

# ***PLYMOUTH TUBE COMPANY.***

## **Purchase Order Terms & Conditions For Vendors**

Effective 02/23/2015

### **1. ACCEPTANCE**

This Agreement is made between the Vendor named on the face of this Purchase Order ("Vendor") and Plymouth Tube Co. ("Plymouth"). The Purchase Order ("Purchase Order") must be accepted in writing by Vendor by signing the Purchase Order and returning it to Plymouth. If for any reason Vendor should fail to accept this Purchase Order in writing, any conduct by Vendor which recognizes the existence of a Contract pertaining to the subject matter hereof shall constitute acceptance by Vendor of this purchase order and all of its terms and conditions. Any terms proposed in Vendor's acceptance of Plymouth's offer which add to, vary from, or conflict with the terms herein are hereby objected to and rejected. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions between Plymouth and may hereafter be modified only by a written instrument executed by both of Plymouth's authorized representatives. If this purchase order has been issued by Plymouth in response to an offer and if any of the terms herein add to, vary from or conflict with any terms of Vendor offer, then the issuance of this purchase order by Plymouth shall constitute an acceptance of Vendor offer subject to the express conditions that Vendor assent to the additional, different and conflicting terms herein and acknowledge that this purchase order constitutes the entire agreement between Plymouth with respect to the subject matter hereof and the subject matter of Vendor offer. Vendor shall be deemed to have so assented and acknowledged unless Vendor notifies Plymouth to the contrary in writing within ten (10) working days of receipt of this Purchase Order. The parties acknowledge that signature herein is not required in that such is deemed incorporated into and a part of the Plymouth Purchase Order accepted by Vendor which references this document and thereby acceptance of the Plymouth Purchase Order shall satisfy the requirement of both a writing and signature for this Agreement to be binding between the parties.

### **2. CHANGES**

Plymouth shall have the right from time to time by written notice to make changes in or additions to drawings, specifications or instructions for the work covered by this order, and Vendor agrees to comply with such change notices. If such changes cause a material increase or decrease in Vendor's cost or in the time for performance of this order, equitable adjustment in the price and time for performance will be made and this order will be modified in writing accordingly; provided that any claim for adjustment must be asserted by Seller within a reasonable time after the change is ordered before proceeding. Any changes by Vendor of sub-suppliers, process, materials, or components without the express written prior consent of Plymouth are strictly prohibited.

**3. TERMINATION**

Plymouth reserves the right to terminate this order in whole or in part for Plymouth's convenience upon written notice to Vendor, in which event Vendor shall be entitled to reasonable termination charges which are limited to reflecting payment for work in process performed prior to the notice of termination plus any the cost of any raw material specially ordered for scheduled deliveries which cannot be returned or cancelled or utilized within six months of termination by Vendor, but no other consequential damages or claims for loss of profit. All work in process or other material paid for by Plymouth, at Plymouth's option shall be delivered to Plymouth at Plymouth's expense as directed by Plymouth.

**4. CONFIDENTIALITY**

All specifications, documents, artwork, or drawings delivered to Vendor by Plymouth remain Plymouth's property. The information is delivered solely for the purpose of Vendor's performance of this order and on the express condition that neither they nor the information contained therein shall be disclosed to others nor used for any purpose other than in connection with this order without Plymouth's prior express written consent. We reserve the right to request that Vendor return all such information to Plymouth upon written request. Vendor's obligations under this paragraph shall survive the cancellation, termination or other completion of this order.

**5. WARRANTY**

Vendor expressly warrants that all goods and services supplied to Plymouth by Vendor as a result of this order shall conform to the specifications, drawings or other description, upon which this order is based, including all required testing and inspections, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, free from defects in manufacture and design, be of new material and lien free when delivered to Plymouth. Inspection, test acceptance or use of the goods by Plymouth or its customer shall not affect Vendor's obligations under this warranty, and such warranty shall survive inspection, test acceptance and use. Vendor agrees to replace or correct promptly defects of any goods or services not conforming to the foregoing warranty without expense to Plymouth, as directed by Plymouth when notified of such nonconformity by Plymouth. Such replacement or repair shall include payment to Plymouth of any and all costs and expenses incurred or claimed due by Plymouth or Plymouth's customer to whom the goods were sold as a product by Plymouth for failure to comply with the warranty herein, including but not limited to any and all costs to replace the goods, deinstallation and reinstallation costs, expedited shipping costs, and any other expenses incurred by Plymouth or Plymouth's customer in part or in whole as contributed to by the failure of the goods or work of Vendor to comply with the warranty provisions herein. In the event of Vendor's failure to correct defects in or replace nonconforming goods or services promptly, as required by Plymouth, Plymouth may, in addition to the foregoing, after reasonable notice to Vendor, make such corrections or effect cover and replacement of the nonconforming Vendor goods at Vendor's expense which amounts shall include but not be limited to the amounts aforesaid. Vendor shall pay such amounts due within thirty (30) days of invoicing by Plymouth. Plymouth shall have the right to set off any amounts due hereunder against any invoicing due to Vendor. The length of the warranty ("Warranty Period") shall be as otherwise set forth in any specifications agreed upon

in the Purchase Order and if no warranty is otherwise stated it shall be for a period of 36 months from delivery to Plymouth. Vendor shall notify Plymouth in writing immediately upon discovery that goods shipped and or delivered to Plymouth are not in conformance with the warranties of this Section 5 or infringe per Section 8.

**6. PRICE**

This order must not be filled at a higher price than shown on the order. Any change must be authorized on a change order written by Plymouth. If no price is shown, Vendor must notify Plymouth to procure acceptance by Plymouth in writing before filling the order.

**7. FORCE MAJEURE**

Neither Vendor nor Plymouth shall be liable for a delay in the performance of the obligations hereunder resulting from the order when the delay is due to the following causes; war, terrorism, strikes or lockouts, embargo, national emergency, insurrection or riot, acts of the public enemy, fire, flood, severe weather preventing delivery or other natural disaster, provided that the affected party has taken reasonable measures to immediately notify the other party, in writing, of the delay. If the delay is unacceptable, the other party may terminate this order per Article 3 herein. A delay of fourteen (14) days or more shall be deemed termination under Article 3 irrespective of Force Majeure. Failure of subcontractors or the inability to obtain materials or labor shall not be considered as a force majeure delay.

**8. INFRINGEMENT**

Unless the goods ordered hereunder are to be manufactured according to special design furnished by Plymouth, Vendor shall at Vendor's own expense defend Plymouth and the customers who purchased the goods hereunder from any claim of infringement of any letter patent, trademark, copyright or other intellectual property right by reason of manufacture or use of the goods furnished hereunder. Vendor agrees to protect, defend, hold harmless and indemnify Plymouth and its agents and customers fully against any liability, cost, recovery or other expense, including attorney's fees, in or resulting from any such claim provided that we give Vendor timely notice of such claim. Furthermore, in the event that Plymouth should be enjoined in any suit or proceeding from using any of the goods delivered hereunder, Vendor shall promptly either (i) secure termination of the injunction and procure for Plymouth and Plymouth's customers the right to use such goods without any obligation or liability or (ii) replace said goods with non-infringing goods or modify same to become non-infringing, all at Vendor's expense and to Plymouth's satisfaction as soon as reasonably possible to avoid damages claimed against Plymouth or Plymouth's customers, and (iii) pay to Plymouth an amount necessary to remove, deinstall and reinstall and replace the infringing goods with non-infringing goods at Vendor's sole expense and refund to Plymouth the amount paid to Vendor for the claimed infringing goods.

**9. INDEMNITY**

Vendor shall be responsible for and hold Plymouth harmless against all damages to persons or property that occur as a result of the breach of performance of any work or service delivered hereunder by Vendor, its agents, subcontractors and/or employees.

## **10. INSPECTION/TESTING/REJECTION**

a) Except as otherwise agreed in writing, all shipments shall be subject to inspection by Plymouth after receipt by Plymouth at destination. In addition, all material and work in progress shall be subject to inspection and test at all times and places and when practical, during manufacture, as Plymouth may direct. If inspections, and tests, whether preliminary or final are made on Vendor's premises, Vendor shall furnish without additional charge, all reasonable facilities and assistance for safe and convenient inspections and tests required by the inspectors in the performance of their duty. All inspections and tests shall be performed in such manner as not to unduly delay the work. Plymouth reserves the right to charge and set off to Vendor any additional cost of inspection and tests when articles are not ready at the time of inspection as requested by Plymouth. Inspection and acceptance by Plymouth shall not be conclusive of compliance of the goods with the warranty provisions of this Agreement and Vendor shall remain responsible for all acts necessary to maintain compliance through the Warranty Provisions as set forth in Article 5, (b) Vendor is to work within and inspect to, tolerances and limitations specified on drawings covering the work, and shall make such tests as are specified in the drawings or test specifications, unless deviation there from is authorized in writing by Plymouth. Verbal changes to tolerance revisions are not official and will not provide grounds for a noncompliance with the drawings or specifications, regardless of their source, (c) No substitution of materials or accessories may be made without written permission from Plymouth, and no charges for extras will be allowed unless the same have been ordered in writing by Plymouth and the price and changes mutually agreed upon in writing, (d) Payment by Plymouth for the goods or services delivered hereunder shall not constitute acceptance. Plymouth retains the right to inspect the goods or work performed and to reject any or all of the goods or work performed which in Plymouth's judgment, fail to comply with the warranty requirements, (d) Goods rejected by Plymouth and goods supplied in excess of quantities called for herein may be returned to Vendor at Vendor's expense and in addition to Plymouth's other rights Plymouth may charge Vendor all expenses of unpacking, examining, repacking, and reshipping such goods (e) Vendor shall immediately notify Plymouth of any non-conformance detected with the goods to be supplied or with the service being provided during the production or service process. The goods shall not be shipped as "use-as-is" nor shall rework on the goods or services be performed, without the written acceptance of Plymouth of the proposed corrective action and the correction of the nonconformity. Acceptance of any corrected goods shall be solely within the discretion of Plymouth.(f) In the event Plymouth receives goods whose defects or nonconformity are not apparent on examination, and subsequently results in deterioration of the Plymouth finished product, Plymouth reserves the right to require the replacement, as well as payment of any resulting damages and claims, and (g) Vendor will notify Plymouth immediately upon discovery that nonconforming material has been shipped.

## **11. PLYMOUTH PROPERTY**

Any material parts furnished by Plymouth intended for use by Vendor in execution of Vendor's duties as required by this order should be considered as being held by Vendor on consignment. All such materials or parts not used by Vendor in connection with this order shall be returned to Plymouth at Vendor's expense unless Vendor is otherwise directed in writing. If not accounted for or returned to Plymouth, missing materials or parts shall be paid for by Vendor. All such materials or parts will be kept insured by Vendor at Vendor's expense in an amount equal to the replacement cost with a loss payable to Plymouth.

**12. REMEDIES**

Plymouth's remedies shall be cumulative and include any remedies allowed at equity or by law. Waiver of any breach by Plymouth shall not constitute Plymouth's waiver of any other breach of the same or any other provision. Acceptance of any items or payments therefore shall not waive any breach.

**13. DELIVERY/RELEASES**

Time is of the essence. Vendor agrees to comply with specific delivery schedule without any delay and without anticipating Plymouth's requirements. Delivery shall be in accordance with the designated INCOTERMS 2010 as set forth in the Purchase Order. Plymouth shall not be required to receive any deliveries hereunder more than three (3) business days prior to the delivery date set forth in the Purchase Order and will have the unconditional right to return or refuse such shipments at Vendor's expense. Such return shall not excuse on time delivery requirements. Any delays in shipment shall be reported to Plymouth immediately as they become known to Vendor. Plymouth reserves the right to cancel this order and effect cover if Vendor cannot comply with the delivery date(s) indicated on this order. If delivery dates are not specified on this order, Vendor shall procure materials, fabricate, assemble and ship goods only as authorized by shipment releases issued to Vendor by Plymouth. Plymouth may return overshipments to Vendor at Vendor's expense for all packing, handling, sorting and transportation. Plymouth may from time to time, and with reasonable notice, suspend shipping schedules specified in the purchase order or such shipment releases. Unless stated otherwise in the Purchase Order, Vendor shall be responsible for all packing of the order at Vendor's expense for safe shipment and the risk of loss or damage shall be in accordance with the INCOTERMS 2010 as set forth in the Purchase Order. Late shipments shall incur liquidated damage expenses paid by Vendor to Plymouth as late fees and not a penalty in the amount of one half of one per cent per day for each day delivery is after the due date per the purchase order until all the goods are delivered per the scheduled delivery date. Such amounts are to be paid to Plymouth or at Plymouth's option, deducted from monies due Vendor. Time is of the essence for all Vendor performance hereunder. Plymouth shall have the right to terminate the Purchase Order if the order is not received in full within fourteen (14) days of the scheduled delivery date. Vendor shall be responsible for any damages or penalties which are charged to Plymouth by its customer which are as a result of late delivery.

**14. ASSIGNMENTS/SETOFFS/SUBCONTRACTING**

This order, the work required to be done hereunder and any payments to be made hereunder may not be assigned, transferred, or subcontracted without Plymouth's prior approval. No invoices may be rendered by others than the named firm shown as "Vendor" on the Purchase Order without Plymouth's written permission. All claims for monies due or to become due from Plymouth shall be subject to deduction by Plymouth for any setoff or counterclaim arising out of this or any other purchase orders with Vendor whether such setoff or counterclaim arise before or after such assignment or subcontract by Vendor.

**15. PREMIUM TRANSPORTATION**

If in order to comply with Plymouth's required delivery date it becomes necessary for Vendor to ship by a more expensive mode than specified on the face of this order, any premium

transportation cost resulting there from shall be paid for by Vendor unless Vendor can establish to Plymouth's satisfaction that the necessity for the change in routing is occasioned by force majeure events.

**16. PACKING LIST**

A packing list and bill of lading must be enclosed with all shipments showing the purchase order number and exact quantity and description of the goods shipped.

**17. NOTICES & INVOICES**

Unless otherwise specified, invoices and notices should be mailed to Plymouth and or Vendor respectively at the addresses as shown on the Purchase Order. Invoices shall include purchase order number and release number where applicable, item number, description of items, sizes, quantities, unit prices and extended totals. All taxes shall be stated separately. Discount items are to run from date invoice is received by Accounts Payable. Failure to comply with the above may result in delayed payment or returned invoices.

**18. INSURANCE**

Vendor shall obtain, at Vendor's expense, comprehensive general liability insurance, including broad form contractual liability, broad form bodily injury and property damage, products liability and at least three (3) years completed operations coverage, with minimum limits of \$1 million per occurrence, \$5 million aggregate bodily Injury and \$500,000 property damage and excess liability or umbrella liability insurance in an amount not less than \$4,000,000 (four million dollars) for any one occurrence with an insurer satisfactory to Plymouth and shall furnish Plymouth with a certificate of insurance certifying to the existence of same. All such policies and the certificate of insurance shall provide that the coverage shall not be terminated or changed without at least thirty (30) day's prior written notice to Plymouth. Plymouth shall be added as additional insured under a broad form vendor's endorsement. To the extent that Vendor uses deductibles in conjunction with the insurance required by this Agreement (including self-insurance), all deductible expenses will be assumed and paid by Vendor.

**19. EXPORT/IMPORT**

Any export credits belong to Plymouth, and Vendor shall furnish all documents required for international shipments, and upon request, all documents required by Plymouth to obtain export credits and customs drawbacks. Vendor shall include a priced invoice with the master packing slip for international shipments. Upon Plymouth's request, Vendor shall furnish certificates that identify the country of origin of the materials used in the supplies hereof and the value added thereto in each country. Vendor will not export or transfer information, technical data, or materials provided by Plymouth, whether directly or indirectly, to any person or entity, even if such disclosure or transfer is otherwise permitted under this Purchase Order, without first complying strictly and fully with all export controls (including, but not limited to the International Traffic and Arms Regulations) which may be imposed on such information, technical data or materials by the United States Government or any country or organization of nations within whose jurisdiction the transaction takes place or the Vendor operates or does business.

**20. COMPLIANCE WITH TOXIC AND CHEMICAL SUBSTANCES CONTROL**

Vendor warrants that each and every chemical substance constituting or contained in the goods sold or otherwise transferred to Plymouth as a result of the Purchase Order and that is subject to the Toxic Substances Control Act is on the list of chemical substances compiled and published by the administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act and is otherwise in compliance with that Act. Vendor certifies that any chemical substance(s) furnished pursuant to this order has been properly labeled, and that proper information on the substance(s), e.g., material safety data sheets, have been provided to Plymouth, pursuant to all federal, state or local laws and regulations.

**21. CONFLICT MINERALS**

Vendor acknowledges that Plymouth requires all deliverables to be in compliance with Section 1502 of the United States Dodd Frank Wall Street Reform and Consumer Protection Act the ("Dodd-Frank Act") related to the use of tin, tantalum, tungsten and gold ("Conflict Minerals"). Vendor represents and warrants that it will source, and track the chain of custody of, all Conflict Minerals contained in any products or materials provided by Vendor to Plymouth in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (or such other internationally recognized due diligence standard as Plymouth may agree upon). At Plymouth's request (which may be as frequently as quarterly at Plymouth's discretion), Vendor must execute and deliver to Plymouth declarations in the form of the EICC-GESI Conflict Minerals Reporting Template as adopted by EICC-GESI (Electronic Industry Citizenship Coalition- Global Engagement Studies Institute) from time to time, or such other reasonable form that Plymouth requires to establish conformity with the requirements hereunder which Plymouth and any customer of Plymouth may rely upon to show the product sold to Plymouth is "Conflict Free". Vendor agrees and represents that all products and materials provided by Vendor to Plymouth shall be "Conflict Free" (as defined in the Dodd-Frank Act). Vendor accepts responsibility for delivering Conflict Free product which incorporates other product from Vendors suppliers and subcontractors and is further responsible for such inquiries and confirmation.

**22. HAZARDOUS MATERIALS**

Any materials required by this order that are deemed hazardous by any regulations will be packaged, marked and shipped by Vendor to comply with all present federal, state and local regulations.

**23. FAIR LABOR STANDARDS ACT**

Vendor shall furnish a statement on each invoice that the goods ordered hereunder were produced in accordance with the provisions of the United States Fair Labor Standards Act, as amended.

**24. 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 and Vendor will be in compliance with same.

**25. EQUAL OPPORTUNITY IN EMPLOYMENT-AFFIRMATIVE ACTION**

Vendor agrees that in connection with the performance of work under this contract, Vendor and its subcontractors, if any, agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation: and selection for training, including apprenticeship. Vendor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause or as otherwise required by applicable law.

**This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. This contractor and subcontractor shall abide by the employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A.**

**26. IMMIGRATION REFORM AND CONTROL ACT**

Seller agrees not to use any persons whose employment is prohibited under the Immigration Reform and Control Act in connection with any labor or services performed pursuant to this order.

**27. NO CORRUPT PRACTICES**

Vendor hereby warrants and represents that no consideration of any nature, be it in cash or in kind, in connection with this Agreement shall, directly or indirectly: (i) be paid, received, transferred, loaned, offered, promised or furnished for the purpose of obtaining or retaining business for or with, or directing business to, any person or entity pursuant to the purchase order, (ii) in violation of any code of conduct or other ethical obligations or prohibitions of Plymouth or of the buyer of Plymouth products incorporating Vendors goods hereunder, or (iii) in any other manner or action which would violate the tax, currency, exchange, commercial bribery, or other laws and regulations of the United States or any other applicable jurisdiction, including but not limited to the provisions of the U.S. Foreign Corrupt Practices Act (15 USC.uu78dd-1 to 78dd-2) and any amendments thereto or any other similar laws or regulations in the jurisdiction where the Vendor is located or performing under this



Agreement. Vendor shall indemnify, defend and hold Plymouth harmless from any claims arising under this Article by reason of the actions of Vendor or any of its agents.

**28. GOVERNING LAW/SUBMISSION TO JURISDICTION**

This agreement shall be construed in accordance with the laws governing contracts made and to be performed in the State of Illinois, U.S.A., exclusive of the U.N. Convention on the International Sale of Goods. Vendor hereby consents to the jurisdiction of any local, state, or federal court located within the County of Cook or County of DuPage, State of Illinois and waives any objection which Vendor may have based on improper venue or FORUM NON CONVENIENS to the conduct of any proceeding in any such court.

**29. RIGHT OF ENTRY**

The Vendor shall include provisions allowing Plymouth Tube Company, its customers, and regulatory agencies Right of Entry to any place necessary to determine and verify the quality of contracted work, records, and material.

**30. RECORDS**

Vendor records as applicable to this order are to be retained by Vendor for a period of at least ten (10) years from the last shipment under the purchase order.

**31. NOTICES**

Notices shall be sent by nationally or internationally recognized overnight courier at the addresses shown on the Plymouth Purchase Order and shall be effective the date of actual delivery.

**32. PLYMOUTH CUSTOMER TERMS**

In cases where Plymouth customers dictate specific formats or requirements that involve Vendor activities or documentation, those requirement will be communicated to the Vendor in writing at the time of submission of the Purchase Order and shall be deemed incorporated conditions of the Purchase Order and these Terms and Conditions as if fully set forth.

**33. 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.

**34. ENTIRE AGREEMENT**

Except to the extent of any written documents agreed upon pursuant to this order signed and acknowledged by Vendor and Plymouth 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

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