

**TELL INDUSTRIES, LLC AS SELLER - TERMS AND CONDITIONS OF SALE**

**NOTICE: THIS SALES TRANSACTION AND ALL DOCUMENTS PERTAINING TO IT, INCLUDING, BUT NOT LIMITED TO, ANY OFFER, QUOTATION, ORDER CONFIRMATION/ACCEPTANCE, OR INVOICE (“SALES DOCUMENTS”) ARE SUBJECT TO AND CONDITIONED UPON ACCEPTANCE OF THE TERMS AND CONDITIONS STATED BELOW (“TERMS AND CONDITIONS OF SALE”). IF ANY OF THESE TERMS AND CONDITIONS OF SALE CONFLICT WITH SELLER’S QUOTATION OR ORDER CONFIRMATION/ACCEPTANCE, THE SPECIFIC TERMS STATED IN SELLER’S 1) INVOICE, 2) ORDER CONFIRMATION/ACCEPTANCE, OR 3) QUOTATION WILL PREVAIL OVER THESE TERMS AND CONDITIONS OF SALE IN SUCH PRECEDENCE. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY THE PURCHASER ARE OBJECTED TO BY, AND WILL NOT BE BINDING UPON, TELL INDUSTRIES, LLC. (“SELLER”). THESE TERMS AND CONDITIONS OF SALE WILL APPLY TO THIS SALES TRANSACTION UNLESS EXPLICITLY OBJECTED TO IN WRITING BY PURCHASER, WHICH WRITING MUST BE RECEIVED BY SELLER AT REJECTIONS@TELLINDUSTRIES.COM, WITHIN FIVE (5) DAYS AFTER THE RECEIPT OF THIS DOCUMENT. THIS SALES TRANSACTION AND ANY SALE OF PRODUCTS ARE ENTERED INTO IN KANSAS AND THEN ONLY IN ACCORDANCE WITH SELLER’S SALES DOCUMENTS AND THESE TERMS AND CONDITIONS OF SALE.**

1. Acceptance. All purchase orders received by SELLER are subject to final acceptance or confirmation in writing by SELLER in Kansas and no purchase orders are binding upon SELLER until so accepted.
2. Deliveries. All deliveries are FCA (Free Carrier) SELLER’s facility (INCOTERMS® 2020) 6255 N. Hydraulic Ave., Park City, Kansas. PURCHASER must make all arrangements for shipment and shipment will be for PURCHASER’S sole account and risk. Partial deliveries of PRODUCTS are permissible. All delivery dates are SELLER’s estimate only. All risk of loss to PRODUCTS will pass to PURCHASER by SELLER upon notification by SELLER to PURCHASER that the PRODUCTS are ready for collection by carrier. Delivery is conditional on the timely receipt by SELLER of all documents necessary for the completion of the order, any down payment, and PURCHASER maintaining credit satisfactory to SELLER. SELLER will not be liable for any damages suffered by PURCHASER by reason of any delay in SELLER’s performance or delivery of the PRODUCTS caused by PURCHASER failing to timely provide such documents or down payments or maintain satisfactory credit. If SELLER deems PURCHASER’s credit unsatisfactory for any reason, SELLER may require the payment to SELLER of the purchase price of PRODUCTS, in full or in part, or the payment to SELLER of any outstanding amounts owed to SELLER.
3. Prices. All prices are quoted FCA (Free Carrier) SELLER’s facility (INCOTERMS® 2020) 6255 N. Hydraulic Ave., Park City, Kansas. Prices stated in catalogs or price lists or in quotes older than thirty (30) days are subject to change by SELLER without notice to PURCHASER. Only those prices set forth in SELLER’s invoice will apply to the order. Unless otherwise specified, prices do not include any packing or handling charges, any sales, use or similar tax, or any duty levied by any government; and PURCHASER will pay any such applicable charges, taxes, and duties. Upon the request of SELLER, PURCHASER will provide SELLER with a tax exemption certificate acceptable to the appropriate taxing authorities.
4. Terms of Payment. Payment terms are net thirty (30) days from the date of invoice. Any required down payment is non-refundable but will be applied to the purchase price. Extension of credit, if any, may be changed or withdrawn by SELLER at any time. Invoices not paid by their due date will be subject to carrying charges. Carrying charges will accrue and be added to the unpaid balance at the rate of one and one-half percent (1½%) per month of any overdue unpaid balance, or the maximum rate permitted by law, whichever rate is less. PURCHASER will reimburse SELLER for the costs of collection, including, without limitation, reasonable attorneys’ fees, of any overdue amount owed by PURCHASER to SELLER, and such collection costs will also be subject to carrying charges. PURCHASER may not retain or set-off any amounts owed to SELLER in satisfaction of any claims asserted by PURCHASER against SELLER. Payment received by SELLER will be applied to the oldest outstanding amounts (including interest and collection costs), regardless of any designation by PURCHASER.
5. Claims and Return of Products. Within two (2) weeks after PURCHASER’s receipt of PRODUCTS, PURCHASER must give written notice to SELLER of any claim by PURCHASER based upon the condition, grade, or quantity of PRODUCTS; such notice must indicate the basis of the claim in detail. PURCHASER’s failure to comply with this paragraph will constitute irrevocable acceptance by PURCHASER of PRODUCTS as delivered and will bind PURCHASER to pay to SELLER the full price of such PRODUCTS. PRODUCTS will not be returned to SELLER without SELLER’s prior written consent; and transportation charges for any authorized returns of PRODUCTS will be pre-paid by PURCHASER.
6. Cancellation/Changes. PURCHASER may not cancel or change an order once placed with and accepted by SELLER except with the prior written consent of SELLER and upon terms that will indemnify SELLER against any loss. SELLER may correct mathematical or clerical errors. SELLER may make any technical changes to PRODUCTS as SELLER may deem necessary.
7. Limited Warranty. The SELLER warrants that the PRODUCTS will be delivered in substantial conformance applicable to the particular PRODUCT sold. Minor deviations acceptable within the trade in quantity, color, width, weight, appearance or design will not constitute defects or breaches of warranty. SELLER will, in its sole discretion, replace any PRODUCT and ship it to PURCHASER found to be defective if such defect is reported to SELLER pursuant to paragraph 5. Dealers and sales representatives are not authorized to offer different or additional warranties or remedies, and descriptions, representations and other information or claims made by dealers or sales representatives are not binding on SELLER. This limited warranty does not cover damage or deterioration caused by normal wear and tear, use under circumstances exceeding specifications, abuse, unauthorized repair or alteration, lack of proper maintenance or damage caused by natural calamities. **THIS LIMITED WARRANTY IS PURCHASER’S EXCLUSIVE REMEDY.** It will not be deemed to have failed of its essential purpose so long as SELLER is willing and able to repair or replace defective

PRODUCTS. This limited warranty will terminate automatically if Purchaser fails to make payments for the PRODUCTS covered herein. **NO OTHER EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES OF ANY TYPE, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, WILL APPLY TO PRODUCTS.**

8. **LIMITATION AND EXCLUSION OF DAMAGES.** IN NO EVENT WILL SELLER'S LIABILITY TO PURCHASER EVER EXCEED THE PURCHASE PRICE OF PRODUCTS OF THE APPLICABLE ORDER SUBJECT TO THE CLAIM. SELLER WILL NOT BE LIABLE TO PURCHASER FOR INJURIES, LOSSES, OR DAMAGES RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF PURCHASER, NOR WILL SELLER BE LIABLE TO PURCHASER, IN ANY EVENT, FOR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, WHETHER ARISING FROM THE SALE OF PRODUCTS, ANY DEFECT IN PRODUCTS, ANY USE OR INABILITY TO USE PRODUCTS, OR OTHERWISE.
9. Proprietary Information. SELLER or other third party owns all intellectual property rights (including, without limitation, patents, trademarks, trade names, trade secrets, and copyrights) now or hereafter applicable to the PRODUCTS or arising from work carried out by SELLER or PURCHASER pursuant to this sales transaction, and all models, documents, and electronic files prepared in connection with the PRODUCTS or this sales transaction ("Proprietary Information"). PURCHASER will not copy for any purpose or disclose to any other person any Proprietary Information without SELLER's prior written consent. PURCHASER agrees that all formula and technical information relating to the PRODUCTS are confidential and proprietary to SELLER and that PURCHASER is purchasing the PRODUCTS solely for use in PURCHASER's manufacturing processes and not for analysis, reverse engineering resale or other distribution to third parties. PURCHASER will not disclose any confidential or proprietary information about SELLER or SELLER's PRODUCTS to any other person or use any such information for any purpose other than PURCHASER's purchase and use of the Products. PURCHASER will not provide samples or extra PRODUCTS to any third parties.
10. Indemnity. PURCHASER will hold SELLER harmless against any claim, liability and damage and at PURCHASER'S expense defend any suit or proceeding, brought against SELLER based on, arising out of or relating to any claims resulting from any breach of the agreement between PURCHASER and SELLER or PURCHASER's sale of the PRODUCTS. All warranty obligations for products sold by PURCHASER are the exclusive obligation of PURCHASER.
11. Force Majeure. SELLER will not be liable if its performance is delayed or made impossible or commercially impracticable, directly, or indirectly, due to acts of God, unusually severe weather, civil commotion, terrorism, military authority, war, riot, fire, labor trouble or strikes, unavailability of materials or components, explosion, breakdown or accident, delay in transportation, plant shutdown, compliance with governmental requests, laws, regulations, order or actions, unforeseen circumstances, or causes beyond such party's reasonable control including the inability of SELLER's supplier to deliver needed goods, services, or raw materials. The parties agree that PURCHASER cannot rely on any force majeure event for any delays in its performance.
12. Assignment. SELLER may assign or delegate its rights or obligations hereunder without the prior written consent of PURCHASER. PURCHASER may not assign its rights or obligations hereunder without the prior written consent of SELLER and any purported assignment by PURCHASER without the consent of SELLER will be of no effect.
13. Opportunity to Bid. PURCHASER will provide SELLER an opportunity to make an offer to supply similar PRODUCTS of this sales transaction that PURCHASER contemplates purchasing from a competing supplier. PURCHASER will provide SELLER with thirty (30) days written notice prior to accepting any offer of similar PRODUCTS of this sales transaction from a competing supplier.
14. Limitations. Any action by PURCHASER under this agreement or relating to PRODUCTS must be commenced within ninety (90) days after delivery of the PRODUCTS to PURCHASER.
15. Compliance. PURCHASER will comply with applicable federal, state, local and foreign laws, orders, rules, regulations and ordinances, including export controls and import compliance, anti-boycott measures, Foreign Corrupt Practices Act ("FCPA"), embargoes, sanctions, shipment to prohibited destinations or end-user, and for a prohibited end-use.
16. Choice of Law, Forum, Venue, Consent to Jurisdiction, and Costs and Expenses. Any dispute or claim relating to PRODUCTS sold will in all respects be governed by and construed according to the substantive and procedural laws of the State of Kansas, excluding its conflict of law principles. Except with respect to an action instituted by SELLER for equitable relief or an action by SELLER to join or implead PURCHASER, PURCHASER and SELLER agree that the courts of the State of Kansas, or the United States District Courts situated in Wichita, Kansas, will constitute the exclusive forum(s) for the adjudication of any and all disputes or controversies arising out of or relating to this order or to PRODUCTS. PURCHASER consents to the exercise of jurisdiction over it by such courts with respect to any dispute or controversy. PURCHASER will be obligated to SELLER for all costs and expenses (including reasonable attorney's fees and expenses and fees for collection agencies) incurred by SELLER in collecting any amounts not timely paid by PURCHASER hereunder or in exercising any of its other rights hereunder.
17. Construction of Agreement. These TERMS AND CONDITIONS OF SALE may not be amended, modified, or supplemented except by written agreement executed by PURCHASER and SELLER. The provisions of this sales transaction are intended to be severable and the invalidity or unenforceability of one provision will not affect the validity or enforceability of any other provision. These TERMS AND CONDITIONS OF SALE, together with the other SALES DOCUMENTS, constitute the entire agreement between PURCHASER and SELLER with regard to the sale or transfer of PRODUCTS, and supersede all prior oral or written statements of any kind made by the parties or their representatives, whether or not relied upon.