

Deca Vibrator Industries Inc. Master Sale Contract

This Master Contract governs all sales of goods and services made by Deca Vibrator Industries Inc., an Illinois corporation, ("Deca"). In this Master Contract, the "parties" means Deca and Customer, a "party" means Deca or Customer, and a "third party" or "third parties" means one or more persons or entities other than Deca and Customer.

1. **Deca's Goods and Services.** Deca sells various goods as a reseller or manufacturer (the "Goods"). Deca also sometimes provides specifications, designs, drawings, installation, instructions, training, supervision, operation, maintenance, and repair regarding the Goods, and advice to select the Goods (one or more of which are the "Services").

2. **Master Contract and Applicable Quotation.** (a) Each sale of Goods and Services by Deca to Customer is referred to herein as a "Transaction". (b) Each Transaction shall be governed by the provisions of this Master Contract, and the following (the "Applicable Quotation"): (i) one or more written quotations from Deca to Customer pertaining to the Transaction, and (ii) sometimes, other writings between Deca and Customer which show their mutual consent to various provisions or conditions of the Transaction. (c) "Customer", as used herein, shall be whomever is identified as Deca's customer by the Applicable Quotation. (d) For each Transaction: (i) If there is any conflict between this Master Contract and an Applicable Quotation, the provisions of this Master Contract shall govern. (ii) This Master Contract and the Applicable Quotation are together referred to herein as the "Applicable Contract". (e) The effective date of a Transaction and the Applicable Contract shall be the date specified by the Applicable Quotation. (f) Each Applicable Contract shall constitute a separate agreement between Deca and Customer.

3. **Acceptance.** Except as otherwise specified by the Applicable Quotation, Customer shall have 30 days to accept the Applicable Quotation by notice to Deca. Absent Customer's acceptance notice, Customer shall be deemed to have accepted an Applicable Quotation by placing an order for the Goods or Services, by accepting delivery of the Goods, or by permitting Deca to furnish or begin furnishing the Services, as applicable. Customer's express or deemed acceptance of an Applicable Quotation shall also constitute Customer's acceptance of all the provisions of this Master Contract.

4. **Errors in the Applicable Quotation.** Customer shall be solely responsible for all errors in an Applicable Quotation that Customer expressly accepted or is deemed to have accepted.

5. **Entire Agreement.** For each and every Transaction:

a. The Applicable Contract shall be deemed to contain and shall constitute the final, entire, and exclusive statement and expression of the parties' agreement, terms, conditions, provisions, understanding, and arrangement regarding that Transaction.

b. The Applicable Contract shall supersede all prior and contemporaneous negotiations, representations, and agreements, if any, of any kind, whether electronic, written, or oral, between the parties regarding that Transaction.

c. The Applicable Contract may not be explained or supplemented by the parties' course of performance, the parties' course of dealing, by usage of trade, or by industry custom.

d. Customer's acceptance of an Applicable Contract is limited to the terms of the Applicable Quotation and the terms of this Master Contract.

e. Deca hereby rejects terms and conditions offered or otherwise submitted by Customer that differ from or are in addition to those contained within the Applicable Contract.

f. No action or conduct by either party shall indicate or be deemed to indicate either of their consent to any term or condition other than those set forth within the Applicable Contract.

6. **Modification, Rescission, and Waiver.** An Applicable Contract shall not be modified or rescinded except by a writing signed or acknowledged in writing by the parties. An Applicable Contract shall not be modified or deemed modified by any oral statement or conduct made or done by a party or any third party. Deca's failure or forbearance to require Customer's compliance with an Applicable Contract, whether or not occurring on multiple occasions, shall not thereby modify the Applicable Contract, shall not excuse Customer's future compliance, and shall apply only to the specific instances of Deca's failure or forbearance.

7. **Trial Units.** If the Applicable Quotation indicates that the Goods are trial units, Customer shall be deemed to have purchased those Goods if Customer does not return those Goods to Deca within the time period provided by the Applicable Quote. The provisions of this Master Contract regarding returns of Goods shall apply to Customer's returns of the trial units.

8. **Delegate.** Except as otherwise provided by an Applicable Quotation: Deca may delegate its performance of all or any part of an Applicable Contract to any third party, and Customer may not delegate its performance of an Applicable Contract.

9. **Shipment.** Except as otherwise provided by an Applicable Quotation: (a) Deca alone shall select the method and carrier to transport the Goods. (b) All Goods shall be shipped F.O.B. Deca's facility. (c) The date and time of a shipment shall be the date and time at which Deca tenders the Goods to the carrier. (d) Customer shall be solely responsible for: (i) all shipping delays occurring on and after the date and time of the shipment, and (ii) all loss of and damage to the Goods occurring during the shipment. Customer shall pay Deca in full for the Goods within three days after

Customer has knowledge or notice of the loss or damage that occurred during the shipment. (e) Delivery shall be deemed to have occurred when the Goods arrive at Customer's facility. The carrier's records shall conclusively resolve any dispute regarding the occurrence of a delivery.

10. **Deca's Delays.** All dates by which Deca shall provide Goods and Services, as indicated by the Applicable Quotation, are estimates. Deca shall use commercially reasonable efforts to timely provide the Goods and Services. Customer's sole remedy for Deca's failure to use commercially reasonable efforts to timely provide those Goods and Services shall be to cancel the Applicable Contract on notice to Deca before Deca ships or installs the Goods or begins providing the Services.

11. **Withholding Goods and Services.** Deca may withhold Goods and Services if Customer owes Deca an amount for any Transaction, whether or not the withheld Goods or Services pertain to the Transaction for which Customer owes Deca. Upon Customer's payment of the past-due amount, Deca shall thereafter furnish the withheld Goods and Services within a reasonable time, depending on the availability of labor and materials, Deca's then current schedule, and all other applicable circumstances.

12. **Cancellation Not Attributable to Deca's Delays.** Customer shall pay Deca's then current cancellation charges if, on notice to Deca, Customer cancels its order for Services or for non-custom-made Goods before Deca ships the Goods or before Deca finishes providing the Services. Customer may cancel orders for custom-made Goods upon paying Deca's then current cancellation charge, but only if Deca has not yet begun its performance.

13. **Acceptance and Rejection of Goods.** Customer shall be deemed to have accepted Goods that Deca does not install, or for which Deca does not supervise the installation, unless Customer rejects the Goods by a notice to Deca, which reasonably describes the defects, within three days after delivery of the Goods to Customer. Customer shall be deemed to have accepted Goods that Deca installs, or for which Deca supervised the installation, unless Customer rejects the Goods on notice to Deca within three days after Deca informs Customer that the installation is complete.

14. **Acceptance and Rejection of Services.** Customer shall be deemed to have accepted Deca's Services unless Customer rejects the Services by a notice to Deca, which reasonably describes the defects, when Deca informs Customer that Deca completed the Services.

15. **Basis and Remedies for Rejection.** Customer may reject Goods and Services only if those Goods or Services do not substantially conform with the Applicable Quotation. If Customer timely and properly rejects Goods or Services, Customer shall have the remedies provided elsewhere by this Master Contract.

16. **Returns.** (a) Customer may not return custom-made Goods that substantially conform with the Applicable Quotation. (b) Customer may return Goods that substantially conform with the Applicable Quotation or that Customer otherwise accepted or is deemed to have accepted ("Returned Goods") within 30 days after delivery, provided that all the following circumstances are present: (i) Within said 30 days Customer requested a return authorization from Deca, (ii) the Returned Goods were not used or installed while at Customer's facility, and (iii) Customer pays Deca a restocking fee equal to 30 percent of the price for the Returned Goods (the "Restocking Fee"). (c) All shipments of Returned Goods shall be F.O.B. Deca's facility. Customer shall be solely responsible for: (i) all shipping delays occurring on and after the date and time of the shipment, and (ii) all loss of and damage to the Goods occurring during the shipment. (d) Customer shall pay Deca the full price for the Returned Goods under any of the following circumstances: (i) the Returned Goods are lost during shipment to Deca, (ii) the Returned Goods, when received by Deca, are not in the same condition as when shipped by Deca to Customer, or (iii) Customer had used or installed the Returned Goods. (e) Customer shall pay Deca the Restocking Fee if: (i) Customer does not place the Returned Goods for shipment to Deca within two days after Deca gives Customer the return authorization, or (ii) the return shipment to Deca is delayed for more than seven days after the carrier's usual shipping time.

17. **Payment.** Except as otherwise provided by the Applicable Quotation, if, as permitted by this Master Contract, Customer does not reject the Goods or Services or return the Goods, Customer shall pay Deca as follows: (a) within 30 days after delivery of the Goods, if Deca did not install or supervise the installation, (b) within 30 days after Deca informs Customer that the Goods are installed, if Deca installed or supervised the installation, and (c) within 30 days after Deca informs Customer that Deca furnished all the Services. If Customer rejects the Goods or the Services as permitted by this Master Contract, Customer shall pay Deca within 30 days after Deca corrects the defects.

18. **Taxes.** Customer shall pay all taxes and similar government charges pertaining to the Goods and the Services, including sales, use, personal property, and excise taxes. If Customer is exempt from paying such taxes, Customer must deliver the appropriate exemption certificate to Deca when Customer accepts the Applicable Quotation.

19. **Specified Services.** Deca shall furnish Services regarding the Goods only as requested by Customer and only as indicated by the Applicable Quotation. Deca shall not be responsible for the consequences if Customer declines to obtain such Services.

20. **Welding and Surface Finish Specifications.** If welding or surface finish specifications are specified within the Applicable Quotation, Customer shall be deemed to have accepted those specifications absent notice to Deca to the contrary before Customer accepts the Applicable Contract.

21. **Information and Circumstances Unknown by Deca.** Customer shall be solely responsible for all losses and liabilities arising from, connected, with, or caused by any information, condition, hazard, or circumstance involving or concerning (a) Customer's other vendors or contractors, (b) employees, facilities, tools, equipment, or business operations of Customer or its other vendors or contractors, or (c) Customer's inventory or products, of which Deca did not have actual knowledge or actual notice before the effective date of the Applicable Contract, even if before the effective date Deca should have had such knowledge or notice, or could have had such knowledge or notice by reasonable diligence, and even if Deca has such knowledge or notice after on or after the effective date (the "Information Unknown by Deca").

22. **Information Furnished By Customer.** The following provisions apply to each and every Transaction, except as otherwise provided by an Applicable Quotation. (a) "Customer Information" means all the information furnished to Deca by Customer, or by any third party for or on Customer's behalf, in connection with a Transaction, including: (i) drawings and specifications, and (ii) information regarding: (1) the training, education, knowledge, and skill of employees of Customer or its other vendors or contractors, (2) Customer's current and intended business operations, (3) Customer's facility, including changes intended by Customer, and (4) the tools, equipment, inventory, and products at Customer's facility or that Customer intends to have at Customer's facility. (b) Customer is required to timely give Deca all the Customer Information pertinent to Deca's provision of the Goods and Services. Customer is solely responsible for accuracy, suitability, and completeness of the Customer Information, and Customer is solely responsible if the Customer Information is inaccurate, unsuitable, untimely, or incomplete. (d) Deca may rely on the Customer Information without determining the accuracy, suitability, timeliness, or completeness thereof.

23. **Deca's General Warranty.** The following constitutes Deca's general warranty for Goods and Services: (a) The Services furnished by Deca will be reasonably workmanlike and in substantial conformity with the Applicable Quotation and with the Customer Information. (b) The Goods manufactured by Deca will function in substantial conformity with the Applicable Quotation, with the drawings and specifications furnished by Deca, and with the Customer Information for one year after the date of delivery if Customer installs the Goods or for one year after installation if Deca installs the Goods. (c) Deca will convey merchantable title to the Goods.

24. **Conditions to Deca's General Warranty Regarding the Goods.** Deca's general warranty regarding the Goods is subject to and conditioned on all of the following occurring: (a) Labor other than furnished by Deca to install the Goods shall be reasonably workmanlike. (b) Materials other than furnished by Deca to install the Goods shall be suitable and in good condition. (c) Customer and third parties engaged by Customer shall properly operate, maintain, and repair the Goods and all the tools and equipment used in connection with the Goods, to the extent that Deca does not perform those functions. (d) Customer shall have all the licenses and permits necessary to operate the Goods.

25. **Conditions to Deca's General Warranties Regarding Training, Supervision, and Operation Services.** (a) If the Services include instructions, training, installation, supervision, operating, maintaining, or repairing the Goods, Deca's general warranty regarding those Services is subject to and conditioned on all of the following occurring, as applicable: (i) Customer and third parties must provide personnel who are capable of following Deca's instructions, training, and supervision. (ii) If the Goods were installed or used at Customer's facility before the start of Deca's Services, the Goods and all the equipment used in connection with Goods must have been properly installed, used, maintained, and repaired. (b) If Customer does not abide by the foregoing conditions, Deca may cancel or cease providing the Services, and Customer shall pay Deca its then current cancellation fee and a reasonable part of the price for those Services.

26. **Nullifying Deca's General Warranties.** Deca's general warranties regarding Goods and Services shall be null and void, as follows: (a) For Goods, if Customer does not notify Deca of Deca's warranty breach within five days after delivery if Deca does not install the Goods or within five days after installation by Deca. (b) For Services, if Customer does not notify Deca of Deca's warranty breach before Deca finishes providing the Services. (c) For Goods and Services, if Customer does not promptly provide Deca with whatever information Deca reasonably requests to investigate the breach, including allowing Deca to inspect and copy Customer's records and allowing Deca to interview Customer's employees, vendors, and contractors.

27. **Warranty for Non-Manufactured Goods. DECA MAKES NO EXPRESS WARRANTY OR WARRANTY OF MERCHANTABILITY FOR GOODS THAT DECA DOES NOT MANUFACTURE. CUSTOMER'S SOLE WARRANTY FOR THOSE GOODS SHALL BE THE MANUFACTURER'S WARRANTY.**

28. **Implied Warranty of Fitness for a Particular Purpose. DECA DOES NOT MAKE ANY IMPLIED WARRANTY THAT THE GOODS ARE FIT FOR A PARTICULAR PURPOSE UNLESS THE APPLICABLE QUOTATION EXPRESSLY STATES THAT CUSTOMER RELIED ON DECA TO SELECT THOSE GOODS. DECA'S WARRANTY REGARDING FITNESS IS SUBJECT TO CUSTOMER'S RESPONSIBILITIES REGARDING INFORMATION NOT KNOWN BY DECA AND THE CUSTOMER INFORMATION.**

29. **No Implied Warranty of Noninfringement. DECA MAKES NO WARRANTY THAT THE GOODS AND THE SERVICES WILL NOT INFRINGE ON A THIRD PARTY'S PATENT RIGHTS.**

30. **Remedies.** Equipment or Services are "Nonconforming" if they do not conform with, or breach, one or more of Deca's warranties. Customer's exclusive remedies for Nonconforming Equipment or Nonconforming Services

shall be as follows: (a) Deca shall replace the Nonconforming Equipment or the Nonconforming Services, as applicable, within a reasonable time and at Deca's sole expense. (b) The Rental Charge for the Nonconforming Equipment shall be waived, and the Rental Term shall be extended, for the time until Deca replaces the Nonconforming Equipment or the Nonconforming Services, as applicable.

31. **Liability.** For each Contract, "Deca's Liability Limit" means the greater of the amount Customer paid and still owes Deca for that Contract or the amount of Deca's insurance coverage, if any. Deca's liability to Customer shall not exceed Deca's Liability Limit for any of the following: (a) Deca's breach of the Contract, including Deca's failure to replace Nonconforming Equipment or Nonconforming Services, (b) a sudden, dangerous, or calamitous event or occurrence involving or caused by the Equipment or the Services, whether or not Nonconforming, (c) Deca's negligent or intentional acts or omissions with respect to the Contract, the Equipment, or the Services, whether or not Nonconforming, or (d) any damage to any property or any injury to any person, including death, involving or caused by the Equipment or the Services, whether or not Nonconforming.

32. **Waiver of Damages.** For any breach of a Contract by Deca, for Deca's negligent or intentional acts or omissions, and for anything else that is the subject of Deca's Liability Limit, Customer waives all claims against Deca for special, consequential, incidental, and punitive damages, and damages for lost profits and lost goodwill, whether direct or indirect, even if Deca was advised of or otherwise has knowledge, notice, or belief of the possibility of such damages. Customer also waives all claims against Deca of which Customer does not notify Deca within five days after Customer knows or should have known of the event, occurrence, act, or omission for or under which Customer's claim first arose, whether or not in connection with a Contract.

33. **Customer Indemnity.** Customer releases and waives all claims against Deca, and Customer shall defend Deca, indemnify Deca, not sue Deca, and hold Deca harmless, from all claims, losses and liabilities sought from or incurred Deca, Customer, or any third party, due to or arising from any Information Unknown by Deca or any Customer Information.

34. **Deca's Marketing Materials.** The contents of Deca's brochures, website, other marketing materials, demonstrations, and samples (one or more of which is "Deca's Marketing Materials") do not create any warranty by Deca concerning the Goods or the Services, notwithstanding anything to the contrary in or shown by Deca's Marketing Materials.

35. **Product Changes.** Deca may at its sole discretion change the pattern, design, and materials of non-custom Goods, which Deca advertised or previously sold to Customer, without notifying Customer when or after Customer orders those Goods or accepts the Applicable Quotation for those Goods, provided the Goods still substantially conform with the Applicable Quotation and the Customer Information.

36. **Reuse of Specifications and Drawings.** Deca may utilize Customer Information, specifications furnished by Deca, and the contents of drawings furnished, modified, or reviewed by Deca for any purpose that Deca desires, except as otherwise provided by the Applicable Quotation or a non-disclosure agreement or similar agreement signed by Deca.

37. **Assignment.** Deca may assign to any third party Deca's rights and obligations under any Applicable Contract. Customer may assign to a third party Customer's rights, but not its obligations, under any Applicable Contract.

38. **Notice.** Notices given under or concerning an Applicable Contract or a Transaction shall not cause any time period under the Applicable Contract to commence, shall not be binding on the recipient, and shall not require any action by or response from the recipient unless in writing and delivered by commercial courier; fax; email, or registered or certified mail, return receipt requested, to the addresses of the parties as specified by the Applicable Quotation or to such other address or fax number as from time to time directed in a notice by a party to the other party. Delivery of a notice shall be deemed to have occurred at the date and time of actual receipt or at the date and time at which a party refuses to accept the delivery, whichever applies. If a party has moved without delivering notice of its new address or fax number to the other party, delivery shall be effective at the date and time of refusal or attempted delivery. The dates and times of delivery, attempted delivery, or refused delivery shall be as shown by the records of the courier, the sender's fax transmittal, or the United States Post Office, as applicable. Delivery shall not be deemed to have been made or refused if a recipient party's fax or email is inoperable.

39. **No Third Party Beneficiaries.** Each Applicable Contract is solely for the benefit of Deca and Customer. There are no third party beneficiaries of any Applicable Contract.

40. **Force Majeure.** Deca's time to perform, if delayed due to anything not caused by Deca and beyond Deca's control, shall be reasonably extended, but at least by a time period equal to duration of the circumstance causing the delay.

41. **Enforcement.** Each Applicable Contract and all disputes concerning each Applicable Contract and each Transaction shall be governed by the laws of the United States and by the laws of the State of Illinois without utilizing conflict of law principles that would result in applying the law of any other state or nation. The parties, in all disputes between them, consent and submit to the exclusive jurisdiction and the exclusive venue of the state courts located in Will

County or DuPage County, State of Illinois, and the exclusive jurisdiction and the exclusive venue of the federal courts located in Cook County, State of Illinois, and the parties waive all claims that such jurisdiction and venue is improper or inconvenient. In all lawsuits to enforce or interpret an Applicable Contract, the parties waive all rights to a jury trial, and if Deca is the prevailing party Deca shall recover, from Customer, Deca's costs and expenses, including the fees of Deca's attorneys, experts, and consultants. Deca shall not be required to post a bond or other security to obtain an injunction or restraining order to enforce any provision of an Applicable Contract. All unpaid past due amounts that Customer owes Deca shall earn simple interest at the rate of 18 percent per annum or the highest lawful rate, whichever is less. Notwithstanding the foregoing jurisdiction and venue restrictions, the party in whose favor a judgment with respect to an Applicable Contract is entered may enforce that judgment in any jurisdiction and in any venue.

42. **Severability and Modification.** If a court, following the conclusion of all appeals, if any, determines that a provision of an Applicable Contract, including any provision of this Master Contract, is void or unenforceable, the balance of the Applicable Contract shall nevertheless remain enforceable, such invalidity shall not affect any other provision of the Applicable Contract which can be given effect without the invalid provision, and to that end, the parties intend that the provisions of each Applicable Contract are and shall be severable. Following the conclusion of all appeals, if any, the parties shall, if and to the extent possible, modify the void or unenforceable provision, retroactive to the Effective Date and consistent with the final court order so that the provision becomes valid and enforceable while remaining as similar as possible to the original.

43. **Interpretation.** The parties intend that the interpretation of each Applicable Contract, including this Master Contract, shall be derived only from the provisions hereof, without resort to course of dealing, usage of trade, course of performance, or any other extrinsic evidence, and shall not be construed in favor of or against either party. Whenever appropriate under the circumstances, within an Applicable Contract, including this Master Contract and including any definition: (a) the plural of any word shall mean the singular; (b) the singular of any word shall mean the plural; (c) "and" shall mean "or"; (d) "or" shall mean "and"; (e) "any" or "each" shall mean one, more than one, or all; (f) "all" shall mean any, one, or more than one; (g) words referring to persons or entities shall include associations, cooperatives, corporations, firms, general and limited partnerships, limited liability companies, natural persons, public agencies, sole proprietors, trusts, and all other entities and enterprises; (h) the words "include," "including," and similar words shall be construed as if followed by the phrase "without limitation" or a similar phrase.

44. **Reliance.** When entering into an Applicable Contract: (a) neither party shall rely on any oral or written statement, representation, warranty, or promise that is not expressly set forth or referred to within that Applicable Contract, within any document that is not attached to or expressly referred to by that Applicable Contract, or that is not part of the Customer Information, and (b) in particular, Customer shall not rely on the contents of Deca's Marketing Materials. The parties release and waive all claims, and shall not sue each other, for fraud-in-the-inducement or otherwise with respect to any statement, representation, warranty, promise, or document concerning an Applicable Contract on which the parties have hereby agreed to refrain from relying.

45. **No Additional Obligations.** Nothing within an Applicable Contract is or will be intended by the parties to impose or create, by implication or otherwise, any requirement, duty, or obligation on any party, of any kind or nature whatsoever, that is not expressly set forth or referred to within that Applicable Contract.

46. **Waiver of Contrary Claims.** The parties waive all claims contrary to the provision of any Applicable Contract.

47. **Headings.** The section headings in this Master Contract are included solely for convenience and are not intended to affect the interpretation of this Master Contract or any Applicable Quotation or to have any substantive meaning.

48. **Independent Advice, Opportunity to Read, No Duress.** Customer acknowledges that Customer had the opportunity to consult with Customer's own attorneys, other advisors, and consultants, concerning this Master Contract, each Applicable Quotation, and each Transaction as fully as Customer desired and as fully as Customer deemed necessary before accepting any Applicable Quotation. Customer represents and warrant to Deca as follows: (a) Customer had an opportunity to read this Master Contract as carefully as Customer desired before Customer accepted any Applicable Quotation, (b) Customer understood the contents of this Master Contract before Customer accepted any Applicable Quotation, (c) Customer shall read the entire Applicable Quotation before accepting it, and (d) Customer consented to this Master Contract of Customer's own free will and without duress.

49. **Authority; Binding Contract.** The individual consenting to this Master Contract and to each Applicable Quotation for Customer: (a) represents and warrants to Deca that such individual is authorized to give Customer's consent and that Customer's consent does not breach any other agreement to which Customer is bound, and (b) acknowledges that Deca will perform each Applicable Contract in reliance on such individual's foregoing representations and warranties. Each individual consenting to this Master Contract and an Applicable Quotation for Customer is personally bound by the provisions of this Master Contract and the Applicable Quotation to the extent that Customer repudiates this Master Contract or the Applicable Quotation, including Customer's claim that for a particular Transaction the Applicable Contract does not exclusively contain all the terms and conditions.