

## TERMS AND CONDITIONS

**APPLICABILITY OF TERMS AND CONDITIONS:** Seller agrees that all of the terms and conditions set forth below shall hereafter apply to and bind every transaction in which Seller sells or agrees to sell any goods to Buyer and these terms and conditions may be modified or suspended only by written agreement signed by both Seller and Buyer.

1. **ACCEPTANCE.** Unless otherwise stated herein, Seller's acknowledgment of a purchase order or commencement of any work or performance of any services under a purchase order received by Seller from Buyer shall constitute acceptance by seller of the purchase order and all of its terms and conditions. No contract shall exist except as provided in such a purchase order or under these terms and conditions. For purposes of these terms and conditions, the term "purchase order" includes any document or electronic communication whereby Buyer requests, orders, or attempts to order goods from Seller under the terms specified therein.
2. **PRICE.** No purchase order shall be filled at prices higher than those appearing on the face thereof. If no prices are specified, the prices charged shall not exceed those most recently quoted or charged Buyer by Seller. Seller warrants that the net prices appearing on a purchase order or charged Buyer for goods ordered thereunder are as low as any net prices charged on the date of the purchase order by Seller to any other customer for goods of like grade and quality, purchased in similar or lesser quantities. If at any time prior to payment for a purchase order, lower net prices are quoted or charged anyone for goods of like grade and quality, purchased in similar or lesser quantities, such lower prices shall be charged to Buyer thereunder.
3. **PACKING.** All goods shall be suitably packed for shipment. No charge shall be made for containers, wrapping, packing, cartoning, crating, transportation, delivery, drayage, storage, or other costs unless specifically authorized in a written or electronic purchase order or by Buyer.
4. **TERMS.** Unless otherwise specified, terms shall be net cash 30 days from the date of shipment or completion of the work, whichever is later, (except that if Seller's standard selling terms provide for a later date for payment, such later date shall be applicable), subject to Seller's standard purchase discounts. Cash discounts applicable will be figured from the date the goods arrive at Buyer's plant or the work is completed, whichever is later. Transportation and related charges for goods purchased F.O.B. Buyer's plant, or Buyer's customer's plant, or on a freight allowed basis, shall be prepaid.
5. **INVOICES.** Invoices shall be mailed in duplicate (or in such additional numbers as may be specified in a purchase order). Invoices for goods ordered shall have appropriate bills of lading, express receipts, and other shipping documents attached and shall be mailed to Buyer at the time the goods are shipped. Unless otherwise specified in a purchase order, invoices for work, labor, or services performed shall be mailed after full completion thereof and acceptance by Buyer. Buyer shall have the right to make adjustments in Seller's invoices for transportation and other charges paid by Buyer or due to any non-compliance with a purchase order.
6. **DELIVERY.** The dates of delivery or performance and the quantities and qualities specified in a purchase order are of the essence. Failure to deliver or perform, whether or not caused by factors beyond Seller's control, shall constitute a material breach of a purchase order, and Seller shall be responsible for and shall hold Buyer harmless from all losses, penalties, or damages (including, without limitation, any losses, penalties, or damage paid or payable by

Buyer to or under agreements with its customers) resulting from Seller's failure to timely deliver or perform. In such case, in addition to any other rights and remedies to which Buyer may be entitled, Buyer shall also have the right, at its option, to cancel all or any part of a purchase order and reject all or part of the goods, work, labor, or services ordered thereunder or to purchase elsewhere and charge Seller for any loss incurred as a result thereof. Buyer's acceptance of short shipments, late deliveries, or late performance shall not constitute waiver of any of its rights. Unless otherwise specified by Buyer in writing, material commitments and production arrangements shall not be made by Seller in excess of the amounts or in advance of the dates necessary to meet the delivery or performance schedules stated in a purchase order. Any material purchasing, preparation, or production undertaken by Seller which is not specifically authorized or called for in a purchase order, whether by specific release dates or otherwise, shall be undertaken at Seller's sole risk, and Buyer shall not be liable therefor under any circumstances. Shipments under a purchase order made prior to the specified shipment dates will not be accepted unless specifically authorized by Buyer, but if accepted by Buyer, which it may do at its option, the invoice dates therefore shall be the dates set forth in Buyer's delivery schedule. Delivery of goods shall not be deemed to be complete, and title shall not pass to Buyer, until finished goods have actually been received by Buyer notwithstanding any agreement by Buyer to pay transportation charges and the risk of loss or damage for work. Labor or services to be performed at Buyer's or Buyer's customers' plant shall remain Seller's responsibility, and delivery will not be deemed to occur until such labor or services are fully completed and accepted by Buyer.

7. **WARRANTIES.** In addition to any other warranties, written or oral, statutory, express or implied, all goods, work, labor, and services covered by a purchase order shall be warranted to be of the quality, type, size, description, and dimensions required thereunder; to be strictly in accordance with Buyer's specifications, drawings, and approved samples, if any; to be suitable for the purposes designed; and to be free from defects in material, workmanship, and fabrication. The Seller warrants that it has good title to the goods to be supplied and that they are free and clear from all liens and encumbrances. Seller specifically agrees to defend, indemnify, and hold harmless Buyer from and against any and all claims, losses, damages, and settlement expenses resulting from or arising out of a breach of Seller's warranties and of which Buyer notifies Seller at any time.

8. **INSPECTION AND REJECTION.** All goods and all work, labor and, services (including materials to be used therein or required in connection therewith) shall be subject to Buyer's inspection and approval after delivery or completion. Buyer reserves the right, whether or not it has made payment therefore, to reject and receive full credit for any goods, work, labor, or services which are (or which, within one year after Buyer's inspection, through service or otherwise, prove to be) defective or not in accordance with Buyer's specifications or purchase order. Buyer will charge Seller the cost of the goods, work, labor, or services rejected. All defective or rejected goods, work, labor, or services shall be held for instructions from Seller or, at Buyer's option, shall be returned to Seller all at Seller's risk and expense. Buyer may accept any part of any shipment of goods or work, labor, or services and reject any other part which is unsatisfactory, and a purchase order shall be deemed breached by Seller to the extent of the part rejected. No goods returned as defective shall be replaced by Seller without a new purchase order. Defects shall not be waived by acceptance of goods, nor by failure to notify Seller thereof.

9. **REWORK ON DEFECTIVE GOODS OR PERFORMANCE.** When Buyer's production schedule, in its judgment, requires it to perform additional work or rework on defective or incorrect goods or work, labor, or services to make them usable to Buyer, Buyer

may perform such at the expense of Seller, and the performance of such by Buyer shall in no way invalidate, constitute a waiver of, or affect any warranty of Seller hereunder. In connection with work, labor, or services performed at Buyer's customer's plant, Seller shall remove and clean up debris caused by its operations, and if Seller shall fail in this responsibility, Buyer shall have the right to proceed with this work and to charge the same to Seller's account.

10. **CHANGES; SUBSTITUTION.** No changes or substitutions of any kind by Seller will be permitted unless approved in advance in writing by Buyer. Buyer reserves the right, by written order, to make changes from time to time in the goods to be furnished or the work, labor, or services to be performed and in the dates for delivery or performance hereunder, except that no change, without Seller's consent, shall accelerate the date of delivery or performance. If any such changes result in an increase or decrease in the cost to Seller in fulfilling a purchase order or in the time required for delivery or performance, then the prices, time for delivery or performance, and other relevant provisions of the purchase order shall be equitably adjusted and the purchase order shall be modified accordingly in writing. No adjustments shall be allowed in favor of Seller, however, unless Seller shall have notified Buyer in writing thereof within (5) days of the date of Buyer's change order. Notwithstanding this or any other provision of these terms and conditions, in the context of a purchase order which involves multiple fulfillment dates by Seller, Buyer may make changes in the purchase order from time to time and shall not be responsible for any materials purchased or goods completed by Seller which were not required to be purchased or completed in order to satisfy the next fulfillment date under the purchase order following Buyer's change, and even then only to the extent necessary to satisfy the next fulfillment date.

11 **PATENTS, TRADEMARKS, COPYRIGHTS AND MANUFACTURING PROCESSES.** Seller shall, except in the case of material supplied by Buyer or goods or work for which Buyer furnishes complete drawings or specifications, indemnify and hold harmless Buyer, its customers, and the users of Buyer's products, and those for whom it may act as agent, from all claims, liabilities, loss, damage, and expense (including, without limitation, attorney's fees, damages, and costs assessed by any court and costs and expenses incurred in the investigation of all claims, preparation for and defense against the same, and settlement thereof, whether or not civil actions or other legal proceedings to enforce such claims are initiated) arising from any actual or alleged infringement of any patent, trademark, copyright, or other proprietary right by reason of the sale or use of any good furnished by Seller to Buyer. Any unpatented knowledge or information concerning Seller's products, methods, or manufacturing processes which Seller may disclose to Buyer incident to the manufacturer of the goods covered by a purchase order shall be deemed to have been disclosed as part of the consideration for this order, and Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use or alleged use thereof.

12. **BUYER'S PROPERTY.** All specifications, drawings, blueprints, nomenclature, samples, models, and other information and papers furnished by Buyer to Seller shall be held by Seller as strictly secret and confidential and shall not, without Buyer's advance written consent, be disclosed to any other person or used by Seller in any manner not necessary to fulfill a purchase order. Seller shall have no rights in respect of any labels, logo styles, trademarks, or trade names of Buyer used or furnished by Buyer for use on any of the goods or work included in a purchase order. All such specifications, drawings, blueprints, samples, models, labels, logo styles, and other information or papers (together with all copies or reprints thereof), and all tools, dies, patterns, molds, gauges, jigs, fixtures, materials, and the like, if any, paid for or furnished by Buyer shall be and remain and shall be properly identified as Buyer's property, shall be held by Seller as trustee for Buyer, and shall be used exclusively in the

production of the goods or performance of the work, labor, or services included in a purchase order. Such items shall be at Seller's risk, shall, at Seller's expense, be maintained by Seller in good condition and insured in the amount of their replacement values, with loss payable to Buyer, and shall be replaced by Seller if lost, damaged, or destroyed. Such items shall at all times be subject to Buyer's disposition and may be removed by Buyer, and shall upon demand be returned to Buyer. Nothing contained in this paragraph shall be construed as imposing any obligation on Buyer to furnish any such items or information.

13. **TAXES.** Except as otherwise provided in a purchase order or prohibited by statute, Seller shall pay any federal, state, or local sales, use, excise, gross receipts, property, or similar taxes which may be imposed upon the goods, work, labor, or services ordered by Buyer under a purchase order or by reason of the state, delivery, or performance thereof.

14. **ADVERTISING.** Seller shall not, without the prior written consent of Buyer, in any manner advertise or otherwise publish the fact that Seller has agreed to furnish Buyer the goods, work, labor, or service ordered under a purchase order. For breach of this provision, in addition to any other rights and remedies to which Buyer may be entitled, Buyer shall also have the right, at its option, to cancel any purchase order without any obligation to accept delivery or performance after the date of cancellation or to make any further payments thereunder except for completed goods actually delivered and accepted or work performed and accepted prior to such cancellation.

15. **COMPLIANCE WITH LAWS.** Seller represents and warrants that in the performance of any purchase order, it shall comply with all applicable federal, state, and local laws. Seller agrees that this warranty may be considered as the written assurance contemplated by federal, state, and local laws wherever such assurance is required by law and that all goods delivered under such a purchase order were produced in compliance with federal, state, and local law in effect as of the date of the purchase order. If a United States Government contract number appears on the face of a purchase order, the same indicates that the goods, work, labor, or services ordered thereunder are intended for use in connection with such government contract, and in such case, there is hereby incorporated as a part of these terms and conditions all applicable provisions required by said government contract or by federal law, executive orders, or regulations to be included in contracts for goods, work, labor, or services of the type called for thereunder. If a purchase order covers the performance of work, labor, or services for Buyer, Seller shall indemnify and hold Buyer harmless from and against all liabilities, claims, or demands for injuries or damages to any person or property arising out of performance thereunder.

16. **FAIR LABOR STANDARDS.** Seller warrants and agrees that all goods delivered to Buyer will have been produced in compliance with the requirements of the Fair Labor Standards Acts of 1938, as amended.

17. **EQUAL EMPLOYMENT OPPORTUNITY.** Where applicable, the Equal Employment Opportunity clause, set forth in Executive Order 11246, as amended, related to equal employment opportunities and implementing rules and regulations thereunder shall bind Buyer and be incorporated in any purchase order to which the Executive Order applies.

18. **ASSIGNMENT.** Seller shall not assign or transfer any of its rights or obligations under this contract, in whole or in part, without the advanced written consent of Buyer. Any attempted assignment or transfer in violation of the provisions of this paragraph shall be void.

19. **DEFAULT, BANKRUPTCY, CANCELLATION.** Buyer may cancel any purchase order in whole or in part at any time by written or electronic notice whenever Seller defaults in delivery or performance, fails to make progress to an extent that endangers performance of the purchase order, ceases to conduct its operations in the normal course of business, becomes insolvent or makes or attempts to make an assignment for the benefit of creditors, or if any proceedings are commenced by or against Seller under any bankruptcy, reorganization arrangement, insolvency, readjustment of debt, dissolution, or liquidation law, or if a trustee, receiver, liquidator, or conservator for Seller is applied for or appointed.

20. **EXCLUSIVITY; MODIFICATIONS.** These terms and conditions and the purchase order contain all of the terms of the transaction between Buyer and Seller and no agreement, representation, or other understanding or arrangement purporting to modify, amend, alter, waive, change, or add to the parties agreements shall be binding upon Buyer unless made in writing and signed by a duly authorized representative of Buyer and Seller. The furnishing by Seller of any goods, work, labor, or services specified in any purchase order shall constitute an unqualified acceptance by Seller of all terms of the purchase order unless otherwise modified in writing and signed by a duly authorized representative of Buyer and Seller. No provisions in addition to or of variance with these terms and conditions or any purchase order contained in any order, acknowledgment form, notice, receipt, invoice, or shipping order, or other document from Seller (notwithstanding that the same is receipted for or executed on behalf of Buyer) shall be binding on Buyer in the absence of an express written acceptance thereof. In addition to such document signed by a duly authorized representative of Buyer, all terms, conditions, and provisions of any purchase order (including, but not limited to, warranties of Seller) shall survive delivery and acceptance of any payment by Buyer. No waiver or condonation by Buyer of any breach of default or failure of Buyer to insist on strict performance under any purchase order shall be valid or binding unless in writing signed by Buyer, nor shall any such waiver, condonation, or failure constitute a waiver of any of these terms and conditions or the provisions of any purchase order, or of any other breach or default.

21. **REMEDIES.** Buyer's remedies herein reserved shall be cumulative and in addition to any further remedies provided under applicable law. Buyer shall not be responsible for any incidental, consequential, or liquidated damages.

22. **SEVERABILITY.** Each provision of these terms and conditions are severable, and if any provision shall at any time be held to be contrary to law or invalid or unenforceable, the remaining terms and provisions shall not be affected thereby but shall remain in full force and effect.

23. **FORCE MAJEURE.** Notwithstanding any other provision of these terms and conditions or any purchase order, Buyer shall not be liable for any failure to perform its obligations to Seller, in whole or in part, under any purchase order resulting from an Act of God, act of Seller, labor disruption, strike, fire, flood, war, government regulation, or any other cause or condition beyond Buyer's reasonable control.

24. **INTERPRETATION; FORUM.** These terms and conditions and any purchase orders shall be governed by and construed according to the laws of the state of Texas, and any claim or action arising from or relating to these terms and conditions or any purchase order shall be brought only in a court of competent jurisdiction in Tarrant County, Texas.

**Buyer**

Jamak Fabrication-Tex, Ltd. d/b/a Jamak Fabrication Inc.