



9076 Carroll Way, San Diego, CA. 92121  
(Ph) 858-271-1067 (Fax) 858-271-6050  
www.tandemmetal.com

## **Tandem Metal Products, Inc.**

### **Commercial Terms and Conditions for Sale of Products and Services**

**1. DEFINITIONS:** As used throughout these Terms and Conditions, the following terms shall have the meanings set forth below:

1.1 "Order" means the purchase order or subcontract issued by Buyer to Seller to which these terms and conditions are incorporated. 1.2 "Buyer" means the person, firm, or corporation purchasing the work or services defined in the Order.

1.3 "Seller" means Tandem Metal Products, Inc.

#### **2. WARRANTY:**

2.1 Seller warrants that any products manufactured by the Seller will conform to their commercial specifications and will be free from defects in material and workmanship for a period of six (6) months after delivery to the FOB point in the Order. Seller further warrants that all work and services called for herein shall comply with the requirements of the Order and shall conform to the highest commercial standards applicable to them.

2.2 The foregoing warranty will not extend to products that have been subjected to:

- (a) improper installation or storage by Buyer,
- (b) accident, damage, abuse, or misuse,
- (c) abnormal or unusual operating conditions or operations or
- (d) operating conditions or applications above the rated capacity of the product.

2.3 Products purchased by Seller from a third party for resale to Buyer, either independently or as incorporated in Seller's products, shall carry only the warranty extended by the original manufacturer.

2.4 If any product fails to meet the foregoing warranty, Seller shall correct such failure at its option by

- (a) repairing the defective product,
  - (b) delivering a replacement product to Buyer, or
  - (c) repaying the portion of the purchase price paid by Buyer attributed to the defective or nonconforming product.
- 2.5 After a product has been repaired or replaced, Seller warrants the repaired or replaced portion of the product for a period of 90 days after delivery of the repaired or replaced product to Buyer, or the balance of the original warranty, whichever is longer.

#### **3. DELIVERY, TITLE AND RISK OF LOSS OR DAMAGE:**

3.1 Shipping and delivery dates are approximate and not guaranteed. Seller, at its option, shall not be bound to tender delivery of any products for which Seller has not received shipping instructions and all other necessary information from Buyer. If the shipment of products is postponed or delayed by Buyer for any reasons, Buyer agrees to extend the delivery date accordingly and to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Products will be delivered Free On Board ("FOB") Tandem Metal Products, Inc. San Diego, California USA ("Seller Shipping Point").

3.2 Legal title and risk of loss or damage shall transfer to Buyer when products are delivered by Seller to and/or received by the carrier at seller's shipping point.

3.2.3 Any claims for non-compliant or damaged goods must be reported back to Seller within 30 calendar days after receipt of goods at Buyers facility for that claim to be deemed valid.

**4. BUYER-FURNISHED PROPERTY AND/OR MATERIAL:** Buyer shall specifically identify in the Order any property and/or material to be furnished to Seller for use in performance of the order time period it will be furnished. Seller will protect such property and/or materials and will be responsible for any damage while in its possession.

**5. CHANGES:** After original order acceptance, Seller shall provide a price and delivery proposal for any changes to the Order desired by the Buyer. Seller shall start work on such changes only after acceptance of a written Change Order is negotiated and issued by the Buyer.



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**6. PAYMENT TERMS:** Buyer shall pay Seller as set forth in the Order within thirty (30) days after receipt of an invoice from Seller. Past due payments are subject to late charges equal to two percent (2%) of the invoice value per calendar month for each such month or portion thereof that a payment is past due. All invoices paid by credit card will incur a 3% surcharge.

**7. TAXES:** All prices are exclusive of sales tax, use tax, duties, charges, and any other taxes or similar levies imposed by any government authority. In the event that any sales, use, consumption, value-added or similar taxes are applicable to the Order, Seller shall separately state these charges on invoices, and shall be responsible for collection and remittance to the appropriate authorities. Buyer shall provide appropriate resale certificates for any items ordered that are not subject to any of the above taxes.

**8. WRITINGS REQUIRED:**

8.1 No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall be of any effect unless in writing and signed by an authorized representative of each affected party.

8.2 No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of the Order.

**9. STOP WORK ORDER:** The Buyer may, at any time, by written order to Seller, require Seller to stop all or part of the work called for by the Order for a period of ninety (90) days after such written order is delivered to Seller. Within ninety (90) days after a "Stop Work Order" is delivered to Seller, or within any extension of the period to which the parties have agreed, Buyer shall either: (1) cancel the "Stop Work Order" and direct Seller to resume work, or (2) terminate the work and the Order or part thereof. In either event Buyer shall compensate Seller with an equitable adjustment, negotiated from a claim for such an adjustment which shall be submitted by Seller within thirty (30) days after the end of the period of work stoppage.

**10. FORCE MAJEURE:** Neither Seller nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (1) acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, epidemics, or unusually severe weather affecting either party; or (2) causes beyond their control and which are not foreseeable or causes beyond the reasonable control of their subcontractors which are not foreseeable.

**11. PROPRIETARY INFORMATION:** Neither the Buyer nor the Seller ("Party"; or "the Parties") shall, without prior written consent, during the term of the Order, and for a period of five (5) years thereafter, divulge to anyone other than the Parties (or such other persons as the Parties designate in writing), or, except in the performance of the Order, make use of information or knowledge relating to details of the Parties' business or that of their subsidiaries, suppliers, or customers, of any other confidential or proprietary information of the Parties or their subsidiaries, suppliers, or customers which the Parties shall have obtained because of the Order. Each Party shall take all reasonable measures to protect such confidential or proprietary information, which measures shall be at least equal to those with which each Party protects its own confidential or proprietary information. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by either Party under the Order are reserved to the Parties and their use is restricted to the work to be performed hereunder. The receiving Party agrees to retain in confidence and return to the disclosing Party on completion of the Order all designs, drawings, specifications, and technical information of every kind belonging to the disclosing Party and furnished to the receiving Party in connection with the Order. Notwithstanding the foregoing, the receiving Party shall have no obligation with respect to any confidential or proprietary information which (1) was written record in the receiving Party's files prior to its first receipt from the disclosing Party (2) is at the date hereof, or at any time hereafter becomes a matter of public knowledge or literature by means other than the act, omission, or fault of the receiving Party (3) is at any time lawfully received by the receiving Party from a third person under circumstances permitting its disclosure to others by the receiving Party.

**12. LIMITATION OF LIABILITY; WAIVER OF CONSEQUENTIAL DAMAGES**

12.1 THE SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER CLAUSE 2) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR



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REFUND OF THE PURCHASE PRICE IN THE PURCHASE ORDER. THIS LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY CONFLICTING OR INCONSISTENT PROVISION CONTAINED IN ANY ORDER OR OTHER DOCUMENT FOR PRODUCTS OR SERVICES, AND TO THE FULL EXTENT PROVIDED BY LAW AND REGARDLESS OF FAULT. Notwithstanding anything to the contrary herein, Seller's total liability in the aggregate under the Order, including but not limited to Clause 2, shall never exceed the Order price actually received by Seller for the products or services.

12.2 In no event shall Seller or its subcontractors or sub-suppliers be liable to the Buyer for any special, indirect, incidental, or consequential damages including, but not limited to, actual or anticipated loss of profit or revenue, loss or damage to property or equipment, business interruption, loss of equipment, cost of purchased power, substitute equipment, and other costs incurred, reputation and data, facilities or services, or claims of customers of Purchaser for such damages.

12.3 If Purchaser is furnishing Seller's products or services to a third party by contract or otherwise, Purchaser must obtain from such third party a provision affording Seller and its subcontractors or sub-suppliers the protections set forth in this Clause 12.

**13. ADVERTISING:** Neither Party shall, without first obtaining the written consent of the other Party, in any manner advertise or publish the fact that either Party has furnished or contracted to furnish to the other Party the articles herein mentioned.

**14. ASSIGNMENT:** Seller will not assign or transfer the Order, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of the Buyer. The Order may not be assigned by Buyer without Seller's prior written consent.

**15. ASSIGNMENT OF PERSONNEL:** If the Order contains a key personnel clause and the designated employee of Seller becomes temporarily unavailable to perform services under the Order, a replacement for that individual with comparable abilities and qualifications shall be promptly assigned. Within five (5) days after such an assignment, Seller shall furnish Buyer with a resume for the replacement personnel.

**16. DISPUTES:** The parties shall attempt to resolve any dispute with good faith negotiation between their functional representatives. If resolution is not achieved, negotiation of the dispute will be elevated to the next higher level of management of the parties.

**17. APPLICABLE LAW:** The Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's Choice of Law provisions shall not apply.

**18. EXPORT CONTROL:** The parties acknowledge that the products manufactured and/or services performed are provided for end use in the United States only and are not intended for any export outside the United States.

**19. ATTORNEY FEES:** If it is necessary for either party to obtain legal representation to enforce any part of the Order, the non-prevailing party agrees to bear the court costs and the attorney fees of the prevailing party.

**20. PRECEDENCE:** Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) provisions stated on the face of the Order, (2) Buyer's Order attachments, including these Terms and Conditions, (3) other specifications or documents incorporated by reference, (4) Seller's proposal or other documents only when specifically referenced on the Order. In the event of any conflicting provisions, the Seller shall promptly notify Buyer thereof.

**21. ENTIRE AGREEMENT:** These terms and those on the face of the Order to which this form is attached, and any specifications or drawings incorporated constitute the entire agreement of the parties and supersede all previous oral or written representations, agreements, and commitments.