



9076 Carroll Way, San Diego, CA. 92121
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Tandem Metal Products, Inc. Supplier Purchase Order Terms and Conditions

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

- a) "Order" means the purchase order or subcontract issued by Buyer to Seller to which these terms and conditions are affixed.
- b) "Buyer" means Tandem Metal Products, Inc.
- c) "Seller" means the person, firm, or corporation from whom the work or services defined in the Order are being purchased.

2. ACCEPTANCE OF ORDER: All Orders issued by Buyer to Seller expressly include and incorporate the terms and conditions set forth in this Purchase Order General Terms and Conditions document. Buyer and Seller shall be bound by this Order upon the earliest of the following Seller actions:

- (a) executing and returning the Order acknowledgement to Buyer.
- (b) commencing performance pursuant to this Order.
- (c) delivering to Buyer any of the Goods ordered herein; or
- (d) rendering to Buyer any of the Services ordered herein.

3. DELIVERY:

3.1 Time is of the essence in the performance of Seller's obligations under the Order. If Seller fails to adhere to the delivery schedule set forth in the Order, and Buyer must therefore demand a more expeditious means of transportation than specified in the Order, Seller shall be liable for the difference in such transportation cost. This in no way affects any other rights and remedies available to Buyer related to such delivery.

3.2 Unless otherwise expressly specified in the Order, all deliveries of products shall be made FOB (Free On Board) destination. Seller shall deliver the products and/or complete the services specified in the Order on or before the delivery date specified in the Order.

4. PACKING AND SHIPMENT. Deliveries shall be made as specified, without additional charge for boxing, crating, carting, or storage unless otherwise specified. Goods shall be suitably packaged to secure the lowest transportation costs and in accordance with the requirements of common carriers and be packaged to ensure against damage from weather or transportation. Buyer's Order number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment showing materials. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5. TITLE AND RISK OF LOSS: Seller warrants that it has good and clear title, free from any security interest, lien, or other encumbrance to all products to be delivered to Buyer. Title and risk of loss or damage to the products shall pass to Buyer upon delivery to Buyer, subject to Buyer's right to reject non-conforming products. Notwithstanding the foregoing, risk of loss of any non-conforming products or deliveries shall remain with Seller until Buyer finally accepts such products or deliveries.

6. INSPECTION: Buyer reserves the right to inspect all goods prior to shipment by Seller, and in furtherance thereof, Seller shall permit employees and/or representatives of Buyer and Buyer's customer to have access to Seller's facilities at all reasonable hours. All goods shall nevertheless be received subject to final inspection and approval by Buyer after delivery at destination. Buyer's inspection, or its lack of inspection, shall not affect any express or implied warranties. If the face of this Order stipulates that the goods shall be subject to inspection at Seller's facilities, Seller shall provide reasonable space and assistance for the safety and convenience of employees and/or representatives of Buyer and its customer. At the time of inspection, Seller shall make available to such representative's copies of all drawings, specifications, and other technical data applicable to the goods ordered.



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7. PAYMENT: Payment shall be made by Buyer to Seller upon the submission of correct invoices for goods and/or services delivered and accepted and in accordance with the payment terms delineated on the face of this Order. With respect to any discount offered, time shall be computed from the date of delivery or from the date a correct invoice is received by Buyer, whichever last occurs. Payment is deemed to be made, for the purpose of earning the discount, on the date Buyer's check is mailed. Seller shall certify, at the time of submitting invoices, that all goods and services were manufactured or performed in compliance with the Fair Labor Standards Act.

8. TAXES: Except as otherwise specified herein, or unless prohibited by law, Seller shall pay all federal, state and local sales, use, excise, or other taxes that may be levied upon any of the goods and/or services, or the Parties hereto, by reason of the sale, delivery, or use of the goods and/or services. All taxes of any nature that are invoiced to Buyer shall be specifically identified and separately stated. Seller shall not include tax for transactions for resale for which Buyer has provided resale certificates. If any tax, or portion thereof, that is included or added to the price paid by Buyer to Seller is subsequently refunded to Seller, Seller shall promptly pay to buyer the amount of such refund.

9. WARRANTY: Seller warrants that the products ordered will be fit for the purpose Intended for a period of twelve (12) months, unless otherwise specified in the Order. All articles purchased hereunder are warranted to be of new material, merchantable, to be of good material and workmanship, and to be free from defect for a period of twelve (12) months after delivery. 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 standards applicable to them. Warranties shall run to Buyer, its successors, assigns, and customers.

10. SPECIAL TOOLS: If prices are stated separately for dies, tools, and/or patterns acquired by Seller for the purpose of filling the Order (each a "Special Tool"), such Special Tools shall be properly identified by Seller as such. Title shall pass to Buyer upon payment for the Special Tool. If a Special Tool is needed for the manufacture by Seller of the Order, then Seller will hold such Special Tool in good condition, normal wear and tear excepted, and hand over to Buyer, as applicable, at the completion of the Order unless Buyer directs Seller in writing to dispose of such Special Tool.

11. BUYER-FURNISHED PROPERTY AND MATERIAL: Property and material furnished by Buyer to Seller for use in performance of the Order is to be held by Seller for mutual benefit and if the materials are damaged or not satisfactorily accounted for, Seller will pay for all such property and materials. All such property and material shall be returned to Buyer upon completion of the Order.

12. SELLER'S OBLIGATIONS FOR "NOT-TO-EXCEED" PURCHASE ORDERS: If the Order specifies payments by Buyer as "not-to-exceed" a stipulated amount, then:

12.1 Seller agrees to perform its obligations hereunder within that limit. If during performance hereunder, Seller's incurred costs equal 75% of the "not-to-exceed" value it shall promptly notify Buyer in writing indicating incurred cost and anticipated cost to complete.

12.2 Buyer shall not be obligated to pay Seller more than the "not-to-exceed" value, unless specifically authorized in writing by an authorized representative of Buyer's Purchasing Department.

13. CHANGES:

13.1 Buyer may at any time, by a written change order issued by a duly authorized purchasing representative, make changes within the general scope of the Order. If a change order causes an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment shall be made in the Order price and/or delivery schedule and the Order shall be modified in writing accordingly. Any claim by Seller for an adjustment under this clause must be asserted in writing within fifteen (15) days from the date of receipt by Seller of the notification of change.

13.2 Whether made pursuant to this clause or by mutual agreement, changes shall not be binding upon Buyer until agreed to in writing by an authorized member of Buyer's Purchasing Department. The issuance of information, advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinions only and shall not affect Buyer's and Seller's rights and obligations hereunder



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unless the same is in a writing which is signed by an authorized representative of the Buyer's Purchasing Department, and which expressly states that it constitutes a modification or change to the Order.

13.3 Seller shall proceed with prosecution of the work in accordance with any written direction issued under this Clause 13.

14. WRITINGS REQUIRED:

14.1 No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall be of any effect unless in writing.

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

14.3 No extra charge of any kind will be allowed unless specifically agreed to by Buyer in writing.

15. 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 the 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:

(a) cancel the "Stop Work Order" and direct Seller to resume work, which event Seller shall receive an equitable adjustment, provided a claim for such an adjustment shall be submitted by Seller within thirty (30) days after the end of the period of work stoppage; or

(b) terminate the work and the Order or part thereof in accordance with Clause 9.

16. 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; (2) causes beyond their control and which are not foreseeable or causes beyond the reasonable control of their subcontractors which are not foreseeable.

17. TERMINATION FOR CONVENIENCE:

17.1 Buyer may, at its option, terminate the Order, in whole or in part, for Buyer's convenience, by written, fax, or e-mail notice to Seller. Upon termination hereunder, Seller shall:

(a) stop work under the Order on the date and to the extent specified in the notice,

(b) terminate all orders and subcontracts to the extent they relate to the terminated work, and

(c) take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest, and direct subcontractors to do the same.

17.2 Within thirty (30) days after receipt of such notice of termination, Seller will prepare and submit to Buyer in writing its claim for reimbursement of costs resulting from the termination. Such claim which shall include termination costs, if any, from lower-tier subcontractors, is to be in accordance with the requirements of Buyer hereinafter set forth. If the parties cannot agree within a reasonable time upon the amount of fair compensation to Seller for Seller's performance of the terminated Order, Buyer will pay Seller, without duplication, the following:

17.2.1 The Order price for articles which have been completed and delivered to Buyer or otherwise disposed of as Buyer may direct. In the event the Order price includes packaging and transportation costs and the completed articles have not been packaged and transported at the time of termination, an equitable adjustment will be made to the Order price for such articles.

17.2.2 The actual costs incurred by Seller prior to termination which are properly allocable or apportionable, under good commercial accounting practices consistent with Seller's usual accounting procedures, to the terminated portion of the Order other than articles whose price is paid under subparagraph (17.2.1). Notwithstanding the provisions of this subparagraph (17.2.2) and subparagraph (17.2.4) below, if the Order provides for fixed hourly rates, Buyer shall pay Seller without duplication the hourly rates fixed in the Order times the number of hours actually expended in conformity with the provisions of the Order.



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17.2.3 Reasonable expenses actually incurred by Seller in settling Seller's terminated orders and subcontracts hereunder, as approved by Buyer, and in protecting property in which Buyer has or may have an interest.

17.2.4 Such allowance for profit on the work performed as may be reasonable and allocable under the circumstances. Payments under this clause, including all payments made under the Order prior to the termination, shall in no event exceed the aggregate price specified in the Order. Seller will transfer title to and deliver on Buyer's instructions any property the cost of which is reimbursed under (17.2.2) above or with Buyer's approval, may retain the same at an agreed price or sell at any approved price and credit or pay the amount so agreed or received as Buyer directs. Buyer may audit all elements of any termination claim including all elements of claims submitted under any orders and subcontracts that Seller has terminated in accordance with this clause. In no event will Seller or its subcontractors or suppliers be entitled to reimbursement for any cost incurred subsequent to the effective date of termination except for those allowed by subparagraph (17.2.3) above, nor shall Seller or its subcontractors or suppliers be allowed to recover any cost incurred prior to termination unless such cost was allocated to the Order in accordance with usual and customary accounting procedures applicable in the absence of termination of orders. Specifically, but not exclusively, no recovery will be allowed of any amounts representing anticipatory profits, unabsorbed administrative expenses, or other overhead costs, or continuing costs.

18. TERMINATION FOR DEFAULT:

18.1 Buyer may terminate all or any part of the Order if Seller breaches any of the terms hereof including warranties or fails to make progress as to endanger performance of the Order in accordance with its terms. Buyer shall notify Seller in writing of such breach or failure and allow 10 days from the date of the notice for Seller to cure the breach or failure. Termination hereunder shall be affected by written notice to Seller.

18.2 In the event Buyer terminates the Order in whole or in part as provided hereinabove, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of the Order to the extent not terminated under the provisions of this clause.

18.3 If the Order is terminated for default, Buyer may require Seller to transfer to Buyer title and possession in the manner and to the extent directed by Buyer of (1) any completed items, and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or acquired for the performance of such part of the Order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest. Payment for completed items delivered to and accepted by Buyer shall be at the Order price. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in the amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed supplies or manufacturing materials, such sum as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

18.5 If, after notice of termination of the Order under the provisions of this clause, it is determined for any reason that Seller was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause.

18.6 The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any others provided by law or the Order.

19. DATA: If the Order is for research, development, or experimental work, all data, notes, drawings, designs, sketches, specification, records, and memoranda of every description in any physical or electronic form relating to the work hereunder or any part thereof as Seller shall produce, and all copies of the foregoing, shall be the property of Buyer and subject to inspection by Buyer at all reasonable times and shall be delivered to Buyer or otherwise disposed of by Seller as Buyer may direct from time to time.



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20. PROPRIETARY INFORMATION:

20.1 Seller shall not, during the term of the Order, and for a period of five (5) years thereafter, divulge to anyone other than Buyer (or such other persons as Buyer designates in writing), or, except in the performance of the Order, make use of information or knowledge relating to details of Buyer's business or that of its subsidiaries, suppliers, or customers, of any other confidential or proprietary information of Buyer or its subsidiaries, suppliers, or customers which Seller shall have obtained because of the Order. Seller shall take all reasonable measures to protect such confidential or proprietary information, which measures shall be at least equal to those with which Seller protects its own confidential or proprietary information. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by Buyer under the Order are reserved to Buyer and their use is restricted to the work to be performed hereunder. Seller agrees to retain in confidence and return to Buyer on completion of the Order all designs, drawings, specifications, and technical information of every kind belonging to Buyer and furnished to Seller in connection with the Order. Notwithstanding the foregoing, Seller shall have no obligation with respect to any confidential or proprietary information which (1) was written record in Seller's files prior to its first receipt from Buyer (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 Seller (3) is at any time lawfully received by Seller from a third person under circumstances permitting its disclosure to others by Seller.

20.2 No private data or proprietary designs, ideas, or information of Seller are to be provided to Buyer. Buyer accepts no obligation of confidence to Seller with respect to ideas, data, information, or designs divulged by Seller or equipment, operations, or designs witnessed by Buyer at Seller's plant. However, this provision shall not constitute any form of license hereunder if there is a validly issued patent in effect. Seller authorizes Buyer to reproduce Seller's copyrighted material, at no cost to Buyer, for the purpose of including such material in documents provided to Buyer's customers, or prospective customers, in the normal course of Buyer's business. In the absence of further written agreement duly signed by both parties to the Order, all information which passes from Seller to Buyer shall be treated as non-confidential, including material provided in written form and marked by the originator as being confidential or private.

21. PATENT RIGHTS: If this work is for experimental, development, or research work, as such, to be performed in accordance with special requirements of Buyer, Seller agrees to disclose and on request to assign to Buyer inventions conceived or first actually reduced to practice in the course of or under the Order.

22. INDEMNITY: Seller agrees to indemnify Buyer against any liability, including costs and expenses, for (1) any asserted trademark, copyright, or patent infringement arising from the manufacture, use, or sale of any articles furnished to Buyer under the Order, except where such articles are in accordance with Buyer's detailed design or specification and Seller gives prompt notice to Buyer of such claims which come to Seller's attention, (2) any breach of any warranty of Seller hereunder, and (3) any damages caused to Buyer by third parties, resulting from the manufacture, use or sale of articles furnished by Seller hereunder.

23. ADVERTISING: Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the articles herein mentioned.

24. 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. In the event written consent is granted, Seller shall promptly supply Buyer two copies of any such assignment. Payment to an assignee of any claim hereunder shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.

25. PRECAUTIONS, INDEMNITY, AND INSURANCE:

25.1 Seller will defend Buyer at Seller's expense from any suit or action, criminal or civil, arising out of Seller's performance, or that of its officers, directors, employees or agents. Seller will procure and carry the following:
a) Automobile liability insurance protecting the Seller from automobile bodily injury, property damage liability with limits of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage.



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b) A broad form comprehensive general liability insurance policy which includes property damage; product liability cannot combine with coverage with contractual liability endorsement with limits no lower than \$1,000,000. Such policy shall be on an Occurrence Form.

c) If the Order is for Engineering or other Professional Service, Professional liability coverage with a limit no less than \$1,000,000.

d) Such insurance of employees as may be required by any Workers' Compensation act or other law, regulation or ordinance which may apply in the circumstances and shall, at Buyer's request, furnish certificates of such insurance to Buyer. For (a) and (b) above, such policies shall name Buyer as additional insured when requested by Buyer.

25.2 At Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, if further requested by Buyer, such certificates will provide that Buyer shall receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverages. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of Its obligations or liabilities under the Order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by the Order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation. If Seller's work under the Order involves operations by Seller on Buyer's premises, Seller agrees to take all proper precautions in its operations against the occurrence of Injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this clause.

26. 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.

27. EXPORT CONTROLS. Information and/or data related to the Order may be subject to U.S. export controls, including the International Traffic in Arms Regulations (ITAR), the U.S. Export Administration Regulations (EAR), and other regulations as deemed applicable (the U.S. Export Regulations). U.S. Export Regulations prohibits the transfer or export of information or data without an export license to any employee or other person who is not a United States Citizen or Permanent Resident Alien, as well as to corporations or to any other entity, organization or group that is not incorporated or otherwise organized to do business in the United States. Seller agrees to comply with all applicable U.S. Export Regulations and convey all U.S. Government export control requirements to all sub-tier suppliers or subcontractors that will be provided access to export controlled data provided under the Order. In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary, significant delay in obtaining them), Seller shall immediately notify Buyer's authorized Purchasing Department representative.

28. DISPUTES: Any dispute arising under this Order that is not settled by agreement of the Parties may be settled by appropriate legal proceedings. Pending any decision, appeal, or judgment in such proceedings, or the settlement of any dispute arising under this Order, Seller shall proceed diligently with the performance of this Order in accordance with the decision and instruction of Buyer.

29. 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.

30. 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.



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31. PRECEDENCE: Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:

- (1) written provisions 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.

32. COUNTERFEIT, FRAUDULENT AND SUSPECT ITEMS: Counterfeit, Fraudulent and Suspect Items ("CF SI") refers to Materials and the Incidental Parts or Supplies that are (i) mis-labeled as to source or quality; (ii) falsely labeled as new; (iii) fraudulently stamped or identified as having been produced to high or approved standards; (iv) an unauthorized copy of a known product within the industry; or (v) materially misrepresented in some way by the Seller. Seller shall implement a program, applicable to all levels of supply, to document the sourcing of all items and components, and to ensure that CFSI is not delivered or incorporated into the Materials and the Incidental Parts or Supplies. If Seller becomes aware that it has furnished CFSI in any form, Seller shall immediately notify Buyer in writing with the pertinent facts and Seller shall immediately: (i) provide Original Component Manufacturer ("OCM")/Original Equipment Manufacturer ("OEM") documentation that authenticates the traceability of the items in question; or (ii) promptly replace the CFSI with non-CFSI replacement items at Seller's sole cost and expense. If Buyer, at any time, has reasonable cause to believe Seller has furnished CFSI, in any form, Buyer shall notify Seller providing all relevant information and Seller shall immediately: (i) provide OCM/OEM documentation that authenticates the traceability of the items in question; or (ii) promptly replace the CFSI with non-CFSI replacement items at Seller's sole cost and expense. Buyer's sole remedy, and Seller's sole obligation, for any breach of this Clause will be to provide a non-CFSI replacement for the CFSI item

33. 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.