



DUR-A-FLEX
INNOVATION FROM THE FLOOR UP

Dur-A-Flex, Inc.

TERMS AND CONDITIONS OF SALE

1. **Contract Terms.** These Terms and Conditions of Sale (“Terms”) constitute the agreement between the parties, to the extent not prohibited by applicable law. Acceptance of Buyer’s order and all sales by Dur-A-Flex, Inc. (“DAF”) are expressly conditioned on these Terms. Buyer’s acceptance of products is agreement to these Terms . DAF hereby rejects all terms and conditions of Buyer. Modifications, including any terms and conditions in Buyer’s purchase order are not binding on DAF unless DAF agrees to the modifications in writing.
2. **Payment Terms.** Payment terms are net 30 days from the earlier of the date of invoice or date of shipment, unless specified otherwise. Goods exported from the USA may be subject to a down payment, with the balance payable through an Irrevocable Letter of Credit established through and confirmed by a bank acceptable to DAF. DAF shall have the right, in its sole discretion, to require payment before shipment or payment via letter of credit in the event that it determines that Buyer is delinquent in payment or will exceed credit limit. Overdue accounts shall bear simple interest at the rate of 1.5% per month (18% per annum) from the date of the invoice. Buyer shall pay all costs of collection of money due DAF, including attorney fees.
3. **Delivery Terms.** Delivery terms are F. O. B. DAF’s plant, unless specified otherwise. As a convenience, DAF may prepay freight charges, and such charges may be added to the Buyer’s invoice as a separate line item or reflected in the agreed price of the product. DAF may make partial shipments of Buyer orders, which shipments may be separately invoiced and shall be paid for when due, without regard to subsequent shipments. Delay in shipment or delivery of any particular portion of an order shall not relieve the Buyer of its obligation to accept the balance of the order. Regardless of the party paying freight charges, all risk of loss or damage in transit will be borne by the Buyer unless specified otherwise. Shipments shall be subject to overrun of 20% without penalty. Shipments of total quantities ordered must be taken within 10 business days of the order date, except that total quantities back-ordered are to be fully released and accepted within 6 months of the date of the order, unless otherwise agreed in writing. If not released as stated above, DAF reserves the right to charge all applicable and ancillary fees and/or carrying costs. Buyer agrees that an order shall in no event be subject to cancellation except by prior written consent of DAF, and then only when DAF is fully reimbursed for work performed, materials used and material which has been ordered specifically for Buyer’s order and cannot be returned.
4. **Delivery Dates.** Delivery dates are estimated at the date that DAF accepts the Buyer’s order. DAF shall endeavor to make deliveries within a reasonable time to the estimated delivery dates, but such dates are estimates of approximate dates of delivery, not a guarantee of a particular day of delivery. DAF shall not be liable to the Buyer for any damages, whether incidental, consequential or otherwise, for failure to fill orders, delays in delivery or any error in the filling of orders. Special or expedited delivery expenses will be charged to Buyer.
5. **Design Components.** It is the Buyer’s responsibility to approve colors and decoration at the DAF’s premises prior to commencement of a new production run, failing which the Buyer shall have no claim against the DAF for color variation or any other decoration defects whatsoever.
6. **Taxes.** Any tax imposed by Federal, State or other governmental authority on the sale of merchandise and service referred to in this order acknowledgment or invoice shall be paid by the Buyer in addition to the purchase price.
7. **Standard Warranty and Limitations of Remedies and Liability covering all DAFs’ goods.** Dur-A-Flex, as a manufacturer of goods, stands behind its products by warranting that, subject to the limitations below, for a period of 1 year from shipment, its products are in conformity with its published specifications, subject to standard tolerances for variations, except that color cannot be warranted as to uniformity of shade or conformity to samples. If Dur-A-Flex determines a product does not meet this warranty, it will replace it, refund the purchase price or give a credit to the purchaser, at its sole option, as Buyer’s sole remedy.

Our products are intended for use by customers with skill in the industry. Technical recommendations on use of Dur-A-Flex products can only be based on present experience and knowledge and reliability of data provided regarding a site. However, many factors beyond the control of Dur-A-Flex can affect the products. Thus, customers must satisfy themselves of suitability of the product for site conditions.

Dur-A-Flex is not an installer and therefore does NOT warrant or guarantee:

1. The work of any person or company installing its goods;
2. Failure of the product due to an installer not following the product Application Instructions;
3. Failure of the product due to improper design by the engineer or architect;
4. Failure of the product due to misuse, abuse, alteration, improper storage or handling, or not using or cleaning the product in the manner in which it was intended and in accordance with instructions provided by Dur-A-Flex;
5. Bond failure of the product caused by deficiencies in the substrate including, but not limited to, the presence of ionic compounds or soluble salts, alkali silicate reaction, alkali aggregate reaction, shale-pop, and other expansive reactions of aggregates and reinforcements;

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Dur-A-Flex's sole liability, and Customer's exclusive remedy, for breach of any warranty as expressly limited, at Dur-A-Flex's option, is to replace material at the original FOB point or refund of the purchase price. A written notice of claim for breach of warranty must be delivered to Dur-A-Flex within sixty (60) days of observation and no more than one (1) year after delivery of the product. Dur-A-Flex shall be allowed reasonable opportunity to investigate the claim and inspect the product. In no event may Customer recover damages exceeding the price paid by the Customer for the specific goods as to which the claim is made, whether based on contract, tort, or any other theory.

DUR-A-FLEX MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. DUR-A-FLEX SHALL NOT BE LIABLE FOR, and CUSTOMER WAIVES ALL CLAIMS FOR, PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY OTHER DAMAGES OR REMEDIES NOT SPECIFICALLY PROVIDED ABOVE, WHETHER BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. ALL WARRANTIES ARE NULL AND VOID IF CUSTOMER HAS NOT PAID IN FULL IN ACCORDANCE WITH DUR-A-FLEX'S PAYMENT TERMS.

Dur-A-Flex, Inc. will not be liable for, and the Customer shall defend, indemnify and hold harmless (including without limitation costs and attorney's fees) Dur-A-Flex, Inc. from, any loss, damage or injury to persons or property, or claim thereof, resulting from (A) Customer's or any third party's or end user's handling, storage, transportation, resale, application or other use of the goods, or in combination with other substances, or otherwise or (B) selection or recommendation by Dur-A-Flex, Inc. of any applicator or other contractor.

Any controversy or claim arising out of or relating to the within Warranty, terms and conditions shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Venue for the arbitration shall be in Hartford, Connecticut.

8. Specifications. Buyer accepts DAF's standard product specifications. Buyer waives all claims relating to products sold by DAF unless notice thereof is received in writing by the DAF within 30 days after delivery of the products which are the subject of the claim(s). In no event shall DAF be liable for any defective good if examination discloses that the good has been taxed beyond its normal capacity or the defective condition of such good was caused by misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, storage, transportation or handling.
9. Safety. USE OF THE GOODS OR MERCHANDISE SUPPLIED BY DAF IN OR WITH SUBSTANCES WHOSE CHEMICAL OR OTHER COMPOSITION OR CHARACTERISTICS ARE INCOMPATIBLE WITH SUCH GOODS OR MERCHANDISE IS A MISUSE BY BUYER OF SUCH GOODS OR MERCHANDISE. ALL RESPONSIBILITY TO TEST AND OTHERWISE ASSURE COMPATIBILITY IS ASSUMED BY THE BUYER, WHETHER OR NOT DAF MAY PERFORM ANY TESTS FOR COMPATIBILITY (WHICH TESTING IS NOT A DUTY OF DAF) AND REGARDLESS OF THE RESULTS OF ANY SUCH TEST, DAF MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT ANY TESTS BY DAF ARE ADEQUATE OR SUFFICIENT FOR BUYERS PURPOSES, AND BUYER AGREES NOT TO HOLD DAF RESPONSIBLE FOR SUCH ADEQUACY OR SUFFICIENCY. Upon request by Buyer, DAF will provide applicable information (including but not limited to Material Safety Data Sheets) concerning the safety and health aspects of its goods. Buyer agrees to communicate such information to Buyer's employees, agents, contractors and customers, and to require such persons to further communicate such information to all persons that they may reasonably foresee will be exposed to or handle such goods.
10. Non-conforming Goods. If Buyer provides DAF with notice within ten (10) days of learning of a possible warranty breach and reasonable opportunity to inspect: DAF may, at its option, either repair or replace said nonconforming goods or repay the price thereof. If DAF requests the return of the nonconforming goods, no obligation for breach of warranty shall arise unless the goods have been returned to DAF within thirty (30) days after such request is made. Buyer's failure to provide timely notice shall constitute a waiver of its claims. The aforesaid obligations of DAF to repair or replace defective or nonconforming goods or repay the purchase price thereof is expressly agreed by the parties to be the limit of DAF's liability and Buyer's sole and exclusive remedy for warranty.
11. Damages. IN NO EVENT WILL DAF BE LIABLE FOR LOSS OF USE OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OR EXPENSE ARISING IN CONNECTION WITH THIS ORDER. DAF's maximum liability shall not in any case exceed the contract price for the goods claimed to be defective or unsuitable.
12. Indemnification. BUYER ASSUMES ALL RISKS AND AGREES TO INDEMNIFY AND HOLD DAF HARMLESS AGAINST ALL CLAIMS AND LIABILITY (INCLUDING LIABILITY BASED ON A CLAIM THAT DAF IS NEGLIGENT OR STRICTLY LIABLE) ARISING AS A RESULT OF USE OR POSSESSION OF THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT. Any advice furnished by DAF, as to any use of the goods by Buyer, is offered "as is" without warranty of any kind, is gratuitous and shall not affect the limitations on DAF's warranties or Buyer's agreement to indemnify. Buyer acknowledges that this Agreement is for the purchase of goods, not services, and that DAF shall therefore have no liability to Buyer for any harm or loss caused by advice received by Buyer from any of DAF's agents or employees. If a claim is brought against DAF by an agent or employee of Buyer, Buyer agrees to defend, indemnify and hold DAF harmless from and against any and all liability, loss, damages, and expense relating to the claim.

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13. Setoff. DAF shall have the right to set-off all amounts due to it against payments owed by it whether arising out of this or any other contract between DAF and Buyer, its subsidiaries, or affiliates.
14. Force Majeure. Neither party shall be liable to the other party or any other person for any failure or delay in the performance of any obligation hereunder, except for payment obligations, due directly or indirectly to events beyond its reasonable control, including but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, terrorism, wars, riots and public disorders, epidemics, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdowns, stoppages or delays, shortages, embargoes or failure or delay of energy, materials, decoration, art work, printing plates, supplies or equipment, transportation embargoes or delays, Acts of God, breakdowns in machinery or equipment, acts or regulations or priorities of federal, state, provincial, or local governments or branches or agencies thereof, and government contracts or shipments to fulfill government contracts.
15. Entire Agreement, Governing Law. There are no terms or conditions with respect to this contract, which are not specified herein. These terms and conditions constitute the complete and exclusive agreement between the parties concerning the subject matter thereof and supersede all prior representations, statements and promises made by DAF which are not expressly stated herein. Irrespective of the place of execution or performance the purchase order shall be governed by and construed in accordance with the laws of the State of Connecticut and all actions arising out of this contract shall be brought in the State of Connecticut.
16. Price Changes. Notwithstanding the price on the order, DAF reserves the right to modify the price in accordance with any change in labor, applicable law, exchange rate for exports, fuel surcharges where DAF pays for shipping or raw material costs, which have been instituted at or before the date of shipment. Where packaging other than standard packaging is necessary, the expense will be charged to the Buyer. DAF reserves a security interest in any goods sold to the extent of the invoiced amount to secure payment of Buyer's obligation. If Buyer defaults, it agrees to make the goods available so that DAF may peaceably repossess. A copy of the invoice may be filed with the appropriate office at any time as a financing statement. At DAF's request, Buyer will execute any instrument DAF requires to perfect its security interest.
17. Returns. Product returns will not be accepted for replacement or credit without prior written authorization from DAF and a returned material authorization (RMA) number, in accordance with DAF's current return policy. A return authorization number must be requested from DAF through the Regional Sales Manager. Merchandise returned is not to exceed the quantity authorized. A minimum 20% restocking fee will be applied. All returns must have freight prepaid. No cash on delivery for freight will be accepted. Credit will be issued only after merchandise is inspected by DAF. Damaged, opened or partially used products will not receive credit. Materials returned beyond 90 days of original ship date will not receive credit. Custom colors, pigmented MMA and Poly-Crete Aggregates are not eligible for return. Credit will not be issued for returns without an RMA number displayed on the pallet and bill of lading.
18. Credit. All orders are subject to approval of the credit department. DAF shall have the right, at DAF's sole discretion, to modify, change or withdraw credit terms at any time without notice and to request guarantees, security or payment in advance for any order or from any Buyer.
19. Nondisclosure. All non-public information provided by DAF to Buyer ("Information") shall be DAF's exclusive property. Information shall be used by Buyer only for installation of DAF products, kept confidential, and returned promptly at DAF's request. Buyer shall not disclose Information to third parties without DAF's consent. These obligations shall survive the cancellation/termination/completion of the sale.
20. Intellectual Property. DAF retains its intellectual property rights, title and interest in and to trademarks, trade names, logos, copyrights, patent rights, trade secrets and other proprietary rights ("IP"). Purchaser obtains no license under Seller's IP (other than as necessary to apply the Products) or any rights to use, or make any representations regarding, any of Seller's IP. Purchaser has no rights to sublicense or otherwise transfer any of Seller's IP rights to third parties. Purchaser shall not disparage any of Seller's IP rights.
21. **GENERAL** (a) Assignment and Delegations: Buyer will not assign any rights or delegate any duties under the Agreement without the written consent of DAF. (b) Statute Of Limitations: any action of any kind under this contract must be brought within one (1) year of the date of delivery. (c) Modification and Termination: This contract shall not be modified or terminated unless expressly agreed by both parties in writing. No waiver or any default hereunder shall be deemed a waiver of the obligation of future compliance, and any provision waived shall remain in full force and effect. In addition to its other remedies, DAF may cancel any unfulfilled part of the contract without any liability and without notice if Buyer fails to pay amounts due or Buyer shall become bankrupt, insolvent, makes an assignment for the benefit of creditors or a receiver is appointed for Buyer, or Buyer is acquired or sold in whole or in part. (d) Sole Agreement: Unless otherwise agreed in writing, this constitutes the entire agreement between DAF and Buyer, and supersedes any previous agreement, representation or warranty, whether express or implied, regarding the goods. Buyer acknowledges that no representations, understandings, conditions, or agreements have been made or relied upon other than those specifically stated in this Agreement.

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