

## PROTOTEK PURCHASE ORDER TERMS AND CONDITIONS

**NOTICE:** THE PURCHASE OF PRODUCTS OR SERVICES BY THE PROTOTEK ENTITY STATED ON THE PURCHASE ORDER (“BUYER”) FROM THE SUPPLIER OR SELLER LISTED ON THE PURCHASE ORDER (“SELLER”), AND ALL DOCUMENTS PERTAINING TO SUCH PURCHASE(S), ARE SUBJECT TO AND CONDITIONED UPON THESE PURCHASE ORDER TERMS AND CONDITIONS (THESE “TERMS”) AND THESE TERMS ARE INCORPORATED BY REFERENCE INTO AND ARE A PART OF ALL TRANSACTIONS BETWEEN SELLER AND BUYER.

### ACCEPTANCE OF CONTRACT

Seller is bound by Buyer’s purchase order to which these Terms are attached or incorporated by reference (“Purchase Order”) and these Terms. If Seller does not reject this Purchase Order within five (5) days following receipt of the Purchase Order, or if Seller delivers any of the items ordered or performs any of the services ordered herein Seller will be deemed to accept this Purchase Order. No other terms will apply to Supplier’s provision of products or services, except as agreed to in writing between the parties, in which case the written agreement will control. Seller’s pre-printed terms listed on any invoice, order confirmation, website, or other written, oral or electronic format, regardless of any knowledge Buyer may have of such terms, are rejected by Buyer and

such terms shall not bind Buyer. All specifications, drawings, and data submitted to Seller with this Purchase Order are incorporated herein and made a part hereof (collectively, with these terms and conditions, the “Contract”). Any references to documents on Prototek’s website are available at <https://www.prototek.com/suppliers/conducting-business/> and are incorporated by reference.

### SUPPLIER CODE OF CONDUCT

By accepting this purchase order Seller agrees to abide by Buyer’s Supplier Code of Conduct found on the Prototek’s website.

### CONFIDENTIALITY

Seller will treat all proprietary and non-public information and materials provided by Buyer (“Confidential Information”) as confidential and will not use the Confidential Information except as reasonably necessary to fulfill its obligations under the Contract and will not disclose the Confidential Information to any third party except as agreed to in writing by Buyer. All Confidential Information shall remain Buyer’s property, and Seller will have no right, title or interest in any Confidential Information. Upon Buyer’s request, Seller shall promptly return to Buyer all

Confidential Information and all electronic or other copies of any Confidential Information. Buyer will be entitled to seek temporary and permanent injunctive relief to prevent a breach of Seller’s confidentiality obligations. These confidentiality restrictions shall not apply to information that is: (i) in the public domain through no fault of Seller; (ii) known to Seller at the time of disclosure without restriction; or (iii) lawfully obtained by Seller on a non-confidential basis from a third party.

### CHANGES

Buyer reserves the right at any time to change: (a) specifications, drawings and data incorporated in this Contract where the items to be furnished are to be specifically manufactured for Buyer; (b) methods of shipping or packaging; (c) place of delivery; and (d) time of delivery. Any changes to these terms of the Contract will be reflected in a change order issued to the Seller and the terms listed herein apply (“Purchase Order Change Notice”). Seller-initiated changes, including a subcontract change, must be submitted in writing and approved by Buyer.

### SHIPPING

Except as otherwise stated on the front of this Purchase Order, Seller shall ship

products DDP (Incoterms 2020) to Buyer's facility stated on its Purchase Order. Shipments will comply with Buyer's packaging guidelines and all wood products will comply with ISPM 15 regulations. Shipments sent cash on delivery (COD) without Buyer's written consent will not be accepted and will be at Seller's risk. Shipments will comply with Buyer's freight routing guides when using Buyer's freight account(s). If freight policy is not properly followed by Seller, Buyer reserves the right to charge back freight expenses to the Seller. If Seller is unable to meet the required delivery due date with normal modes of transportation, Seller shall use, and shall be responsible for all costs associated with expedited freight.

#### **TITLE AND RISK OF LOSS**

Buyer shall bear all risk of loss with respect to products until Buyer actually receives and accepts products as provided herein..

#### **DELIVERY**

Time is of the essence in this Contract and, if delivery of products or rendering of services is not completed by the time specified in the Contract, Buyer reserves the right without liability, in addition to its other rights and remedies, to terminate this Contract by providing notice to Seller. Seller shall not

make any partial delivery of products or services without the prior written approval of Buyer; provided, that partial delivery of products or services shall not be construed as making the obligations of Seller severable.

#### **QUALITY / NON-CONFORMING PRODUCTS AND SERVICES**

Seller shall meet all supplier quality requirements. If not otherwise specified in the Contract, Seller must abide by the policies set forth in the Global Supplier Quality Manual available on Prototek's website. Buyer is not required to perform incoming inspections of any products or services, and Seller waives any right to require Buyer to conduct any such inspections. If Buyer rejects any products or services as non-conforming, Buyer may, at its option, (a) reduce the quantities of products ordered by the quantity of non-conforming products, (b) require Seller to replace or re-perform the non-conforming products or services, and/or (c) exercise any other applicable rights or remedies. Seller must provide written instructions within forty-eight (48) hours of notice of Buyer's rejection of nonconforming products of how Buyer should dispose of rejected products. Seller will bear all risk of loss with respect to all non-conforming products and will promptly pay or reimburse all costs incurred

by Buyer to return, store or dispose any non-conforming products. Buyer's payment for any non-conforming products or services will not constitute acceptance by Buyer, limit or impair Buyer's right to exercise any rights or remedies or relieve Seller of responsibility for the nonconforming products or services.

#### **WARRANTY**

By accepting this Purchase Order, Seller warrants that for a period of 18 months after Buyer's receipt of the correct delivery, the products and services to be furnished hereunder will be in full conformity with Buyer's requirements (including, but not limited to, specifications, drawings, data, samples or statements of work) and this Contract, and will be of merchantable quality and fit for use intended by Buyer; Seller further warrants that products will be free of defects in design, material and workmanship (collectively, the "Limited Warranty"). Seller agrees that this Limited Warranty shall survive acceptance of the products or services, and shall be in addition to any express warranties given to Buyer by Seller. At Buyer's election and at Seller's sole expense, Seller shall, within thirty (30) days of Buyer's notice of nonconformity, repair or replace the nonconforming product, reperform the nonconforming Service, or refund the purchase price Buyer paid for all

products or services that do not comply fully with the Limited Warranty. The warranty period shall be extended for 12 additional months after any repair, replacement, or reperformance with respect to the affected products or services.

## **PRODUCT COMPLIANCE**

Seller shall ensure that all products will comply with the Product Compliance requirements listed in Buyer's *Product Environmental Policy and Restricted Material List* found on the Prototek's website. Seller shall certify that only new and authentic materials are used in products delivered to Prototek and that the products delivered contain no counterfeit parts, components, or materials. Seller must provide traceability identification (i.e. date code, lot number, serial number) for all products delivered to Prototek. As applicable, the Seller shall provide a certificate of analysis (COA) or certificate of compliance (COC) and the latest revision of safety data sheets (SDS), Restriction of Hazardous Substances Directive (RoHS), Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH), Certified Maintenance & Reliability Technician (CMRT) and California Proposition 65 documents for all products provided. To prevent the use of expired products, the Seller shall provide the expected shelf life of the products. The

Seller shall also provide either the date of material expiration or the date of material manufacture. Products purchased by Prototek must arrive with a minimum of 75% of their shelf life remaining. In some instances, Prototek may choose to accept products with less than 75% of shelf life remaining in order to better meet the production schedule or customer needs.

## **PRICE**

Buyer shall not be billed at prices higher than stated on this Purchase Order unless authorized by a Purchase Order Change Notice issued and signed by Buyer. Seller represents that the price charged for the products or services covered by this Purchase Order are the lowest prices charged by the Seller to Buyers of a class similar to Buyer under conditions similar to those specified in this order and that prices comply with applicable government regulations in effect at the time of quotation, sale or delivery.

## **PAYMENT**

Standard payment terms are net 60 days after Buyer's receipt of the correct invoice, or receipt of the complete delivery of the products or services, whichever comes later. Seller must include Buyer's Vendor Code and Purchase Order number on all invoices

for payment. Buyer will not pay for shipping and transportation costs unless expressly authorized by this Purchase Order. Seller agrees to provide Buyer with copies of bill of lading or express receipt evidencing the shipping charges.

## **BUYER'S REMEDIES**

In the event Seller breaches this Contract, Buyer may: (a) procure some or all of the products or services under this Purchase Order from a third party ("Cover") and recover from Seller the difference between the cost of Cover and the Contract price for such products or services, or (b) terminate the Contract and recover any and all amounts paid to Seller under this Purchase Order. Notwithstanding anything to the contrary elsewhere, the foregoing shall not limit Buyer's other rights and remedies (including Buyer's rights to recover special, indirect, incidental, punitive, and consequential damages from Seller).

## **PROPERTY FURNISHED TO SELLER BY BUYER**

Unless otherwise agreed in writing, all property furnished to Seller by Buyer, or specifically paid for by Buyer, for use in the performance of this Contract, including tooling ("Buyer Property"), shall be and remain the property of Buyer, shall be

subject to removal upon Buyer's instruction, shall be marked or tagged showing it is the property of Buyer, and shall be used only in filling orders from Buyer. Buyer does not authorize any other usage of Buyer Property for the manufacture of items to third parties or the use of products made to Buyer specifications for third parties without written authorization from Buyer. Seller grants Buyer a first priority security interest in all Buyer Property and authorizes Buyer to file all Uniform Commercial Code financing statements, continuation statements and other documents necessary to evidence Buyer's ongoing ownership and to perfect and to maintain its security interest in the such property. Seller shall not grant, nor allow the creation of, any lien or security interest or other right or claim in or to Buyer Property. Seller shall not: (a) transfer or otherwise dispose of any Buyer Property except as instructed by Buyer in writing, (b) allow any encumbrance, lien or other claim to be made by any third party in Buyer Property, or (c) refuse or delay in the performance of its obligations. Seller agrees to maintain (including repair) all tools (at Seller's expense) capable of producing products for Buyer for as long as Buyer orders such products or 10 years after final payment. The Seller shall maintain records on file that provide evidence of conformance to specified requirements and the effective

operation of the quality system as set forth in the Global Supplier Quality Manual available on Prototek's website. If the Seller is not the original fabricator, processor, or assembly source of product(s) which makes up the deliverable end-product, then Seller shall flow-down such conformance requirements to its lower-tier supplier/processor and require that they maintain certificate of conformance documentation on file for the same retention period, which shall be shared with Seller and Buyer. Seller shall contact Buyer prior to destruction of any such documentation.

#### **OWNERSHIP/INTELLECTUAL PROPERTY**

All documentation, designs, specifications, data, and other information Buyer prepares or delivers to Seller pursuant to a Purchase Order or otherwise, and all copyright, trade secret, patent, and other intellectual property rights therein, will be the property of Buyer and/or its customers, and Seller shall have no right, title, or interest in or to them. With respect to any products or services provided by Seller, Seller represents and warrants: (i) it has all necessary rights, title and interests in such products or services, and (ii) the products and services will not violate the intellectual property rights of any third parties. Seller will execute and deliver to Buyer all such further assignments and assurances confirming

Seller's ownership of, and all right, title and interest to and of, its products and services as Buyer may request from time to time.

#### **COMPLIANCE WITH LAWS**

In accepting this Purchase Order, Seller represents that it has and will continue to comply with the provisions of all applicable domestic and foreign laws, including but not limited to environmental, occupational, health, and safety laws, import and export compliance laws as well as all laws and regulations from which liability may accrue to Buyer from any violation hereof. Seller further represents that it will comply with all applicable anti-bribery laws and anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010. Seller represents it is an equal-opportunity employer and does not discriminate based on any protected status or as prohibited by law and as more specifically outlined in Buyer's Supplier Code of Conduct.

#### **TERMINATION**

Buyer may terminate this Purchase Order for its convenience, in whole or in part, by written notice or otherwise, at any time. If this Purchase Order is terminated for convenience, Buyer will pay Seller a pro-rata amount based on the percentage of correct

products delivered, and/or services performed correctly, prior to cancelation.

#### **FORCE MAJEURE**

Delays resulting from causes outside the reasonable control of either party, including but not limited to acts of God, acts or requests of government or governmental agencies in their non-commercial capacity, riot or civil commotion, sabotage, accidents, fire, flood, explosion damage to plant or facilities, epidemics or pandemics, typhoons, or absence of normal means of communication or transportation shall extend the time of performance for a period not to exceed 30 cumulative calendar days ("Force Majeure Period"). Seller's economic hardship, delays in obtaining (or the inability to obtain) labor or materials through its normal suppliers at normal prices, as a result of tariffs or changes in market conditions, are not considered force majeure events. Neither party shall be liable for any loss, damage, detention or delay resulting from any of the foregoing causes. Buyer may terminate this purchase order for force majeure events that continue beyond the Force Majeure Period.

#### **INDEPENDENT CONTRACTOR**

Seller shall perform the work necessary for performance of this Contract with Seller's

employees and agents under the control of Seller. The parties are independent contractors, and nothing in this Contract shall be construed as constituting a joint venture or partnership between the parties or as authorizing a party to represent or bind the other party. Buyer's On-Site Contractor Clauses available on the Prototek's website apply whenever any products will be installed or services will be performed on Buyer's property.

#### **RIGHT TO ACCESS**

Buyer, its customers, and regulatory authorities shall be granted the right of access to applicable areas of Seller's facilities and applicable documented information, at any level of the supply chain. Requests to access by Buyer and/or its customers will be scheduled in advance and limited to the scope of quality management, regulatory requirements, data security (as applicable for suppliers receiving data from Buyer), and other data and information relevant to products/services provided for Buyer.

#### **PRODUCT LIABILITY AND INSURANCE**

Seller hereby agrees to indemnify, hold harmless and, at Buyer's election, defend Buyer from and against all claims: (a) arising out of the performance of the services or the

use by Buyer or other persons of the products furnished hereunder (including property damage, death, or personal injury), (b) for actual or alleged infringements of any U.S. or foreign intellectual property rights resulting from the use or sale of the products or services purchased hereunder, and (c) from Seller's gross negligence, willful misconduct, or violation of applicable law. Seller shall maintain general liability insurance with a nationally recognized insurance company. Unless otherwise stated on the Purchase Order, Seller shall maintain at least \$2,000,000 USD in commercial general liability insurance, including contractual liability, products liability, completed operations, property damage, and personal injury liability. At Buyer's request from time to time, Seller will provide to Buyer current and valid certificates of insurance evidencing such insurance policies are in full force and effect.

#### **TAXES**

Unless the purchase is subject to sales and/or use taxes as indicated on the front of this Purchase Order, the price for the products or services purchased hereunder shall not include sales, use, excise, or similar state or local taxes applicable to the products or services furnished hereunder. Where such taxes are applicable, they shall

be shown separately on Seller's invoice. Seller shall be responsible for collecting from Buyer and remitting to the proper government authority any applicable taxes. Buyer may provide to Seller a certificate, acceptable to Seller, exempting the sale from sales, use or other taxes.

#### **APPLICABLE LAW**

This Purchase Order shall in all respects be construed according to the laws of the State where Buyer's principal place of business is located, without regard to its conflict of law principles. Buyer and Seller irrevocably consent and submit to the exclusive jurisdiction of the state and federal courts sitting in the county of Buyer's principal place of business as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, as the sole and exclusive judicial forum(s) and venue over the adjudication and resolution of any and all matters, actions, disputes and controversies arising out of or relating to a transaction, the Contract, products, or any services provided under a Contract. Buyer and Seller irrevocably waive any objection they may have to venue of any proceeding brought in such court(s) or any claim that such proceeding brought in any such court has been brought in an inconvenient forum.

#### **MISCELLANEOUS**

In the event any of the provisions of a Contract are held to be invalid by any court of competent jurisdiction, such provision(s) shall be deemed to be severable and the Contract shall then be construed and enforced in accordance with the remaining provisions. As used herein, the words "including", "include" and "includes" shall be exemplary only, and shall not be construed as limiting the word or phrase to which it relates. Any reference to "Seller" in a Contract shall include any directors, officers, shareholders, members, managers, employees, agents, contractors and subcontractors of Seller. Provisions of a Contract which by their nature should apply beyond their terms will remain in force after any termination or expiration of any applicable Contract. Notwithstanding the foregoing, the following sections of these Terms shall survive the termination or expiration of any applicable Contract: Confidentiality, Warranty, Product Liability and Insurance, Applicable Law.

**Last updated May 2025.**