



Vendor Terms and Conditions

1. **ACCEPTANCE OF TERMS AND CONDITIONS** – The purchase by Prater Industries Inc. (“Prater”) of the goods and/or services specified in the written quotation, purchase order or invoice with Vendor (the “Purchase Order”) is expressly conditioned upon acceptance by Vendor of these terms and conditions. These terms and conditions, including any document attached hereto or incorporated by reference herein, are the only terms which govern the Purchase Order. No other terms and conditions shall be binding upon Prater unless accepted by it in a written contract signed by both parties. Any of the following acts by Vendor shall constitute acceptance of the Purchase Order and all of these terms and conditions: (a) signing and returning a copy of the Purchase Order, (b) delivery of any of the goods ordered; or (c) commencement of performance. Prater may withdraw the Purchase Order at any time before it is accepted by Vendor.
2. **PRICING** – Prater will not pay invoices at prices higher than the pricing indicated in the Purchase Order. If no price is included in the Purchase Order, the price shall be the most favorable applicable price offered by Vendor as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the price includes all packaging, transportation costs, insurance, customs duties, fees and applicable taxes, including but not limited to, sales, use or excise taxes. No increase in the price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Prater. Vendor represents that the prices charged for good and services covered by the Purchase Order are not, and will not be, in excess of the maximum prices therefore established by law and are the lowest prices charged by Vendor to any of its external buyer for similar volumes. If Vendor charges any other buyer a lower price, Vendor must apply that price to all goods and services, as applicable, under the Purchase Order. If Vendor fails to meet the lower price, Prater, at its option, may terminate the Purchase Order without liability.
3. **QUANTITIES** – The specific quantities ordered must be delivered in full and shall not be changed without the written consent of an authorized representative of Prater prior to shipment. If Vendor delivers more or less than the specific quantities ordered, Prater may reject all or any excess quantities. Any such rejected quantity shall be returned to Vendor at Vendor’s risk and expense. If Prater does not reject the unauthorized quantities and instead accepts delivery, the aggregate price shall be adjusted on a pro rata basis. Prater is not obligated to any minimum purchase or future purchase obligations under the Purchase Order.
4. **SHIPMENT OF GOODS** – Vendor shall deliver all goods to the address specified in the Purchase Order (the “Delivery Location”) during Prater’s normal business hours (unless otherwise instructed by Prater in writing), and delivery shall be made in accordance with the terms specified in the Purchase Order. All shipments of goods must be made according to Prater’s instructions, or if there are no instructions, in standard commercial containers capable of safe delivery to Prater to ensure that the goods are delivered in undamaged condition and at the lowest lawful transportation and insurance rates. Vendor must provide Prater prior written notice if it requires Prater to return any packaging material, and any return of such packaging material shall be made at Vendor’s expense. Commodity descriptions which produce the lowest lawful freight charges must be shown on bills of lading. Packing slips must be included with all shipments. Vendor shall deliver all goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “Delivery Date”). Prater and Vendor agree that time is of the essence in delivering the goods ordered. If Vendor fails to deliver the goods in full on the Delivery Date, Prater may terminate the Purchase Order immediately by providing written notice to Vendor and Vendor shall indemnify Prater against any losses, claims, damages and reasonable costs and expenses directly attributable to Vendor’s failure to deliver the goods on the Delivery Date. Shipments in advance of the Delivery Date shall not be made without Prater’s written approval. Prater reserves the right to return, at Vendor’s expense, any early shipments and/or delay payment for such early shipments until their scheduled due date, and Vendor shall redeliver such goods on the Delivery Date.
5. **IDENTIFICATION - RISK OF LOSS** – Identification of the goods under Section 2-501 of the Uniform Commercial Code shall occur at the moment that the Purchase Order is accepted. Title and risk of loss of the goods shall pass to Prater when the goods have actually been received and accepted by Prater at the Delivery Location, notwithstanding any contrary F.O.B. or similar designation elsewhere, and Vendor bears all risk of loss or damage to the goods until such time.
6. **INSPECTION/REJECTION OF GOODS** – Goods contemplated by the Purchase Order shall be subject to inspection by Prater from time to time on or after the Delivery Date notwithstanding prior inspection or payment for the goods. Prater shall have the sole right, exercisable within ninety (90) days of the receipt by it of the goods called for, to (a) reject all or any of such goods which do not conform to the requirements of the Purchase Order and/or these terms and conditions and, at Prater’s option, require prompt replacement of such rejected goods, (b) accept all or any of such goods which do not conform to the requirements of the Purchase Order and/or these terms and conditions at a reasonably reduced price or (c) rescind the Purchase Order in its entirety if any goods do not conform to the requirements of the Purchase Order and/or these terms and conditions. If Prater rejects any goods pursuant to this paragraph, (x) Prater shall have the right to cancel without liability any unshipped portion of the Purchase Order, (y) all rejected goods shall be fully refunded to Prater and returned to Vendor at Vendor’s sole risk and expense including, but not limited to, labor for removal, packing/crating, transportation to and from Prater’s designated location, and installation of replacement equipment, and (z) no rejected goods shall be replaced unless otherwise instructed by Prater in writing. Prater’s rights under this paragraph shall be in addition to its other rights under the Purchase Order and applicable law, and these terms and conditions shall not be deemed to diminish its rights and claims against Vendor. Inspection and acceptance of the goods shall not release Vendor of its warranties and shall not reduce or otherwise affect Vendor’s obligations under the Purchase Order, and Prater shall have the right to conduct further inspections after Vendor has carried out its remedial actions.
7. **PROVISION OF SERVICES** – Vendor shall: (a) before the date on which the services are to start, obtain, and at all times during the term of the Purchase Order, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the services; (b) comply with all rules, regulations and policies of Prater, including security procedures concerning systems and data and remote access thereto, building security procedures and general health and safety practices and procedures; (c) maintain complete and accurate records relating to the provision of the services under the Purchase Order, including records of the time spent and materials used by Vendor in providing the services in such form as Prater shall approve; (d) during the term of the Purchase Order and for a period of two (2) years thereafter, upon Prater’s written request, Vendor shall allow Prater to inspect and make copies of such records and interview Vendor personnel in connection with the provision of the services; (e) obtain Prater’s written consent prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Vendor, other than Vendor’s employees, to provide any services to Prater (each such approved subcontractor or other third party, a “Permitted Subcontractor”); provided, that, (x) Prater’s approval shall not relieve Vendor of its obligations under the Purchase Order, and Vendor shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of the Purchase Order as if they were Vendor’s own employees, and (y) nothing contained in the Purchase Order shall create any contractual relationship between Prater and any Vendor subcontractor or supplier; (f) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of the Purchase Order, and, upon Prater’s written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Prater; (g) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Vendor, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the services; (h) ensure that all



of its equipment used in the provision of the services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Prater; and (i) keep and maintain any Prater equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Prater's written instructions or authorization. Vendor shall perform said services during Prater's normal business hours unless otherwise instructed by Prater in writing. Prater and Vendor agree that time is of the essence with respect to Vendor's obligations. If Vendor delivers the services in an untimely manner or in violation of any terms of the Purchase Order, Prater reserves the right to (x) purchase the services elsewhere, in which case Vendor shall be responsible for any resulting expense, loss, or damage, and/or (y) cancel the Purchase Order in its entirety without liability. Costs for corrected services, plus any additional costs necessary to perform corrective services to Prater's satisfaction, will be the responsibility of Vendor.

8. **COMPLIANCE WITH LAW** – Vendor shall comply with all applicable laws, regulations and ordinances. Vendor shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Purchase Order and hereunder. Vendor shall comply with all export and import laws of all countries involved in the sale of the goods under the Purchase Order or any resale of the goods by Vendor. Vendor assumes all responsibility for shipments of goods requiring any government import clearance. Prater may terminate the Purchase Order if any governmental authority imposes antidumping or countervailing duties or any other penalties on goods.
9. **INVOICES/PAYMENT TERMS** – The Purchase Order number must be shown on all invoices, shipping documents, shipping labels and any other documents pertaining to the Purchase Order. Vendor must provide invoices in duplicate with copy of freight bill(s) (if applicable) on or after delivery. Prater shall pay all properly invoiced amounts due to Vendor per the terms specified in the Purchase Order after Prater's receipt of such invoice, except for any amounts disputed by Prater in good faith or withheld by Prater to offset a Vendor breach or failure to perform. All payments must be in U.S. dollars and may be made by check or wire transfer. In the event of a payment dispute, the parties shall seek to resolve all such items expeditiously and in good faith. Vendor shall continue performing its obligations under the Purchase Order notwithstanding any such dispute, and Prater may withhold any payments to Vendor until such dispute is resolved.
10. **WARRANTY** – In addition to all other expressed or implied warranties, Vendor warrants to Prater that for a period of twelve (12) months from the Delivery Date, the goods delivered pursuant to the Purchase Order (a) will be free and clear of all liens, security interests or other encumbrances and that Vendor has, and will deliver to Prater, good title therein, (b) will be merchantable and will conform to the specifications and descriptions appearing on the face of the Purchase Order and any other requirements specified herein or by Prater, (c) will be free from any defects in design, material, and workmanship and will be suitable for the purposes intended, whether expressed or reasonable implied, and (d) will not infringe or misappropriate any third party's patents or other intellectual property rights. Vendor further warrants to Prater that it shall perform the services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the Purchase Order. All such warranties shall survive delivery, provision, acceptance or payment and shall not be deemed waived by reason of Prater's inspection or acceptance of said materials or services or payment for them. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Prater's discovery of noncompliance of the goods or services with the foregoing warranties.
11. **DISCLOSURES** – Vendor shall not use or disclose any data, designs, specifications, samples, patterns, plans, drawings, business operations, customer lists, pricing, discounts, rebates or other information belonging to or supplied by or on behalf of Prater, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential." Where Prater's data designs or other information are furnished to Vendor's supplier for procurement of supplies by Vendor for use in the performance of Prater's orders, Vendor shall insert the substance of this provision in its orders. Upon Prater's request, Vendor shall promptly return or destroy all documents and other material received from Prater. Prater shall be entitled to injunctive relief for any violation of this section. Any knowledge or information which Vendor shall have disclosed or may hereafter disclose to Prater incident to the placing and filling of the Purchase Order, shall not, unless otherwise specifically agreed upon in writing by Prater, be deemed to be confidential or proprietary information, and accordingly shall be acquired free from restriction (other than restrictions which may result from a claim for patent infringement). No employee of Prater has authority to make any agreement, express, or implied, limiting the use of publication of, or providing for confidential treatment of information or suggestions of whatever kind received by him unless such agreement is made in writing and signed by an officer of Prater.
12. **PATENTS/TRADEMARKS** – Vendor shall, at its sole cost and expense, defend, indemnify and hold harmless any Indemnitee (as defined below) and each subsequent purchaser or user of the goods from and against any and all Losses (as defined below) arising out of or in connection with any claim that Prater's or Indemnitee's use, possession or resale of the goods or use of the services infringes or misappropriates any patent, trademark, copyright, trade secret or other intellectual property right of any third party. Upon the commencement of any such suit or action, or the making of any such claim, Prater shall notify Vendor and Vendor shall, at Prater's election, promptly assume and diligently conduct the entire defense thereof, including settlement and appeals, at its own sole cost and expense, and shall pay and discharge any and all settlement amounts, judgments, or decrees which may be rendered. In no event shall Vendor enter into any settlement without Prater's or Indemnitee's prior written consent.
13. **PRATER'S RIGHTS AND REMEDIES** – The rights and remedies reserved herein to Prater shall be cumulative and in addition, to and not in substitution of, any other or further rights and remedies provided in law or equity or otherwise. If a dispute arises between Prater and Vendor under the Purchase Order or the transactions contemplated thereunder, and Prater is the prevailing party then Vendor shall reimburse Prater for all reasonable attorney's fees and related costs incurred by Prater in connections with such dispute. Prater shall have the right to assert claims for all damages and/or losses, including, but not limited to, incidental, special, punitive or consequential damages, lost profits, lost goodwill, loss of the use of funds, equipment, personnel, data, or facilities, and attorney's fees and court costs incurred in obtaining satisfactory remedial action or compensation. Without prejudice to any other right or remedy it may have, Prater shall have the right at any time to reduce and set off against amounts payable, any indebtedness or any other claim which Prater may have against Vendor, however, and whenever arising. Nothing in the Purchase Order or hereunder shall exclude or limit Vendor's liability under the Purchase Order or Vendor's liability for fraud, personal injury or death caused by Vendor's negligence or willful misconduct. Prater's maximum liability to the Vendor shall not exceed the aggregate amount actually payable under the Purchase Order.
14. **INDEMNIFICATION** – Vendor shall, at its sole cost and expense, defend, indemnify and hold harmless Prater and Prater's parent company, their subsidiaries, affiliates, successors or assigns and each of their respective directors, officers, direct or indirect equityholders, employees and agents (collectively, "Indemnitees") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with (a) the goods and/or services provided by Vendor or any of its subcontractors, affiliates or employees (collectively, the "Vendor Parties") and (b) a Vendor Party's negligence, willful misconduct, fraud or breach of the



- Purchase Order and/or these terms and conditions. Vendor shall not enter into any settlement without the applicable Indemnitee's prior written consent.
15. **TERMINATION** – If for any reason Vendor fails to deliver goods or render services at the time or in the manner specified by the Purchase Order or if Vendor breaches any of the terms hereof (whether before or after Prater's acceptance of any goods or services), Prater may, at its option and without any liability to Vendor, terminate the Purchase Order, in whole or in part, with immediate effect upon notice in writing to Vendor, in addition to any other remedies provided under the Purchase Order or otherwise. If Vendor becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then Prater may terminate the Purchase Order upon written notice to Vendor without any liability. Prater may also terminate the Purchase Order, in whole or in part, for its convenience at any time by written notice to Vendor. If Prater terminates the Purchase Order for any reason, Vendor's sole and exclusive remedy is payment for the goods and/or services received and accepted by Prater prior to the termination (with a reduction in price for any such goods and/or services that fail to comply with the Purchase Order or any of the terms hereof).
 16. **RELATIONSHIP OF PARTIES** – Nothing in the Purchase Order or hereunder shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. Vendor acknowledges that it is an independent contractor, and as such, Vendor shall be solely responsible for the payment and withholding of all social security and other employment taxes. Vendor agrees to maintain its own worker's compensation insurance coverage and agrees to provide its own insurance for injury, sickness or retirement or otherwise. No relationship of exclusivity shall be construed from the Purchase Order or these terms and conditions.
 17. **GOVERNING LAW AND JURISDICTION** – All matters arising out of or relating to the Purchase Order or these terms and conditions shall be construed and governed according to the laws of the State of Delaware, including without limitation, the Uniform Commercial Code as adopted in the State of Delaware, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Illinois. Any legal suit, action or proceeding arising out of or relating to the Purchase Order or hereunder shall be instituted in the federal courts of the United States of America or the courts of the State of Illinois, in each case, located in the City of Bolingbrook and County of Will County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
 18. **MODIFICATION/ASSIGNMENT** – No modification of the Purchase Order or these terms and conditions shall be binding on Prater unless made by a written supplemental order that specifically states it amends the Purchase Order and these terms and conditions and is signed by an authorized representative of Prater. The Purchase Order and performance hereof or any right or interest herein or monies payable under the Purchase Order, may not be assigned, transferred, delegated or subcontracted by Vendor without Prater's prior written consent. Any purported assignment or delegation in violation of this section shall be null and void. No assignment or delegation shall relieve Vendor of any of its obligations under the Purchase Order or hereunder. Prater may at any time assign or transfer any or all of its rights or obligations under the Purchase Order without Vendor's prior written consent to any affiliate or to any person acquiring all or substantially all of Prater's assets.
 19. **WAIVERS** – No waiver by Prater of any of the provisions of the Purchase Order or these terms and conditions is effective unless explicitly set forth in writing and signed by Prater. A waiver of Vendor's default in any one or more instances shall not be construed as a waiver of any subsequent default. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Purchase Order or these terms and conditions operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
 20. **ENTIRE AGREEMENT** – These terms and conditions, any other conditions contained in the Purchase Order, and any specifications referenced in the Purchase Order constitute and represent the complete and entire agreement between Prater and Vendor and supersede all previous or contemporaneous communications, understandings and negotiations, either written or verbal, concerning the subject matter of this order. These terms and conditions prevail over any of Vendor's general terms and conditions of sale regardless whether or when Vendor has submitted its sales confirmation or such terms.
 21. **INSURANCE** – During the term of the Purchase Order and for a period of one (1) year thereafter, Vendor shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2,000,000 and umbrella liability in the minimum amount of \$5,000,000 with financially sound and reputable insurers. Upon Prater's request, Vendor shall provide Prater with a certificate of insurance from Vendor's insurer evidencing the insurance coverage specified in the Purchase Order. The certificate of insurance shall name Prater as an additional insured. Except where prohibited by law, Vendor shall require its insurer to waive all rights of subrogation against Vendor's insurers and Vendor.
 22. **NO THIRD-PARTY BENEFICIARIES** – The Purchase Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Purchase Order.
 23. **NOTICES** – All notices, requests, consents, claims, demands, waivers and other communications (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), e-mail (without receipt of an automatic email from the applicable server indicating a delivery failure) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Purchase Order, a Notice is effective only if the party giving the Notice has complied with the requirements of this section.
 24. **SEVERABILITY** – If any term or provision of the Purchase Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Purchase Order or invalidate or render unenforceable such term or provision in any other jurisdiction.
 25. **SURVIVAL** – Provisions of the Purchase Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Purchaser Order.