



# Prater-Sterling

SINCE 1925

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## ADDITIONAL TERMS AND CONDITIONS OF SALE

1. **General.** The Terms and Conditions of Sale outlined herein shall apply to the sale by Prater-Sterling (the "Company") of products, equipment, parts and services ("Equipment") to Purchaser. The ("Purchase Price") is the price for the Equipment, which the Company has agreed to accept from Purchaser, as payment-in-full for the Equipment. The details of the sale are detailed in the Proposal, these Additional Terms and Conditions of Sale and any related documents, all which shall be collectively referred to as the ("Contract"). The Company's acceptance of the Contract is expressly subject to Purchaser's assent to all of the Terms and Conditions set forth below. The Purchaser's assent to these Terms and Conditions shall be conclusively presumed from Purchaser's receipt of this document without prompt written objection thereto or from Purchaser's receipt of delivery of all or any of the Equipment.

2. **Prices.** All prices are F.O.B. Company's factory or other place of manufacture and are subject to adjustment, without notice, to Company's prices in effect at the time of shipment. Price does not include freight charges and installation services unless otherwise stated in the quotation or confirmation.

3. **Payment Terms.** All accounts shall be paid net in U.S. dollars at Company's principal offices, in accordance with the terms specified in the Contract and/or listed on the Company's invoice. If, in the judgment of the Company, the financial condition of Purchaser at the time Equipment is ready for shipment does not justify the terms of payment specified, the Company may require full payment prior to making shipment. A charge of the greater of one and a half (1-1/2%) percent per month or the maximum permissible rate will be added to all past due accounts.

4. **Costs of Collection.** Should any payment, subsequent installment or the balance due (collectively referred to as "Balance Due") remain unpaid by Purchaser and the Company has not referred collection of the Balance Due to an attorney then the Company shall have the right to charge all costs and fees the Company incurs by a third party company collecting on behalf of the Company to the Purchaser;

5. **Title and Risk of Loss.** Title and risk of loss or damage to the Equipment shall pass to the Purchaser upon tender of delivery F.O.B. Company's facility or other place of manufacture. Notwithstanding the foregoing, any claim by Purchaser against Company for shortage or damage occurring prior to such delivery must be made in writing within ten (10) days after receipt of shipment and accompanied by original transportation bill signed by carrier noting that carrier received goods from Company in the condition claimed. Any claim by Purchaser for damage occurring during shipment shall be made directly against the freight carrier, with a copy of such claim forwarded to Company within ten (10) days. Any shipments returned to Company as a result of Purchaser's unexcused delay or failure to accept delivery will require Purchaser to pay all additional costs incurred by Company.

6. **Security.** Purchaser hereby grants to Company a UCC §9 Security Interest in all Equipment identified in the Contract between the parties. The Contract between Company and Purchaser shall be sufficient to satisfy the requirement of a written agreement under UCC §9-203. Purchaser hereby agrees that granting the Security Interest includes attachment of the Purchaser's Equipment. Company has provided value to Purchaser as defined under UCC §1-201(44) and the parties agree that this consideration is sufficient. The Equipment provided to Purchaser by Company shall continue at all times to remain as personal property, and at no time shall become real property, a fixture or any part of the improvements in which they were installed no matter how they have been attached or integrated into the existing structure of the Purchaser. Company reserves all rights and interests and this UCC §9 Security Interest in the Equipment as a way to secure payment of all the unpaid amounts due as well as any other obligations of the Purchaser. Purchaser hereby grants to the Company the limited authority to file a UCC-1 and UCC-2 Financing Document with the State and County in which the property is located to perfect its security interest in the Equipment. Purchaser agrees upon request to do all things and acts necessary to perfect and maintain said Security Interest and shall protect Company's interest by adequately insuring the Equipment against loss or damage from any cause.

7. **Assignment.** The Company shall have the right to assign all of its right, title and interest in this Contract without notice to the Purchaser. Purchaser shall not assign or transfer this Contract without the prior written consent of the Company.

8. **Delivery and Delays.** Delivery dates shall be interpreted as estimated and in no event shall dates be construed as falling within the meaning of "time is of the essence." Company shall not be liable for any loss or delay due to war, riots, terrorism, fire, flood, strikes or other labor difficulty, acts of civil or military authority including governmental laws, orders, priorities or regulations, acts of the Purchaser, embargo, shortage of transportation facilities or delay in transportation, or inability to obtain necessary labor or materials from usual sources, other contingencies of manufacture or shipment, or other causes beyond the reasonable control of Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. Under no circumstances shall the Company be liable for damages to the Purchaser due to delay in the delivery of the Equipment. Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay. Company will use all reasonable efforts to comply with Purchaser's requests as to method of shipment, but Company reserves the right to use an alternate method of transportation or route of shipment if substantial delay might otherwise occur. In such cases Company will notify Purchaser of such changes as soon as reasonably possible. If the Purchaser declines or is unable to take delivery at the time(s) specified, the Company will have the Equipment stored at the Purchaser's cost, risk and account. The Equipment shall be considered shipped and received by the Purchaser.

9. **Taxes.** Except for sales tax imposed in the States of Illinois and California if applicable, the price does not include any present or future Federal, State or local property, license, privilege, sales, use, gross receipts or other excise, transportation, occupational, like taxes or assessments which may be applicable to, measured by, imposed upon or result from this transaction or any services performed in connection therewith. Any taxes itemized separately to Purchaser on the Company's Contract, shall be paid promptly to Company. All others incurred by the Purchaser through performance of the Contract shall be the Purchaser's responsibility to pay directly to the proper taxing authority. Company will accept a valid exemption certificate from Purchaser, if applicable.

10. **Set Offs.** Neither Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts, which become payable to Company under this Contract or otherwise.

11. **Patents.** Company shall defend any suit or proceeding brought against Purchaser and shall pay any adverse judgment entered therein so far as such suit or proceeding is based upon a claim that the use of the Equipment manufactured by Company and furnished under this Contract constitutes infringement of any patent of the United States of America, providing Company is promptly notified in writing and given authority, information and assistance for defense of same; and Company shall, at its option, procure the Purchaser the right to continue to use said Equipment, or to modify it so that it becomes non-infringing, or to replace the same with non infringing Equipment, or to remove said Equipment and to refund the Purchase Price. The foregoing shall not be construed to include any agreement by Company to accept any liability whatsoever in respect to patents for inventions including more than the Equipment furnished hereunder, or in respect of patents for methods and processes to be carried out with the aid of said Equipment. The foregoing states the entire liability of Company with regard to patent infringement. Purchaser shall, in respect of goods packaged by the Company in accordance with designs, processes or formulas supplied, determined or requested by Purchaser, defend the Company at Purchaser's expense and pay costs and damages awarded in any suit brought against the Company for infringement of any letters patent by reason of use of such designs, processes or formulas provided the Company promptly notifies the Purchaser in writing of any claim of or suit for infringement and tenders defense thereof to Purchaser. The Company is entitled to be represented in any suit at its own expense.

12. Warranty. Company warrants that the Equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period of eighteen (18) months from the date of shipment by Company or twelve (12) months from commencement of use of the Equipment, whichever occurs first (the "Warranty Period"). Purchaser shall be obligated to promptly report any failure of the Equipment to conform to this warranty in writing to Company within the Warranty Period, whereupon Company shall, at its option, correct such nonconformity by suitable repair to such Equipment, or furnish a replacement part F.O.B. point of shipment, provided Purchaser has fully paid for the Equipment and has stored, installed, maintained and operated such Equipment in accordance with good industry practices and has complied with specific recommendations or instructions of Company. Company shall not be liable for any repairs, replacements, or adjustments to the Equipment or any costs of labor performed by Purchaser or others without Company's prior written approval. Equipment returns for any reason will be refused without the Company's prior authorization.

Upon request, the Company will endeavor to furnish such technical advice as is requested by Purchaser. It is expressly understood that, unless otherwise agreed in writing, any technical advice furnished by the Company with reference to the use of its products is given without charge, and Company assumes no obligation or liability for the technical advice given, or results obtained, all such advice being given and accepted at Purchaser's risk.

This warranty does not apply to goods, subcomponents and materials not manufactured by the Company, and the Company shall not be liable for any defects contained in such goods, components and materials. Accessories, subcomponents or equipment furnished by Company, but manufactured by others, shall carry whatever warranty the manufacturer has conveyed to Company and which can be assigned to the Purchaser.

This warranty shall not apply to equipment that has been altered, modified or repaired by anyone other than Company or to Equipment that has been damaged through accident, misuse, neglect or lack of proper maintenance. The effects of corrosion, erosion and normal wear and tear on the equipment are specifically excluded from this warranty.

This warranty shall not apply to wear to the Equipment or wear to any of its parts or components caused by the Purchaser's feed material or any of Purchaser's products.

PURCHASER ACKNOWLEDGES AND UNDERSTANDS THAT NO WARRANTY, GUARANTEE OR UNDERTAKING, WHETHER EXPRESSED OR IMPLIED, EXCEPT AS SET FORTH IN THIS AGREEMENT, PERTAINING TO THE EQUIPMENT SHALL BIND OR OBLIGATE COMPANY. ALL OTHER WARRANTIES, GUARANTEES AND UNDERTAKINGS ARE HEREBY EXPRESSLY DISCLAIMED. SPECIFICALLY, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY HEREBY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TOGETHER WITH ANY AND ALL OTHER STATUTORY OR COMMON LAW IMPLIED WARRANTIES. THE CONSEQUENCE OF SUCH DISCLAIMER BY COMPANY IS THAT PURCHASER'S RIGHTS AND REMEDIES ARE SEVERLY LIMITED AND PURCHASER MAY NOT SEEK RELIEF IN REGARD TO THE BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

Correction by Company of non-conformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of Company for such non-conformities, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such Equipment.

13. Limitation of Liability. The remedies of Purchaser set forth herein are exclusive, and the total liability of Company with respect to this Contract and the Equipment and services furnished hereunder, in connection with the performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or technical direction covered by or furnished under this Contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit of Equipment or services upon which such liability is based.

COMPANY AND ITS SUPPLIERS SHALL IN NO EVENT BE LIABLE, WHETHER ARISING UNDER CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE ARISING AT ANY TIME OR FROM ANY CAUSE WHATSOEVER (EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH

LOSSES OR DAMAGES), INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION OR INCREASED EXPENSE OF OPERATIONS, SERVICE INTERRUPTION, COST OF PURCHASED OR REPLACEMENT POWER, CLAIMS OF PURCHASER'S SUBCONTRACTORS OR SUPPLIERS, COST OF MONEY, LOSS OF USE OF CAPITAL OR REVENUE.

Any claim by Purchaser with reference to the goods sold hereunder for any cause shall be deemed waived by Purchaser unless submitted to Company in writing within thirty (30) days from the date Purchaser discovered, or should have discovered, any claimed defect.

In the event that a court determines that the sole remedies stated in and incorporated in these Additional Terms and Conditions of Sale have failed in its essential purpose, then Purchaser's exclusive remedy for breach of any Company warranty shall be the return of the Equipment freight prepaid, for refund of the purchase price less a depreciation/restocking charge of two (2%) percent per month.

The provisions of this Paragraph 13 shall supersede any inconsistent provisions in any document involving Purchaser's purchase of Equipment.

14. Performance Standards. Prior to the Equipment order process the Company may test the Purchaser's product (including size, moisture content, product temperature and abrasiveness of the product referred to collectively as the "Product Characteristics"), as a sample to achieve capacity and/or fineness standards. Whether the Purchaser's product was tested by the Company or not, it is the responsibility of the Purchaser to specifically identify the exact Product Characteristics and any and all variations of the Purchaser's product, which is to be processed by the Equipment. Purchaser represents and warrants to the Company that the Purchaser's product (including all Product Characteristics) to be used in the Equipment is identical to the product provided to the Company as a sample. All variations of the product to be processed by the Equipment by Purchaser shall be provided as a sample at the time of ordering the Equipment. Failure to process feed material in the Equipment, which is identical to the samples provided to Company voids and nullifies the warranty provided for herein. Purchaser's ability to achieve approximately comparable capacity and fineness is highly dependent upon the characteristics of the feedstock and the manner in which Equipment is operated.

In the event of a warranty claim by Purchaser, capacity and fineness will be tested and measured by the Company, if required, using the Company's Equipment in order to determine whether the feed material used by Purchaser (including all Product Characteristics) matches the product samples provided to the Company. In the event of a warranty claim requiring the testing and measuring of feed material, Purchaser at its expense shall be obligated to provide the Company with samples of feed material currently being used for testing purposes. Purchaser shall represent and warrant to the Company that the samples of feed material currently supplied is the same feed material being used by Purchaser with the Equipment. The Company's determination of product specifications of feed material into the Equipment matching samples previously provided shall be determinative and binding on the Purchaser.

15. Waiver of Insured Claims and Subrogation. Any loss that is covered by property insurance, boiler insurance, or the like, Purchaser and Company, for themselves, for all other insured under any such insurance policy, and for Company and Purchaser's insurers under any such insurance policy, hereby waive any claim against each other for any loss by fire, flood, explosion, mechanical breakdown or otherwise. Both Purchaser and Company, to the fullest extent permitted by each such policy, waive any right of subrogation against each other and against Company and Purchaser's respective employees, agents, officers, affiliated companies, suppliers, subcontractors and insurers.

16. Cancellation Charges. Because the Company and the Purchaser have entered into a binding contract, neither party has the right to cancel the Contract. Nevertheless, if Purchaser notifies Company that it terminates its order for its convenience, Company will attempt to mitigate its damages by stopping all work as promptly as reasonably possible. Purchaser shall then be responsible for a cancellation charge, computed on the following basis: Company's full costs include all engineering work, work in progress, raw materials, supplies, administrative expenses and overhead (20% of purchase price) plus all commitments made by Company in connection with the order, less such allowances as Company may be in position to make for any standard components and scrap material. If any portion of the Equipment subject to the Contract is identified as "Special" or "Made to Order", Purchaser's order shall not be cancelled or cancelable by Purchaser after acceptance by Company, except upon payment in full of the purchase price.

17. Confidentiality. Any Contracts, quotes, invoices, order acknowledgments, prints, brochures, drawings, or other information furnished to Purchaser by Company are intended for confidential use by

Purchaser, shall remain the property of Company, and shall not be disclosed or used to the detriment of Company's competitive position.

18. Promotional Materials. All of Company's drawings, descriptive matter, weights, dimensions, the descriptions and illustrations contained in Company's catalogues, price lists or advertisements, are approximate only and intended merely to give a general idea of the goods described therein and shall not form part of this Contract. Because Company is continually researching and improving its products, it reserves the right to improve, correct and/or further modify its designs and specifications upon notification and mutual agreement between Company and Purchaser.

19. Purchaser's Use, Covenants and Indemnification. All safety devices, sensors and guards offered in Company's Contract are recommended for purchase. Purchaser hereby agrees as part of Company's consideration to sell the Equipment that Purchaser hereby covenants to Company that Purchaser: Will use Equipment only for its intended uses; will keep Equipment level and balanced and in good repair; will keep all guards, sensors and safety devices in place; will train all operators, service personnel, other employees and third parties who operate the Equipment in accordance with the operator's manuals and instruction sheets, within OSHA Regulations and within the applicable National Fire Protection Association (NFPA) and American National Standards Institute (ANSI) standards/recommendations; will implement and enforce a Lockout/Tagout program per OSHA; will conduct a Process Hazard Analysis of its process and will comply with the findings of its analysis; has determined or will determine the proper NFPA classification for the area where the Equipment will be located and has ordered and will order from the Company and from other suppliers only components that are suitable for that classification; will comply with OSHA regulations, with applicable National Electric Code (NEC), NFPA and ANSI standards/recommendations and with any other applicable state or federal safety laws or regulations; will install fire and explosion detection and suppression equipment appropriate to Purchaser's products and process; has determined without reliance on Company that Equipment is a suitable component in Purchaser's process; will not remove or modify any device, warning sign, operator's manual or work handling tools accompanying, installed on or attached to the Equipment; will comply with the terms of this Contract, including these Additional Terms and Conditions of Sale; and, if ownership of the Equipment is transferred, will notify Company of the name and address of the new owner and will furnish the new owner with all manuals, instructions, safety devices, sensors and guards. Recognizing that under some circumstances Company can be held liable to third parties because of actions by the Purchaser, the Purchaser agrees that if any damage or injury (including death) to any person or to any property (including loss of use thereof) results, or is alleged to have resulted, in whole or in part from any modification or alteration of the Equipment (including but not limited to the removal of any guards), from the improper or abnormal operation of Equipment without the Company's written consent or approval, or from breach of any covenants in this paragraph or of other provisions of these Additional Terms and Conditions of Sale, then Purchaser will defend, indemnify, and hold Company harmless from all liability, costs, and expenses (including attorney fees and all other costs of litigation and defense) for which Company is or may be held liable in connection with such injury or damage, whether Company's liability or alleged liability be in contract, negligence, strict tort, or otherwise. Purchaser shall not operate Equipment, which is considered to be defective without first notifying Company in writing of its intention to do so. Any such use of Equipment shall be at Purchaser's sole risk and liability. Purchaser shall as promptly as possible notify Company in writing, and no later than ten (10) days after its occurrence, of any accident or malfunction involving any Equipment which results in injury to or death of persons, including Purchaser's agents and employees, or damage to property, including Purchaser's property, or the loss of use thereof; and Purchaser shall cooperate fully with Company in investigating and determining the cause of any such accident or malfunction.

20. Fire & Explosion Protection. The Equipment processes, handles and/or may create fine dusts or powders. As such, there may be a fire and explosion hazard. Purchaser agrees to contact its property insurance company and determine what, if any, fire or explosion protection requirements should be met and to inform Company of any such requirements. Fire and explosion detection and suppression systems vary depending on what materials Purchaser is processing and using, and they are something that Purchaser must coordinate throughout its factory. Purchaser is solely responsible for determining what fire and explosion protection is necessary for its particular facility, including the Equipment, and Purchaser must supply any necessary fire and explosion detection and suppression equipment or systems.

21. Indemnification. Purchaser shall indemnify Company and hold Company harmless from all losses, costs and expenses (including

reasonable attorneys fees) incurred by Company in the defense of any lawsuit, proceedings or claims that may be asserted against Company based upon alleged defects in or failures of the Equipment where such defects or failures are the result of the actions of persons or companies other than Company.

22. Authority to Bind. Purchaser warrants to Company that it has the authority to execute and accept the Contract for the Equipment and Services, as well as the authority to order modifications, upgrades, repairs or alterations to the Equipment to be installed. Purchaser's execution, delivery and performance of this transaction and all related documents do not in anyway conflict, violate or constitute a default under any other Agreements, Articles of Incorporation, By Laws, Operating Agreements, Partnership Agreements or any other instrument which is binding upon the Purchaser.

23. Integration. This Contract represents the entire agreement between the parties and supersedes all prior negotiations and agreements relating to the subject matter hereof. No terms or conditions in any way adding to, modifying or otherwise changing the provisions stated herein shall be binding upon Company unless made in writing and signed and approved by an officer of Company. No modification of any of these terms will be effected by Company's shipment of goods following receipt of Purchaser's purchase order, shipping request or similar forms containing printed terms and conditions conflicting or inconsistent with the terms herein.

24. Non-reliance. The Parties acknowledge and expressly represent and warrant that they have relied solely upon their own judgment, together with advice of their counsel and their advisors when deciding whether to agree to the terms the Contract. Each Party further acknowledges and expressly warrants that no information, statement, promise, representation, warranty, condition, inducement, or agreement of any kind, whether oral or written, made by or on behalf of any other Party has been relied upon by it unless specifically contained and incorporated herein.

25. Waiver. Waiver by Company of any breach of these terms and conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time.

26. Severability. In the event that one or more of these terms or conditions of this Contract is held invalid, illegal or unenforceable, such provision or provisions shall be severed and the remaining terms and conditions shall remain binding and effective.

27. Governing Law. This Contract and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed exclusively by the laws of the State of Illinois, including the Uniform Commercial Code, without giving effect to the principles of conflicts of law thereof. In the event Purchaser's place of business is in a country that has ratified the United Nations Convention on the International Sale of Goods (1980) ("Convention"), the parties agree to exclude application of the Convention.

28. Exclusive Jurisdiction. The Circuit Court of the 12<sup>th</sup> Judicial District, Will County, Illinois shall have exclusive jurisdiction of any dispute between the parties regarding this Contract and all related issues. The Purchaser hereby submits itself to this court's jurisdiction. In the event of a lawsuit, Purchaser and Company each agree not to file any motion or defense asserting that the Circuit Court of Will County, Illinois does not have jurisdiction over the parties and the subject matter.

29. Exclusive Venue. The Circuit Court of the 12<sup>th</sup> Judicial District, Will County, Illinois shall have exclusive venue of any dispute between the parties regarding this Contract and all related issues. The Purchaser hereby submits itself to this court's venue. In the event of a lawsuit, Purchaser and Company each agree not to file any motion or defense asserting that the Circuit Court of Will County, Illinois is not a court of proper venue.

30. Attorneys' Fees Award. If Purchaser or Company commences legal proceedings to enforce any of its rights, the prevailing party shall be entitled to recover its out-of-pocket costs and expenses including reasonable attorneys' fees, court costs and other costs and fees from the other Party.

31. Time Limitation on Claims. Any claim by the Purchaser for breach of any warranty against the Company must be filed within one (1) year of the date when the Purchaser knew or should have known of the alleged breach of the Warranty. Claims not filed within this one (1) year period are barred. This provision shall not extend any statute of limitation period. Instead, this provision is intended to shorten the statute of limitations in most instances.

**Dated: September 1, 2009**