

**DEMI EQUIPMENT PURCHASE AGREEMENT
PURCHASED EQUIPMENT SUBJECT TO THIS CONTRACT**

All equipment purchases from Dakota Equipment Manufacturing Inc. ("DEMI") require the Customer to thoroughly read and agree to the following terms. These terms and conditions, and the Quote to which they are attached, form the entire agreement (the "Agreement") between DEMI and the customer identified in such Purchase Order or Quote (the "Customer"). The Customer's agreement to the terms is deemed provided once the Customer submits a Purchase Order or submits a signed Quote. Acceptance of any portion of the Services, providing payment in whole or in part, taking possession of any Equipment, or acceptance of the Agreement in any form (whichever occurs first) shall constitute acceptance of these Agreement Terms and Conditions and any terms outlined in the document(s) issued by the DEMI should the terms of any proposal, purchase order, or statement of work issued by the Customer or a third-party conflict with the terms and conditions of this Agreement, the terms of this Agreement shall control.

1. **PRICE:** Prices and charges shall be as stated in the Quote unless otherwise agreed to in writing. The price on the Quote will not include taxes or freight. The Customer is responsible for all applicable taxes unless the appropriate tax exemption documentation is pre-approved by DEMI.
2. **TAXES AND FEES:** The Customer shall pay all taxes, assessments, and license and registration fees on the equipment unless waived in writing by DEMI.
3. **PAYMENT RATE:** Payments shall be due regardless of whether the Customer has received notice of a payment. Customers may pay via check or wire. All credit card charges will be subject to an additional four percent (4%) charge.
4. **SERVICE CHARGE:** If any installation is not paid for within five (5) days after the due date, the Customer shall pay DEMI a surcharge charge of 1% of monies overdue per day.
5. **INSUFFICIENT FUNDS:** The Customer shall be charged \$250.00 for each check that is returned to DEMI for lack of sufficient funds.
6. **RISK OF LOSS OR DAMAGE:** From the point where the equipment leaves the DEMI's office in Aberdeen, SD the Customer assumes all risks of loss or damage to the equipment from any cause.
7. **DELIVERY TERMS:** DEMI will make every effort to meet the delivery date and will promptly communicate any changes or delays due to natural disasters or other uncontrollable causes. All products are delivered FOB Aberdeen, SD unless otherwise specified. The customer shall also bear and pay for all charges for freight, shipping, consular fees, customs duties, and all costs and charges.
8. **TIMING:** DEMI shall use reasonable efforts to meet any performance dates specified in the Agreement. The Customer agrees that any such dates shall be estimates only.
9. **CHANGE IN SERVICES:** If the Customer wishes to change the scope of the Services, it shall submit details of the requested change to DEMI in writing. Changes may incur additional fees including, but not limited to, engineering time fees, change of equipment fees, and administrative fees.
10. **CANCELLATION:** If Customer accepts the quotation and offer (so long as DEMI has not previously rescinded it) it becomes a legally binding agreement between both parties. Neither party may cancel this agreement unless both parties agree in writing to cancel it. If Customer decides to cancel this agreement without first reaching a new written agreement between both parties, or if Customer fails to pay DEMI any money owed under this agreement, or if Customer fails to fulfill any of the agreements made by accepting this contract, we may treat the order as having been wrongfully terminated by the Customer, in which case the agreement is immediately terminated upon DEMI providing written notice to Customer. If Customer terminates the order without reaching a new agreement with DEMI first, Customer agrees to pay DEMI an amount to compensate us for the damages incurred as a result of Customer having wrongfully terminated the order. The Customer agrees that our damages, for which Customer will be liable, will be calculated as of the greater of:
 - A. Twenty-five (25%) percent of the original contract price agreed to pay DEMI; or
 - B. The total of all labor and material costs DEMI incurred in fulfilling the Customer's order before it was terminated, plus an allowance for DEMI's overhead expenses and lost profits resulting in the termination of the order. **All paid fees, down payments, and project progression payments are considered non-refundable.**
11. **FORCE MAJEURE:** DEMI shall not be liable nor deemed to be in default for any delay or failure in performance under the Agreement or other interruption in the discharge of its responsibility, either directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, pandemics (such as Coronavirus disease), floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions by employees, or any similar or dissimilar cause beyond the reasonable control of DEMI.
12. **USED GOODS:** Should the Agreement include the purchase of used machinery, parts, or other equipment, said used equipment is sold "as is" and "with all faults." DEMI makes no warranty related to the title of these goods.
13. **ACCEPTANCE OF EQUIPMENT:** The Customer shall inspect each item of equipment delivered according to this purchase. The Customer shall immediately notify DEMI of any discrepancies between such an item of equipment and the description of the equipment in the Quote. If the Customer fails to provide such notice in writing within 2 days (s) after the delivery of the equipment, the Customer will be conclusively presumed to have accepted the equipment as specified. Any subsequent claim that the equipment was not provided in fully functional order will not be considered.
14. **CARE AND OPERATION OF EQUIPMENT:** The equipment may only be used and operated in a careful and proper manner. Its use must comply with the manual in addition to all laws, ordinances, and regulations relating to the possession, use, or maintenance of the equipment, including registration and/or licensing requirements, if any. The Customer must provide or purchase from DEMI all wearable supplies that include but are not limited to, fuel, oil, filters, and grease required to maintain equipment warranty.
15. **FAILURE TO PERFORM AND IDLE EQUIPMENT:** DEMI will not be held responsible for any failure of equipment for any reason. DEMI will not be held liable for any costs associated with equipment downtime for any reason. DEMI will not be held responsible for any errors or omissions due to the Customer's lack of operational or technical capability.
16. **LIMITED WARRANTY:** DEMI warrants for one year or (2,080 hours) from the date of delivery of DEMI's manufactured products to the extent that DEMI will replace those having defects in materials or workmanship when used for the purpose and in the manner that DEMI recommends. If DEMI's examination at DEMI headquarters shall disclose to its satisfaction that the products are defective, and an adjustment is required, the amount of such adjustment shall not exceed the net sales price of the defective products, and no allowance will be made for labor or expense of repairing or replacing defective products or workmanship or damage resulting from the same. If DEMI examination shall disclose that Customer is responsible for the damage, Customer shall be responsible for all freight and repair or replacement costs. DEMI warrants the products that it sells to other manufacturers to the extent of the warranties of their respective makers only. Where engineering design or fabrication work is supplied, the Customer's acceptance of DEMI's design or delivery of work shall relieve DEMI of all further obligations, other than as expressed in DEMI's product warranty. The foregoing limited warranty does not apply to any part, component, or item of any Product which was manufactured by anyone other than DEMI.
17. **INDEMNITY OF DEMI FOR LOSS OR DAMAGES:** If the equipment is damaged the Customer has the option to return the equipment to DEMI and pay for DEMI to repair the equipment to a state of good working order or pay for DEMI employees to repair the equipment on the Customer's job site.
18. **LIABILITY AND INDEMNITY:** The Customer assumes all risk and liability for the loss of, damage to, death of, or injury to any person or property caused by the use, condition, possession, or storage of property purchased from DEMI as well as all other risks and liabilities arising from the same. In no event shall DEMI be liable to the Customer or any third party for any loss of use, revenue profit, or loss of data or diminution in value or for punitive damages (including attorney's fees and costs and expert witness fees and costs) of any nature whatsoever. Liability for injury, disability, and death of workers and other persons caused by operating, handling, or transporting the equipment is the obligation of the Customer, and the Customer shall indemnify and hold DEMI harmless from and against all such liability. The Customer shall indemnify and hold DEMI harmless from and against all liabilities associated with injuries, disability, death, or damages caused by or to equipment rented or purchased from a third party, including judgments, costs, and reasonable counsel fees. The Customer shall maintain liability insurance of at least \$1,000,000.00 unless waived in writing by DEMI.
19. **REVERSE ENGINEERING:** The Customer agrees not to disassemble, decompile, or otherwise reverse engineer any equipment or materials provided.
20. **CONFIDENTIALITY:** From time to time during the term of the Agreement, either Party may disclose or make available non-public proprietary and confidential information to the other party. The receiving party shall protect and safeguard the confidentiality of the disclosing party's confidential information.
21. **NOTICE:** All notices required or permitted shall be deemed delivered when delivered in person or by mail, addressed to the appropriate party at the address shown for that party at the beginning of this agreement or on the Quote.
22. **ENTIRE AGREEMENT AND MODIFICATION:** This contract constitutes the entire agreement between the parties. No modification or amendment of this contract shall be effective unless in writing and signed by both parties. This contract replaces any and all prior agreements between the parties.
23. **GOVERNING LAW:** All matters arising out of or relating to the Agreement are governed by and construed in accordance with the internal laws of the State of South Dakota without giving effect to any choice or conflict of law provision or rule.
24. **SEVERABILITY:** If any portion of the Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision, it will become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
25. **CERTIFICATION:** The Customer certifies that the application, statements, references, and reports submitted to DEMI are true and correct and any material misrepresentation will constitute default under this contract.
26. **SERVICE RATES:** The Customer will be responsible for any additional Field Service costs incurred over the required commissioning and startup of the equipment or project. Field Service costs will be incurred for any customization, changes, or alterations not included in the original scope of work. DEMI will provide current Field Service rates or quotations upon request of the Customer.