

# TST, INC.

## TERMS AND CONDITIONS OF PURCHASE

*Seller acknowledges having received and approved a copy of this Purchase Order. Seller accepts all of the terms and conditions of this Purchase Order by either signing the front side of this Purchase Order or by shipping any of the goods identified on the front side of this Purchase Order.*

**1. PURCHASE ORDER.** This Purchase Order sets forth the entire agreement between the parties regarding this transaction. No waiver or modification of any of the terms or conditions hereof nor any additional or inconsistent terms shall be effective against Buyer unless approved in writing by an officer of Buyer. In the event that Seller has or hereafter submits a sales order, invoice or other document to Buyer regarding this transaction and such document contains any additional or inconsistent terms, such additional or inconsistent terms shall be deemed material alterations within the meaning of California Uniform Commercial Code section 2207(2)(b) and shall not become a part hereof unless approved in writing by an officer of Buyer.

**2. INSPECTION.** Buyer shall have the right to inspect the goods at its facility in accordance with any reasonable method. Such inspection shall be final and binding on the parties. Buyer may reject or revoke its acceptance of any nonconforming goods.

**3. HANDLING.** When more than one class of goods is contained in a single delivery Seller, at its expense, must separate and identify each package of each lot according to classification. If Seller fails to separate or identify the individual packages and lots, Buyer shall have the right either to reject any of the packages or lots or to sort all or a portion of the goods, at Seller's expense.

**4. DELIVERY.** Seller shall pack, mark and ship the goods in accordance with instructions from Buyer. Unless other terms are specified on the front side of this Purchase Order all delivery costs shall be borne by Seller. Buyer shall have the right to reject any goods which are not shipped or delivered as specified by this Purchase Order, including but not limited to late shipments. Time is of the essence. Buyer shall have the right from time to time to delay or suspend delivery of any shipment. Nonconforming goods shall be held or returned at Seller's risk and expense. If this Purchase Order calls for delivery in installments and any of such installments is nonconforming or is not shipped or delivered as required, Buyer shall have the right to terminate the entire Purchase Order and transaction. Any delays in unloading a delivery shall be at Seller's expense. Seller shall indemnify and hold Buyer harmless from any damage or injury to any person or property arising out of the delivery or unloading of the goods, except where due to Buyer's or its agent's gross negligence or willful misconduct.

**5. FORCE MAJEURE.** Notwithstanding anything herein to the contrary, Buyer's performance hereunder shall be suspended where prevented or hindered or where Buyer is unable to receive or use the goods at its facility due to causes beyond the control of Buyer, such as accidents, strikes, fire, flood, earthquake, war, civil disturbance, sabotage, equipment failure, plant shutdown, theft or acts of God. If as a result of such event Buyer's performance is delayed for more than two months either party shall have the right to terminate this Purchase Order. Buyer has advised Seller to carry its own insurance to protect itself against loss upon the occurrence of any such event.

**6. RISK OF LOSS.** Risk of loss and damage to any goods subject to this Purchase Order shall pass to Buyer upon unloading of the goods at Buyer's facility, provided that the goods and the delivery thereof conform to the requirements of this Purchase Order.

**7. DEFAULT; TERMINATION.** If any of the goods delivered to Buyer do not conform to the specifications of this Purchase Order or Seller otherwise is in default of any of its representations, warranties or covenants hereunder, Buyer may, among other things, reject or revoke its acceptance of all of the goods subject hereto and recover damages from Seller. Under no circumstance shall Buyer be required to resell any rejected or revoked goods. Any failure of Buyer to specify seasonably any defects in rejected or revoked goods shall not prevent Buyer from relying on the defect to reject or revoke its acceptance of the goods or establish a breach. All remedies of Buyer set forth in this Purchase Order shall be cumulative and in addition to all other remedies available to Buyer at law or in equity. Buyer shall not be liable for any damages in excess of the price of the goods, or for special, incidental, consequential or punitive damages.

**8. SELLER'S WARRANTIES.** Seller hereby represents and warrants to Buyer that all goods sold to Buyer shall conform fully to the specifications set forth on the front side and be of merchantable quality and fit for Seller's intended use; that such goods were manufactured, delivered and sold in compliance with all applicable laws, regulations and orders; that Seller has good title to such goods, free of all third party liens, claims and encumbrances; and that such goods do not infringe any rights of any third party.

**9. SEVERABILITY.** If any provision of this Purchase Order shall be found to be invalid or unenforceable, that shall not affect the remainder of this Purchase Order. The offending provision shall be reformed so as to make it as near as possible in intent and effect as originally written but yet be valid and enforceable.

**10. ARBITRATION.** This Purchase Order shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws principles. In the event of any dispute arising out of or otherwise relating to this Purchase Order or for the interpretation or enforcement hereof, the matter shall be decided by binding arbitration in Los Angeles, California before the American Arbitration Association, pursuant to its Commercial Arbitration Rules as then in effect, except that the California rules of evidence as set forth in the California Evidence Code shall apply. The parties hereto reserve the right to seek all provisional remedies to which they would be entitled in the absence of this arbitration provision, including without limitation the remedies described in California Code of Civil Procedure section 1281.8. The provisions of in California Code of Civil Procedure section 1283.05 are incorporated into this Purchase Order. The prevailing party in any dispute, action or proceeding between the parties shall be entitled to recover its reasonable attorneys' fees and costs, including any fees and costs incurred in enforcing any judgment hereon. Notwithstanding the foregoing, if Seller is domiciled outside the United States (including but not limited to its possessions and territories), Mexico and Canada and Buyer has attached an International Arbitration Addendum hereto, that Addendum and not this Paragraph shall control.

**11. AUTHORITY.** If Seller is a corporation, partnership or other entity, the person executing this Purchase Order on behalf of Seller hereby represents and warrants to Buyer that this Purchase Order has been duly authorized by Seller and is a legal and valid binding agreement of Seller, and that he/she has been duly authorized to execute and deliver this Purchase Order on behalf of Seller.

**12. ASSIGNMENT AND BINDING EFFECT.** This Purchase Order shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, representatives, successors and assigns, provided that Seller may not delegate any of its duties hereunder without Buyer's prior written consent.

**13. MISCELLANEOUS.** In the event that Buyer consents in writing to waive any of the provisions hereof with respect to a particular matter or event, that shall not constitute a waiver of such provision with respect to any other matter or event. The section headings in this Purchase Order are for convenience only and are not to be deemed a part of this Purchase Order or used in the construction hereof. No course of prior dealings between the parties and no usage or custom of the trade shall be used to interpret or supplement this Purchase Order. Seller acknowledges that Buyer has made no representations, warranties or covenants of any kind regarding this transaction except as expressly set forth in this Purchase Order. This Purchase Order is entered into at Fontana, California.