

## TERMS AND CONDITIONS OF SALE

**1. Agreement.** These Terms and Conditions of Sale, together with any other document(s) that Delaware Valley Box & Lumber ("DVBL") has attached hereto or executed that specifically reference these Terms and Conditions of Sale (such as a Purchase Order Confirmation, Quotation, Proposal, Standing Order, Credit Application, or Letter of Authorization) (collectively, "Agreement") constitute the entire binding agreement between DVBL and you ("Buyer") regarding the purchase, use, and/or resale of products, services, and support from DVBL (collectively, "Products") and supersede all other agreements and understandings, whether written or oral, between the parties. Buyer agrees to be bound by and accept the terms and conditions contained in this Agreement. No additions, conditions, amendments, alterations, or modifications by Buyer or any other person, whether oral or contained in any other documents submitted from Buyer to DVBL will be binding on DVBL, regardless of DVBL's failure to object or DVBL's shipment of Products, unless otherwise agreed to in writing and signed by DVBL. These terms and conditions may be updated or amended from time to time by DVBL, a copy of which will be available for review at <http://www.delvalbox.com/T&C.pdf>.

**2. Price.** All prices exclude applicable United States federal, state, and local taxes which will be the responsibility of Buyer and unless Buyer is exempt therefrom and DVBL has received proper documentation therefor, such taxes will be added to the price of the Product or billed separately to Buyer where DVBL has the legal obligation to collect the taxes. Buyer must provide DVBL with a resale/exemption certificate in order to avoid the withholding of applicable taxes. No refund or adjustment to previously withheld taxes will be made by DVBL more than sixty (60) days after the invoice date. Proof of certification should be mailed to: Delaware Valley Box & Lumber, Attention: Credit and Collection Department.

**3. Payment Terms.** Payment may be made by credit card (at the time of order), COD, or on open account (subject to credit approval). Provided that Buyer meets DVBL's credit requirements, payment will be due net thirty (30) days after the date of DVBL's invoice, unless otherwise agreed in writing. All payments must be made in U.S. Dollars. DVBL reserves the right to charge at any time a monthly service charge of one percent (1%) or the highest rate allowed by law, whichever is lower, on accounts that are not paid when due, effective as of the first day after the due date. If Buyer fails to fulfill the terms of payment or does not meet DVBL's continuing credit requirements, DVBL will have the option to do one or more of the following: (i) decline to accept orders or fulfill pending orders; (ii) require all pending and future orders to be on a prepaid basis; (iii) delay any shipment until payment is received by DVBL; (iv) declare all outstanding sums immediately due and payable. Nothing contained herein will release Buyer from any previous obligation. Buyer will be liable to DVBL for all costs incurred by DVBL in its collection of any amounts owing by Buyer which are not paid when due, including collection agencies' and attorneys' fees and expenses, regardless of whether a lawsuit is commenced. All orders are subject to current credit approval. From time to time, DVBL may review Buyer's creditworthiness. Buyer agrees to provide DVBL with all credit information reasonably requested, and Buyer represents and warrants to DVBL now, and each time Buyer places an order, that all information Buyer has provided is true and correct.

**4. Force Majeure.** Neither party assume liability or will be liable to the other party for any failure or any delay in fulfilling its obligations hereunder caused, in whole or in part, directly or indirectly, by fires, natural disasters, strikes, shortages of raw materials, supplies or components, retooling, upgrading of technology, delays of carriers, embargoes, government orders or directives, terrorist activities, or any other circumstance beyond the reasonable control of such party. DVBL may at its option suspend deliveries while such event or circumstance continues, apportion available inventory between its customers as it determines, or terminate this Agreement with immediate effect by written notice to Buyer.

**5. Delivery Terms; Title.** Unless otherwise agreed by Buyer and DVBL in writing, all shipments will be delivered by DVBL FOB customer's facility within seventy-five (75) miles of Trenton or Glendora, NJ.

**6. Inspection/Acceptance; Installation.** Buyer must inspect delivered Products and report claims for defects, damages, or shortages which are discoverable on a visual inspection in writing within five (5) days of delivery or the Products will be deemed irrevocably accepted and such claims will be deemed waived. In the event Buyer engages DVBL to provide packaging services, Buyer is responsible for all reasonable expenses incurred related to such installation.

**7. Changes.** After acceptance by DVBL, Buyer's order will not be subject to cancellation or reduction in any amount without DVBL's written consent. Any other changes to an order requested by Buyer will require the prior written approval of DVBL, which approval may be subject to price adjustments as determined on a case-by-case basis.

**8. Duty to Select Material.** To the best of DVBL's knowledge, the information contained in its publications is correct. All information is based upon data collected by DVBL and third party providers. DVBL does not assume any liability whatsoever for the accuracy or completeness of such information. Final determination of suitability is the sole responsibility of Buyer and the user of the Product. The manner of use is the sole responsibility of Buyer, the user and/or their engineer.

**9. Limited Warranties; Limitation of Warranties.**

Non-DVBL Products. Any Products not manufactured by DVBL will carry the original manufacturer's warranty, copies of which are available on request. DVBL takes no responsibility for enforcing such warranty. DVBL MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT NOT MANUFACTURED BY DVBL.

DVBL Products. DVBL warrants to Buyer that Products manufactured by DVBL that are sold to Buyer will be free from defects in material and workmanship under normal use and service at the time of shipment from DVBL. The warranty period for Products (other than parts) shipped by DVBL is ninety (90) days. DVBL will have no warranty obligation whatsoever with respect to any damage to a Product caused by or associated with external causes, including, without limitation, accident, vandalism, natural

disaster and acts-of-God. Notice of a defective Product must be given to DVBL in writing within ten (10) days following the discovery of such defect. DVBL's SOLE LIABILITY under the warranty will be, at DVBL's option, to either replace or repair the defective Product(s) or refund or credit the purchase price to Buyer. The return of defective Products is subject to the terms and conditions of Section 11 below. Buyer will be responsible for reimbursement of DVBL's reasonable travel and other expenses incurred in providing on-site warranty and out of warranty services.

DVBL'S LIMITED WARRANTY HEREUNDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY PRODUCTS PROVIDED BY DVBL AND DVBL DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE, AND DVBL DOES NOT REPRESENT OR WARRANT THAT ANY PRODUCT WILL MEET BUYER'S REQUIREMENTS. Any oral or written statement concerning the Products inconsistent with the limited warranty set forth above will be of no force or effect.

**10. Limitation of Actions.** Any actions or claims by Buyer regarding the sale of Products by DVBL must be brought within three (3) months after the date of delivery of the Products. However, any billing disputes must be made within one (1) month of the applicable invoice date or will be deemed to be waived.

**11. Returns.** All returns are subject to prior approval of DVBL, in its sole discretion, and require documentation of the return material authorization ("RMA") number requested by Buyer and provided by DVBL. Products returned without an RMA number will be returned to Buyer at Buyer's expense and Buyer will bear all risk of loss or damage to the returned Products while in transit.

**12. Trademarks; Copyrights.** Other than the limited use permitted for distributors set forth in Section 35 below, Buyer may not use the DVBL name or any DVBL trademark, service mark, logo, or copyrighted work for any purpose.

**13. Confidential Information.** Except for information that Buyer demonstrates was in Buyer's possession prior to receipt from DVBL, Buyer agrees that all information of DVBL, whether written or oral, that is furnished by DVBL to Buyer concerning the business and affairs of DVBL or is learned by Buyer during discussions or communications between Buyer and DVBL, is proprietary to DVBL, and Buyer will hold such information in confidence and will not use or disclose such information without DVBL's prior written consent, except for the fulfillment of this Agreement.

**14. Limitation of Liabilities and Remedies.**

UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY FOR, AND EACH PARTY HEREBY EXPRESSLY WAIVES, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY DESCRIPTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING OUT OF WARRANTY OR CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS, AND RELIANCE DAMAGES. BUYER AGREES THAT UNDER NO CIRCUMSTANCES WILL DVBL'S LIABILITY RELATING TO ITS SALE OF PRODUCTS TO BUYER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PARTICULAR PRODUCTS INVOLVED. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE REMEDIES SET FORTH IN THIS AGREEMENT WILL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

**15. Indemnity.** To the fullest extent permitted by law, Buyer will indemnify, defend, and hold harmless DVBL, including DVBL's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors, and assigns, from and against any claim, demand, cause of action, debt, liability, loss, fine, damage, or expense (including reasonable attorneys' or legal fees, expenses, and court costs) (collectively, "Liabilities") that relates to: (i) Buyer's modification of or addition to any Product(s); (ii) Buyer's breach of this Agreement; (iii) Buyer's gross negligence or willful misconduct; or (iv) damage to a third party by any Products distributed or resold by Buyer to the extent such claim is based on (a) Buyer's modification of or addition to the Products, misuse or abuse of the Products, or breach of any provision in this Agreement; (b) Buyer's failure to abide by all applicable laws, rules, regulations, and orders that affect the Products; (c) Buyer's gross negligence or willful misconduct; or (d) intentional harm to any person or property caused by Buyer. To the fullest extent permitted by law, DVBL will indemnify, defend, and hold harmless Buyer, including Buyer's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors, and permitted assigns, from and against any Liabilities arising out of a third party claim (i) for bodily injury to or property damage to the extent caused by a defect in a Product manufactured by DVBL; (ii) to the extent caused by DVBL's breach of this Agreement; or (iii) to the extent caused by DVBL's gross negligence or willful misconduct. DVBL is not required to indemnify Buyer to the extent that any claim arises out of Buyer's gross negligence or willful misconduct or use of a Product by any person or entity other than in accordance with DVBL's-approved Product labeling, including, without limitation, any restrictions on re-use of Products.

**16. Independent Contractors.** No provision of this Agreement will be deemed to create a partnership, joint venture, or other combination between DVBL and Buyer. Neither party will make any warranties or representations or assume any obligations on the other party's behalf. Neither party is or will claim to be a legal representative, partner, agent, or employee of the other party. Each party is responsible for the direction and compensation, and is liable for the actions of, its employees and subcontractors.

**17. Governing Law/Venue.** This Agreement, any sales hereunder, and any claim, dispute, or controversy between Buyer and DVBL arising from or relating to this Agreement, its interpretation, or the breach, termination, or validity thereof, will be governed by and construed in accordance with the laws of the State of New Jersey, without regard to conflicts-of-law rules.

**19. Modification and Waiver.** Except as otherwise provided in Section 1 of this Agreement, no purported amendment, waiver or modification of any provision hereof will be binding unless set forth in writing and signed by an officer of each party. The failure of either party to enforce any provision of this Agreement at any time will not be construed to be a waiver of such provision nor of the right of such party thereafter to enforce such provision.

**20. Validity.** If any provision of this Agreement is held to be invalid or unenforceable in any respect, the remaining terms and conditions of this Agreement will remain in full force and effect <sup>2</sup> if such invalid or unenforceable provision had not been included herein.