

Standard Terms and Conditions of Purchases

Revision 2.2 – March 5, 2024

- 1. TERMS AND CONDITIONS.** As used herein, the term “Buyer” refers to JAKTOOL, LLC. The term “Seller” refers to the named Seller (Vendor/Supplier) providing goods or services pursuant to this Purchase Order (hereinafter “Order”). Buyer and Seller are each a party (“Party”) to this Order and together constitute the parties (“Parties”).
- 2. SELLER’S ACCEPTANCE.** The Seller’s acknowledgement of this Order or commencement of work pursuant to this Order, whichever occurs first, shall be deemed an acceptance of this Order (“Acceptance”). Such Acceptance is limited to the express terms and conditions herein. Any terms and conditions proposed by the Seller in its Acceptance that are different or addition to those herein shall be deemed a material change and as such are hereby rejected by Buyer and shall be void and unenforceable. Buyer shall not be bound by any terms of Seller’s Acceptance that are inconsistent with the terms within. The Buyer shall not, except by its written concurrence, be bound by any communication or by any typewritten or printed matter on Seller’s acknowledgement form or invoice which imposes conditions at variance with the terms of this Order.
- 3. CHANGES TO ORDER.** The Buyer may at any time, by written notice, make changes within the general scope of this Order, to any one or more of the following: (i) designs, data or documents (“Specifications”), (ii) method of shipment or packing, and (iii) place of delivery (“Changes”). If any such Change causes an increase or decrease in the cost or time required for the performance, an equitable adjustment of price or delivery schedule, or both shall be made and the Order shall be modified in writing accordingly, provided any claim by the Seller for adjustment be asserted promptly and in no event more than sixty (60) days from the date of such written notice. Nothing in this clause shall excuse the Seller from proceeding with this Order as changed.
- 4. NO LIABILITY FOR EXCESSIVE MATERIAL LABOR OR PRODUCTION COSTS.** In order to minimize liability in case Changes are directed or Termination for Convenience occurs with respect to non-standard commercial items, Seller is cautioned that Buyer shall not be responsible for material, labor or production costs or charges that are unrealistic, excessive, or inconsistent with the minimum needs to meet the delivery requirements of this Order.
- 5. PRICE.** If price is not shown on this Order, Seller agrees to not sell at a higher price than that at which the goods were last sold or at the lowest prevailing market price, whichever is lower, unless Buyer has been notified and has agreed to a different price. If at any time during the pendency of this Order, lower net prices are quoted to any person or party for similar goods, such lower net prices shall be substituted for the prices contained herein for the time of the lower quotation. Seller agrees to list separately on the invoice any applicable sales, use, turnover, purchase, luxury or similar taxes, customs, duties or charges are not so separately listed, the amount of such items will be considered as included in the total price shown on such invoice. No charge shall be allowed by Buyer for packing or crating unless specified herein. Deposit charges for containers owned by and to be returned to Seller must be separately shown on packing slips and invoices. The prices stated herein include all Federal, State and Local taxes and duties in effect and applicable to this Order.
- 6. PAYMENTS.** Payments are made subject to final inspection and acceptance. Discounts will be counted from the date of receipt of Seller’s shipment or invoice, whichever is later.
- 7. GUARANTY AND WARRANTY.** Seller warrants and guarantees for a period for one year following delivery that the goods and/or services to be furnished under this Order shall be free from defects in material and workmanship and that goods furnished will meet Buyer’s Specifications therefore, or in absence of Specifications, shall conform to Seller’s samples approved by Buyer prior to placement of this Order and will be merchantable and fit for the Buyer’s purpose. In case of breach, Buyer shall have the right to request that the goods be corrected and Seller agrees promptly to comply at its own cost and expense including transportation, if any. Buyer shall have the right to effect correction itself but at the cost and expense of the Seller; and shall further have the right to terminate this Order without liability. In lieu of the foregoing, the Buyer may, in its discretion, elect to accept and retain the defective goods at a reduction in price corresponding to the decrease value.
- 8. INSPECTION AND TESTING.** All goods, materials and workmanship furnished in the performance of this Order shall be subject to inspection and testing by representatives of Buyer to the extent practicable at all times and places during the manufacture or testing thereof, and, in any event, prior to final acceptance. This Order is subject to any and all rights of the Buyer or its authorized representative as to access to Seller’s plant and facilities. If such inspection is made on Seller’s premises, Seller shall provide to such representatives, without charge, reasonable facilities and assistance. This right of inspection and testing shall not relieve Seller from liability or other responsibility regarding defects or other failure to meet Order requirements.
- 9. REJECTION OF NON-CONFORMING GOODS.** Payment of invoices shall not be deemed an acceptance by Buyer of goods hereunder, Buyer may reject at any time all goods that do not conform either to Specifications patently or latently, or if none have been specified, to specifications standard in the industry. Upon receipt of defective goods, Buyer may cancel any undelivered portion of the Order. Buyer may return at Seller’s expense within ninety (90) days after delivery any goods with patent defects or which are patently non-conforming for credit or replacement at the Price charged. Buyer, at its option and without notice to Seller, may retain and repair such goods and deduct the cost of such repairs, including factory overhead at its standard rate, from the Price thereunder, or if Buyer has already paid, Seller shall reimburse Buyer on demand for all such costs. Buyer may return, at any time and at Seller’s expense, any goods with latent defects, or make such repairs thereon as may be required upon discovery of such latent defects and recover from Seller the costs of such repairs in accordance with the preceding sentence. The foregoing shall not be in limitation of any rights which Buyer may have at law or in equity by reason of any breach of warranty, express or implied.
- 10. DELIVERIES.** Buyer’s production schedules are based upon compliance with the specified delivery dates. Time is therefore of the essence of this Order. If deliveries are not made on time, Buyer reserves the right to: (a) cancel the Order; (b) purchase elsewhere; or (c) accept the late delivery, holding Seller accountable for loss caused by the cancellation, the purchase elsewhere, or the late delivery, as the case may be. Seller shall notify Buyer promptly of any delays or threatened delays in delivery, along with the estimated recovery date. Acceptance of late delivery shall not excuse a subsequent late delivery nor shall such acceptance constitute a waiver of any of Buyer’s rights herein.
- 11. SHIPMENT-METHOD, EXCESSIVE, OR IN ADVANCE.** Shipments shall be in accordance with instructions given herewith, or in the absence of such instructions, in accordance with Seller’s practice. All shipments shall be securely packed. No additional charge is allowed for cartage, boxing or packing unless specified in writing in this Order. Material shipped in excess of quantity ordered may be returned at Seller’s expense. Deliveries in advance of schedule without written consent, if retained, will be subject to payment conforming to the delivery schedule.

- 12. DEFAULT AND DAMAGES.** If Seller fails to make deliveries, or perform the services or comply with any other requirement of this Order, or becomes insolvent or subject to bankruptcy proceedings, the Buyer may terminate this Order in whole or in part and Seller shall be liable for excess costs of re-procurement of the same or similar items in addition to all other damages provided by law. To the extent of any un-terminated portion, Seller shall continue performance thereof.
- 13. TERMINATION FOR CONVENIENCE (NONGOVERNMENT GOODS).** The Buyer shall have the right to terminate this Order for convenience in whole, or, from time to time, in part, in such event, and provided the goods ordered are non-standard commercial goods. The Buyer's sole and maximum liability shall be limited to: (a) payment for completed and delivered goods at the Price agreed upon in the Order; and (b) reimbursement of costs directly attributable to and incurred by Seller for the satisfaction of the Order terminated, less prior payments, if any, plus a profit thereon not to exceed six (6%) percent. The Buyer shall have the right to delivery of goods partially fabricated and to all unused material and inventory acquired and included in Seller's claim, or to credit for the agreed value thereof. If the goods ordered are standard commercial goods, the Buyer shall have the right to terminate this Order for convenience, in whole, or from time to time, in part without any obligation or liability whatsoever, except for payment for goods delivered prior to such termination.
- 14. DESIGNS, DATA AND DOCUMENTS.** The Buyer retains all rights in and to any and all designs, data and documents ("Specifications") furnished to Seller in connection with this Order and same shall be considered at all times the EXCLUSIVE PROPERTY OF BUYER AND SHALL BE KEPT CONFIDENTIAL. All such Specifications shall be returned promptly to Buyer after the need therefore has ended. The use of such Specifications shall be limited to performance of this Order and, except as otherwise authorized by the Buyer, in writing, shall not be incorporated into goods for others or be used, disclosed or duplicated for any other purpose whatsoever.
- 15. SPECIAL TOOLING, EQUIPMENT AND MATERIAL.** All tooling, dies, molds, patterns, jigs fixtures, equipment, material, and similar items furnished to Seller or paid for by or charged against Buyer ("Buyer's Equipment") shall be considered at all times the EXCLUSIVE PROPERTY OF BUYER. All such Buyer's Equipment shall be returned promptly to Buyer after the need therefore has ended. The use of such Buyer's Equipment shall be limited to performance of this Order and, except as otherwise authorized by the Buyer, in writing, shall not be used for the benefit of others or be used, disclosed or duplicated for any other purpose whatsoever. Seller shall keep Buyer's Equipment in proper repair and shall return such Buyer's Equipment on demand, at Seller's expense, in the same condition as when received, reasonable wear and tear excepted. In the event any of Buyer's Equipment is lost, damaged or destroyed before delivery to Buyer, Seller shall pay the replacement cost for same directly to Buyer. To the extent the Buyer's Equipment was procured for Buyer at Buyer's expense, such Buyer's Equipment shall be accompanied by such operation sheets or other appropriate data as are necessary to show manufacturing operations or processes for which such Buyer's Equipment was used or designed. Buyer shall have the right to inspect Buyer's Equipment during working hours. In case of breach of any of the foregoing provisions, Buyer may terminate this Order and shall have the immediate right to take possession of Buyer's Equipment. No common law or statutory lien in favor of Seller shall attach even though payment therefore has not been made or independent disputes exist between Seller and Buyer.
- 16. CONFIDENTIALITY.**
- a. Seller shall keep in confidence, and not disclose to any other person or entity, any Specifications or other information supplied by Buyer in connection with this Order. Seller will not advertise or publish the fact that Buyer has contracted to purchase goods or services from Seller without the express written consent of Buyer.
 - b. The parties (Buyer, Seller, Seller's sub-tier suppliers, contactors, agents and their employees) shall not disclose any Proprietary Information or other information furnished hereunder in any manner contrary to the laws and regulations of the United States of America, or any Agency thereof, including but not limited to, the Export Regulations of the U.S. Department of Commerce, the International Traffic in Arms Regulations (ITAR) of the U.S. Department of State, and the Industrial Security Manual for Safeguarding Classified Information of the Department of Defense. Additionally, all proprietary information supplied to the parties (identified above) shall only be disclosed to United States Citizens or Permanent Residents. Exceptions may be granted in writing by the disclosing party according to regulations. All disclosures to other than United States citizens shall be reported to JAKTOOL LLC at the time of disclosure.
- 17. INDEPENDENT CONTRACTOR.** The parties expressly understand and agree that Seller is acting as an independent contractor unrelated to Buyer. Nothing in this Order is intended to create a relationship, express or implied of employer-employee or principal-agent between Buyer and Seller. Seller shall not incur any expenses or obligation nor make any representation or warranties to third parties binding upon or in the name of Buyer.
- 18. PATENTS.** Except where the goods called for by this Order require direct and necessary compliance with Specifications, furnished by Buyer, Seller warrants that such goods and their sale, lease or use will not infringe on any United States Patent. Should the Buyer or its customers be charged with any alleged infringement, or should suit be brought alleging infringement. Seller (upon notification and being furnished with pertinent papers) shall indemnify, defend and hold Buyer harmless for expenses relating thereto and pay all judgments resulting therefrom.
- 19. INDEMNIFICATION.** Seller shall indemnify, defend and hold Buyer and its respective officers, agents, officials, employees, volunteers, contractors, heirs, personal representatives, successors, assigns, agents and attorneys harmless from any and all suits, claims, losses, damages, costs (including without limitation reasonable attorney's fees), compensations, penalties, fines, liabilities or judgments of any name or nature for, including, but not limited to, injuries or alleged injuries to person(s) or to property, real or personal, or financial losses sustained by any person or concern arising from any and all acts or omissions of the Seller, its employees, representatives, contractors, and/or agents in relation to the production of the goods and performance of the services anticipated in this Order.
- 20. INSURANCE.** Seller shall procure and maintain, at all times and at its own expense, and ensure that its contractors, subcontractors, and consultants procure and maintain all necessary and appropriate insurance coverages, including, but not limited to commercial general liability, professional liability (if applicable) and workers' compensation insurance coverages. Seller agrees to submit to Buyer the appropriate certificates of insurance upon Buyer's request. All such insurance will be primary with no right of contribution by Buyer, its affiliates, or their respective insurers. Seller shall be solely and fully responsible for any deductibles or self-insured retentions under any required coverage. Seller shall remain liable for any insurance obligation not satisfied; however, this requirement will in no way restrict or reduce any indemnification obligations contained elsewhere herein.
- 21. ASSIGNMENT/SUBCONTRACT.** No right or obligation under this Order (including the right to receive monies due hereunder) shall be assigned or subcontracted by the Seller without prior written consent of the Buyer. Any assignment or subcontract without Buyer's written consent shall be null and void.

- 22. COMPLIANCE WITH LAWS.** Seller shall comply with all laws, ordinances, and government rules, regulations and orders applicable to this Order including, but not limited to, (a) all laws, ordinances, and government rules, regulations and order regarding controlled, restricted, toxic, and hazardous substances applicable to the goods, their manufacturing process(es), or any byproduct or waste generated in connection with the goods or such process(es); and (b) applicable Federal Acquisition Regulation Clauses relating to SELLER'S CERTIFICATION OF NON-SEGREGATED FACILITIES FAR 52.222-21, EQUAL OPPORTUNITY FAR 52.222-26, AFFIRMATIVE ACTION FOR SPECIAL, DISABLED AND VIETNAM ERA VETERANS FAR 52.222-35, AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS FAR 52.222-36, UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS FAR 52.219-8, 9 and UTILIZATION OF LABOR SURPLUS AREA CONCERNS FAR 52.220-3, 4, which to the extent applicable are hereby incorporated onto this Order.
- 23. MISCELLANEOUS PROVISIONS.** (a) Stenographic and clerical errors are subject to correction; (b) This Order shall be governed by the Laws of the State of New Jersey. The New Jersey state courts of Middlesex County, New Jersey, (or if there is exclusive federal jurisdiction, the United States District Court of New Jersey) will have exclusive jurisdiction and venue over any dispute arising out of these terms and conditions, and Buyer hereby consents to the jurisdiction of such courts; (c) Reasonable attorney's fees and costs will be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation if these terms and conditions; (d) Any concession or indulgence made by the Seller or Seller's failure to insist on performance of any of the terms and conditions hereto shall not be considered a waiver of any other term, whether the same or similar. No waiver by Seller of any default or provision shall be deemed a waiver of any subsequent default or provision; (e) This Order may not be modified or amended except by a written instrument signed by both parties; (f) All notices required or permitted hereunder shall be in writing and shall be considered as having been given if faxed with follow-up original mailed by U.S. first class mail, sent to the addresses as may be designated in advance by a party giving written notice to the other party; (g) If any of the provisions herein is or becomes illegal, unenforceable, or invalid (in whole or in part for any reason), the remainder of these terms and conditions shall remain in full force and effect without being impaired or invalidated in any way; (h) This Order contains the entire understanding of the parties with respect to the matters herein contained and supersedes all previous agreements and undertakings with respect thereto.