

Summerill High Precision Tube LLC Purchase Order Terms and Conditions

1. **Acceptance of Order** - Seller agrees that the following terms and conditions will control its performance and the performance of Buyer under this order. If Seller is a supplier/subcontractor of a product processing or service, acknowledges that Buyer is an SAE AS9100 and ISO9001 registered company and as such requires seller to comply to the general procurement specification listed under in Appendix 1. Seller agrees to acknowledge this order on the attached acknowledgment copy and to return said copy promptly to Buyer at the address appearing on the face of this order. The acknowledgment may be transmitted to Buyer by an automated transaction. In such event, the acknowledgment shall contain an electronic signature of Seller. The transmission of the acknowledgment shall be conducted in accordance with the requirements of the Electronic Transactions Act: 73 Pa.C.S.A. Section 2260.101, et seq. Should Seller accept this order by automated transaction or in any other manner, Buyer **PREEMPTIVELY OBJECTS TO THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS** proposed by Seller in said acceptance, and if they are included in said acceptance, a contract of sale will result upon Buyer's terms stated herein. If this order responds to a quotation by Seller, Seller agrees that the following terms and conditions shall supersede any terms or conditions contained in said quotation or relating thereto.

2. **Changes** - In accordance with paragraph 22, Buyer reserves the right to make changes at any time in (a) work to be performed or materials to be furnished, (b) drawings, designs or specifications applicable to said work or materials, (c) methods of shipment and packing, and (d) time and place of delivery including temporary suspensions of shipments. If any such change causes an increase or decrease in the cost of, or the time required for performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of notice of the change. Price increases or extensions of time for delivery shall not be binding on Buyer unless evidenced by a purchase order change notice issued by Buyer.

3. **Delivery** - Time is of the essence in this contract, and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right, without liability and in addition to its other rights and remedies, to terminate this contract by notice effective upon receipt by Seller as to stated items not yet shipped or services not yet rendered, and to purchase substitute items or services elsewhere and charge Seller with any loss, expenses, incidental or consequential damages incurred or suffered. Any provisions herein for delivery of articles or the rendering of services by installments shall not be construed as making the obligations of Seller severable. Shipment sent C.O.D. without Buyer's written consent will not be accepted and will be at the Seller's risk regardless of F.O.B. point. Transportation charges on goods sold, delivered destination, must be prepaid. No insurance charge which increases shipping cost will be allowed unless authorized by Buyer. Regardless of F.O.B. point, Seller will handle all claims regarding loss or damage of material in transit, and billing and payment for such material will be held in abeyance until claim is resolved. Goods must be shipped as per instructions, and failure so to ship will cause Buyer to bill any extra handling charge back to Seller.

4. **Inspection** - Materials or equipment purchased hereunder are subject to inspection and approval at the place designated by Buyer or at Buyer's destination. For a reasonable time from delivery or until such time as the material purchased hereunder is used by Buyer, whichever is longer, Buyer reserves the right to reject, refuse or revoke acceptance, and to return items which are not in accordance with Seller's warranty as described in paragraph 7. Buyer will charge Seller for the cost of inspecting the merchandise rejected. Items not accepted will be returned to Seller at Seller's expense. Buyer reserves the right to place in Seller's plant, at Buyer's expense, an inspector or inspectors who will be permitted to inspect any material on this order before shipment or during the process of manufacture.

5. **Payment** - Regardless of shipment or payment terms, payment for any article hereunder shall not be deemed an acceptance thereof. If payment by installments is permitted under this order, Seller waives any right to accelerate the amount due by reason of a failure by Buyer of whatever duration to pay one or more installments.

6. **Advance Manufacture and Shipments** - Seller shall not manufacture in advance of Seller's normal flow time or deliver any material in advance of the schedule set forth in this order without Buyer's written permission. Buyer reserves the right to return at Seller's expense all material received at Buyer's plant in advance of the schedule applicable to this order. Seller may request Buyer's written consent to advance manufacture or delivery at that time of returning acknowledgment of this order. Material shipped in excess of quantity designated in this order or tolerance from quantity previously agreed to in writing may be returned at Seller's expense.

7. **Warranty** - By accepting this order, Seller warrants that the articles (a) are free from defects in materials, workmanship and fabrication, (b) are of the quality, quantity, size and dimension described, (c) are merchantable and fit for the particular purpose for which they are required. This warranty is nonexclusive, shall survive acceptance and payment and shall run to Buyer and its successors, assigns, customers and the users of its product. This warranty is in

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addition to any warranties given by Seller to Buyer, and Seller authorizes Buyer to extend Seller's warranties to Buyer's customers and the users of its products on the same terms as Buyer's warranty in effect at the time of shipment to said customers or users. In the event that any article sold and delivered shall be defective in any respect whatsoever, Seller will indemnify and hold harmless Buyer from any and all loss, costs (including counsel fees) for damages (including incidental and consequential damages) which Buyer may sustain or become liable for, in whole or in part, by reason of said defect, whether said loss, costs or damages result from injuries to the person or property, and whether said liability is premised on contract or on tort (including without limitation strict liability).

8. **Patents** - Seller agrees to indemnify and save Buyer harmless from any and all claims for infringement of any patent, trademark, copyright, or industrial design covering any articles purchased hereunder or their use, including the cost (including counsel fees) of defending against said claims. Seller agrees to indemnify Buyer for all losses of whatever nature incurred as a consequence of injunctions against the sale, use or resale of said article. Any such claim of infringement, whether asserted against Buyer or Seller, and regardless of its validity, shall constitute cause for termination of this order if Buyer so decides, and damages to Buyer after such termination, in addition to the indemnities granted herein, shall be calculated in the same manner as damages for non-delivery.

9. **Non-Disclosure and Buyer's Property** - All drawings, specifications, artwork, patterns, information or data furnished by Buyer or developed by Seller in connection with this order shall be Buyer's exclusive property, shall be used by Seller only for Buyer's work, shall be kept confidential, and shall be returned promptly at Buyer's request. If any work relating to this order is, with Buyer's consent, assigned to subcontractors, Seller shall require a similar agreement from said contractors. Unless otherwise agreed in writing, all tools, patterns, equipment or material of every description furnished to Seller by Buyer or paid for by Buyer, any replacement thereof, and any material affixed or attached thereto shall be personal property of Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as Buyer's property, and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders.

10. **Prices** - In the event that the prices in effect at the date of acceptance of this order, for material or services specified in the order are reduced prior to the date of shipment of performance, or in the event that Seller shall quote lower prices to other purchasers under similar conditions and in similar quantities before completion of this order, Seller agrees to afford to Buyer the benefit of said reduction or lower prices. In the event of any increase in prices, Seller must notify Buyer of such increase and obtain Buyer's written acceptance prior to shipment or performance by Seller.

11. **Delays** - If Seller learns of any conditions or event which may cause a delay in the timely performance of this order, which condition or event would constitute force majeure as that term is generally understood, Seller must notify Buyer in writing of said condition or event and estimate time duration of the delay. Absent acknowledgment of said notification by Buyer, Seller must comply with the performance schedule otherwise applicable to this order.

12. **Compliance with Laws** - In accepting this order, Seller represents and warrants that it has complied and will continue to comply with all applicable federal, state and local laws and regulations in the production of material or performance of services under this order. If Buyer shall be held liable for any failure by Seller to comply with said laws and regulations, shall suffer any loss (including incidental and consequential damages) as a result of said noncompliance, the allegation thereof, or administrative or judicial action based thereon, or shall incur any expense (including counsel fees) in relation to said noncompliance or the allegation thereof, Seller shall indemnify and hold harmless Buyer to the full extent of such liability, loss or expense. Without limiting the generality of the foregoing, Seller warrants and agrees as follows: (a) all goods produced and services performed under this order shall be produced and performed in compliance with the Fair Labor Standards Act of 1938, as amended, and no shipment against this order shall be accepted by Buyer unless accompanied by an invoice or similar document bearing the following legend: "We hereby certify that these goods were produced in compliance with applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof"; (b) the products delivered to Buyer under this order comply with the provisions of the Federal Occupational Safety and Health Act of 1970, as amended, and with safety standards promulgated pursuant thereto, which provisions and standards are in effect on the date of shipment to Buyer. Seller will honor any reasonable request by Buyer for information necessary to determine whether the products comply with said provisions and standards, and in addition to other remedies of Buyer, Seller will replace at its expense, upon Buyer's request, all products found by Buyer or by official authority not to comply.

13. **Government Regulations** - To the extent applicable to this order, the following clauses are incorporated by reference: (a) the equal opportunity clause set out in 41 C.F.R. Section 60-1.4; (b) the listing of employment openings clause set out in 41 C.F.R. Section 1-12, 1102-2; and (c) the employment of the handicapped clause set out in 41 C.F.R. Section 1-12, 1304-1.

14. **Termination** - Buyer may, at any time, terminate this order in whole or in part by written or telegraphic notice, or

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oral notice confirmed in writing. If this order is terminated for Buyer's convenience and Seller is in full compliance with the conditions of this order, any claim by Seller shall be settled on the basis of reasonable costs it has incurred in the performance hereof. If, however, Seller has breached any condition of this order, whether said breach affects the entire order or one or more installments thereof, or if Seller becomes insolvent by any test, is voluntarily or involuntarily adjudicated bankrupt or subject to reorganization or rehabilitation under any applicable law, or appoints or suffers the appointment of a trustee, receiver or assignee for the benefit of creditors, Seller shall not be entitled to any costs, and Buyer shall have against Seller all remedies provided at law or equity.

15. **Resale Certification** - If this order is marked "Resale" the property hereunder is purchased for purposes of resale. The failure by Buyer so to mark this order, however, shall not affect Seller's liability to purchasers from Buyer under the provision hereof.

16. **Right of Setoff** - Buyer shall have the right at any time to setoff any amount owed by Seller to Buyer or any of its affiliated companies (including other divisions or subsidiaries of Sandvik, Inc.) against any amount due and owed to Seller on this order.

17. **Taxes** - Except as otherwise provided herein and unless prohibited by statute, Seller agrees to pay all federal, state or local sales, use, and transportation or excise tax which may be imposed upon the articles ordered or upon their sale, use or delivery.

18. **Indemnification** - Seller shall indemnify and hold harmless Buyer from and against any and all costs (including counsel fees), losses and damages of any nature relating to the performance by Seller hereunder and including without limitation claims made for property damage or personal injury (including death), whether said claims are premised on contract or on tort (including without limitation, strict liability). This indemnity will not apply where such damage or injury is attributable solely to the actions of Buyer or its customers, agents or employees.

19. **Insurance** - Where fulfillment of this order requires Seller to perform work on Buyer's premises, Seller shall procure and keep in force at its own expense such insurance as Buyer deems necessary from time to time. Evidence of such insurance shall be deposited with Buyer prior to commencement of the work.

20 – **Duty Drawback** - Should Buyer be entitled to make application for duty drawback with respect to any material imported by Seller to satisfy this order, Seller will provide, without cost to Buyer, the necessary information and documentation to enable Buyer to make such application.

21. **Packing and Crating** - All items shall be packed by Seller in suitable containers for protection in shipment and storage, and all such containers shall bear Buyer's name and this order number. Detailed packing slips are required. Prices set forth in this order include all charges for Seller's packing and crating and for transportation to F.O.B. point.

22. **Modification Agreement** - This order and any attachments hereto contain all of the agreements and conditions of this transaction, and no course of dealing or usage of trade shall be applicable unless expressly referred to herein. None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Buyer and delivered by Buyer to Seller. Any act by Buyer in accepting or paying for any shipment against this order, or any similar act, shall not constitute an acceptance of additional or different terms in Seller's quotation, acknowledgment, shipping documents or invoice, and said additional or different terms shall be null and void against Buyer.

23. **Shipment** - If, in order to comply with Buyer's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in this Purchase Order, any increased transportation cost resulting therefrom shall be paid for by Seller, unless it shall be established to Buyer's satisfaction that the necessity for rerouting is occasioned by factors over which Seller has no control, such as strikes, floods and acts of God.

24. **Invoices** - Must be rendered in duplicate immediately upon shipment of material. Invoices are paid from date of receipt of material and not on the basis of Seller's invoice date. All invoices must show Buyer's order number and routing.

25. **Packing Lists** - Must be enclosed in all shipments showing the Purchase Order number and exact quantity and description of goods shipped.

26. **Advertising** - Seller shall not, without first obtaining the written consent of Buyer, in any manner, advertise, publish or disclose the fact that Seller has contracted with Buyer to furnish the items or render the services herein ordered nor any of the details connected with this Purchase Order to any third party except as may be required to perform this Purchase Order. For failure to observe this provision, Buyer shall have the right, in addition to any other rights and

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remedies provided by law, to cancel this Purchase Order without any duty to accept deliveries after the date of such cancellation or to make further payments hereunder except for items delivered prior to such cancellation.

27. **Liens** - All items to be furnished hereunder and all property to be returned to Buyer shall be free and clear of any and all liens and encumbrances whatsoever, including, without limitation, mechanic's and materialman's liens. If requested by Buyer, Seller will execute an appropriate agreement waiving all liens against Buyer's property.

28. **Assignment** - Neither this Purchase Order nor any rights or obligations herein may be assigned or subcontracted by Seller, nor may Seller delegate the performance of any of its duties hereunder without, in either case, Buyer's prior written consent. The terms and conditions of this Purchase Order shall bind any permitted successors and assigns of Seller. Any consent by Buyer to assignment shall not be deemed to waive Buyer's right to recoupment and/or set off claims arising out of this or any other transactions with Seller, its divisions, affiliates or subsidiaries, or to settle or adjust matters with Seller without notice to permitted successors and assigns.

29. **Force Majeure** - Except as provided in paragraph 11 hereof, either party to this Purchase Order shall be free from liability for failing to perform hereunder if such failure is caused due to acts of God, labor difficulties, fires or other causes beyond the reasonable control of the affected party. In the event that the Seller is unable to perform for such reasons beyond its reasonable control, Buyer shall have the right to either continue the delivery dates until Seller is able to perform or terminate this Purchase Order.

30 – **Applicable Law** - The contract and any disputes related thereto shall be governed by the laws of the Commonwealth of Pennsylvania.

31 – **Disputes** - Any disputes between the parties shall be settled at the option of the Buyer either by (i) arbitration in Pittsburgh, Pennsylvania, in accordance with the provisions of the regulations regarding conciliation and arbitration of the American Arbitration Association, by one or more arbitrators appointed in the means prescribed in the said regulations, or (ii) by a court of competent jurisdiction in Pittsburgh, Pennsylvania.

ACKNOWLEDGED AND AGREED:

[Seller]

By: _____

Name:

Title:

Date: _____

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APPENDIX 1

Summerill High Precision Tube LLC (SHPT) is an SAE AS9100 and ISO9001 registered company. As a supplier/subcontractor of a product processing or services, seller agrees to comply to the following quality management system requirements:

Procurement Specification for External Services, Product Processing Providers, and Tooling

- I. Scope – This specification covers purchased product and processing including:
 - a. Calibration and Testing Services
 - b. Machining and external processing operations (e.g. seam welding, honing, burnishing, cut & machine.)
 - c. Specialized maintenance on key equipment
 - d. Tooling (e.g. dies, mandrels, plugs, tool coating, etc)

- II. Quality:
 - a. Calibration and testing services should preferably be accredited to a recognized standard.
 - b. Machining and external processing operations and tooling should preferably be registered to a recognized quality system standard.

- III. Documentation:
 - a. Calibration, testing, certified test reports, certificates of analysis should indicate or provide direct access to the accreditation or registration certificate with the current date and issuing accreditation / registration / certification body identified.
 - b. Calibration certificates should indicate traceability to national or international standards.
 - c. Calibration or test reports should indicate on the certificate consideration and compliance all of the standards and/or specifications to which SHPT has requested on the SHPT purchase order, along with the requirements specified in ISO 17025 for calibration certificates.
 - d. Tooling inspection reports should contain all appropriate dimensional inspection results.

- IV. Non-Conformance:
 - a. Deviations from the SHPT specification or purchase order requirements must be approved in writing by SHPT Purchasing or Quality Manager prior to providing the product or completion of service.

- V. Supplier Notification Requirements:
 - a. Product or service suppliers to SHPT are responsible to notify SHPT by writing of any changes to their product, processes, suppliers and facilities that affect the product or services provided to SHPT.
 - b. SHPT suppliers of product or service are required to flow down this requirement to any affected supplier subcontractor(s) or supplier(s). It is the responsibility of SHPT suppliers to assure supplier subcontractor/supplier changes are communicated to SHPT.

- VI. Supplier Records Retention:
 - a. SHPT suppliers are responsible to maintain records of product or services provided to SHPT for three (3) years minimum from the date of processing (20 years for nuclear suppliers).

- VII. Right of Access:
 - a. SHPT or its clients authorized representative shall be permitted access to the supplier or their sub-tier supplier's facilities and records for the purpose of performing in-process inspections, final inspections, or other inspections and audit activities pertinent to the items ordered.
 - b. Notice of such an audit, surveillance, or inspection will be communicated at least three (3) business days prior to arrival. Any such surveillance or inspection performed shall in no way relieve the supplier or the supplier's subcontractor of any responsibility for product or service quality.

- VIII. Personnel Responsibilities;
SHPT supplier personnel must be aware of:
 - a. Their contribution to product or service conformity
 - b. Their contribution to product safety
 - c. The importance of their ethical behavior