

# TSI, Incorporated/DICKEY-john Corporation Terms & Conditions

## PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS.** As used herein, "Seller" means the legal person to whom this order is issued "Buyer" means the legal person issuing this order, "supplies" means all articles, materials, work or services to be furnished by Seller.
2. **ACCEPTANCE AND MODIFICATION.** This purchase order, whether or not issued with reference to a quotation or proposal of Seller, shall constitute an offer to enter into the purchase agreement it describes, and it shall be the complete and exclusive statement of such purchase agreement. Seller shall accept the offer in writing or by commencement of work hereunder. No modifications or changes proposed by Seller shall be valid unless confirmed in writing by Buyer. Buyer is not bound by any printed matter on Seller's acknowledgement forms or invoices that impose additional conditions or conditions not agreeable to the terms on this order.
3. **CHANGES.** Buyer, at anytime, by written order, may change the design (including drawings, materials, and specifications), processing, method of packing and shipping, and the place, quantity, and time of delivery, of the supplies and services. Seller shall not make any change in the design, processing, packing, shipping or place and time of delivery of the supplies and services without the Buyer's written approval.
4. **FABRICATION AND MATERIAL COMMITMENTS.** Unless otherwise authorized in writing by Buyer, Seller shall not make commitments for material or fabricate in advance of time necessary to permit shipment on prescribed delivery dates.
5. **PACKING, MARKING, ROUTING, AND SHIPPING.** Seller shall pack and ship the articles in accordance with the requirements of Buyer and the carrier transporting such articles. Seller shall mark each package in accordance with the current edition of Buyer's packaging specifications and additional instructions of Buyer and the carrier. Seller shall reimburse Buyer for all expenses incurred by Buyer as a result of improper packing, marking, routing, or shipping. Seller shall not charge separately for packing, marking, or shipping, or for materials used therein, unless Buyer specifies, in writing, that it will separately reimburse Seller for such charges. Buyer may require shipment of any of the articles by a more expeditious method of transportation if Seller fails to meet the shipping requirements of this purchase order, and Seller shall bear the cost difference of such transportation unless such failure is due, as defined in Section 6, to an excusable delay. Seller shall be responsible for any loss, damage, or injury which results from or occurs during shipment of goods F.O.B. Seller's plant via Seller's vehicles.

If the goods are not shipped in accordance with Buyer's direction and the instructions set out in this order, Seller shall be responsible for any excess cost thereby caused. Except for customary quantity variations recognized by trade practice, quantities in excess of those specified will not be accepted, and may be returned to supplier freight collect at Buyer's discretion.
6. **DELAYS.** As a result of Seller's failure or refusal to proceed with any purchase order, or failure to make delivery according to the specified delivery schedule, Buyer may cancel any remaining open balances of this order, unless delay is an excusable delay, as acknowledged by Buyer. As used herein, the term "excusable delay" means any delay resulting from causes or events beyond reasonable control and without fault or negligence on the part of the party involved, including but not limited to acts of God or of the public enemy, fires, floods, any allocation order issued by the Government or any other act of Government, and delays of a supplier due to such causes. In the event of a delay in performance, Buyer, at its option, may acquire possession of all finished goods, work-in-process, and parts and materials produced or acquired for the work hereof, and Seller shall deliver such articles to Buyer, at Buyer's option F.O.B. carrier, Seller's facility, or F.O.B. Buyer's facility.
7. **INSPECTION AND ACCEPTANCE.** Inspection and test of the articles by Buyer may at Buyer's option be made at Seller's plant and/or points of destination. At the Buyer's option, the Buyer may make a surveillance of the Seller's inspection, quality, and reliability procedures as well as the data supporting same. Acceptance of the goods by Buyer shall not relieve Seller from any obligations and warranties hereunder. In no event shall payment be deemed to constitute acceptance.

Buyer may reject, or retain and correct, goods that fail to meet the requirements of this purchase order. Upon notice of such nonconformity, Seller shall promptly correct or replace goods at Seller's expense. If Seller shall fail to do so, Buyer may cancel this order as to all such goods, and in addition, may cancel the then remaining balance of this order. After notice to Seller, all such goods will be held or returned at Seller's risk and expense. If Buyer elects to correct the goods, it shall consult with the Seller on the method of correction. Seller shall reimburse Buyer for reasonable expenses resulting from rejection or correction.
8. **PROPERTY USED OR FURNISHED.** Unless otherwise specified herein, any necessary special tools, dies or other equipment shall be furnished at the expense of the Seller. If agreed and specified, or if a charged to Buyer, any necessary tools or dies or other equipment shall be the property of the Buyer, and are for the sole use of the Buyer. If the Seller is not keeping the tools, dies or other equipment in Seller's plant, Seller must identify the party which is holding this property. If Seller does not pre-advise subcontractor's name, Buyer has the right for refund on tools, dies or other equipment involved. Notwithstanding the foregoing, Seller agrees that it will use the designs, tools, patterns, drawings, information and equipment for Buyer in the production of articles called for herein and not otherwise except with Buyer's written consent. Buyer does not warrant the accuracy of the tools and fixtures that it furnishes, and all work must be in strict accordance with blueprints and specifications. While such property is in Seller's possession, Seller bears all responsibility for any loss or damage, regardless of cause or fault, to property furnished or owned by Buyer, but excluding normal wear and tear. Seller shall at its expense, insure for reasonable value, house and maintain on Seller's premises, and identify as property of Buyer all such articles. Buyer shall have the right to enter Seller's premises at reasonable times to inspect such articles and Seller's records pertaining thereto. Upon completion or termination of this order, all items furnished or owned by Buyer shall be forwarded to Buyer within 7 days unless otherwise specified by Buyer. Delivery shall be by a carrier selected by Buyer, at Buyer's option F.O.B. carrier, Seller's facility, or F.O.B. Buyer's facility, properly packed and marked in accordance with the requirements of the carrier and the Buyer.
9. **SAMPLES.** Seller, at its own expense, shall fabricate from production tooling and processes and furnish to Buyer the number of samples specified on the face of this purchase order. Seller shall inspect such samples before delivery and shall certify inspection results in the manner required by Buyer.
10. **INDEMNITY.** Except as may be otherwise expressly agreed to in writing between Buyer and Seller, in no case shall Buyer indemnify or hold harmless Seller against any claim for personal injury, property, incidental, consequential, or special damages arising out of or resulting from improper or defective design, material, or workmanship in goods purchased from Seller hereunder.
11. **WARRANTY.** (a) Seller warrants that all Products delivered hereunder shall be free from defects in workmanship, material, and manufacture; shall comply with the requirements of this contract, including any drawings or specifications incorporated herein or samples furnished by Seller, and where design is Seller's responsibility, shall be free from defects in design. (b) Seller warrants all Products purchased hereunder shall be of merchantable quality and shall be fit and suitable for the purposes intended by Buyer. The foregoing warranties shall constitute conditions and are in addition to all other warranties, whether expressed or implied, and shall survive any delivery, inspection, acceptance, or payment to Seller. (c) Seller warrants that all articles, material and work covered by this order will conform to the specifications, drawings, samples, or other description furnished by the Buyer and will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship free of defects. (d) Seller warrants that the use and sale of the Products delivered hereunder and the designs upon which they are based do not infringe any present or future patent, copyright, industrial design right, or other proprietary right. (e) Buyer's approval of the Seller's material or design shall not relieve Seller of the warranties set forth in this clause, nor shall waiver by Buyer of any drawing or specification requirement for one or more of the items constitute a waiver of such requirements for the remaining items to be delivered hereunder unless so stated by Buyer in writing. The provisions of this clause shall not limit or affect the rights of Buyer under the clause entitled "INSPECTION and ACCEPTANCE".
12. **TERMINATION.** Buyer may terminate its purchase obligations hereunder in whole or in part at any time by written notice of termination to Seller. Buyer shall have such right of termination notwithstanding the existence of an excusable delay as defined herein. Upon receipt of the notice of termination, Seller, unless otherwise directed by Buyer, shall: (a) terminate promptly all work under this purchase order; (b) transfer title and deliver to Buyer the finished work, the work-in-process, and the parts and materials which Seller produced or acquired in accordance with this purchase order and which Seller cannot use in producing goods for itself or for others; (c) settle all claims by subcontractors for actual costs that are rendered unrecoverable by such termination, and; (d) take any actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest. Upon termination by Buyer under this section, Buyer's obligations to Seller shall be: (e) the purchase order price for all finished work and completed services which conform to the requirements of the purchase order; (f) Seller's actual cost of the work-in-process and parts and materials transferred to Buyer in accordance with subsection (b) hereof; (g) Seller's actual costs of settling the claims by subcontractors of subsection (d) hereof; but Buyer's obligations shall not exceed those Buyer would have had to Seller in the absence of termination.

Seller shall furnish to Buyer, within one month after termination date, Seller's termination claim, which shall consist exclusively of the items of Buyer's obligations to Seller set forth in this section. Buyer may audit Seller's records, before or subsequent to payment to verify amounts requested in Seller's termination claim. Buyer shall have no obligation to Seller if Buyer terminates its purchase obligations of this purchase order because of default by Seller.
13. **TAXES.** Unless otherwise stated, the prices do not include sales, use, excise, and similar taxes that may be applicable to the goods furnished hereunder or the materials used in the manufacture thereof.
14. **ASSIGNMENT, DELEGATION AND INSOLVENCY.** Assignment of this order, or any interest therein or any payment due or to become due, or delegation of any duty therein without the written consent of Buyer shall be void. If Seller ceases to conduct its operation in the normal course of business (including inability to meet its obligations as they mature), or if any proceeding under the bankruptcy or insolvency laws brought by or against Seller, or a receiver for Seller is appointed or applied for, an assignment for the benefit of creditors is made by Seller, Buyer may terminate the order without liability except for deliveries previously made or for goods covered by the order then completed and subsequently delivered in accordance with the terms on this order.
15. **REMEDIES.** No remedy herein provided shall be deemed exclusive of any other remedy allowed by law.
16. **PROPRIETARY RIGHTS, CONFIDENTIAL INFORMATION.** (a) Seller shall indemnify and defend Buyer against any claim of infringement of any present or future patent, copyright, industrial design right, or other proprietary right that results from the sale or use of the supplies or products hereof (i) alone, (ii) in combination by reason of their content, design, or structure, or (iii) in combination in accordance with Seller's recommendations, or, at Buyer's option provide all reasonable assistance to Buyer in Buyer's handling of such claims. Seller's obligations shall apply even though Buyer furnishes all or any portion of the design and specifies all or any portion of the processing. (b) Seller grants to Buyer a nonexclusive, royalty free, irrevocable license to rebuild and have rebuilt the supplies or products purchased by Buyer under this purchase order. (c) Seller will neither assert nor transfer to another a right to assert against Buyer or customer thereof, any copyright of Seller that is applicable to any works of authorship furnished to Buyer in the course of Seller's activity hereunder. (d) All technical information disclosed heretofore and hereafter by Seller to Buyer in connection with these products or services is disclosed on a non-confidential basis. (e) Seller may not refer to Buyer in any advertising or other public release without the written consent of Buyer. (f) This document and any material transmitted herewith including but not limited to drawings, schematics, or specifications may contain information proprietary to Buyer, its subsidiaries or affiliates, and such information is not to be used by the recipient for any purpose other than the purpose for which it was transmitted. The information shall be maintained in confidence and not disclosed to third parties without the written consent of the Buyer
17. **GOVERNING LAW.** The contract resulting from the acceptance of this order is to be construed according to the laws of the State of Buyer's domicile.
18. **COMPLIANCE WITH LAWS.** Seller agrees to comply with, and warrants that the products and services which are the subject of this order, and the production thereof, comply with all applicable state, federal and local laws, rules and regulations.