

PLYMOUTH TUBE COMPANY ("PLYMOUTH")
ORDER ACKNOWLEDGEMENT / INVOICE
TERMS AND CONDITIONS
Effective 4/1/18

1. ACCEPTANCE

THE TERMS AND CONDITIONS AS HEREIN SET FORTH ARE INCORPORATED INTO PLYMOUTH'S WRITTEN ACCEPTANCE OF THE BUYER/PURCHASER ("BUYER") PURCHASE ORDER. THIS ACCEPTANCE SHOULD BE CAREFULLY COMPARED WITH BUYER'S ORIGINAL ORDER AND PLYMOUTH'S RESPONSE TO ACCEPT SUBJECT TO THE TERMS HEREIN. 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 IN WRITING WITHIN THREE (3) BUSINESS DAYS OF RECEIPT OF THIS ACKNOWLEDGEMENT, BUYER SHALL BE DEEMED TO HAVE SO CONSENTED TO THE TERMS HEREIN IF THE NOTICE OF OBJECTION IS NOT RECEIVED WITHIN SAID THREE (3) BUSINESS 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 NO EVENT WILL THE BUYER'S GENERAL TERMS AND CONDITIONS OR OTHER TERMS OF WHATEVER KIND APPLY, UNLESS PLYMOUTH HAS EXPRESSLY AGREED THERETO IN WRITING. **IN ANY EVENT, BUYER'S 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 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 Purchase Orders ("Purchase Orders") for PLYMOUTH Products ("Products") 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 in the Purchase Order and not set forth in this Acceptance, then freight shall be paid by Purchaser EX Works (Incoterms 2010).

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/TARIFFS

PLYMOUTH reserves the right to charge BUYER with the amount of any taxes or tariffs 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 CHANGES OR QUOTA CHANGES

In the event of any market changes resulting or causing an increase in the cost of raw materials or other charges or events affecting pricing, availability or production of the Goods under the Purchase Order, including but not limited to imposition of Tariffs or other import quotas beyond the commercially reasonable control of PLYMOUTH, which occurs on or after the date of PLYMOUTH'S date of acceptance of PLYMOUTH'S offer to produce the Goods, the pricing shall be increased to account for the additional costs and PLYMOUTH shall give notice of such to BUYER and the purchase price shall be deemed amended to reflect same. In the event of a quota imposition by any governmental entity of the raw materials to produce the products, Plymouth shall use commercially reasonable and equitable proportional allocations between all of its customers and the quantity or delivery dates for products shall be adjusted to account for same without penalty or breach of the Purchase Order.

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 in Section 13 herein or Market Change or Quota Changes as described in Article 5, 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, through no fault of PLYMOUTH 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 and indemnify 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 produced 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 BUYER 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. Risk of loss passes to BUYER upon delivery of Products to the freight carrier by PLYMOUTH. PLYMOUTH shall not be liable for any damage, loss or expense resulting from anything occurring during, or attributable to transportation, but for the commercially reasonable packing of the Products in accordance with the Purchase Order of BUYER. Title shall pass to BUYER upon delivery to BUYER by the carrier.

11. CLAIMS/WARRANTIES

- A. PLYMOUTH warrants to BUYER and its successors, assigns and customers that all Products provided under or covered by this Agreement (i) shall conform to the required specifications set forth in the Purchase Order, (ii) will conform to recognized industry standards of quality, (iii) shall be free from defects in all PLYMOUTH design, material, process of manufacture and PLYMOUTH'S workmanship, (iv) shall be lien free, and (v) be of new manufacture.
- B. PLYMOUTH'S warranties shall survive even after inspection, test and acceptance of, and payment for, the Products.
- C. PLYMOUTH warrants the Products for a period that is the earlier of (i) one (1) year after the Products are placed into commercial service for purposes other than testing, or (ii) eighteen (18) months from delivery of the Products to BUYER ("Warranty Period"). BUYER shall be responsible for maintenance of the Products upon receipt of such Products from PLYMOUTH during the period prior to and during installation to prevent any damage to the Products and for maintenance of the Products once installed in accordance with any PLYMOUTH specifications and normal reasonable commercial care and use.
- D. If during the Warranty Period, BUYER gives written notice of the failure of the Products to

comply with any of the warranties in this Section or elsewhere in this Agreement, PLYMOUTH shall be required, to either repair or to replace the defective nonconforming Products supplied, the option of repair or replacement being that solely of PLYMOUTH, with conforming Products within a commercially reasonable time period to meet BUYER'S commercially reasonable needs. Such repair or replacement of Products shall be at PLYMOUTH'S sole cost, with PLYMOUTH paying any normal and customary shipping costs similar to those expended at the original shipment. In the event PLYMOUTH cannot repair or replace the defective nonconforming Products with conforming Products, BUYER shall be entitled to either a refund for the cost of the defective nonconforming Products actually paid for per the original Purchase Order or at its option, may procure replacement of the defective-nonconforming Products from a third party and PLYMOUTH will be liable for the actual direct purchase cost of the conforming replacement Products in an amount not to exceed one hundred and five (105%) per cent of the original Purchase Order price paid to PLYMOUTH under the original Purchase Order for that portion of defective nonconforming Products plus shipping costs which shipping costs shall be the same per unit cost as in the original Purchase Order.

- E. If BUYER has not paid for the Products, then PLYMOUTH shall only be liable for any costs to procure such Products from a third party which exceed the original Purchase Order unit price up to five (5%) per cent over the original Purchase Order price and such shall be limited to only paying for the purchase replacement of the defective non-conforming Products and no other related costs. At PLYMOUTH'S option and request, BUYER shall return to PLYMOUTH all defective nonconforming Products. PLYMOUTH shall pay all shipping charges for such return.
- F. The foregoing shall be PLYMOUTH'S exclusive and sole limited liability for any warranty breach or failure to deliver the Products or the negligence of BUYER or its customer or third party in installation or use of the Products. The foregoing shall be BUYER'S and any customer of BUYER and any third party or legal entity's sole and exclusive remedy against PLYMOUTH at law or equity.
- G. Notwithstanding any language of limitation, exclusivity of remedy or disclaimer appearing elsewhere in any contract document related to the Products, no such language, clause or section will operate to diminish or expand the warranties or remedies specifically provided for breach of the warranties contained in this Section.
- H. The total of all damages shall not exceed the amounts aforesaid.
- I. The Products repaired or replaced pursuant to this Section entitled "Warranty" will be further warranted for one (1) year after the date such repair or replacement is completed or until the expiration of the original Warranty Period, whichever is later. Notwithstanding any language of limitation, exclusivity of remedy, or disclaimer appearing elsewhere in any Agreement related to the Products, no such language, clause or section will operate to diminish or expand the warranties or remedies specifically provided for breach of the warranties contained in this Section.

THE FOREGOING IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY PERFORMANCE GUARANTY (EVEN IF DISCLOSED TO PLYMOUTH) AND OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF THE SUPPLIER EXCEPT AS STATED.

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 Purchase Order and any other open Purchase 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 Products 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 cannot 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 an amount equal to twenty (20%) per cent of the balance of the Purchase Order after deduction of the foregoing.
- 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 ("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 underutilization of labor, equipment or facilities, except as specifically set forth herein.

PLYMOUTH'S liability for any reason shall not exceed the amount of the Purchase Order, subject to provisions of Section 11. In the case of claims for damages arising by reason of defective tubes as defined in Section 11, PLYMOUTH'S liability shall not exceed the amount due or paid for the defective tubes plus the amount set forth in Section 11 as applicable. 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 underutilization of labor, equipment or facilities. In all events, the BUYER shall be liable to the extent it has contributed to or caused the event giving rise to liability to PLYMOUTH or third parties.

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 nonperformance, 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 Products 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, indemnify and hold BUYER harmless for any infringement actions which are by reason of PLYMOUTH'S 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 AND EQUAL OPPORTUNITY

A. 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 PLYMOUTH will be in compliance with same.

- B. PLYMOUTH agrees that in connection with the performance of work under this agreement, that it will not 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. PLYMOUTH 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.
- C. To the extent required by law, PLYMOUTH shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) as to its performance under the Purchase Order. 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, 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, national origin, protected veteran status or disability.

20. NO CORRUPT PRACTICES

PLYMOUTH and BUYER hereby warrant and represent 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 PLYMOUTH Products 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 PLYMOUTH and BUYER are located or performing under this Agreement. BUYER and PLYMOUTH agree to indemnify, defend and hold the other harmless from any claims arising under this Article by reason of their actions or that of their agents.

21. 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.

22. 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.

23. NOTICES

Notices shall be sent by nationally and internationally recognized overnight courier at the address shown on the Purchase Order and shall be effective the date of actual delivery. The Parties may agree to email notices by separate agreement.

24. 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