



## TEK-FINS INCORPORATED PURCHASE ORDER TERMS AND CONDITIONS

Revised 3/4/2020

1. **General.** This purchase order ("Order") comprises the face of the Order, these purchase order terms and conditions, and such other documents incorporated by reference on the face of the Order. The "Seller", "Supplier" or "Vendor" ("Supplier") identified on the face of the Order agrees to sell, and Tek-Fins, Incorporated ("Company") agrees to buy, the goods, articles, and materials described in the Order (together with such documentation as specified on the face of the Order, collectively, "Goods") and services related thereto.
2. **Acceptance of the Order. Supplier's acceptance of the Order, whether in writing or by performance, will be only upon these terms and conditions, which are incorporated into and made a part of each Order; no other terms or conditions shall be binding on Company unless: (i) conspicuously referenced on the face of the Order to which such other terms and conditions apply; and (ii) expressly agreed to by Company. Any quote, invoice, acknowledgement or other form or communication issued by Supplier in connection with the Order will be for Supplier's record and accounting purposes only and any terms and conditions referenced therein will not apply to the Order.**
3. **Order Number.** Company's Order number and corresponding item line number(s) as shown on the face of the Order must appear on all invoices, correspondence, shipping documents, packages and any other documents relating to the Order.
4. **Delivery, Risk and Title.** Unless otherwise noted in the Order, Supplier shall ship Goods FCA Buyer's Facility (Incoterms 2020). Title transfers to Company upon: (i) Company's acceptance of the Goods; or (ii) Company's payment for the Goods (in whole or in part); whichever occurs first. Supplier warrants it will have good and transferable title to the Goods at the time of title transfer to Company, and further that title to the Goods will transfer to Company free and clear of any and all liens or encumbrances.
5. **Packaging & Labelling.** All Goods furnished under the Order shall be suitably packed, marked and shipped in accordance with the requirements of the carrier and in a manner to secure the lowest transportation cost, and no additional charges shall be made to Company for such packing, marking, shipping or any other costs of transportation, nor shall Company be charged for demurrage or storage unless otherwise stated herein. The outside of each box, crate, bale or other containment device shall be marked by some permanent weatherproof means with Company's Order number, Seller's name, shipping point of origin, and content description and/or part number. All shipments shall contain a packing list.
6. **Warranty.** Supplier warrants that the Goods, and the services related thereto, will (i) conform in all respects to the requirements of the Order; (ii) comply with the more stringent of industry or Company's standards; (iii) conform strictly to applicable specifications, drawings, samples or other description upon which the Order is based; (iv) be fit, safe and effective for their intended use and purpose, and operate as intended; and (v) be merchantable and free from defects in material, workmanship, and design. All warranties set forth in the Order will remain in effect one (1) year from the date of Company's acceptance, or eighteen (18) months from delivery of the Goods, whichever occurs latest, or as stated on the face of the Order. All warranties will not be deemed waived by reason of Company's receipt, inspection, or by payment for the Goods. Supplier shall assign and transfer all assignable warranties it receives from its vendors and manufacturers to Company.

In the event of a breach of warranty, Supplier shall repair and/or replace the defective Goods at no cost to Company (including, without limitation, shipping costs). Goods will not be considered in breach of this warranty if a defect is caused primarily by Company's improper installation, operation or maintenance.

7. **Delay.** Supplier shall deliver the Goods on the date(s) specified in the Order, during Company's normal business hours or as otherwise instructed by Company. Timely completion and delivery is a material term of the Order. Timely delivery is delivery of Goods, which conform to requirements of the Order, to the Delivery Point on or before the agreed delivery date. If Supplier is unable to make a timely delivery, it shall notify Company of the anticipated delay as soon as it learns of same, such notice becoming effective upon receipt by Company. Supplier's notice shall state the reasons for the delay and the anticipated date of delivery. If the delay (a) is not caused in whole or in part by the negligence or intentional fault of Supplier and (b) will not contribute to a delay in

Company's schedule or otherwise cause damages to Company or any entity to whom Company is providing services, then Company may, but is not obligated to, agree to extend the date of delivery, without additional liability to Supplier, to the earlier of: (i) the anticipated date of delivery stated in Supplier's notice, or (ii) ten (10) business days after the original agreed delivery date. If delivery is not accomplished before the agreed delivery date, as such may be extended by these terms, then Supplier will be liable to Company for all direct damages caused by the delay.

8. **Rejection and Acceptance of Goods.** Company may reject any Goods that do not conform to the requirements of this Order and to return non-conforming Goods to Supplier at Supplier's expense. Company's acceptance or inspection of any Goods is not a waiver of any of Company's rights hereunder, at law or otherwise. Receipt of the Goods, acknowledgement of receipt of the Goods, or payment of Supplier's invoices does not constitute acceptance of the Goods.
9. **Invoicing.** Company shall pay all invoice amounts pursuant to the payment terms on the face of the Order upon receipt of undisputed invoice(s). Company and Supplier shall work together in good faith to resolve all invoice disputes. Each of the parties shall be responsible for the payment of all taxes, duties, levies, charges and contributions for which the respective party is liable as imposed by any appropriate government or regulatory authority ("Tax" or "Taxes") in connection with the Order. Taxes imposed on Company that Supplier is required to collect shall be separately stated and identified on each invoice issued by Supplier in compliance with appropriate tax laws or regulations. Company shall provide Supplier with exemption documentation as required by the applicable governmental authority where exemption from Taxes is claimed. For further clarification, Supplier will be responsible for paying its income taxes and any other taxes of any kind in any jurisdiction that might become payable in relation to the sale of goods. Company shall bear no responsibility for any income, gross margin, franchise, capital, net worth or other type of direct tax that may inure to Supplier as a result of the Order.
10. **Liens.** Supplier shall timely pay its subcontractors and vendors, and indemnifies and defends Company from and against all claims by third-parties and liens and encumbrances on Company's property related in any way to Supplier's performance of the Order.
11. **Changes.** Company may at any time make reasonable changes in any one or more of the following: (1) drawings, plans, designs and specifications; (2) quantities; (3) delivery schedule; or (4) place, manner or time of delivery. If any such change increases or decreases the cost of the Goods to be provided or results in an extension of the shipping schedule, Supplier shall give Company written notice stating the effect of such change within ten (10) days after receipt of the change request. No claim for an increase in price or schedule extension will be recognized unless such was authorized in advance and in writing by Company.
12. **Compliance.** Supplier shall comply with all applicable federal, State and local laws and regulations that affect the Order. All deliveries to Company's premises must be carried out in a safe manner, and Supplier shall comply with, and cause all other parties acting on Supplier's behalf to comply with all safety policies, rules and warnings communicated by Company.
13. **Conditional Requirements**
  - a. Welded Components. If Supplier fabricates welded components per Company drawings, Seller shall submit all welding procedures (WPS) and procedure qualifications (PQR) to Company for approval prior to performing any welding. No welding shall be performed until Seller is in receipt of approved procedures from Company. Welder qualifications (WPQ) shall be kept on file by Seller and be made available for review and submittal if requested by Company.
  - b. Painted Components. If Supplier paints components for Company per Company drawings, Seller shall submit all painting procedures to Company for approval prior to performing any painting. No painting shall be performed until Seller is in receipt of approved procedures from Company. Painting procedures shall be submitted within one (1) week after receipt of purchase order.
  - c. Spec Sheets, Instructions & Operating Manuals. If Supplier has previously created, or the face of the Order requires Supplier to create, either a spec sheet(s), instruction manual, or operating manual for a Good or Goods ordered by Company, Supplier shall transmit a digital copy of the spec sheet(s), instruction manual, or operating manual to Company as part of the Good(s) delivery.
  - d. Safety Data Sheets. If applicable, Supplier will provide Safety Data Sheets (SDS) for materials in compliance with the OSHA Hazard Communication Standard (29 CFR 1910.1200).

- e. Mill Test Reports. Suppliers of pressure vessel component(s) including but not limited to: tubes, headers and components, plugs, flanges, pipe, couplings, transitions; or low temperature structural components per Company drawings; or as otherwise requested, shall submit Mill Test Reports (“MTR”) for all materials to Company. Reports shall include original numerical test results for chemical composition and mechanical properties of all materials. An electronic copy of each mill test report shall be sent for each shipment to the originator of the Order. Order will not be considered complete until all required documentation is received and approved.

**14. Insurance Requirements.**

- a. Supplier shall maintain at its own expense, the insurance coverage outlined herein with licensed, reputable and reliable insurers: i) **Workers' Compensation and/or Occupational Disease** coverage that fully complies with all applicable laws where activity related to this Order is performed, where Supplier's employees reside, and in all states where Supplier is domiciled. **As applicable**, coverage shall include an alternate employer's endorsement and voluntary compensation; ii) **Employer's Liability** coverage with limits of One Million Dollars (\$ 1,000,000) each accident, by disease each employee, and by disease policy limit; iii) **Commercial General Liability** coverage With a limit of One Million Dollars (\$1,000,000 each occurrence for bodily injury and property damage arising out of or relating to Supplier's activities under this Order. The policy shall include coverage for, contractual liability, cross liability, severability of interests, products and completed operations; iv) **as applicable, Commercial Auto Liability** covering all vehicles used by Supplier under this Order with a combined single limit of One Million Dollars (\$1,000,000) for injury or death of one or more persons or damage to or destruction of property as a result of each accident; and v) **as applicable, All Risk Property Damage** Insurance on a replacement cost basis covering loss of or damage to property owned by or in the care custody and control of the Supplier, Supplier shall ensure that each insurance policy hereunder: A) with exception of 12(a) i) and v) includes Company as additional insured; B) provides a waiver of insurers' rights of subrogation in favor of Company; and C) is written to respond on a primary and non-contributory basis. Insurance shall not be canceled without thirty (30) days' prior written notice to Company.
- b. Upon execution of this Agreement, and on an annual basis thereafter until this Agreement is terminated, Supplier shall provide to Company Certificate(s) of Insurance certifying Supplier's compliance with this Order. In the event of a reduction in Supplier insurance limits during the Term which may otherwise reduce the limits of insurance required to comply with this Order, the Supplier shall promptly provide Company with notice of same, and immediately thereafter secure such additional insurance as is required to comply with the terms of this Order. Company's acceptance of certificates or correspondence associated thereto does not constitute a waiver, release or modification of the requirements under this Order. "Certificate Holder" shall be: "Tek-Fins Incorporated".
- c. In the event Supplier fails to comply with insurance requirements under this Order, at its sole discretion, Company may, but shall not be obligated to, obtain such Insurance for Company's sole benefit as Company deems necessary to address any failure on the part of the Supplier to obtain the insurance required pursuant to this Order. Any cost thereof shall be payable by the Supplier to Company on demand and Company may, at its election, deduct the cost thereof or set-off from any monies which are due or may become due to Supplier. No liability shall attach to Company for any decision on the part of Company to forego the purchase of additional insurance under this Section 12, nor does Company's decision not to purchase additional insurance pursuant to this Section 12 constitute a waiver, release or modification of the requirements under this Order, or constitute a statement by Company that Supplier's insurance coverage at any time during the Term hereof is in compliance with the requirements under this Order.
- d. Company will not be responsible for any premiums, deductibles, self-insured retentions or any other costs for the insurance provided by Supplier in this Order.

**15. INDEMNITY. NOTWITHSTANDING ANYTHING ELSE IN THE ORDER TO THE CONTRARY, SUPPLIER SHALL INDEMNIFY, RELEASE, HOLD HARMLESS, AND DEFEND COMPANY AND ITS OFFICERS, DIRECTORS, EMPLOYEES,**

**AGENTS, ASSIGNS AND SUCCESSORS IN INTEREST FROM AND AGAINST ALL CLAIMS, DISPUTES, SUITS, COMPLAINTS, LIABILITIES, DAMAGES, AND EXPENSES OF WHATEVER NATURE (including, without limitation, attorneys' fees), INCLUDING, WITHOUT LIMITATION, FOR INJURY TO ANY PERSON (INCLUDING DEATH) OR DAMAGE TO ANY PROPERTY, RESULTING FROM OR IN ANY WAY CONNECTED WITH SUPPLIER'S PERFORMANCE OF THE ORDER, EXCEPT THAT THE OBLIGATIONS HEREUNDER DO NOT APPLY TO COMPANY'S SOLE NEGLIGENCE OR WILLFUL MISCONDUCT.**

16. **Intellectual Property Warranty and Indemnity.** Supplier warrants that the Goods and the related services do not infringe or misappropriate any letters patent, trademark or copyright or any other intellectual property rights of any third party. **Supplier shall release, indemnify, save harmless and defend Company from and against all claims, liabilities, damages, and expenses (including, without limitation, attorneys' fees) arising in favor of any person or entity and based on misappropriation of trade secrets, infringement or claim of infringement of a patent, trademark, trade name, copyright or other proprietary right in the Goods provided by Supplier, except to the extent directly caused by specifications expressly provided by Company.**
17. **Intellectual Property Ownership and License.** All ideas, concepts, drawings and similar items created by Supplier specifically in connection with the performance of the Order shall be the property of Company and shall be immediately delivered by Supplier to Company, with all compensation to Supplier for such ideas, concepts, drawings and similar items being included in the price(s) stated in the Order. Supplier grants to Company a non-exclusive, royalty-free, transferable, irrevocable license under all foreign and domestic patents now or hereafter owned by Supplier to use (for any purpose) and sell the Goods purchased under the Order.
18. **Confidentiality.** Both Company and Supplier, on behalf of themselves and their employees, agree that any ideas, concepts, or proprietary information received from the other in connection with the performance of the Order will not be disclosed to third persons nor used for any purpose except to the extent necessary for the proper performance of the Order,
19. **Termination for Cause.** Company may terminate all or any part of the Order for: (i) Supplier's failure to make deliveries by the date(s) specified; (ii) Supplier's breach of any of the terms hereof, including, without limitation, the warranties of Supplier; (iii) change in price of the Goods; (iv) Supplier's failure to provide adequate assurance of its ability to meet quality standards; (v) Supplier's failure to make progress on any Goods so as to endanger performance of the Order; or (vi) in the event of any proceeding by or against Supplier in bankruptcy or insolvency or for the appointment of a receiver or trustee or an assignment for the benefit of creditors. Upon termination for cause, Company shall provide written notice of termination and have no further obligation to Supplier. Upon receipt of notice of termination, Supplier shall discontinue all work pertaining to the Order and use its best efforts to mitigate additional costs resulting from the termination. Supplier shall preserve and protect materials in supply, work in progress, and finished work, the disposition of which shall be as directed by Company. Supplier is not entitled to any prospective profits or damages.
20. **Termination for Convenience.** Company may terminate all or any part of the Order for convenience upon written notice to Supplier. Company shall accept and pay for materials in supply, work in progress and finished work, as well as reasonable additional costs caused by the termination, Supplier is not entitled to any prospective profits or damages. In no event will the total amount paid to Supplier under a terminated Order exceed the original value of the Order.
21. **Notice.** All notices, consents and requests hereunder must be in writing and served by personal service, by mail or by e-mail to the address of the receiving Party set forth on the face of this Order (or such different address as may be designated by such Party in a notice to the Other Party, from time to time), Notices, consents and requests served by personal service shall be deemed served when delivered. Notices, consents and requests served by mail must be sent by registered mail, return receipt requested, and shall be deemed served 10 business days after mailing. Notices, consents and requests served by e-mail shall be deemed served on the date of sending, provided: (i) no incomplete or bounce-back error transmission is received by the sending Party, and (ii) if such day is not a business day or if the notice or communication is received after 5:00 PM (at the place of receipt) on any business day, the notice or communication shall be deemed to have been sent and received on the immediately following business day.
22. **Independent Contractor.** Supplier is an independent contractor in all respects pertaining to its performance of the Order.

23. **Waiver.** Waiver by Company of any provision hereof shall not constitute a continuing waiver or a waiver of any other provision, nor shall it affect in any manner any right or remedy to which Company is entitled for any breach or default by Supplier, whether or not similar.
24. **Assignment.** Supplier shall not assign or transfer any right or obligation under the Order without Company's prior written consent.
25. **Venue, Choice of Law and Jury Trial Waiver.** The Order shall be governed by and construed in accordance with the laws of Oklahoma, without reference to its conflict of laws rules or principles. Each party irrevocably submits to the exclusive jurisdiction of the state and federal courts of Oklahoma seated in Tulsa County for the interpretation and enforcement of this Order, and unconditionally waives any defense of an inconvenient forum to the maintenance of any action or proceeding in any such court, any objection to venue with respect to any such action or proceeding and any right of jurisdiction on account of the place of residence or domicile of either party. A final judgment on any such dispute, as to which all appeals, if any, have been exhausted, shall be conclusive and may be enforced in other jurisdictions in any manner provided by law. EACH PARTY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY ON ANY MATTER WHATSOEVER ARISING OUT OF, IN CONNECTION WITH OR RELATED TO THIS ORDER.
26. **Set Off.** Company may set-off and deduct from any amounts payable to Supplier any amounts owing by Supplier to Company pursuant to this Order or any other agreement between Supplier and Company. The failure by Company to set-off or deduct any amount from an invoiced payment will not constitute a waiver of Company's right to set-off, deduct or collect such amount.
27. **Severability.** If any provision of this Agreement is finally determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect.
28. **Survival.** The provisions of this Order which are intended to extend beyond its termination, including the liability, indemnity, compliance, warranty, intellectual property and confidentiality provisions, and the provisions applicable to the enforcement of those provisions and/or the enforcement of rights and obligations incurred hereunder that are not fully discharged prior to the termination of this Order, Will survive termination to the extent necessary to effect the intent of the parties and enforce such rights and obligations.
29. **Interpretation.** Headings used herein are for the convenience of reference only and shall not be considered in construing or interpreting this Agreement. The words "herein", "hereunder", "hereof" and other similar words refer to this Order as a whole and not to any particular paragraph or part of the Order. "Includes", "including" and similar terms shall mean "including (or includes, as applicable) without limitation".
30. **Counterparts.** This Order, and any amendment, supplement or schedule to this Order, may be executed in any number of counterparts, and may be executed using electronic signatures. The executed signature page(s) from each counterpart may be joined together and attached to an original and together shall constitute one and the same Instrument. Exchange of counterparts of a document of this Order may be provided by fax or other electronic means, including email delivery.