

TERMS AND CONDITIONS OF SALE

- 1. FORMATION OF AGREEMENT.** The terms and conditions contained herein, together with the terms and conditions contained in the accompanying proposal and/or specifications (all of which constitute the "Proposal"), shall, upon acceptance, constitute the complete agreement between Buyer and DIDION International, Inc. ("Seller"), and shall supersede any and all prior statements of any kind which are attributable to a party. THE PROPOSAL EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS AND CONDITIONS STATED HEREIN AND IN THE ACCOMPANYING PROPOSAL AND/OR SPECIFICATIONS, AND ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE REJECTED UNLESS EXPRESSLY AGREED TO BY SELLER IN WRITING. Any order issued or received in response to the Proposal shall be deemed to be an acceptance of all of the terms and conditions set forth in the Proposal. The Proposal may be accepted only by directing an order to Seller's office. Prices are quoted Ex-Works St. Peters, Missouri, U.S.A. in US Dollars unless otherwise stated.
- 2. DELAY.** Seller shall not be responsible for nonperformance or delay of performance resulting from any cause beyond the reasonable control of Seller, including labor difficulty, government action or inaction, delay of a vendor or carrier, weather, war, civil disturbance, or acts of God. Any delay resulting from any such cause shall effect a corresponding extension of a date on which Seller's performance may be due. Buyer shall pay reasonable storage charges to Seller for equipment ready for delivery from Seller's plant but not delivered within a reasonable time therefrom as a result of delay attributable to Buyer.
- 3. DELIVERY.** The delivery date set forth in the Proposal is an estimate. Firm delivery date will be established upon formation of agreement and receipt of required deposit. All freight charges and customs duties are for Buyer's account irrespective of Seller's role arranging delivery.
- 4. TAXES.** All sales, use, excise or other taxes, and all penalties and interest arising therefrom, are strictly Buyer's responsibility and for Buyers account, and are not included in quoted prices. Buyer shall timely furnish Seller with evidence of exemption where applicable.
- 5. TITLE AND RISK OF LOSS.** All right, title and interest in and to equipment, and all risk of loss, shall pass from Seller to Buyer upon loading of equipment by transporter at Seller's plant.
- 6. SPECIFICATIONS.** Seller reserves the right to change equipment specifications provided that such changes do not result in any material adverse affect for Buyer.
- 7. BUYER TO FURNISH.** Unless otherwise provided, Buyer shall furnish and/or be responsible for all designs for, and other components of, production line; all motor controls and wiring to equipment; complete foundation for equipment; dust collection; and all labor and equipment necessary to safely unload, uncrate and place equipment on foundation.
- 8. PRODUCTION ESTIMATES.** Any statements or estimates made by Seller or its agent regarding production, capacity or performance of the equipment or similar models are not representations or guarantees of such production, capacity or performance by the equipment which is the subject of the Proposal unless specifically set forth as such in the Proposal. Any such statements or estimates not set forth in the Proposal may be based upon past performance of similar equipment in conjunction with various types of processes and equipment under various conditions. Results may vary for many reasons, including material conditions. The design and operation of the production facility in which the equipment is intended to operate is not the responsibility of Seller, and may have a material affect upon results achieved.
- 9. TERMINATION.** This agreement may not be terminated by Buyer for any reason unless Buyer shall give Seller reasonable written notice of Buyer's intention to terminate and accompany such notice with payment in full of all completed components of the equipment, at the pro-rated contract price, plus a termination charge equal to 30% of the total contract price. When calculating such amounts, credit shall be given for all deposits and other payments made by Buyer, less all reasonable attorney's fees and other costs and expenses attributable to Buyer's termination.
- 10. TECHNICAL ASSISTANCE.** Seller will provide service personnel to Buyer at Buyer's request, and Buyer shall pay Seller the per diem rates for such personnel and the actual travel and living expenses incurred plus 15%.
- 11. LIMITATION OF ACTION AND REMEDIES.** Any and all claims, actions or suits by Buyer arising out of this agreement shall be barred unless commenced within one year after shipment of the equipment. Seller shall not be liable for any consequential, incidental or exemplary damages arising out of any breach or nonperformance of this agreement, and Seller's liability for any such breach or nonperformance shall not exceed the contract price. Seller shall not be liable for any loss arising out of damage to sand and/or castings during production. Seller may commence any action against Buyer for nonpayment of any account or sum due at any time within any applicable statute of limitation.
- 12. VIBRATION TRANSMISSION.** Non-balanced and non-isolated conveyors transmit dynamic reaction forces into the foundation. Vibration transmission can affect support structures and buildings. The purchaser or end user is responsible for soil conditions, foundation designs, and the effects of vibration transmission.
- 13. GOVERNING LAW; SELECTION OF FORUM.** This agreement shall be deemed to have been made in St. Charles County, Missouri, and shall be governed by and construed in accordance with the internal laws of the State of Missouri. Any and all claims, actions or suites arising out of this agreement shall be filed in a court having a situs in, or jurisdiction over, St. Charles County, Missouri, and Buyer hereby irrevocably submits itself to the jurisdiction and venue of any such court and waives any objections venue or convenience therein.
- 14. PAYMENT; CREDIT.** Buyer's failure to make any payment when due shall entitle Seller to suspend further performance until Buyer has made such payment and pre-paid such other amounts as are deemed by Seller to be reasonable. Buyer agrees to pay the reasonable attorney's fees and expenses incurred by Seller in collecting any payments hereunder.
- 15. LIMITED WARRANTY.** Seller warrants to Buyer that for a period of one (1) year from the date of shipment the equipment will be free from material defects in workmanship and materials. Upon written notice from Buyer informing Seller of such defects, Seller will replace or, at its option, repair such defects. Improper maintenance, failure to tighten compression bolts, chain misalignment, excessive thrusting, and unapproved modifications will void warranty. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.
- 16. AUTHORITY.** Seller and Buyer each represent and warrant to the other that each is duly authorized to make and enter into this agreement, and that the person or persons executing and delivering this agreement are duly authorized to do so on behalf of Seller and Buyer respectively.
- 17. ENTIRE AGREEMENT.** The Proposal, as herein defined, sets forth the entire agreement between the parties with respect to the subject matter thereof. There are no promises, representations or warranties to or from a party which are not set forth therein. Any modification or alteration of this agreement shall be effective only if set forth in a writing duly executed by the parties.