

# DIVERSIFIED DISTRIBUTION CENTERS

## Distributor Agreement and Standard Terms and Conditions of Sale

**1. THIS OFFER AND ITS ACCEPTANCE:** The terms and conditions set forth below are part of an offer by Diversified Distribution Centers (“DDC”) and Diversified Products Manufacturing (“DPMI”), California corporations for the sale of certain goods and services (“Products”). The other terms are set forth in a contract which incorporates these terms by reference (the “Contract”). Buyer’s acceptance is expressly limited to the terms and conditions of this offer and DDC hereby objects to and rejects any additional or different terms or conditions in Buyer’s acceptance, Buyer’s purchase order, and other documentation purporting to order the same or equivalent goods contained in this document. Buyer accepts this offer as made and all its provisions by transmitting in oral or written form a Buyer purchase order number, an authorization to proceed, or other request by issuing any document which orders the same or equivalent goods referred to herein; by accepting or making any payment for any goods or services furnished hereunder; or by any Buyer conduct recognizing the existence of a contract between Buyer and DDC for the goods and services referred to herein. Any additional or different terms or attempt by Buyer to vary in any degree any of the terms herein shall be deemed material but shall not operate as a rejection of this offer unless they contain variances in the terms of the description, quantity, price, or delivery schedule of the goods offered herein which are unacceptable to DDC. No modification of this offer and the Contract resulting (including any additional or different conditions in the Buyer’s acceptance) shall be binding on DDC unless expressly agrees in writing to change this offer.

**2. PRICE:** The price for each item covered by this Contract shall be the price shown for such items on the face of the document that incorporates these terms. Prices do not include any Federal, State or Local taxes, duties or fees which may be imposed upon the sale, use, transfer, importation or transportation of materials and all such costs shall be paid by Buyer.

DDC’s pricing is tiered based on the type of customer, quantity of product purchased and certain minimum purchase levels.

**Distributors:** Distributors are expected to purchase in Case quantities and comply with the rest of the terms and conditions outlined herein. Distributors will receive distributor pricing when product is purchased in case quantities. Should a distributor not purchase in case quantity on individual line items MSRP price will be charged on those line items. Distributors may choose to purchase any product listed in the price list in any of the 7 product groupings listed below. There is no stocking commitment by a distributor.

**Stocking Distributors:** Stocking Distributors agree to stock a minimum selection of product in one of two general groupings; New Construction Products & Repair Products. Chemicals are primarily classified in the repair product grouping but do crossover to the New Construction Product grouping. Stocking Distributors must pay in 10 days from date of Invoice not receipt of goods. For those products the Stocking Distributor elects to “STOCK” stocking distributor pricing will prevail. Whenever the Stocking Distributor elects to order a case of product not previously on the Stocking Distributors agreed upon stock, that product will be added to the stocking distributor’s profile. Should a Stocking Distributor not purchase in case quantity on individual line items MSRP price will be charged on those line items. Stocking Distributors must commit to carry the prevalent products sold within the geography serviced by the Stocking Distributor. DDC offers 7 product groups listed below:

### **New Construction Products**

- PF-Penetration Fittings, Reducers and Accessories
- SU-Sumps and related Products
- IN-Industrial and Isolation Products
- FC-Flex Connectors

### **Repair Products**

- PG-Polyglass Repair Fittings
- SR-Split Repair Products and Kits
- CH-Chemicals and related products

Case quantities have been established on the majority of DDC’s products. There are over 1,000 line items that are listed with a case quantity of 1 each. Case quantities will change from time to time based on a few factors such as: When an item shows a history of higher usage. When new products are generated by demand or upon request from the industry. These products when introduced will be added to the literature as occasion permits. Stocking distributors will be asked to upgrade their inventory status for kits, new products, popular Multi-Sync products and products showing increased demand.

Price lists will be available from DDC with associated data sheets and installation instructions in electronic format. Customers will be qualified prior to issue of this electronic media. Price lists for the general public will be limited to List Price only. Price lists for Contractors will be limited to List & MSRP prices. Distributor's price lists will be limited to List, MSRP and Distributor prices. Stocking Distributors will have all prices available.

**Contract Pricing:** From time to time, DDC is invited to participate in an RFQ by major customers. These requests often result in a commitment for extended pricing, extended warranties or for other special considerations. In these instances negotiated pricing may be different than the published pricing for similar items. Such pricing is considered contract pricing and is an addendum to this agreement. In general, DDC sells through distribution and will honor the terms and conditions of the agreements associated with contract pricing.

**Export/International Pricing:** Export/International pricing is not included in these Terms and Conditions and are established via a separate quote not outlined in this document.

**3. LIMITED WARRANTY:** DPMI warrants that the products sold under this agreement are free from any defect in design, material or workmanship for a period of three (3) years on all non-chemical products from the date of shipment. DPMI MAKES NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS OR WITH RESPECT TO THE MERCHANTABILITY OF THE GOODS OR THE FITNESS OF THE GOODS FOR ANY PURPOSE. DDC's sole obligation with respect to any defect in any of the products will be, at DDC's option, to repair or replace the item or to refund, in the form of a credit on the account, the purchase price for that item. Where practical parts must be returned to DDC for evaluation. DDC will not be liable for costs of labor or other costs associated with the replacement of the defective item. DDC will not be liable for any damage to the environment or any other damage associated with the use of its product. To the maximum extent permitted by law, Buyer waives any claim against DDC by reason of any such defect or any breach of DPMI's warranty herewith; and, without limiting the foregoing, any claim for indirect, incidental or consequential damages. Customer confirms that it has relied, is relying and will rely only on DPMI's warranty and undertaking above, and that Buyer has not relied, is not relying and will not rely on any other statement, promise, affirmation, description, sample or model, any of which are superseded by this Agreement. This warranty is conditioned on Buyer promptly notifying DDC of any alleged defect. Any product purchased by DPMI for use on or in conjunction with the Products which are manufactured by DPMI, DPMI extends to Buyer only the warranty that the product or vendor granted to DPMI.

**4. ACCEPTANCE:** Rejection of the goods supplied under this Contract for defects or defective delivery shall occur within a reasonable time after their delivery or tender at the delivery point, but in any event no later than five (5) days thereafter. If the goods are not accepted or rejected by Buyer or Buyer's agent in writing to DDC within said five (5) day period, they shall be deemed accepted by Buyer. In the event of Buyer's rightful rejection of the goods, DDC's liability shall be limited to replacing the rejected goods within a reasonable time, or to allow credit to the extent of the invoice value or the goods, at DDC's option. DDC shall not be liable for any loss, damage, or expense of any kind arising from delays due to transportation, installation, buyer's rejection of goods, or any cause whatsoever.

**5. LIMITATION OF DPMI and DDC'S LIABILITY:** DPMI and DDC's liability on any claim of any kind, including claims based upon DDC's negligence, breach of contract, or strict liability in tort, for any loss or damage arising out of, connected with, or resulting from the use of the products furnished hereunder or DDC's performance of this contract, shall in no case exceed the purchase price allocable to the goods or part thereof which give rise to the claim. IN NO EVENT SHALL DDC BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWSOEVER ARISING OUT OF DDC'S PERFORMANCE OF THIS CONTRACT AND NOTWITHSTANDING WHETHER DDC MAY HAVE BEEN ADVISED OR IS ADVISED OF THE POSSIBILITY OF SPECIAL (OR LIQUIDATED) DAMAGES.

**6. PAYMENT:** DDC offers a 3% 10 day discount (less freight) from the date of the invoice not the date of receipt of goods. Where a prompt payment discount is offered, funds must be received by DDC by the 10<sup>th</sup> day following the date of invoice. Should DDC not receive payment in a timely fashion credit terms will be revoked. For payments received beyond 10 days where a discount is taken, DDC will invoice for the discount taken. These invoices are due upon receipt. Typically, all International orders are pre-pay before shipping. If any questions arise concerning accounts receivable, Buyer shall contact the Credit Department for assistance. In the event of disputes Buyer shall pay the undisputed portion of the invoice within the above time.

Preferred methods of payment are Check by Fax, Check by Phone, ACH or EFT. Credit cards while acceptable are not preferred as there is a 4% processing fee charged to the invoice. If Buyer chooses to wire funds, Buyer is responsible for all bank charges both at Buyer's end and DDC's end. DDC will invoice Buyer for all shortages on wire transfers. Such shortages must be made up within 30 days or with the next order.

**7. BUYER'S DEFAULT:** (a) If Buyer fails to make any payment to DDC when due; (b) if Buyer's financial responsibility becomes impaired or unsatisfactory in DDC's sole judgment; (c) Buyer commits a material breach of this contract; or (d) inhibits or frustrates DDC's performance of this Contract by any act or failure to act, DDC may, without breach of contract and without prior notice or demand, suspend or cancel further performance or deliveries due hereunder.

Buyer shall be liable to DDC for any losses or damages of DDC arising from such Buyer defaults and failures, as well as any resulting delays to DDC's performance. DDC may, at its sole option and its discretion, resume performance of this Contract upon Buyer's removal of any inhibiting cause, and upon Buyer's providing assurance or security for its performance as DDC in its sole judgment may determine to be required.

**8. NO IMPLIED WAIVER:** The failure of DDC in any one or more instances to enforce one or more of the terms or conditions of this contract, to exercise any right or privilege hereunder, or the waiver by DDC of any breach of this contract, shall not be construed as thereafter waiving any terms, conditions, rights or privileges of this Contract and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

**9. FORCE MAJEURE:** The delivery date shown on the Contract is an estimate only and is not guaranteed. DDC may not be liable for non-performance or delay in performance resulting from any governmental law or regulation, now or hereafter in effect, or for delays caused by DDC's suppliers, or caused by Acts of God, fire, flood, wind, sabotage, strikes or other labor troubles, accidents, necessary repairs to machinery, adverse weather conditions, or any cause beyond DDC's reasonable control. In the event of any of the foregoing, DDC shall have the right to allocate and reschedule production and delivery of products to Buyer as DDC, in its sole discretion, shall deem fair and practical, without liability to DDC.

**10. DELIVERY:** Sales are F.O.B. DDC's factory or distribution facility. This means that title to goods passes to the customer when the carrier leaves DDC's facility. If shipping damage or loss should occur, Buyer is responsible for filing the freight claim with the carrier. Buyer is responsible for noting any damage on the carrier's bill of lading. DDC will assist in the filing of freight claims if requested to do so by the Buyer. Buyer shall report any concealed damage or shortages in the Product to DDC within five (5) working days from the date of delivery.

Should a loss occur of product after it has shipped, Buyer is liable for payment of the original invoice as well as for invoices created for products shipped to replace lost or damaged items. While DDC may provide assistance to the Buyer in filing a claim, financial recovery of the loss is between the freight carrier and the Buyer.

**11. DELAY, TERMINATION, and OR CANCELLATION BY BUYER:** DDC shall be entitled to recover all costs, expenses, and damages suffered as a result of Buyer's cancellation, or termination of this contract, or Buyer's delay of DDC's performance under this contract.

**12. PATENTS:** To the extent the Product are manufactured pursuant to designs provided by Buyer, Buyer shall indemnify and save harmless DDC, its agents and subcontractors, from any expense, cost, loss, damage or liability for infringement of any patents with respect to such items and their process of manufacture and Buyer agrees at its own expense to defend or assist, at DDC's option, in the defense of any action in which such infringement is alleged with respect to the manufacture, sale or use of such items delivered hereunder.

**13. ASSISTANCE BY DDC:** No recommendation or statement made or assistance given by DDC, its representatives, or agents, in connection with the installation, application, storage, transportation, or use of the goods or products furnished hereunder shall constitute a waiver by DDC of any of the provisions herein, or enlarge DDC's liability, as herein defined, or be deemed to provide any warranty in excess of those DDC warranties set forth herein above.

**14. ATTORNEY FEES AND EXPENSES:** If DDC is required to file suit or take other legal action to interpret any of its rights hereunder, including, without limitation, collection of amounts due DDC hereunder, Buyer shall pay to DDC the reasonable attorney fees and expenses incurred by DDC.

**15. SALES:** All sales are final. Any return of goods shall be subject to the prior written approval of DDC.

**16. SALES TAX:** Buyer shall upon DDC's request provide DDC with Buyer's Seller's Permit issued by the California Board of Equalization. Buyer shall pay any sales tax attributable to Buyer's purchase of the Products from DDC.

**17. SPECIFICATIONS, APPLICATION, and USE OF PRODUCTS:** Products furnished hereunder are sold pursuant to DDC's specifications and are subject to standard manufacturing variations. DDC may change specifications at any time. Buyer shall be solely responsible for the performance of Products produced to Buyer's specifications. Buyer shall be responsible for determining the appropriate use or application of Products for Buyer's requirements, notwithstanding Buyer's solicitation of, or DDC's providing, advice or recommendations to Buyer. Buyer waives any claim against DDC and DDC's agents or employees arising out of Buyer's selection, application or use of the Products. Buyer shall indemnify and defend DDC from any claim or suit for personal injury (including death), property damage, or other liability arising out of the improper selection, improper application, or any misuse of DDC's products or failure to follow DDC's application, installation, or safety instructions, or proper industry standards.

**18. TECHNICAL SERVICES:** DDC has personnel that will assist the training in the inside and outside sales personnel of the Distributor or Stocking Distributor. Each Distributor or Stocking Distributor will need to provide DDC with a listing of all sales and support personnel that need to be trained by DDC. DDC will schedule training with the Distributor once stocks are received. It is expected that the Distributor or Stocking distributor will make joint calls with DDC on major accounts to present the DDC products and introduce the stocking status of the Stocking Distributors.

DDC may charge for all expenses incurred when traveling for training. Requesting party may make arrangements or DDC will make arrangements and invoice the training sponsor. Expenses for such training are not paid by DDC. Consult the factory for Repair Service options.

19. **LITERATURE:** Media will be provided in electronic form and will be available on our website. Contact customer services for literature.

20. **SHIPPING:** DDC maintains an extensive stock of its products. Several thousand components are required to support its customers' needs. DDC will make every effort to ship the same day an order is placed. On larger stock orders, DDC endeavors to ship in 1 to 3 weeks. Order entry is open from 8:00 AM to 5:00 PM Pacific Standard Time. DDC will make every effort to ship one and two day shipments from inventory. From time to time DDC will be out of stock on standard items.

DDC offers a freight allowance to Stocking Distributors and only on net orders in excess of \$5,000.00. Stocking Distributors are recognized by DDC as distributors that carry stock for resale to other distributors, contractors and specialty customers. Stocking distributors must carry sufficient stock to service customers that wish to purchase through distribution. FREIGHT ALLOWANCE DOES NOT APPLY TO ANY SUMP OR SU SERIES PRODUCTS.

For UPS shipments DDC will contact UPS and receive a quote on the shipment to the customer's desired destination. That amount will be credited to the net invoice on qualifying orders.

For freight shipments DDC will obtain a written quote DDC will apply that quote as a credit to the net invoice on qualifying orders. THIS IS NOT INTENDED TO BE A FREE FREIGHT POLICY BUT RATHER AN ALLOWANCE REFLECTING APPROPRIATE FREIGHT COSTS.

Many next day requests will be directed to Stocking Distributors. The stocking distributor program is intended to minimize the issues associated with "next day". When DDC receives a same day or next day request, that request will be honored provided we are able to meet the demand. Should DDC be able to honor the request a \$150.00 expediting fee will be charged to the order.

Hazardous Materials fees where applicable on ALL orders will be added to the invoice.

21. **RETURN MATERIAL POLICY:** All returns are subject to approval by and at the sole discretion of DDC. Inventory level, sales activity, reason for return and frequency will be considered in each request. All returned material requests must include either the original customer purchase order number or the original DDC invoice number where the product was billed. DDC will issue credits only to the original Buyer of product.

DDC will allow products to be returned under the following guidelines. First an RMA must be received. Call customer Service 530-534-3966 to obtain a RMA number. All products will be inspected for salability after receipt. A credit to the customer's account will be issued only for salable product in the original packaging. The following schedule will be used to determine the restocking charge credited against the original invoice.

<b>PF</b>	Penetration fittings and accessories	20%
<b>SU</b>	Sumps and related products	30%
<b>IN</b>	Industrial Products	40%
<b>FC</b>	Flex Connectors	40%
<b>PG</b>	Polyglass Products	20%
<b>SR</b>	Split Repairs	40%
<b>CH</b>	Chemicals	RETURNS NOT ACCEPTED

All returned items must be in perfect, resalable condition and are subject to quality control inspection prior to acceptance. Freight must be paid by the requesting party. Any damage in transit is between the carrier and the party requesting the return. Items shipped that are out of spec or incorrect will not be assessed a restocking charge.

22. **INTERPRETATION:** The laws of the State of California shall govern the interpretation and enforcement of this contract, excluding only the law of conflicts.

23. **FINAL AGREEMENT:** There are no understandings or agreements between Buyer and DDC relating to this Contract which are not fully expressed herein, and no change shall be made to this Contract unless it is made in writing and signed by duly authorized officers of DDC and Buyer. No part of Buyer's contract(s) with Buyer's customer is included in this Contract except as may be specifically and expressly incorporated in DDC's written quotation to Buyer. Buyer may not assign or otherwise delegate Buyer's obligations under this offer and any resulting contract without DDC's express written consent.

28. **JURISDICTION AND VENUE:** This Contract shall be construed in accordance with the laws of the State of California and Buyer hereby consents to the jurisdiction of the courts of the State of California, County of Butte, which shall have sole and exclusive jurisdiction over this Contract and any controversies arising out of this Contract.

I/We agree to all the terms and conditions set forth above.

Authorized Company Signature

Company Name & Address

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**Required Additional Information:**

Management Contact

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Name

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Phone

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E-mail

Accounts Payable Contact

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Name

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Phone

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E-mail

Shipping Information

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UPS Account #

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Surface Freight Carrier Name

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Surface Freight Carrier Account Number