

PLYMOUTH TUBE COMPANY ("PLYMOUTH")
ORDER ACKNOWLEDGEMENT / INVOICE
TERMS AND CONDITIONS
(Effective 6-10-09)

1. ACCEPTANCE

THE TERMS AND CONDITIONS AS HEREIN SET FORTH ARE INCORPORATED INTO PLYMOUTH'S WRITTEN ACCEPTANCE OF THE BUYER/PURCHASER PURCHASE ORDER. THIS ACCEPTANCE SHOULD BE CAREFULLY COMPARED WITH BUYER'S ORIGINAL ORDER AND PLYMOUTH'S RESPONSE TO ACCEPT SUBJECT TO THE TERMS HERIN. ANY TERMS WHICH ARE CONTAINED HEREIN WHICH ARE DIFFERENT OR AT VARIANCE WITH THE PURCHASE ORDER ARE DEEMED OBJECTED TO AND THIS ACCEPTANCE IS DEEMED A COUNTER OFFER FOR ACCEPTANCE. NOT WITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS THAT MAY BE EMBODIED IN BUYER'S PURCHASE ORDER, BUYER'S PURCHASE ORDER IS ACCEPTED ONLY ON THE CONDITION THAT BUYER EXPRESSLY CONSENTS TO THE TERMS AND CONDITIONS CONTAINED IN THIS ACCEPTANCE/COUNTER OFFER AND UNLESS WRITTEN NOTICE OF OBJECTION TO ANY OF THE TERMS, CONDITIONS AND PROVISIONS OF THIS ACCEPTANCE, INCLUDING INCONSISTENCIES BETWEEN BUYER'S PURCHASE ORDER AND THIS ACCEPTANCE IS GIVEN BY BUYER TO PLYMOUTH WITHIN 7 DAYS OF RECIEPT OF THIS ACKNOWLEDGEMENT, BUYER SHALL BE DEEMED TO HAVE SO CONSENTED TO THE TERMS HEREIN IF THE NOTICE OF OBJECTION IS NOT RECEIVED WITH SAID 7 DAYS. BUYER AGREES THAT THIS ACCEPTANCE, INCLUDING THE TERMS AND CONDITIONS HEREIN, SHALL CONSTITUTE THE COMPLETE AND FINAL AGREEMENT BETWEEN PLYMOUTH AND BUYER IN RESPECT OF THIS ORDER, NO WAIVER, ALTERATION OR MODIFICATION OF THE TERMS AND CONDITIONS CONTAINED HEREIN SHALL BE BINDING UNLESS SPECIFICALLY ACCEPTED BY PLYMOUTH'S AUTHORIZED REPRESENTATIVE IN WRITING. **IN ANY EVENT, BUYERS AUTHORIZATION TO PROCEED TO PLYMOUTH UNDER THE PURCHASE ORDER FOR PRODUCTION AND DELIVERY OF SUCH PRODUCTS AS DIRECTED BY BUYER SHALL BE DEEMED TO BE BUYER'S CONSENT TO PLYMOUTH'S ACCEPTANCE TERMS AND CONDITIONS OF ACCEPTANCE AND SHALL BE FURTHER DEEMED ACCEPTANCE OF THE COUNTEROFFER TERMS WITHOUT FURTHER ACTION.**

2. TRANSPORTATION AND DELIVERY PRICE CHANGES

Transportation and delivery prices, as charged by third parties, are subject to change without notice. All orders are accepted subject to PLYMOUTH'S price in effect at time of shipment. All charges in freight rates or transportation charges used by PLYMOUTH in computing prices and charges shown on this acceptance occurring after the date of this acknowledgement will be for Buyer's account. If Buyer should change the point at which the products are to be delivered F.O.B. the corresponding increase or decrease in freight transportation charges will be for Buyer's account. PLYMOUTH shall not be liable for any transportation charges incurred at destination such as spotting, switching, drayage, demurrage, pier unloading charges, etc.. If freight charges and who pays them are not set forth set forth in the Purchase Order and not set forth in this Acceptance, then freight shall be paid by Purchaser EX Works (Incoterms 2000).

3. PAYMENT

Terms of payment on all shipments are subject to approval of PLYMOUTH'S Treasury Department. Payments of all invoices shall be due within thirty (30) days of receipt by Buyer. ANY AMOUNTS NOT PAID BY DUE DATE AS INDICATED ON THE FACE OF PLYMOUTH'S INVOICE TO BUYER SHALL BE SUBJECT TO A *FINANCE CHARGE* OF 1-1/2% PER MONTH UNTIL PAID. THE RATE OF SAID FINANCE CHARGE BEING EQUIVALENT TO AN ANNUAL PERCENTAGE RATE OF 18% PER ANNUM. In no event, however, shall the rate of the said finance charge exceed the highest rate permitted by law.

4. TAXES

PLYMOUTH reserves the right to charge Buyer with the amount of any taxes which PLYMOUTH may be required to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption, services or transportation of any of the products sold.

5. MARKET PRICE CHANGES

In the event of any market changes in the cost of raw materials beyond the commercially reasonable control of Plymouth, which occurs no earlier than ninety (90) days from the date of acceptance of Plymouth's offer to produce, whereby Plymouth was not required to purchase material for the Purchase order more than six (6) months in advance to hold in inventory or for any of the reasons set forth below in section 6 the material prices shall be increased to account for the additional actual direct cost of acquisition of the material and Plymouth shall give notice of such to Buyer and the purchase price shall be deemed amended to reflect same.

6. DELIVERY

Manufacture, shipment and delivery shall be subject to any prohibition or regulation imposed by the United States or any state government or any subdivision or agency thereof or the laws of a foreign country which are applicable. PLYMOUTH shall not be liable for any delay or failure to perform in whole or in part, directly or indirectly resulting from a Force Majeure as defined at Section 13 herein, preventing normal delivery of materials to Plymouth or delivery of purchased product to Buyer. Any delay in (i) manufacturing caused by Buyer or contributed to by Buyer or (ii) any delay in delivery methods or carriers chosen by Buyer, which may delay delivery, shall be deemed excusable delays and the delivery date shall be extended a commercially reasonable time to account for the delay.

7. INSPECTION BY BUYER

Where mill inspection is made by Buyer, Buyer's inspector(s) shall be deemed the agent(s) of Buyer to accept products on Buyer's behalf with authority to waive specified tests or details of test procedure, and to accept products which may deviate from formal specifications. Buyer and its agent inspector shall hold defend, indemnify and Plymouth harmless from any acts of negligence or omission on the part of Plymouth while the Buyer or its agent is on Plymouth property during the inspection process.

8. PERMISSIBLE VARIATIONS

Unless otherwise agreed upon in writing, all material shall be furnished to PLYMOUTH standard manufacturing variations and practices and within limits and sizes PLYMOUTH produces. Materials purchased are subject to customary quantity variations recognized by trade practice.

9. CANCELLATIONS

The Contract resulting from this acknowledgement and acceptance of Buyer's order cannot be cancelled, terminated or modified by Buyer in whole or in part, nor shall releases be held up by Buyer after the manufacturing process commences which includes the ordering of materials to produce the material, except with PLYMOUTH'S consent in writing and then only upon terms and conditions to be agreed upon which shall include protection of PLYMOUTH against all loss direct and consequential. Buyer shall not have the right to suspend performance under the Purchase Order without the written consent of PLYMOUTH.

10. LOSS OR DAMAGE IN TRANSIT

In case of loss or damage in transit or failure to receive shipment within a reasonable time, the consignee must immediately notify in writing the carrier's agent at destination and PLYMOUTH. This action is necessary in order to preserve the right to damage from the carrier and to substantiate formal claim when presented. Title and risk of loss pass to Buyer upon delivery of products to Buyer's freight carrier, if Buyer is paying for freight, or if PLYMOUTH is paying for freight at the time of delivery to Buyer. PLYMOUTH shall not be liable for any damage, loss or expense resulting from anything occurring during, or attributable to transportation which is paid for by Buyer.

11. CLAIMS/WARRANTIES

PLYMOUTH'S sole warranty is that the tubes produced are in compliance with and meet the specific specifications of the Purchase Order as accepted by PLYMOUTH and will be free and clear of all liens for sale to Buyer as of the delivery date. No warranty is provided as the tubes being fit for a particular purpose, even if disclosed to PLYMOUTH. PLYMOUTH will not allow any allowances, deductions or return of products except by written permission of PLYMOUTH. PLYMOUTH shall not be liable to nor indemnify Buyer or any third parties for any claims, losses, labor, expenses or damages, direct or consequential, resulting directly or indirectly from the performance of this order or the use of, or inability to use the products sold hereunder, including, without limitation, loss of profits because of increase operating costs, loss of production or shutdown of operation or otherwise and liabilities, claims and damages because of personal injury, death or property damage. Notwithstanding the foregoing, products proving and substantiated to be defective in material and/or workmanship by reason of not being in strict accordance with the specifications of the Purchase Order as accepted by PLYMOUTH will be repaired or replaced, at Plymouth's option, with Plymouth paying any normal and customary shipping costs similar to those expended at the original shipment, or, at PLYMOUTH'S option, credit will be allowed for the original price thereof paid for the defective and non compliant product delivered. Notwithstanding the foregoing, unless Plymouth has agreed to a different length of warranty then the warranty terms shall be the earlier of twelve (12) months from the date the product is placed in to service or eighteen (18) months from the date of delivery to Buyer or it's designee, provided written claim in respect of such products is made by Buyer with reasonable promptness after discovery of such non compliance. PLYMOUTH shall not be liable for replacement or repair or any damages to the extent Buyer or any other party to whom Buyer has sold the product, has failed to store the products in a commercially reasonable manner to reasonably protect the product from the effect of exposure to outdoor weather. **THE FOREGOING ARE PLYMOUTH'S ONLY WARRANTIES AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF THE PLYMOUTH.**

12. REMEDIES

(a) PLYMOUTH shall have all remedies allowed by law, including the Uniform Commercial Code.

(b) Buyer's sole remedy shall be limited to the repair or replacement of defective products as set forth above or, at PLYMOUTH'S option, credit for the original price for the defective product and delivery as set forth in paragraph 11 above. In case Buyer shall fail to make payments in accordance with the terms as set forth in the accepted purchase order, PLYMOUTH, in addition to its rights and remedies under the law may at its option defer further shipments on this and any other open orders until such payments are made, or may terminate this order and any other open orders, and Buyer shall not have any cause of action or be entitled to any off-set, counter-claim or recoupment against PLYMOUTH by reason of any such action. In the case of a breach by Buyer, PLYMOUTH shall be entitled to its costs to terminate the Purchase Order, which shall include reimbursement for costs incurred, to the extent Tubes were not delivered and terminated, including raw material costs and work in process. Raw material shall not be reimbursable which has been purchased for the Purchase Order (or ordered which can not be terminated) to the extent it does not have other similar material in inventory to be sold and the subject material is sold or processed within ninety (90) days of the termination. Plymouth shall further be entitled to the profit it would have made on the sale as if it was not terminated.

(c) If the Buyer shall fail to make payments in accordance with the terms as set forth in this acknowledgment, PLYMOUTH shall be entitled to reimbursement for all collection and related reasonable attorney fees and legal costs from the Buyer in order to secure the payments due.

(d) No failure of PLYMOUTH to insist upon strict compliance by Buyer with the terms and conditions of this acknowledgment or to exercise any right accruing from any default of Buyer shall impair PLYMOUTH'S rights in case Buyer's default continues or in case of any subsequent default by Buyer.

(e) In no event shall either Party to this Agreement be liable to the other (in contract or in tort, including negligence) for special, indirect, punitive, incidental or consequential damages including, but not limited to, interest or carrying charges on its investment, expenses arising from costs of capital, loss of profits on work not performed, or

for loss of use of, or under utilization of labor, equipment or facilities.

(f) PLYMOUTHS liability for any reason shall not exceed the amount of the Purchase Order. In the case of claims for damages arising by reason of defective tubes as defined in Section 11, Plymouths liability shall not exceed the amount due or paid for the defective tubes. In the event of a personal injury or damage to property, to the extent caused by or contributed to by PLYMOUTH, such limitation of liability shall be to the extent of insurance coverage carried by PLYMOUTH, to the extent such coverage is made available. In any event PLYMOUTH shall not be liable for special, indirect, punitive, incidental or consequential damages including, but not limited to, interest or carrying charges on its investment, expenses arising from costs of capital, loss of profits on work not performed, or for loss of use of, or under utilization of labor, equipment or facilities.

13. FORCE MAJEURE

A party shall be temporarily excused from performance under this Agreement to the extent its non-performance is caused solely by acts of God, including but not limited to, fire, flood, severe weather problems, or other casualty or acts of war, acts of terrorism, embargoes, acts of civil or military authorities, riots or national emergencies, strikes or walkouts, governmental acts, orders or regulations, any of which delay or prevent either the procurement of materials or manufacture or shipping, provided, however, such excuse from performance shall continue only for the duration of the interruption caused by such event and then only if the non-performing party gives to the other party prompt written notice of the event and, if feasible, a good faith estimate of the likely duration of the anticipated non-performance. The non-performing party shall use all commercially reasonable efforts to remedy the circumstances causing the non-performance, and shall take all commercially reasonable steps to work around such circumstances. Immediately after the circumstances causing the non-performance are substantially remedied, the non-performing party shall resume performing under this Agreement. Notwithstanding the foregoing, any time for performance by Plymouth shall be extended upon not less than (5) days written notice from Plymouth from the occurrence of the end of the event causing the Force Majeure requesting additional time to perform which shall not be more than thirty(30) days after the end of the occurrence of the Force Majeure.

14. WAIVER

Waiver by either PLYMOUTH or Buyer of a breach by the other of any provisions herein shall not be deemed a waiver of future compliance therewith; any such provisions shall remain in full force and effect.

15. GOVERNING LAW

This order shall be deemed made and performed in the State of Illinois. The construction, interpretation and performance of this Order and all transactions hereunder shall be governed by the law of the State of Illinois, including the Illinois Uniform Commercial Code. Buyer agrees and consents to jurisdiction and venue of the courts of the United States Federal Court Northern District of Illinois Eastern Division or DuPage or Cook County Illinois and waives any objection based upon forum non conveniens.

16. INDEMNIFICATION FOR INFRINGEMENT

If the goods to be manufactured are per the Buyer's specifications and or plans, Buyer shall indemnify, defend and hold Plymouth harmless from any third party claim of infringement or non-compliance of any nature with any applicable laws or regulations. Plymouth shall defend and indemnify and hold Buyer harmless for any infringement actions which are by reason of Plymouths designed plans and specifications of the products hereunder which are not those of Buyer.

17. COMPLIANCE WITH EXECUTIVE ORDER

Unless otherwise exempt by rules, regulations, or orders of the Department of Labor, Office of Federal Contract Compliance Programs, and other Federal Government Agencies, Executive Order 11246, Section 503 of the Rehabilitation Act of 1974, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974 and other regulations (contained in 41 Code of Federal Regulations and relating to equal employment) are hereby made a part of the terms and conditions of this order as to both Plymouth and Buyer.

18. CHANGE ORDERS

No change in the Purchase Order terms as accepted shall be effective unless mutually agreed in writing by PLYMOUTH and Buyer in writing and neither party is authorized to proceed on any work until such is agreed upon. Any delay shall extend delivery dates proportionately.

19. FAIR LABOR STANDARDS

Plymouth hereby certifies that the goods hereunder were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended and of regulations and orders of the United States Department of Labor issued under section 14 thereof.

20. SIGNATURES AND BINDING EFFECT

The parties acknowledge that signature, if required, may be in the form of facsimile and such shall satisfy the requirement of both a writing and signature to be binding otherwise this shall be binding in accordance with the terms set forth in Section 1 hereof without signature.

21. NOTICES

Notices shall be sent by nationally recognized overnight courier at the addresses shown on the reverse side and shall be effective the date of actual delivery. The parties may agree to email notices by separate agreement.

22. RELATIONSHIP OF PARTIES

The relationship herein is solely as buyer and seller and not to be construed as creating any agency, joint venture or employment relationship.

23. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties and supersedes any oral or prior agreements or understandings. In the event any provision hereunder is deemed to be invalid or unenforceable the remainder shall not be affected.

END