

# DMCPOWER TERMS AND CONDITIONS OF SALE

**ORDERS** - All orders are subject to acceptance or rejection by DMC Power. No order of contract shall be deemed accepted unless and until such acceptance is made in writing by DMC Power.

**PRICES** - Prices, quotations, specifications, and other terms and all statements appearing in DMC Power's catalogs and advertisements, and otherwise made by are subject to change without notice. DMC Power reserves the right to make changes in design at any time without incurring any obligation to provide changes on units previously purchased, or to continue to supply obsolete items. Unless otherwise specifically provided in writing, the prices quoted are based upon manufacture of the quantity and types originally specified and are subject to revision when interruptions or engineering changes are caused or requested by the customer. We are not responsible for typographic errors made in any of our publications, or for stenographic or clerical errors made in preparation of our quotations. All such errors are subject to corrections. Prices quoted herein do not exceed the maximum prices permitted under applicable governmental regulations. Price redetermination clauses will not apply on an order resulting from this quotation. DMC Power reserves the right to renegotiate prices on that portion of an order scheduled for shipment more than six months from the order entry dates, unless specifically agreed to in writing for an extended schedule beyond six months. Unless otherwise stated in this quotation, all tools required to produce the materials covered by a resulting order are to remain the property of DMC Power, F.O.B. Carson, Calif. All quotations subject to 30 days acceptance. Two-hundred fifty dollar (\$250.00) minimum order charge.

**DELIVERY** - The delivery date is our best estimate of the time material will be shipped from our factory, and we assume no liability for loss, damage, or consequential damages due to delays. We reserve the right to fabricate the entire quantity ordered in one production run. In the event of cancellation of such items, any components, subassemblies and/or finished assemblies on quantities equivalent to the full production run for the entire quantity ordered plus the normal overrun shall be considered as part of applicable cancellation charges. Increases in quantities to orders entered are allowed provided that the production of the items has not commenced. Where production has commenced, a new order shall be entered at the appropriate price level commensurate with the new quantity. This condition also applies to cross-referenced purchase orders so designated for accumulative price advantage.

**TERMS OF PAYMENT** - On approved orders, terms are Net 30 days from date of invoice. DMC Power may at any time, when in its opinion the financial condition of the customer warrants it, either alter or suspend credit. In cases where credit is not established satisfactorily or financial information is not available, the terms are cash with order, C.O.D. at the option of DMC Power. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. Service charge of 1% per month which amounts to 12% per year will be made on unpaid past due balances.

Credit card payments are accepted. There will be a 2% adder to cover bank costs when processing credit cards.

**SHIPMENT** - All shipments are made F.O.B. the appropriate DMC Power facility, unless otherwise specified. All boxing and packing for domestic shipment are included in the quoted price. When special packing is specified involving greater expense than that customarily supplied, a charge may be made to cover such extra expense. When ordering, state clearly the method of shipment. Unless otherwise specified, we will normally use the best, least expensive surface transportation. Reasonable care is exercised in packing our products for shipment and we assume no responsibility for delay, breakage, or damage after having made delivery in good order to the carrier. All claims for breakage and damage should be made to the carrier, but we will be glad to render all possible assistance in securing satisfactory adjustments of such claims. In the absence of any agreement to the contrary, DMC Power reserved the right to over or under ship by 10% where the manufacturing processes make it impractical to provide the exact quantity specified.

**PRODUCT WARRANTY** - DMC Power warrants each new unit sold to be free from defects in material and workmanship under normal use and service. Every unit is manufactured in accordance with the drawings, and/or specifications called for and current on the date the order for these parts was received. DMC Power's obligation under this warranty is limited to the correction or replacement of any unit which proves defective in material or workmanship under normal use and service within ninety (90) days of shipment to the first user on Swage Dies and Hydraulic Pumps and one (1) year from shipment to the first user on Swage Connectors, Power Units, Yokes, Die Blocks, repair parts and labor, provided return is authorized and unit is prepaid to the DMC Power shipping point (or authorized distributor if purchased through this source) with all transportation charges prepaid and providing said unit is found to be defective by DMC Power Inspection. DMC Power makes no warranty regarding the compatibility of its connection products with connection products of others and Customer acknowledges that any such unauthorized combination shall constitute a breach of contract.

All tooling and fitting warranties are void if non-DMC Power products are used with DMC Power tooling or fittings. Compliance with our SOP is critical to our system performing safely and creating the connection our customers have come to expect. As a result of any unauthorized misuse of our system, any and all potential future liabilities of the Swage tool will fall on the users or owner of the tools. The user or owner of DMC Power tools are making an informed decision to relieve DMC Power of any liabilities if the DMC Power System is misused.

In addition, we assume no liability for consequential or special damages resulting from the use of any of our products. This warranty is in lieu of all other warranties expressed or implied. NEITHER DMC POWER NOR ITS MANUFACTURER MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR USE, AND THEY DISCLAIM ALL SUCH REPRESENTATIONS AND WARRANTIES.

**CLAIMS AND REJECTED MATERIAL** - No products may be returned except with return authorization from DMC Power. Custom made special parts for a customer are not returnable. Approved returns must be sent in original product packaging and in the same condition in which it was shipped.

**TAXES** - Federal Excise, State or Local Taxes, if any, must be added to the net quoted prices and will be shown as a separate item upon invoices and shall be borne by the customer.

**INDEMNIFICATION** - Customer shall indemnify, reimburse, release, hold harmless, and defend DMC Power and its affiliates and their respective successors and assigns from and against any loss, liability, claims, suits and costs caused by, arising out of or relating to (i) the design of goods supplied hereunder or the design of the packages or containers in which they are shipped, if such goods, packages or containers are made in compliance with Customer's design or specifications, (ii) infringement of any United States patent to the extent that such infringement arises from designs, specifications or instructions furnished or expressly or implicitly required by Customer, and/or (iii) the application or the use to which goods provided hereunder are put by Customer or others.

Customer acknowledges and agrees that it shall not utilize DMC Power's connection tools with connectors manufactured by others. Customer shall defend, indemnify and hold DMC Power harmless from all loss, costs, damages and expenses arising from any such usage of DMC Power's connection tools. In addition, Customer shall secure a waiver of subrogation in DMC Power's favor in connection with loss under policies insuring Customer facilities. DMC Power shall be deemed to be exonerated from claims for damages to Customer facilities to the extent of deductibles under said policies or if Customer self-insures its facilities.

**PROPRIETARY STATEMENT** - Notwithstanding any other contractual provisions to the contrary, all products sold hereunder, including but not limited to all components, modules, assemblies and parts thereof and all computer software and technical data used in the development and manufacture of said product etc., were developed at private expense and are proprietary to DMC Power. Neither the purchaser nor any government entity shall have any rights or interest therein.

**APPLICABLE LAW** - This Contract is made in the State of California, and it is intended by all parties that it be construed according to the internal laws of the State of California without regard to conflicts of law principles. Customer irrevocably: (a) consents to venue solely in the courts of the County of Los Angeles, State of California, in any court having jurisdiction therein, (b) agrees not to contest such venue and (c) agrees that orders and judgments of any such court may be enforced anywhere that Customer or its property is found. Notwithstanding the foregoing, DMC Power may file suit or appear in any proceeding anywhere where it deems such action appropriate to enforce its rights or protect its interests with respect to this Contract.

**GOVERNING TERMS** - DMC Power's obligations under this order are defined by these Terms and Conditions of Sale. Confirmation and acceptance of the order is expressly made conditional on Customer's assent to these Terms and Conditions of Sale whether or not in addition to or different from the terms of Customer's purchase order or terms and conditions or other Customer documents. Unless DMC Power otherwise agrees in writing, it expressly rejects any inconsistent terms in any of Customer's purchase order or terms and conditions or other Customer documents.