Terms and Conditions
1. ENTIRE AGREEMENT. The terms and conditions set forth below constitute all of the terms and conditions of the agreement between Seller and Buyer. No statements or representations, whether oral or written, made by Seller or Buyer shall modify or amend the terms and conditions of this Agreement. This Agreement shall not be modified by any subsequent agreement, unless such agreement is in writing and signed by Seller and Buyer.

2. SHIPMENT. Shipment is F.O.B. Seller's plant or other place of manufacture, unless otherwise specified. The risk of loss to the Products (including damage or destruction thereto) passes to Buyer on delivery to Buyer's carrier. If the Buyer fails to accept delivery of Products or parts which have not been installed, operated or maintained in accordance with Seller's written instructions, Seller reserves the right to irrecoverably refusal to continue for the remainder of the warranty period for the original Product or part. The warranty and warranty period for Products or parts purchased by Seller from third parties are limited to the warranty period extended to Buyer from the manufacturer thereof. No interest of any nature relating to operation, use of installation of the Products, all which will be performed by Seller, the supplier of the Products.

3. DELIVERY. Seller will make every effort to fill orders within the time stated, but the stated delivery date is approximate only, and Seller reserves the right to re-adjust shipment schedules. Any delay in delivery by Buyer due to Buyer's failure to so install the Products.

4. PRICES AND FEES. All prices are subject to change without notice and any unshipped balance on Buyer's order shall be invoiced to and paid by Buyer at prices in effect at the time of delivery. Unless otherwise specified, payment terms are net thirty (30) days from invoice date. In addition to the purchase price, Buyer will pay all federal, state and local sales, excise, privilege, use or other similar taxes, levies, charges and/or assessments with respect to the Products and services. The contract price will be adjusted to reflect increases in the selling price caused thereby. If by the terms of sale credit is extended to Buyer, Seller reserves the right to require the Buyer to pay for any Products when due, and Seller may demand payment prior to the commencement of any further shipment. Buyer shall also reimburse Seller for any collection and legal fees incurred by Seller in enforcing Buyer's order or any agreement hereunder.

5. WARRANTY, EXCLUSIVE REMEDY. Seller warrants that the Products manufactured by it will be free from defects in materials and workmanship for a period of twelve (12) months from the date of installation or operation or, if earlier, eighteen (18) months from the date of shipment. Seller will repair or replace any Product or part thereof manufactured by Seller which has proven defective in material or workmanship, or to refund the portion of the purchase price relating to the defective Product or part, at Seller's option. Buyer shall notify Seller in writing within a reasonable time of discovery of such defect, but in no event later than the end of the warranty period set forth above. Upon the repair or replacement of a defective Product or part, Seller's warranty will continue for the remainder of the warranty period for the original Product or part.

6. The warranty and warranty period for Products or parts purchased by Seller from third parties are limited to the warranty period extended to Buyer from the manufacturer thereof. No interest of any nature relating to operation, use of installation of the Products, all which will be performed by Seller, the supplier of the Products.

7. LIMITATION OF LIABILITY. WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS PROFITS OR LABOR COSTS, ARISING FROM THE SALE, USE OR INSTALLATION OF THE PRODUCTS OR SOFTWARE, FROM THE PRODUCT OR SOFTWARE BEING BECOME A COMPONENT OF ANOTHER PRODUCT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE, BASED ON CONTRACT OR TORT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, INFRINGEMENT OF ANY COPYRIGHT OR TRADEMARK REGISTERED DESIGN OR OTHER INTELLECTUAL PROPERTY RIGHTS CAUSED BY THE PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE TO THE OTHER, OR ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE TO THE OTHER, OR ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE TO THE OTHER, OR ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT.

8. INSTALLATION. Buyer, at its expense, is to make all service connections necessary for operating the Products, such as electricity, water and air. Buyer will install the Products in accordance with Seller’s instructions and will indemnify Seller against any and all damages, demands, suits, causes of action, claims and expenses arising directly or indirectly out of Buyer’s failure to so install the Products.

9. REFURBISHED EQUIPMENT. Except as otherwise expressly agreed in writing by Seller, refurbished equipment shall mean equipment which is not covered by any law or regulations imposed by any governmental agency or certification or standards organization.

10. SPECIFICATIONS. Seller may, at its option, make changes in the design, arrangement or components of the Products if, in Seller’s judgment, such changes will be beneficial to the operation, manufacture or shipment of the Products. Buyer shall not be entitled to cancel the Products unless Seller approves of such changes in writing. If any such change made by Buyer results in an increase in price or change in delivery schedules for the Products, Buyer shall accept such increase or change upon Seller’s written notice of same.

11. Proprietary Information; Confidentiality. All non-public materials and information furnished by any other Person to Seller in confidence, unless otherwise specified, and all information learned or observed by Seller or its operations through performance of Buyer’s order is confidential and Buyer shall not disclose any such information to any other person, or use such information for any purpose other than performing the order hereunder.

12. DESCRIPTIONS. All weights, measurements, dimension, drawings, capacities and other particulars of the Products, whether contained in plans, photographs, catalogs, price lists or advertising material or otherwise, are only approximate and are included solely for Buyer's guidance. Such particulars do not form part of the contract, and deviations therefrom or subsequent changes in design are not for non-acceptance of the Products and do not constitute a breach of the agreement.

13. INFRINGEMENT. Seller at its expense will defend and hold Buyer harmless from and against all damages, costs and expenses arising from any claim of infringement or misappropriation of any patent, trademark registered design or other intellectual property rights caused by the Products originally manufactured by Seller, provided such claim of infringement or misappropriation is not based on or caused by: (a) Seller’s compliance with any designs, drawings, samples, specifications or instructions relating to the Products provided by Buyer or (b) the modification of the Products following shipment by Seller or (c) the combination, operation or use of the Products with devices, products, parts, or software not supplied by the Seller. In all other cases, Seller will pay all reasonable expenses incurred and hold Seller harmless from and against all damages, costs and expenses arising from any claim of infringement or misappropriation of any patent, trademark registered design or other intellectual property rights caused by the Products. If any such originally manufactured Product is held to infringe any United States patent and if Buyer’s use of such Product results in any such claim, Buyer may, at its option, (i) continue using the Products, (ii) supply a non-infringing Product, (iii) modify the Product so that it becomes non-infringing, or (iv) refund the then market value of such Product. In no event shall Buyer be required to pay the higher of the price of the infringing Product. THE FOREGOING REPRESENTS SELLER’S ENTIRE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY CHARGE OF MISAPPROPRIATION OR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT AND IS IN LIEU OF ANY STATUTORY WARRANTIES RELATING TO INFRINGEMENT. Seller will have no responsibility insofar as any Product or part thereof is made by another, is modified by Buyer or is modified by Seller in accordance with Buyer’s order.

14. NAMEPLATES. Any nameplate or other form of identification (including serial number) which Buyer is required to affix to or mark upon any of the Products may not be removed by Buyer without Seller’s written consent.

15. TERMINATION BY BUYER. Buyer may not cancel orders placed with Seller, except with Seller’s written consent and then only if Buyer makes payment to Seller in indemnity it against loss, including without limitation expenses incurred and commitments made by Seller.

16. TERMINATION BY SELLER. Seller may cancel Buyer’s order without penalty if Buyer fails to comply with the terms or conditions of its order, including terms or conditions relating to payment.

17. LOSS, DAMAGE OR DELAY. Seller will not be liable for loss, delay or damage resulting from causes beyond its reasonable control or caused by strikes or labor difficulties, lockouts, acts or omissions of any governmental authority or Buyer, insurrection or riot, war, acts of terrorism, fires, floods, Acts of God, breakdown of essential machinery, accidents, embargo or material shortages, delays in transportation or inability to obtain labor, materials or parts from usual sources. In the event that the Products will be delayed in transit by such causes, the delay of time as may be reasonably necessary to compensate for the delay. If performance by Seller under Buyer’s order cannot be accomplished by Seller due to any action of governmental agencies, strikes, lockouts, acts or omissions, then Buyer may terminate without penalty any of the provisions of this agreement which will not affect the enforceability or validity of any terms or conditions of the order.

18. WORK BY OTHERS. ACCESSORIES AND SAFETY DEVICES. Unless agreed in writing, Seller, being the supplier of the Products, has no responsibility for labor or work of any nature relating to operation, use of installation of the Products, all which will be performed by Buyer or others. If the responsibility of Buyer to furnish such accessory and safety devices as may be necessary to ensure the safe operation of the Products to the extent set forth in manuals and instruction sheets furnished by Seller. Buyer is responsible for consulting any operator or machine manufacturer, and all safety standards and applicable laws or regulations.

19. No Assignment. Buyer shall not delegate or assign its rights or obligations hereunder, in whole or in part, without Seller’s prior written consent. Any attempted delegation or assignment by Buyer without such consent shall be void.

20. INDEPENDENT CONTRACTOR. Seller, its agents and other suppliers shall at all times be independent contractors and Buyer shall make no express or implied representations to the contrary.

21. GENERAL. (a) No modification or waiver of this agreement or any of its provisions is valid unless expressly agreed to by Seller in writing. No waiver by Seller of any default under this agreement is a waiver of any other or subsequent default; (b) the unenforceability of invalidity of any of the provisions of this agreement shall not affect the validity of the remaining provisions; (c) this agreement will be governed by, and construed in accordance with the laws of the State of Wisconsin; (d) this agreement is governed by and shall be construed in accordance with the laws of the State of Wisconsin, without regard to its conflicts of laws principles. Buyer hereby consents to the jurisdiction and venue of the state courts located in Waukesha County, Wisconsin and agrees that all claims shall be heard and determined only in such courts.

DGF-040 Rev A