

TOM SMITH INDUSTRIES, INC.
VENDOR TERMS AND CONDITIONS

Unless otherwise agreed to in writing and regardless of the language in any invoice, order acknowledgement, sales acceptance, sales order or other preprinted form, these Terms and Conditions constitute the only Terms and Conditions under which Tom Smith Industries, Inc. (“TSI”) is willing to purchase the products and/or services specified on TSI’s purchase order from its supplier identified on the same form (“Vendor”).

1. Applicability

These Terms and Conditions are incorporated by reference into TSI’s purchase order and any and all purchases by TSI from Vendor shall be governed by and subject to these Terms and Conditions, and, by Vendor’s sale of the items to TSI as set forth in the purchase order from TSI, Vendor is agreeing to be bound by these Terms and Conditions. These Terms and Conditions are subject to change periodically and Vendor agrees to be bound by any such revised Terms and Conditions.

These Terms and Conditions, which are incorporated into any and all TSI purchase orders and amendments thereto, and include any supplementary sheets, schedules, exhibits, riders, and attachments annexed hereto by TSI, contain the complete and entire agreement between TSI and Vendor, and supersede any other communications, representations, or agreements, whether verbal or written with respect to the subject matter hereof.

2. Delivery

If delivery of goods or performance of services is not completed by the time and/or date specified, then TSI reserves the right without liability, in addition to all other remedies available to TSI at law, to terminate TSI’s agreement with Vendor. Upon the occurrence of a late delivery or partial shipment by Vendor, TSI may, at its option, either approve a revised delivery schedule and/or service performance schedule, or terminate TSI’s agreement with Vendor, with the right to reject the goods and or services in whole or in part, in addition to any other remedies available to TSI. Should TSI agree to accept partial or late deliveries in lieu of a single delivery, Vendor agrees to pay, at no expense to TSI, all additional expenses, losses or costs reasonably incurred as a result of the Vendor’s failure to accomplish a timely single delivery.

3. Packaging & Shipping

All goods shall be properly packaged, labelled, marked, and shipped in accordance with TSI’s shipping and logistics policies, pursuant to TSI’s specific shipping instructions to Vendor, and in accordance with all applicable federal, state, and local laws, rules, and regulations. This shall include, but not be limited to:

- a. Packaging.** This shall be sufficient to reasonably protect product from damage while in-transit.
- b. Labelling/Marking.** At a minimum, all containers shall clearly show the correct Item Code, Quantity per Container, Lot Number, Date and Purchase Order Number for the product.

TOM SMITH INDUSTRIES, INC.
VENDOR TERMS AND CONDITIONS

- c. Shipping.** Each shipment shall be accompanied by a Packing Slip, Certificate of Analysis (COA) and/or Safety Data Sheet (SDS), if necessary. In the event the shipment includes more than one (1) container, the container bearing the Packing Slip shall be clearly identified. In the event information on the Packing Slip is unclear with regard to any basic product or shipment information (including but not limited to Item Code, Quantity per Container, Lot Number, Date and Purchase Order Number), TSI reserves the right to refuse the order and/or correct the Packing Slip upon receipt for such errors or omissions.
- d. Advanced Paperwork.** Paperwork for shipments may be sent in advance to purch@tomsmithindustries.com but still must accompany all shipments as indicated in section 3c. Packaging and Shipping. If new resins or chemicals are being brought into the building, whether via shipped or carried in by a vendor, a Safety Data Sheet must be sent prior to the resin being brought or shipped to the building. The chemical or resin must be approved via an internal process before it will be received by TSI associates.

4. Billing

Vendor shall prepare and deliver billing documentation according to the following specifications:

- a. Invoices.** These must be provided within five (5) business days following shipment, and must display the TSI purchase order number clearly.
- b. Prepaid Freight.** In the event the Invoice includes charges for prepaid freight, a copy of the carrier's billing for said freight must accompany the invoice.
- c. Purchase Discounts.** In the event TSI claims payment period-based purchase discounts offered by Vendor, the discount period shall be computed from the date of delivery of the materials or services, or the date of receipt of a valid and correct invoice, whichever is later.
- d. Mode of Conveyance.** Invoices shall be conveyed to TSI via email, USPS or other courier delivery, facsimile transmission, or other means as directed by TSI.

5. Warranty

Vendor warrants that all goods and services sold hereunder shall:

- a.** Be free from defects in material and workmanship;
- b.** Be sellable;
- c.** Comply with all specifications, drawings, samples, or other descriptions furnished or specified by TSI;
- d.** Comply with all applicable Federal Motor Vehicle Safety Standards;
- e.** Be manufactured in accordance with the quality and reliability standards and policies established by TSI for its suppliers; and
- f.** Comply with all other warranties implied or provided for by law.
- g.** Meet all the statutory and regulatory requirements for the country of shipment, the country of receipt, and (if provided) the country of destination for TSI's customer.

Vendor shall indemnify and reimburse TSI for all damages or costs (including labor charges)

TOM SMITH INDUSTRIES, INC.
VENDOR TERMS AND CONDITIONS

incurred by TSI as a result of Vendor's breach of these warranty obligations. These warranty obligations shall survive any termination or expiration of these Terms and Conditions. TSI shall also have available to it all other remedies implied or provided for by law.

6. Inspection

All goods and services provided by Vendor shall be received, subject to TSI's inspection and may be rejected by TSI at any time if found to be defective, damaged, or otherwise non-conforming to these Terms and Conditions or to Vendor's warranty obligations.

7. Subcontracting/Assignment/Labor Matters

Vendor may not subcontract any or all of the manufacture or supply of goods or services without the prior written consent to such subcontract by TSI. In the event of any such subcontracting, Vendor shall continue to be solely responsible for all obligations of Vendor under these Terms and Conditions.

Vendor's rights and obligations under these Terms and Conditions shall not be assigned or otherwise transferred, in any manner by Vendor without the prior written consent of TSI.

- a. If any TSI purchase order covers the performance of labor for TSI or involves operations by Vendor on the premises of TSI or one of its customers, Vendor shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work and, except to the extent that such injury is due solely and directly to TSI's or its customer's negligence, as the case may be, shall indemnify and protect TSI against all liability, claims, or demands for injuries or damages to any person or property growing out at the performance of this contract, including the cost of defending against any such claim. Vendor further agrees to furnish insurance carrier's certificates showing that Vendor has adequate Worker's Compensation, Employer's Liability, General Comprehensive Liability, and Automobile Liability insurance coverages. Said certificates must set forth the amount of coverage, number of the policy, and the date of expiration, and must provide that said policy shall not be canceled without ten (10) days written notice to TSI. If Vendor is a self-insurer, the certificate of the appropriate state agency of the state in which said labor is to be performed must be furnished by such state agency directly to TSI.
- b. When in the performance of work under these Terms and Conditions, it is necessary for Vendor, its agents, employees, representatives, or subcontractors, to perform work on TSI's premises, Vendor agrees that such agents, employees, representatives, or subcontractors shall be obligated to maintain the confidentiality of any information obtained while onsite.

8. Intellectual and Other Property

Vendor warrants that the sale or use of goods ordered herein and the sale or use of goods ordered herein in combination with Vendor's specifications or recommendations will not infringe on any patents, copyrights, industrial design rights, or other proprietary or intellectual property rights of Vendor or others, and covenants that Vendor (at Vendor's expense, upon demand by TSI) will investigate and deal with every claim that may be made and defend every

TOM SMITH INDUSTRIES, INC.
VENDOR TERMS AND CONDITIONS

suit, action, or proceeding that may be brought against TSI or against those selling or using any product of TSI for any alleged infringement of any patent, copyright, industrial design right, or other proprietary or intellectual property rights by reason of the sale or use of such goods in combination in accordance with Vendor's specifications or recommendations, and will pay all costs, damages, expenses, and judgments that TSI and those using or selling TSI's products may sustain by reason of any such claim, suit, action, or proceeding. Vendor hereby grants TSI a non-exclusive, royalty-free, irrevocable license to repair, rebuild, and relocate, and to have repaired, rebuilt, and relocated the goods purchased by TSI under these Terms and Conditions. All technical information disclosed by Vendor to TSI in connection with the goods or services supplied under or pursuant to these Terms and Conditions is disclosed or will be disclosed on a non-confidential basis. Vendor shall not use in any manner any trademarks, trade names, trade dress, or other marks which are owned or controlled by TSI or which TSI is licensed to use except to apply, use, or affix them to goods supplied by Vendor at such place and in such manner as shall be designated in writing by TSI.

Unless otherwise agreed to in writing by TSI, all tools, equipment, or material of every description furnished to Vendor by TSI, or specifically paid for by TSI, and any replacement thereof or any material affixed or attached thereto, shall be and remain the personal property of TSI. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Vendor as "Property of Tom Smith Industries" and shall be safely stored separate and apart from Vendor's property. Vendor shall not substitute any property for TSI's property and shall not use such property except in fulfilling the requirements of purchase orders issued by TSI. Such property shall be subject to removal at TSI's written direction, in which event Vendor shall prepare such property for shipment and shall redeliver to TSI in the same condition as originally received or manufactured by Vendor, reasonable wear and tear excepted.

It is agreed that any part made according to TSI's own designs and/or specifications, or to the designs and/or specifications of TSI's customer, will not be furnished by Vendor to any other person, firm, or corporation. Nor shall any parts be produced from TSI's dies, tools, patterns, or replacements thereof, for any other person, firm, or corporation without TSI's written permission. Upon completion of the work by Vendor, Vendor shall promptly return to TSI all drawings, specifications, and other data furnished by TSI, together with all copies or reprints thereof in Vendor's possession or control. If drawings, data, and written information or copies thereof are made available to persons other than Vendor (after TSI's written consent), similar restrictions will be placed upon them by Vendor.

9. Remedies/Waiver

The warranties and remedies available to TSI under these Terms and Conditions shall be cumulative and in addition to those implied or available at law. No waiver of any breach of any provision of these Terms and Conditions shall be construed to constitute a waiver of any other breach of any other provisions hereof.

10. Compliance with Law

Vendor agrees that in the manufacture and sale of goods and the furnishing of services, if any,

TOM SMITH INDUSTRIES, INC.
VENDOR TERMS AND CONDITIONS

to TSI, Vendor shall comply with all applicable federal, state, and local laws including, without limitation, the Federal Occupational Safety and Health Act of 1970, the Federal Hazardous Substances Act, the Transportation Safety Act of 1974, the Hazardous Materials Transportation Act, the Clean Air Act, the Toxic Substance Control Act, The Federal Water Pollution Control Act, and Sections 6, 7, and 12 of the Fair Labor Standards Act, and such amendments to such Acts and regulations and orders as may be promulgated thereunder. In addition, if applicable to the goods manufactured and sold and/or the furnishing of services hereunder, Vendor shall comply with executive Orders 11246, 11375, and 11458, Section 503 of the Rehabilitation Act of 1973 and Section 402 of the Vietnam Veterans Readjustment Act, all relating to equal employment opportunity. These Terms and Conditions incorporate by reference all provisions of the applicable foregoing laws, regulations, and orders.

11. Conflicting Language

In the event of a conflict between these Terms and Conditions and any other terms and conditions on any other contracts, invoices, or other documents of Vendor (collectively, the "Vendor Documents"), or any purchase orders or other documents generated by TSI (collectively the "TSI Documents"), these Terms and Conditions shall control and take precedence.

12. Force Majeure

Vendor shall not be liable for its failure to perform hereunder, in whole or in part, due to strikes, riots, war, fire, acts of God, global pandemics, terrorist activities, or compliance with any law, regulation or order, whether valid or invalid, of the United States of America, or any other governmental body or any instrumentality thereof, whether now existing or hereafter created. Vendor shall immediately notify TSI of any inability to perform any obligation required under this agreement as a result of any of the foregoing.

13. Indemnity

Vendor shall defend, indemnify, and hold harmless TSI, its officers, directors, agents and employees from and against any and all losses, costs, liabilities, damages, expenses (including without limitation reasonable attorney's fees and expenses), claims, demands, actions, and causes of action (collectively, "Claims") arising from or relating to Vendor's performance of the work or provision of the services pursuant to the purchase order in any way occasioned by an act or omission of Vendor or any of its officers, directors, agents, employees, or contractors. Prior to commencing work, Vendor shall furnish to TSI a certificate of insurance showing that Vendor carries public liability insurance, property damage insurance, and worker's compensation insurance with insurers and in amounts acceptable to TSI. All such policies of insurance shall contain appropriate endorsements naming TSI as an additional insured, extending coverage thereof to contractual liability expressly assumed by Vendor and requiring the insurer to give TSI thirty (30) days' prior written notice of any cancellation or substantial change of coverage. The failure by Vendor to furnish TSI with such certificate of insurance, or the failure by TSI to obtain such certificate of insurance, shall not constitute a waiver of the requirement for such certificate or of any other provisions of these Terms and Conditions.

TOM SMITH INDUSTRIES, INC.
VENDOR TERMS AND CONDITIONS

14. Severability

The invalidity or unenforceability of any provision of these Terms and Conditions shall not affect the validity or enforceability of any other provision of these Terms and Conditions.

15. Choice of Law

These Terms and Conditions, along with any other document generated by TSI or Vendor shall be construed and interpreted in accordance with the laws of the State of Ohio. The venue for any litigation related in any way to TSI's purchase of the products and/or services from Vendor, and/or to these Terms and Conditions, shall be the courts located in Montgomery, County, Ohio, and Vendor specifically consents to the jurisdiction of these courts and waives any objection or defense based on improper venue or lack of jurisdiction. Vendor irrevocably waives its rights to trial by jury in any action arising out of or related to performance under these Terms and Conditions.

16. Change Orders

TSI reserves the right at any time to make changes in any one or more of the following:

- a. Quantity
- b. Specifications, drawings, and data
- c. Methods of packaging or shipment

No such changes shall be valid or binding upon TSI unless incorporated in a change order or additional order signed by an authorized representative of TSI.

17. Price Changes

During the term of TSI's agreement with Vendor, Vendor shall not increase the price it charges TSI for the product and/or service provided by Vendor to TSI without the prior notification and authorization of TSI. This notification or authorization needs to be made at least 60 days in advance. Any such price increase by Vendor without the prior written consent of TSI shall be null and void, and of no force or effect.

**TOM SMITH INDUSTRIES, INC.
VENDOR TERMS AND CONDITIONS**

THIS REPRESENTS THE TERMS AND CONDITIONS AGREED TO BY TSI AND VENDOR.
NO OTHER TERMS AND/OR CONDITIONS SHALL APPLY UNLESS STIPULATED AND
AGREED TO IN WRITING BY BOTH PARTIES UNDER A SEPARATE AGREEMENT.

TOM SMITH INDUSTRIES, INC.

VENDOR

SIGNED

SIGNED

PRINT NAME

PRINT NAME

DATE SIGNED

DATE SIGNED