

**TELL INDUSTRIES, LLC – PURCHASE ORDER  
TERMS AND CONDITIONS**

These Purchase Order Terms and Conditions (the “Terms and Conditions”) apply to any Purchase Order (“PO”) issued by Tell Industries, LLC (“Tell”) that is not governed by a written Master Purchase Agreement entered into between Tell and the vendor or seller named on the PO (the “Supplier”). Supplier’s commencement of performance pursuant to or acknowledgment by electronic mail or otherwise of Tell’s PO constitutes Supplier’s acceptance of these Terms and Conditions without modification, alteration, deletion, or addition notwithstanding any contrary terms or provisions which may appear in or on any form or document produced by Supplier. Any additional or different terms in any form, document, or acknowledgment prepared and sent to Tell from Supplier are expressly rejected by Tell and will not be deemed accepted by Tell unless Tell responds in writing to the additional or different term and such writing specifically approves the additional or different term. The goods described in the PO to be delivered by Supplier to Tell are referred to in these Terms and Conditions as the “Goods.”

**1. Price; Payment Terms**

A separate original invoice is required for each shipment under the PO. Tell will pay for the Goods within thirty (30) days after the later of the date of (a) Tell’s receipt of the applicable invoice or (b) the date acceptable Goods are received by Tell (but not earlier than the specified delivery date). Supplier warrants that the prices charged to Tell are no higher than the lowest prices charged to any other customer during the past twelve months for the same or comparable Goods.

The price will reflect shipping F.O.B. to the Supplier. Tell will not accept C.O.D. shipments. Supplier will be responsible for payment of all charges for handling, shipping, packaging, wrapping, bags, container, boxing, crating, labeling, customs and duties, taxes (except for Kansas sales tax, if any), storage, insurance, and other related matters. Supplier will cause all Goods to be insured for the full value during all phases of packaging and delivery and such insurance will remain in place until such time as Tell has accepted delivery of Goods at its Park City facility.

The price includes all taxes directly applicable to the Goods unless otherwise specified. Notwithstanding the foregoing, Tell will only be liable for such federal, state, and local taxes that Supplier is required by law to collect from Tell.

**2. Specifications**

Supplier will comply with any specifications stated on the face of the PO and with any applicable United States government specifications, including without limitation that the Goods will not contain more lawful trace amounts of naturally-occurring tetrahydrocannabinol (“THC”), which in no instance may exceed the lower of (a) 0.3% concentration by weight, or (b) the maximum concentration permitted by applicable laws. Supplier will also comply with all other specifications set forth in any writing delivered to Supplier by Tell.

**3. Tell Inspections**

Tell’s rights to perform inspections, surveillance, and tests and to review procedures, practices, processes, and documents related to quality assurance, quality control, and configuration control at Supplier’s facility or its subcontractor’s facility, a right which Supplier hereby grants to Tell, will extend to Tell’s customers. Supplier will cooperate with any government-directed or Tell-directed inspection, surveillance, test or review, without additional charge to Tell. Nothing in these Terms and Conditions will be interpreted to limit United States government access to Supplier’s facilities pursuant to law or regulation.

#### **4. Supplier Inspections**

Supplier will inspect and otherwise verify that all Goods comply with the requirements of the PO (including these Terms and Conditions) prior to shipment. Supplier is responsible for all tests and inspections. Supplier agrees to furnish copies of test or control in data upon request of Tell. Supplier must assure Tell in writing that all Goods and production comply with the requirements of the PO (including these Terms and Conditions) and any other written specifications provided by Tell. Supplier will maintain inspection records for a period of ten (10) years, which records must directly reflect that all Goods were produced in accordance with applicable specifications.

#### **5. Change Orders**

Tell may at any time, by written notice to Supplier, make changes in the Goods ordered or their specifications, quantities, delivery schedules, or shipping instructions under a PO. If any such change increases or decreases the cost of performing or the time required for performance of the PO, an equitable adjustment in prices or schedules will be considered by Tell provided that any claim by Supplier for such adjustment is presented in writing with supporting documentation to Tell within two (2) business days from the date of Tell's notice to Supplier. No changes whatsoever will be initiated by Supplier without Tell's written approval.

#### **6. Storage of Goods Prior to the Time for Delivery**

Supplier will store Goods at its cost in a safe manner and not subject to environmental degradation until the Goods are ready for shipment to Tell.

#### **7. Packing**

Goods will be suitably prepared for shipment to secure the lowest transportation rates (unless a premium method is specified on the face of a PO) and comply with all carrier and importation regulations. No charges are allowed for packing, crating, freight express, or cartage unless authorized by Tell.

#### **8. Liens, Claims and Encumbrances**

Supplier warrants and represents that all the Goods when delivered will be free and clear of all liens, claims, encumbrances, or infringements.

#### **9. Routing, Risk of Loss, Excess Shipments and Delays**

Time is of the essence in the performance of POs. Supplier will take all necessary action, both normal and extraordinary, to ensure timely deliveries. If Tell selects the mode of transportation, routing of, and carrier for the Goods on the face of the PO, Supplier will be liable for excess transportation costs resulting from deviation. Supplier will bear the risk of loss until the delivery point specified in the PO or, if not so specified, until delivery at Tell's Park City facility. If Supplier believes that it will be unable to meet its delivery schedule, Supplier will immediately notify Tell in writing. Upon receipt of notice of the anticipated delay or upon occurrence of an actual delay, Tell may (i) direct expedited routing of Goods, with excess costs paid by Supplier, or (ii) cancel the PO and purchase substitute Goods elsewhere.

#### **10. Rejection of Goods and Revocation of Acceptance**

Tell's action in paying for or initially accepting any Goods will not constitute a waiver of any rights or remedies of Tell, including Tell's right to revoke acceptance and return any part of the Goods or the right to make a claim for damages because of the failure of the Goods to conform to the PO. For all non-conforming Goods, Supplier will

provide Tell, at Tell's election, a full refund or replacement of the Goods, at Supplier's risk and expense, including transportation costs both ways. Tell may, at its option, purchase substitute Goods in lieu of non-conforming Goods, and Supplier will be liable for the difference in costs, less expenses saved by Tell. Tell's rights herein will be in addition to all other rights of Tell under the PO and applicable law.

## **11. Quality; Warranties**

Supplier warrants that all Goods delivered will strictly conform to the PO, any applicable United States government specifications, and all other specifications of Tell, including those set forth in these Terms and Conditions. Supplier further warrants that all Goods will be of good quality, materials, and workmanship; will be free of defects; will be merchantable and fit for their intended purpose; and will meet all applicable industrial and governmental standards. Supplier further warrants that Supplier will have title to and the right to sell such Goods at the time of delivery, and that all such Goods will be new (unless otherwise specified in the PO) at the time of delivery. Supplier will also transfer to Tell the warranties on goods and services incorporated into Goods. All warranties will survive any inspections, delivery, acceptance, or payment by Tell, and will run to Tell, its successors, assigns, customers, and users of Goods. Tell may, at its option and without cost to Tell, either (a) return for credit or refund any defective or nonconforming Goods, (b) require prompt correction or replacement of the defective or nonconforming Goods, or (c) repair the defective or nonconforming Goods and charge Supplier for all related repair costs. Return to Supplier of defective or nonconforming Goods and re-delivery to Tell of corrected or replaced Goods will be at Supplier's expense and Supplier will pay for all other resulting damage, loss or claims arising out of defective or nonconforming Goods. Supplier's warranties with respect to repaired or replaced Goods will be the same as the warranties given with respect to the original Goods.

## **12. Indemnification**

Supplier agrees to defend, indemnify and hold Tell, including its officers, directors, employees, parent, subsidiaries, affiliates and agents (collectively, the "Indemnified Party"), harmless of and from any claim, loss, cost, damage, settlement or judgment arising out of Supplier's provision of Goods, specifically including without limitation any failure to deliver goods that comply with the specifications or Supplier's warranties as set forth in these Terms and Conditions, or the presence of Supplier's employees, agents or subcontractors on the Indemnified Party's premises. This duty to defend, indemnify and hold harmless extends to any legal claim or proceeding, whether based on contract, warranty, infringement, strict liability in tort, negligence or other legal theory, and also extends not only to third party claims but also to any loss suffered directly by the Indemnified Party or any claims or investigations initiated by any governmental authority. Tell is entitled to control Supplier's defense of Tell hereunder.

## **13. Limitations of Tell's Liability**

Any liability of Tell for any breach of any term or condition imposed upon it, whether such term or condition is contained in these Terms and Conditions or otherwise, will not exceed the purchase price for the Goods involved in the alleged breach. Tell will not under any circumstance be liable for consequential or incidental damages.

## **14. Assignment**

Supplier will not assign or delegate any of its rights or interest in a PO without the prior written consent of Tell, which consent Tell may grant or withhold in its sole and absolute discretion. The prohibition against assignment or delegation includes without limitation a change of control of Supplier. Change of control means any of the following transactions: (a) the sale or other transfer to, or acquisition by, any person of securities possessing more than fifty percent (50%) of the total combined voting power of the outstanding securities of Supplier in one or more related transactions; or (b) the sale or other transfer of all or substantially all of the assets of Supplier in one or more related transactions, whether by sale, exchange, merger, consolidation, reorganization, dissolution, or liquidation; or (c) a

merger or consolidation (or series of related transactions culminating in a merger or consolidation) (i) in which Supplier is not the surviving entity, except for a transaction the principal purpose of which is to change its state of domicile, or (ii) in which Supplier is the surviving entity but in which securities possessing more than fifty percent (50%) of the total combined voting power of its outstanding securities are transferred to a person or persons different from those who held such securities immediately prior to such event. Failure to obtain approval of any assignment, including an involuntary assignment to creditors, will constitute a breach which may lead to termination of any outstanding POs.

## **15. Tell's Remedies**

All of Tell's rights and remedies under any PO or at law are cumulative and non-exclusive. In the event of a delivery delay other than due to force majeure or in the event the Supplier delivers nonconforming Goods which Tell rejects, the parties acknowledge that Tell may suffer and Supplier may be liable for significant costs, including administrative costs, and damages at law and that Tell may proceed to press its claims against Supplier and, at the same time, pursue corrective actions.

### **a. Administrative Costs**

Supplier agrees to be liable for the following administrative expenses incurred by Tell because of any such delays or rejections: employee overtime; telecommunication costs; transportation; special handling expenses; and various anticipated and unanticipated costs to install the products out of the normal manufacturing sequence. The nature and actual amount of costs, damages and administrative expenses associated with delivery delay are uncertain and difficult to calculate. Therefore, but separate and apart from Tell's right to pursue other rights or remedies to recover its actual costs and damages, Tell may, in its sole discretion, invoice Supplier for administrative expenses associated with delivery or developmental delay or delivery of rejected Goods. The parties acknowledge that such payments are not intended as a penalty, but are in lieu of actual calculation of such administrative expenses. If Tell chooses to invoice for the administrative expenses, such expenses, regardless of their actual amount, will equal the greater of 1% of (i) the value of the delinquent or rejected Goods per day of delay (or rejection turnaround or second sourcing) or (ii) \$100 for each item per day for such days of delay or turnaround ("Administrative Claim"); however, Tell will not invoice Supplier for the Administrative Claim for any delay or rejection that is resolved to Tell's sole satisfaction within five (5) days. This calculation represents a reasonable estimate of the additional administrative expenses to be incurred by Tell in in such circumstances. Tell's election to invoice for such administrative expenses as agreed reimbursement for administrative costs on any one or more occasions will not, however, preclude Tell from recovering the actual costs and damages (including reasonable attorney fees) incurred because of delayed delivery or rejected Goods even on those occasions when the administrative expenses are charged or any other occasion, as determination and invoicing of administrative expenses is a matter separate and apart from Tell's potential claims for actual costs and damages. Tell's exercise of rights under this provision will not preclude Tell from exercising its option to cancel a given PO, even if Supplier has (a) paid such administrative charges or actual damages to Tell on prior occasions, or (b) if repeated incidents of later or rejected delivers in the aggregate (or a single significant incident of delay or rejection) materially adversely affect Tell's ability to enjoy the bargained for benefits of the PO on an ongoing basis.

### **b. Other Rights and Remedies**

In the event of any such delays or rejections, Tell, in its sole and absolute discretion, may elect to pursue any or all legal or equitable rights and claims in addition to or in lieu of an Administrative Claim. This includes, as illustration and not as limitation, the right to pursue claims for all damages, expenses, and costs incurred directly or indirectly by the delays or rejections in questions, including any charges or penalties assessed to Tell by its customer, and the right to terminate the PO with Supplier, as well as a reasonable attorney fee for pursuing such remedies.

## **16. Setoff**

Payment to Supplier under the PO is subject to set-off or recoupment for any present or future claims that Tell or its affiliates may have against Supplier or its affiliates under any other contract.

## **17. Termination for Convenience**

Tell may terminate all or part of a PO by written notice to Supplier. Any such written notice of termination will specify the effective date and the extent of any such termination. Notwithstanding the foregoing, Tell may only implement this provision in the exercise of good faith and solely to the extent necessary: (a) to terminate a PO erroneously entered by it or its agent; (b) to terminate all or part of a PO with respect to Goods that Tell subsequently determines it has no actual need of in its processes and does not use in its processes; or (c) to the extent Tell's customer has terminated all or part of its contract with Tell and such termination directly affects the Goods. Tell will not use this provision in a situation primarily to permit it to obtain for itself or its customers more favorable pricing or other terms with respect to Goods. In addition, any reimbursement to Supplier will be limited to the same extent Tell is limited to seeking reimbursement from its customer.

## **18. Applicable Law; Disputes**

The interpretation of the PO and the rights and obligations of Tell and Supplier will be construed and governed by the substantive and procedural laws of the state of Kansas, U.S.A. except that Kansas's choice of law rules will not be invoked for the purpose of applying the law of another jurisdiction. The U.N. Convention on Contracts for the International Sale of Goods will not apply to the PO. The parties agree to personal jurisdiction in the state and federal courts in the state of Kansas and that the exclusive venue for any dispute involving a PO is state and federal courts in Sedgwick County, Kansas.

## **19. Customer Agreements**

Supplier acknowledges that Tell may have written agreements with customers which require Tell to bind its suppliers to certain terms and conditions. Supplier agrees to be bound, to the extent applicable to Supplier, by any and all such customer agreements.

## **20. Miscellaneous**

### **a. Entire Agreement; Amendment**

The PO constitutes the entire agreement between Tell and Supplier with respect to the subject matter and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings, and all other communications between Tell and Supplier. No waiver, alteration, modification or addition to the PO will be binding unless expressly agreed to in writing and signed by duly authorized representatives of Tell and Supplier. A waiver of any PO term or condition will not be deemed a continuing waiver but will apply solely to the instance to which the waiver is specifically, in writing, directed.

### **b. Conflicts**

Any conflict between provisions on the face of the PO and these terms and conditions will be resolved so that the provisions printed directly on the PO prevail.