

PHILLIPS & JOHNSTON, INC. (PJ Tube)
PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE:** Seller (as named on the face of the Confirming Purchase Order) has read and understands this Purchase Order Terms and Conditions ("POTC") and agrees that Seller's written acceptance or commencement of any work or service or provision of any goods/services under this POTC shall constitute Seller's acceptance of these terms and conditions only. All terms and conditions proposed by Seller which are different from or in addition to this POTC are unacceptable to Phillips & Johnston, Inc. (PJ Tube) ("Buyer") and are expressly rejected by Buyer, and shall not become a part of this POTC. Any modifications to this POTC shall be made in accordance with Paragraph 30.

2. **SHIPPING, BILLING AND FLSA CERTIFICATION:** Seller agrees (a) to properly pack, mark and ship goods in accordance with the requirements of Buyer and involved carriers in a manner to secure lowest transportation cost; (b) to route shipments in accordance with instructions from Buyer; (c) to make no charge for handling, packaging, storage, transportation or drayage of goods unless otherwise stated in this POTC, (d) to provide with each shipment packing slips with Buyer's POTC number marked thereon, (e) to properly mark each package with this POTC number, the factory information, and where multiple packages comprise a single shipment, to consecutively number each package; and (f) to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Buyer's instructions and carrier's requirements. The marks on each package and identification of the goods on packing slips, bills of lading and invoices shall be sufficient to enable Buyer to easily identify the goods purchased. Seller further agrees (a) to promptly render, after delivery of goods or performance of services, correct and complete invoices to Buyer, and (b) to accept payment by check or at Buyer's discretion, other cash equivalent (including electronic transfer of funds). Seller's invoice must include a certification that all goods were produced in compliance with the 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 in connection therewith. The payment date is set forth on the face side of this POTC, or if not stated, shall be on the 25th day of the month following Buyer's receipt of a proper invoice (except as may otherwise be agreed upon by Buyer and Seller). Time for payment shall not begin until correct and complete invoices are received, and Seller's cash discount privileges to Buyer shall be extended until such time as payment is due. Buyer may withhold payment pending receipt of evidence in such form and detail as Buyer may direct of the absence of any liens, encumbrances and claims on the goods or services under this POTC.

3. **DELIVERY SCHEDULES AND PRICE:** Deliveries shall be made both in quantities and at times specified in Buyer's schedules. Buyer shall not be required to make payment for goods delivered to Buyer which are in excess of quantities specified in Buyer's delivery schedules. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price for goods or services covered by this POTC or to any restock, interest or other fees/charges. For POTCs of goods where quantities and/or delivery schedules are not specified, Seller shall deliver goods in such quantities and times as Buyer may direct in subsequent releases. The price set forth in Buyer's purchase order shall be a firm price and shall not be subject to increase by Seller due to market conditions or otherwise.

4. **PREMIUM SHIPMENTS:** If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified by Buyer, Seller shall, at Buyer's option, (i) promptly reimburse Buyer the difference in cost between the more expeditious method and the original method, (ii) allow Buyer to reduce its payment of Seller's invoices by such difference, or (iii) ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment.

5. **CHANGES:** Buyer reserves the right at any time to direct changes, or cause Seller to make changes, to drawings and specifications of the goods or to otherwise change the scope of the work covered by this POTC, including work with respect to such matters as inspection, testing or quality control, and Seller agrees to promptly make such changes; any difference in price or time for performance resulting from such changes shall be equitably adjusted by Buyer after receipt of documentation in such form and detail as Buyer may direct. Any changes to this POTC shall be made in accordance with Paragraph 30.

6. **INSPECTION:** Seller agrees that Buyer shall have the right to enter Seller's facility at reasonable times to inspect the facility, goods, materials and any property of Buyer covered by this POTC. Buyer's inspection of the goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-progress or finished goods.

7. **NONCONFORMING GOODS:** To the extent Buyer rejects goods as nonconforming, the quantities under this POTC will automatically be reduced unless Buyer otherwise notifies Seller. Seller will not replace quantities so reduced without a new POTC or schedule from Buyer. Nonconforming goods will be held by Buyer for disposition in accordance with Seller's instructions at Seller's risk. Seller's failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling, or to dispose of the goods, without liability to Seller. Payment for nonconforming goods shall not constitute an acceptance thereof, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects.

8. **FORCE MAJEURE:** Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order, provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) days. During the period of such delay or failure to perform by Seller, Buyer, at its option, may purchase goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the goods from other sources in quantities and at time requested by Buyer and at the price set forth in this POTC. If requested by Buyer, Seller shall, within ten (10) days of such request, provide adequate assurance that the delay will cease within fifteen (15) days. Buyer may immediately cancel the POTC without liability.

9. **WARRANTY:** Seller expressly warrants that all goods or services covered by this POTC will conform to the specifications, drawings, samples, or descriptions furnished to or by Buyer, and will be merchantable, of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Buyer's intended use and expressly warrants that all goods covered by this POTC which have been selected, designed, manufactured, or assembled by Seller, based upon Buyer's stated use, will be fit and sufficient for the particular purposes intended by Buyer.

10. **INGREDIENTS/MATERIALS DISCLOSURE AND SPECIAL WARNINGS AND INSTRUCTIONS:** If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients/materials in the goods purchased hereunder; (b) the amount of one or more ingredients/materials; and (c) information concerning any changes in or additions to such ingredients/materials. Prior to and within the shipment of the goods purchased hereunder, Seller agrees to furnish to Buyer sufficient warning and notice in writing including appropriate labels on goods, containers and packing of any hazardous material which is an ingredient/material or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, and their respective employees of how to exercise that measure of care and precaution which will best prevent bodily injury to property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing shipped to Buyer.

11. **INSOLVENCY:** Buyer may immediately cancel this POTC without liability to Seller in the event of any of the following or any other comparable event: (a) insolvency of the Seller, (b) filing of a voluntary petition in bankruptcy by Seller; (c) filing of any involuntary petition in bankruptcy against Seller; (d) appointment of a receiver or trustee for Seller; (e) or execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment or assignment is not vacated or nullified within fifteen (15) days of such event.

12. **CANCELLATION FOR BREACH:** Buyer reserves, at its sole discretion, the right to cancel all or any part of this POTC, without liability to Seller, if Seller (a) repudiates or breaches any of the terms of this POTC, including Seller's warranties; (b) fails to perform services or deliver goods as specified by Buyer; or (c) fails to make progress so as to endanger timely and proper completion of services or delivery of goods, and does not correct such failure or breach within ten (10) days or such shorter period of time if commercially reasonable under the circumstances after receipt of written notice from Buyer specifying such failure or breach.

13. **TERMINATION:** In addition to any other rights of Buyer to cancel or terminate this POTC, Buyer may at its option immediately terminate all or any part of this POTC, at any time and for any reason, by giving written notice to Seller. Upon such termination, Buyer shall pay to Seller the following amounts without duplication (a) the POTC price for all goods or services which have been completed in accordance with this POTC and not previously paid for; and (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods or services under this POTC to the extent such costs are reasonable in amount as determined by Buyer in its sole discretion and is properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this POTC, less the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent, and the cost of any damaged or destroyed goods or material. Buyer will make no payments for finished goods, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in delivery releases nor for any undelivered goods which are in Seller's standard stock or which are readily marketable. Payments made under this Paragraph shall not exceed the aggregate price payable by Buyer for finished goods which would be produced by Seller under delivery or release schedules outstanding at the date of termination. **Except as provided in this Paragraph, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, consequential damages, exemplary damages, interest on claims, time price differentials, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges from termination of this POTC.** Within thirty (30) days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer, with sufficient supporting data to permit Buyer's audit, and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Buyer, or its agents, shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim of Seller.

14. **INTELLECTUAL PROPERTY:** Seller agrees: (a) to defend, hold harmless and indemnify Buyer, its successors and customers against all claims, demands, losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or mask work right by reason of the manufacture, use or sale of the goods or services provided under the POTC, including infringement arising out of compliance with specifications furnished by Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions; (b) to waive any claim against Buyer under the Uniform Commercial Code or otherwise, including any hold harmless or similar claim, in any way related to a claim asserted against Seller or Buyer for patent, trademark, copyright or mask work right infringement or the like, including claims arising out of compliance with specifications furnished by

Buyer; and (c) to grant to Buyer a worldwide, nonexclusive, royalty-free, irrevocable license to repair and have repaired, to reconstruct and have reconstructed the goods ordered under the POTC hereunder. Seller assigns to Buyer all right, title and interest in and to all trademarks, copyrights and mask work rights in any material created for Buyer under this POTC. Seller acknowledges that Buyer has not transferred to Seller any interest in intellectual property provided by Buyer, and that Buyer shall continue to own such intellectual property and any additions to it by Seller without any claim whatsoever by Seller. Seller agrees that it shall neither disclose to third parties any Confidential Information (as defined herein) nor use any of such Confidential Information for any purpose other than to provide the goods or services covered by this purchase POTC. Except as otherwise provided here, "Confidential Information" means and includes all information of or concerning Buyer and its products, whether or not in writing, which has been disclosed to Seller or which Seller may otherwise learn during the course of discussions concerning this POTC and the product(s) or their material parts, including without limitation the issuance of and the contents of Buyer's POTC and any information concerning business processes, business plans, business methods, finances, know-how, inventions, trade secrets, patents, formulas, discoveries or other information of any nature whatsoever which Buyer has directly or indirectly created or otherwise acquired or which is involved in the operation of the business carried on by Buyer. Notwithstanding the foregoing, the term "Confidential Information" shall not include information which the Seller can show (i) was transmitted to Seller by Buyer for the express purpose of permitting Seller to disclose such information to third parties; (ii) was known or became known to the general public in the country in which Seller is located without disclosure by Seller or Buyer; (iii) was known to Seller before Seller became involved in discussions with Buyer concerning its POTC or the products, as evidenced by any written document which is properly in possession of the Seller; or (iv) was legally acquired by Seller from a third party and in good faith, provided that the disclosure to Seller by the third party was not in breach of any agreement or confidential relationship between such third party and Buyer. Without limiting the generality of the foregoing, Seller shall not take any action which shall infringe upon any patent held by Buyer or which shall cause in any manner any diminution in value of any patent or other intellectual property owned by Buyer. Without limiting the generality of the foregoing, Seller agrees that in consideration of the issuance by Buyer of any purchase order/POTC to Seller, Seller shall maintain as confidential and not disclose or permit any employee of Seller to disclose to any third party the fact of issuance or the contents of Buyer's POTC regardless of whether Seller accepts such purchase POTC, issues a quotation for the product(s) described, or accepts Buyer's POTC.

15. **TECHNICAL INFORMATION DISCLOSED TO BUYER:** Seller agrees not to assert any claim with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the goods or services covered by this POTC.

16. **INDEMNIFICATION:** If Seller performs any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises, Seller shall indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including reasonable attorney fees) for damages to the property of or injuries (including death) to Buyer, its employees or any other person arising from or in connection with Seller's performance of work or use of Buyer's property, except for such liability, claim or demand arising out of the sole negligence of Buyer.

17. **INSURANCE:** Seller shall maintain insurance coverage in amounts not less than the following (a) workers' Compensation - Statutory Limits for the state or states in which this POTC is to be performed (or evidence of authority to self-insure); (b) Employer's Liability \$250,000; (c) Comprehensive General Liability (including Products/Completed Operations and Blanket Contractual Liability)- \$1,000,000 per person, \$1,000,000 per occurrence, Personal Injury, and \$1,000,000 per occurrence Property Damage combined single limit; and (d) Automobile Liability (including owned, nonowned and hired vehicles) - \$1,000,000 per person, \$1,000,000 per occurrence Personal Injury and \$1,000,000 per occurrence Property Damage, or \$1,000,000 per occurrence Personal Injury and Property Damage combined single limit. At Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the

amount(s) of coverage policy number(s) and date(s) of expiration for insurance maintained by Seller and if further requested by Buyer, such certificates will provide that Buyer shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverages. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under this POTC. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this POTC and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

18. **TOOLS:** Unless otherwise agreed to by Buyer, Seller at its own expense, shall furnish, keep in good condition, and replace when necessary all tools, jigs, dies, gauges, fixtures, molds and patterns ("Tools") necessary for the production of the goods. The cost of changes to the Tools necessary to make design and specification changes authorized by Buyer shall be paid for by Buyer only if agreed in writing. Seller shall insure the Tools with fire and extended coverage insurance for the replacement value thereof. Seller grants Buyer an irrevocable option to take possession of and title to the Tools that are special for the production of the goods upon payment to Seller of the book value thereof less any amount which Buyer has previously paid to Seller for the cost of such tools; provided, however, that this option shall not apply if such Tools are used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others.

19. **BAILED PROPERTY:** All supplies, materials, tools, jigs, die, gauges, fixtures, molds, patterns, equipment and other items furnished by Buyer, either directly or indirectly, to Seller to perform this POTC, or for which Seller has been reimbursed by Buyer, shall be and remain the property of Buyer. Seller shall bear the risks of loss of and damage to Buyer's property. Buyer's property shall at all times be properly housed and maintained by Seller, shall not be used by Seller for any purpose other than the performance of this POTC; shall be deemed to be personalty; shall be conspicuously marked "Property of Buyer" by Seller; shall not be commingled with the property of Seller or with that of a third person; and shall not be moved from Seller's premises without Buyer's prior written approval. Upon the request of Buyer, such property shall be immediately released to Buyer or delivered to Buyer by Seller, either (i) F.O.B. transport equipment at Seller's plant, properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property, or (ii) to any location designated by Buyer, in which event Buyer shall pay to Seller the reasonable cost of delivering such property to such location. Buyer shall have the right to enter onto Seller's premises at all reasonable times to inspect such property and Seller's records with respect thereto.

20. **REMEDIES:** The rights and remedies reserved to Buyer in this POTC shall be cumulative, and additional to all other or further remedies provided in law or equity. To the extent Buyer pursues any rights, remedies or defenses which it may have relative to this POTC, Seller agrees to pay Buyer's actual costs and attorney fees relative to the same so long as Buyer prevails on any part of the same. Seller agrees to be responsible for any injury/damage caused by Seller's breach of this POTC.

21. **DUTY DRAWBACK RIGHTS:** This POTC includes all related customs, duty and import drawback rights, if any, (including rights developed by substitution and rights which may be acquired from Seller's suppliers) which Seller can transfer to Buyer. Seller agrees to inform Buyer of the existence of any such rights and upon request to supply such documents as may be required to obtain such drawback.

22. **SETOFF:** In addition to any right of setoff provided by law, all amounts due Seller shall be considered net indebtedness of Seller to Buyer and its subsidiaries, and Buyer may deduct any amounts due or to become due from Seller to Buyer and its subsidiaries from any sums due or to be come due from Buyer to Seller.

23. **GOVERNMENT COMPLIANCE:** Seller agrees to comply with all federal, state and local law, Executive Orders, rules, regulations and ordinances which may be applicable to Seller's performance of its obligations under this POTC. **CONFLICT MINERALS** Seller hereby warrants that none of the goods sold under this agreement include Conflict Materials from the Democratic Republic of the Congo or any of its adjoining countries. Terminology used in this section is as defined or used in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any rules and regulations promulgated in support thereof.

24. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION:** This POTC incorporates by reference (a)

all provisions of 41 C.F.R. 60.1.4 as amended, pertaining to the equal opportunity clause in government contracts; (b) all provisions of 41 C.F.R. 60.250, as amended, pertaining to affirmative action for disabled veterans of the Vietnam. Era; and (c) all provisions of 41 C.F.R. 60.741, as amended, pertaining to affirmative action for handicapped workers. Seller certifies that it is in compliance with all applicable provisions of 41 C.F.R. 60.1, including but not limited to: (a) developing and presently having in full force and effect a written affirmative action compliance program for each of its establishments as required by 41 C.F.R. 60.1.40 as amended; (b) filing EE0-1 Reports as required by 41 C.F.R. 60.1,7 as amended; and (c) neither maintaining segregated facilities nor permitting its employees to perform services at segregated facilities as prohibited by 41 C.F.R. 60.1.8 as amended. Buyer requests that Seller adopt and implement a policy to extend employment opportunities to qualified applicants and employees on an equal basis regardless of an individual's age, race, color, sex, religion or national origin.

25. **NO IMPLIED WAIVER:** The failure of Buyer at any time to require performance by Seller of any provision of this POTC shall in no way affect its right to require such performance at any time hereafter, nor shall the waiver of any breach of any provision of this POTC constitute a waiver of any succeeding breach of the same or any other provision.

26. **NONASSIGNMENT:** Seller may not assign or delegate its obligations under this POTC without Buyer's prior written consent. In the event that Seller assigns its obligations under this POTC without Buyer's prior written consent, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this POTC and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

27. **RELATIONSHIP OF PARTIES:** Seller and Buyer are independent contracting parties and nothing in this POTC shall name either party the agent or legal representative of the other for any purpose whatsoever nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

28. **GOVERNING LAW AND ARBITRATION:** This POTC is to be construed according to the laws of the state of Michigan. Any dispute between the parties shall be determined in either the State or Federal Court courts which includes within the geographic border the County of Kent, State of Michigan, and such court(s) shall be the exclusive forum for such dispute. Buyer may, at its sole option, submit any dispute between the parties to binding arbitration pursuant to the Rules of the American Arbitration Association.

29. **SEVERABILITY:** If any term of this POTC is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, POTC or rule, and the remaining provisions of this POTC shall remain in full force and effect.

30. **ENTIRE AGREEMENT:** This POTC, together with the attachments, exhibits, or supplements, specifically referenced in this POTC, constitutes the entire agreement between Seller and Buyer with respect to the matter contained herein and supersedes all prior oral or written representations and agreements. This POTC may only be modified by a purchase POTC amendment alteration issued by Buyer and signed by an authorized agent of Buyer.