

Terms and Conditions for Supply of Small Orders and Samples

This document sets forth the required Terms and Conditions for Supply of Small Orders and Samples (“Terms and Conditions”) by and between Junkosha USA, Inc., a Delaware Corporation, on behalf of itself and its affiliates (collectively “Junkosha”) and you as a customer or potential customer requesting a small order or samples from Junkosha (“Customer”). These Terms and Conditions are effective as of the date on which Customer submits a request for an Order for Samples to Junkosha.

WHEREAS, Customer is requesting Junkosha to supply a small volume order or one or more samples of standard products (collectively “Samples”); and

WHEREAS, Junkosha is willing to provide such Samples requested by Customer under certain terms and conditions set forth herein. These Terms and Conditions are necessary to address Junkosha’s investments in providing the requested Samples, which may include associated product and service costs, and allocation between the parties of risks associated with such Samples.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which being stipulated by the parties, the parties hereto agree as follows:

1. Orders for Samples. Customer may submit an order for Samples via:
 - (a) an order accepted by a Junkosha sales representative;
 - (b) an order accepted through Junkosha’s website (<https://www.junkosha.com/en>); or
 - (c) an order accepted through Chamfr (www.chamfr.com)

(collectively referred to herein as “Order”). At any time, Junkosha in its sole discretion may reject or cancel any Order. These Terms and Conditions must be fully accepted by Customer in order for Junkosha to fulfill any Order.

2. Pricing for Orders. Samples provided by Junkosha hereunder will be at a price set forth in a writing provided by or expressly accepted by Junkosha. Customer shall be responsible for the payment of any and all taxes or duties, including without limitation any value added tax (VAT), state and local sales, use and excise taxes, and tariffs and duties, and costs and fees required to comply with these Terms and Conditions.

3. Changes to Orders. Junkosha may cancel or modify any Order, in whole or in part, at any time.

4. Limitation of Warranties. ALL SAMPLES ARE PROVIDED “AS IS.” EXCEPT AS SPECIFICALLY REQUIRED OR LIMITED BY LAW, JUNKOSHA SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF ANY THIRD-PARTY RIGHTS.

5. Restrictions on Use of Samples. Customer agrees:
- (a) not to use Samples for any commercial purpose;
 - (b) not to provide the Samples to any third party without Junkosha's express written permission, including not reselling the Sample alone or in conjunction with any other product or service;
 - (c) to use Samples solely in connection with internal research and development activities for the purpose of evaluating the possibility of entering into a business or research relationship with Junkosha;
 - (d) that the Samples may constitute experimental prototypes and/or may not be suitable for human implantation and accordingly Customer stipulates that the SAMPLES SHALL NOT BE USED IN HUMANS OR IN ANY CLINICAL SETTING;
 - (e) to use the Sample in a safe manner and in compliance with all applicable federal, state, and local laws and regulations, including all FDA and NIH guidelines and regulations and any and all applicable export control licenses;
 - (f) Samples shall be treated as Confidential Information in accordance with the restrictions contained in these Terms and Conditions; and
 - (g) not to modify, reverse engineer, or analyze the Samples in any way, or otherwise attempt to determine the chemical composition, formula, structure, properties, or methods of manufacture of the Samples, without Junkosha's written permission.

CUSTOMER ACKNOWLEDGES AND STIPULATES THAT THE SAMPLES MAY NOT BE AVAILABLE COMMERICALLY IN THE FUTURE AND THAT CUSTOMER WILL NOT IN ANY WAY RELY ON CONTINUING SUPPLY OF THE SAMPLES.

6. Intellectual Property Licenses and Assignment. Nothing contained in these Terms and Conditions shall be construed, either expressly or implicitly, to grant to either party any rights by assignment, license, or any other means to any existing patent, copyright, trademark, trade secrets, Confidential Information, or any other intellectual property rights of the other party. During and after the term of these Terms and Conditions, Customer shall not file any patent application that discloses or claims the Samples without Junkosha's express written permission. If at any time Customer conceives and/or reduces to practice, either solely or jointly with Junkosha, any inventions that utilize or disclose the Samples, or in any way may restrict Junkosha's making, using, selling, or importing any Junkosha product in the future, including the Sample, (collectively "Invention"), Customer shall promptly notify Junkosha of any such Inventions and agrees to assign, and hereby assigns to Junkosha, all rights, title and interest in and to such Inventions. Customer will fully cooperate with Junkosha, at Junkosha's expense, to assign, secure, and enforce any intellectual property rights assigned hereunder, including without limitation, executing any required documentation. Other than Inventions so defined, ownership of any other intellectual property created by either or both parties shall be determined in accordance with U.S. law, including U.S. Patent Laws, U.S. Code Title 35.

7. Indemnification of Junkosha. Customer will defend, indemnify and hold harmless Junkosha and its affiliates, and officers, directors, employees, and agents from and against any and all claims, demands, actions, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) (collectively, "Claims") arising out of or relating to:

(a) Customer's use, handling, storage, testing, modification, disposal, or any other utilization of the Samples;

(b) any products, materials, or processes developed, manufactured, or sold by or on behalf of Customer using or incorporating the Samples;

(c) Infringement of any third-party intellectual property rights by the Customer's use of Samples, including any infringement by the Customer's devices or products that use or are manufactured with Samples provided hereunder;

(d) Customer's breach of any provision of these Terms and Conditions; or

(e) Customer's violation of any applicable laws, regulations, or other government requirements. Junkosha shall promptly notify Customer of any claim subject to indemnification and shall reasonably cooperate in the defense. Customer shall have control of the defense and settlement of such claim, provided that no settlement containing any admission of fault or obligation on Junkosha may be entered into without Junkosha's prior written approval. Nothing herein shall prevent Junkosha, at its own expenses, from retaining its own counsel to monitor or assist in any such defense and Customer agrees to instruct its counsel to fully coordinate litigation strategy with any such counsel designated by Junkosha.

8. Confidentiality. Unless Junkosha and Customer have otherwise expressly agreed in writing, the following confidentiality terms shall control and govern the confidentiality and non-use of the parties with respect to Samples and Confidential Information disclosed in connection with these Terms and Conditions. As used herein, "Confidential Information" means all non-public information disclosed by or on behalf of either party ("Disclosing Party") to the other party ("Receiving Party"), whether in written, oral, electronic, visual, or other form, that is designated as "confidential" or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. All Samples provided hereunder shall be deemed Confidential Information of Junkosha, whether or not marked or identified as confidential. The Receiving Party shall: (a) use Confidential Information solely for purposes of performing under these Terms and Conditions; (b) protect Confidential Information using at least the same degree of care it uses to protect its own confidential information of similar importance, and no less than reasonable care; and (c) not disclose Confidential Information to any third party except to its employees, contractors, or advisors who have a need to know for the permitted purpose and are bound by confidentiality obligations no less protective than those herein. Confidential Information does not include information that the Receiving Party can demonstrate with written records: (a) is or becomes publicly available through no breach of these Terms and Conditions; (b) was lawfully known to the Receiving Party prior to disclosure by the Disclosing Party; (c) is independently developed by the Receiving Party without use of or reference to the Confidential Information; or (d) is lawfully received from a third party without any obligation of confidentiality to the Disclosing Party. If the Receiving Party is required by law, regulation, or court order to disclose any Confidential Information, it shall, to the extent legally permitted, promptly notify the Disclosing Party in writing and cooperate reasonably, at the Disclosing Party's expense, to seek protective treatment or limit the scope of such disclosure. The Receiving Party may disclose only that portion of Confidential Information that it is legally required to disclose.

9. Limitation of Liability. EXCEPT AS OTHERWISE EXPRESSLY AGREED IN WRITING BY THE PARTIES, JUNKOSHA SHALL NOT BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES INCURRED BY CUSTOMER WITH RESPECT TO ANY TRANSACTION HEREUNDER, INCLUDING, BUT NOT LIMITED TO, A LOSS OF SALES, PROFITS, OR GOODWILL, WHETHER AS A RESULT OF A BREACH OF CONTRACT, BREACH OF WARRANTY OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), INDEMNIFICATION, OR OTHERWISE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, JUNKOSHA'S LIABILITY FOR ANY AND ALL LIABILITIES, CLAIMS, CAUSES OF ACTION, SUITS, LOSSES, EXPENSES, DAMAGES, SETTLEMENT COSTS AND ATTORNEYS' FEES SHALL BE LIMITED IN TOTAL TO ANY AMOUNT PAID BY CUSTOMER FOR THE SAMPLES PROVIDED HEREUNDER.

10. Force Majeure. Neither party shall be liable for any failure or delay in the performance of its obligations under these Terms and Conditions (other than payment obligations) to the extent such failure or delay is caused by or results from events beyond its reasonable control ("Force Majeure Event"). Force Majeure Events include, but are not limited to: acts of God; natural disasters; fire, flood, earthquake, or extreme weather conditions; war, terrorism, civil unrest, or riots; epidemics, pandemics, or other health crisis; governmental actions, laws, regulations, or orders; labor disputes or shortages (including strikes or lockouts); shortages or unavailability of raw materials, components, energy, or transportation; supply chain disruptions; utility failures; or failures of subcontractors or suppliers due to any of the foregoing. The affected party shall promptly notify the other party of the Force Majeure Event and use commercially reasonable efforts to mitigate its effects and resume performance as soon as practicable. Performance shall be suspended for the duration of the Force Majeure Event. If the Force Majeure Event continues for more than sixty (60) days, either party may terminate the affected portion of any outstanding purchase order upon written notice, without liability, except for obligations accrued prior to the Force Majeure Event.

11. Use of Names and Trademarks of Other Party. Unless specifically permitted by written agreement between the parties, neither party (as well as its affiliates and associated entities) shall use, publicize, or attempt to register the name, trademarks, and/or services marks of the other party (alone or as part of another name or mark) or any logos, designs, symbols, or devices that identify such other party or their affiliates for any purpose. This restriction does not prevent a party from disclosing the name and/or trademarks or service marks of the other party as may be required by law or regulation, including making required disclosures to regulatory bodies.

12. No Waiver. No failure or delay by either party in exercising any right, power, or remedy under these Terms and Conditions shall operate as a waiver of such right, power, or remedy, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. Any waiver must be in writing and signed by an authorized representative of the waiving party to be effective.

13. Term and Continuing Obligations. The term of these Terms and Conditions shall commence on the date on which Customer submits a request for an Order to Junkosha and will continue until completion of all Orders made hereunder. Termination or expiration of these Terms and Conditions shall not affect any rights or obligations of the parties that by their nature are intended to survive termination or expiration, including, without limitation, obligations relating to payment, confidentiality, intellectual property, warranties, indemnification, limitation of liability, governing law, dispute resolution, and any accrued rights or remedies.

14. Entire Agreement. These Terms and Conditions constitute the entire agreement between the parties with respect to the subject matter of these Terms and Conditions, and supersede any prior or concurrent representations, agreement, or understanding between the parties. Customer and Junkosha agree that any other terms and conditions provided by Customer in connection with an Order are hereby null and void, and that these Terms and Conditions shall control the parties' respective rights and obligations with respect to the purchase and supply of Samples under each Order. These Terms and Conditions may be amended or modified only by a written instrument that specifically references these Terms and Conditions, and that is signed by an authorized representative of each party. Without limiting the foregoing, no modification shall be affected by the acknowledgment or acceptance of purchase order forms stipulating different conditions.

15. Severability. In the event that a court of competent jurisdiction finds any term or clause in these Terms and Conditions to be invalid, unenforceable, or illegal, such invalid, unenforceable, or illegal term or clause shall be treated as excised from these Terms and Conditions and the same will not have an impact on other terms or clauses in the Terms and Conditions or the entire Terms and Conditions. However, to the extent that such invalid, unenforceable, or illegal term or clause may be revised to the extent required according to the opinion of the court to render the Terms and Conditions enforceable or valid, and the rights and responsibilities of the parties shall be interpreted and enforced accordingly, so as to preserve their agreement and intent to the fullest possible extent.

16. Miscellaneous. These Terms and Conditions may not be assigned or transferred by either party without the prior written consent of the other party; provided, however, that these Terms and Conditions shall be binding upon and inure to the benefit of the respective parties and their permitted successors and assigns. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict-of-laws principles. The parties irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts located within the State of California and waive any objection based on lack of jurisdiction, improper venue, or forum non conveniens. The United Nations Convention on Contracts for the International Sale of Goods (1980) (the "CISG") shall not apply to these Terms and Conditions or to any contract, transaction, or dispute arising out of or relating to the sale of goods hereunder.