Arbitration. Any dispute, controversy, claim or other matter arising out of or relating to the negotiation, execution, delivery or performance of this Contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof. The agreement of the parties to arbitrate any such dispute, controversy, claim or other matter shall apply regardless of whether the dispute, controversy, claim or other matter is characterized as arising in contract, tort (including, without limitation, fraud, fraudulent misrepresentation, negligence, and/or negligent misrepresentation), strict liability, statutory liability, indemnity, contribution or otherwise. Any such arbitration proceedings shall be held in Mercer, Pennsylvania, and shall be conducted in the English language.

11.2 Limitation of Actions by Buyer. Any actions against Deist with respect to any matter arising out of or relating to this Contract must be brought by Buyer, or anyone claiming through or under Buyer, within the earlier of: (1) one (1) year from the date that the claim in question accrued; or (2) the expiration of any applicable statute of limitations.

11.3 Governing Law. This Contract shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without reference to any applicable principles of conflicts of law which would direct the application of the laws of another jurisdiction. Any dispute, controversy, claim or other matter arising out of or relating to the negotiation, execution, delivery or performance of this Contract, or the breach thereof, regardless of whether such dispute, controversy, claim or other matter is characterized as arising in contract, tort (including, without limitation, fraud, fraudulent misrepresentation, negligence and/or negligent misrepresentation), strict liability, statutory liability, indemnity, contribution or otherwise, shall be governed by, and determined and resolved in accordance with, the laws of the Commonwealth of Pennsylvania, without reference to any applicable principles of conflicts of law which would direct the application of the laws of another jurisdiction. The United Nations Convention on the International Sale of Goods, the 1974 Convention on the Limitation Period in the International Sale of Goods and the Protocol amending the 1974 Convention shall not apply to this Contract.

11.4 Waiver. The waiver of any right or default in any one instance shall not be deemed a waiver of any future right to enforce this Contract.

11.5 Assignment. This Contract may not be assigned by Buyer without the written consent of Deist.

11.6 Severability. If any provision of this Contract is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect.

11.7 Safety Devices, Risks and Damages. Buyer assumes all responsibility for the safe operation of the Goods. Buyer shall provide all signage, warning labels, safety devices, guarding, shielding and other measures as may be necessary and/or appropriate, or which are required by federal, state, or local laws and regulations, for the safe operation of the Goods. Buyer shall defend, indemnify and hold Deist harmless with respect to any property damage and/or personal injury, including death, which is caused by reason of the failure on the part of Buyer, and/or any employee, representative, operator or agent of Buyer, to comply with this Section 11.7.

11.8 Buyer Disclosures. Unless otherwise agreed to in writing by Deist, any information or ideas transmitted by Buyer to Deist in connection with this Contract shall not be regarded as a trade secret of, or submitted in confidence by, the Buyer.

11.9 No License or Sale of Intellectual Property. The sale of the Goods does not grant to, convey to or confer upon Buyer a license or any other rights, express or implied, under any patent, copyright or other intellectual property right of Deist encompassed within, covering or relating to the Goods.

11.10 Recovery of Expenses. Deist shall be entitled to recover from Buyer all costs and expenses (including, but not limited to, reasonable attorney's fees) which are incurred by Deist in enforcing its rights under this Contract, including, but not limited to, the recovery of any amounts owed by Buyer to Deist under this Contract.

11.11 No Third Party Beneficiaries. There are no third party beneficiaries with respect to this Contract between the Buyer and Deist, including (but not limited to) any customers of the Buyer or any affiliates of the Buyer.

11.12 No Nuclear Use. The Goods which are the subject of this Contract shall not be used by Buyer or any third party in any nuclear installation or for the processing, handling, movement and/or storage of nuclear material. If any such use occurs, Deist disclaims all liability for any damages, injury or contamination relating to or arising out of such use. Buyer shall defend, indemnify and hold Deist harmless from any such liability, regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort (including, without limitation, fraud, fraudulent misrepresentation, negligence and/or negligent misrepresentation), strict liability, statutory liability, indemnity or otherwise.

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