

**Prufrex USA, Inc.**  
**TERMS AND CONDITIONS OF PURCHASE**

**§ 1 Contract Formation:** These Terms and Conditions of Purchase (the "Terms and Conditions") apply to any purchases by Prufrex USA, Inc., its subsidiaries, affiliates, successors, and assigns ("Prufrex") of the goods ("Goods") described in Prufrex's purchase or release order (the "Order"), any other document issued by Prufrex and attached hereto, and any other written communication of Prufrex that incorporates these Terms and Conditions (collectively, the "Contract Documents"). NO DOCUMENTS FURNISHED BY OR ON BEHALF OF SELLER SHALL CONSTITUTE A CONTRACT DOCUMENT UNLESS ACCEPTED BY PRUFREX IN WRITING. In the event of any conflict between these Terms and Conditions and any other Contract Document, these Terms and Conditions shall prevail. "Seller" is the merchant selling the Goods identified in the Contract Documents. Seller shall be deemed to have accepted the provisions of the Contract Documents by any of the following: (a) signing and returning to Prufrex a copy of any of the Contract Documents; (b) sending to Prufrex an acknowledgement of any of the Contract Documents; (c) delivering any portion of the Goods described in the Order; (d) accepting payment for any portion of the Goods described in the Order; or (e) indicating in some other manner Seller's acceptance of the Contract Documents. Prufrex may revoke its offer to purchase the Goods at any time prior to Seller's acceptance or at any time within ten (10) days following Seller's written confirmation of acceptance. Upon acceptance, Seller irrevocably agrees and commits to sell and deliver the Goods in strict compliance with the Contract Documents. PRUFREX HEREBY OBJECTS TO AND REJECTS THE PROVISIONS OF ANY CONFIRMATION, ACKNOWLEDGMENT OR OTHER DOCUMENT FURNISHED BY OR ON BEHALF OF SELLER AND ANY TERMS SUPPLIED BY ANY TRADE USAGES OR COURSE OF DEALING WHICH ARE INCONSISTENT WITH OR IN ADDITION TO THE PROVISIONS OF THE CONTRACT DOCUMENTS (WHICH INCONSISTENT OR ADDITIONAL PROVISIONS ARE HEREBY EXCLUDED FROM THE PARTIES' CONTRACT). THE ORDER AND PRUFREX'S OBLIGATIONS ARE EXPRESSLY CONDITIONED UPON SELLER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS. THE CONTRACT DOCUMENTS SHALL BE THE COMPLETE AND EXCLUSIVE CONTRACT BETWEEN PRUFREX AND SELLER WITH RESPECT TO THE GOODS (THE "CONTRACT") AND MAY BE MODIFIED ONLY IN A WRITING SIGNED BY PRUFREX'S AUTHORIZED REPRESENTATIVE.

**§ 2 Orders:** Prufrex may furnish Orders to Seller which set forth the Goods scheduled for delivery over multiple months. Orders accepted by Seller and not withdrawn by Prufrex as provided in paragraph 1 shall be binding upon Prufrex only with respect to Goods scheduled to be delivered within two months following the date of the Order. The Goods scheduled for delivery in subsequent months under the Order shall be non-binding

forecasts for such months. By giving notice to Seller, Prufrex may cancel the Order with respect to deliveries scheduled in any or all such forecast months, without liability to Seller; provided, however, with the passage of each then-current month of deliveries under the Order, the first occurring forecast month of deliveries shall become binding upon Prufrex unless Prufrex has canceled the Order with respect to such forecast month prior to the end of such then-current month of deliveries.

**§ 3 Price:** The Contract price of the Goods shall be as agreed to by the parties and confirmed by Prufrex in the Contract Documents and, unless otherwise agreed in writing by Prufrex, shall cover and be inclusive of all costs and charges incurred in connection with the sale or delivery of the Goods, including without limitation, (a) all import duties, Customs fees and taxes (other than sales or use taxes payable by Prufrex under Virginia law), and (b) all costs of carriage, packing, packaging, and insurance (all of which costs and charges shall be borne by Seller). No increase in price or extra charges, including any interest or finance charges, shall be effective unless Prufrex consents thereto in advance and in writing. If the scheduled delivery date for the Goods is more than sixty (60) days following the date of Prufrex's Order, then Prufrex shall be entitled to a reduction in the Contract price if the unit price for comparable Goods being charged by Seller to any third party in such time period is less than 95% of the Contract unit price for such Goods (in which case the Contract unit price shall be reduced to such lower unit price). Further, without impairing any other remedy available at law or under these Terms and Conditions, Prufrex shall be entitled to reduce the invoiced Contract price payable for the Goods (whether or not Prufrex has already paid for the Goods) if the Goods do not conform to the Contract in any respect, with the amount of such price reduction being proportionate to the difference in the value of the Goods as actually delivered versus the value that conforming Goods would have had at the time of delivery. Prufrex may offset any such reduction in price against future invoices from Seller if Prufrex has already paid for the nonconforming Goods. Unless otherwise stated in the Contract Documents, the prices and other sums stated in the Contract Documents shall be paid in the currency of the United States of America.

**§ 4 Warranties:** Seller unconditionally represents and warrants, for a period without limit, that (a) Seller has marketable title to and the right to convey the Goods; (b) the Goods are unencumbered and free from security interests and liens; and (c) the Goods do not infringe any United States or foreign trademark, patent, copyright, design, or similar intellectual property right of any third party. In addition to any other express or implied warranties that Seller has provided or that Prufrex may otherwise have the right to rely upon, Seller expressly and unconditionally warrants, for a period ending one (1) year after Prufrex's delivery to its customer of Prufrex's finished product incorporating the original or any replacement Goods, that all such Goods shall, unless otherwise specified or agreed by Prufrex in writing: be new and of first-class quality; be merchantable; be fit for Prufrex's specific purpose; be free of defects in materials, workmanship, manufacture and

design, whether latent or otherwise; conform strictly to any specifications and descriptions set forth in the Contract Documents; conform strictly to any representations, depictions, samples, or models of the Goods furnished to Prufrex; meet the highest standards of quality available in the industry, including ISO standards when applicable; and be adequately contained, packaged and labeled. If Prufrex issues a recall for any of its finished products attributable, in whole or in part, to defects or nonconformity in Goods supplied by Seller (a "Recall"), then the period of Seller's warranty shall be extended to include such Recall period and Seller shall indemnify Prufrex in respect thereof as provided in paragraph 5 below. Prufrex shall be entitled to all remedies for breach of any of the above warranties by giving notice of a warranty claim to Seller within the applicable warranty period. All of Seller's warranties are for the benefit of Prufrex; may be assigned to Prufrex's direct and indirect customers; and shall survive any inspection, delivery, acceptance or payment. Seller shall assign in full, and without cost to Prufrex, all warranties from Seller's suppliers that are applicable to the Goods. If Seller has furnished any samples or other representations, depictions or models of the Goods prior to Prufrex placing its Order, Seller shall promptly notify Prufrex of any change in the source of any part, component or other material used in producing the Goods and shall provide a sample from such new source, if requested by Prufrex. Prufrex may cancel the Order, in whole or in part, should Prufrex not be satisfied with the new source, in its sole discretion.

**§ 5 Indemnity:** Seller shall indemnify, defend, and hold Prufrex harmless against any and all loss, liability, damages, expense, claims, demands, suits, judgments, settlements or costs, including without limitation, reasonable attorneys' and consultants' fees and expenses, incurred by Prufrex arising from or caused by (a) Seller's breach of the Contract, (b) a breach of Seller's warranty, (c) a Recall, or (d) any act or omission by Seller or any of its officers, directors, managers, employees, contractors or agents that causes any personal injury (including death), property damage or economic losses in any manner connected with the Goods or the performance of the Contract except to the extent caused by Prufrex's sole negligence. Prufrex shall have the right, but not the obligation, to control the defense or settlement of any claim or lawsuit covered by Seller's indemnity, all at Seller's expense. At Prufrex's option, Seller shall be liable at Seller's sole expense to assume the defense of any such litigation. Seller shall procure and maintain a products liability insurance policy, with such carrier and with such coverage as shall be acceptable to Prufrex, and such policy shall be endorsed to name Prufrex, its parents, subsidiaries and affiliates as an additional insured under such coverage. Seller shall provide Prufrex such evidence of such insurance coverage and endorsement as Prufrex may require.

**§ 6 Delivery:** The date or dates for delivery of the Goods shall be as set forth in Prufrex's Order. Prufrex reserves the right to accept or reject, in whole or in part, partial or excess deliveries of Goods. Prufrex may designate the permitted time of day for deliveries within normal business hours. Unless otherwise specified in the Contract Documents: (a) all

deliveries of Goods shall be DDP (as defined in "Incoterms 2010"), using a carrier of Prufrex's choice and (b) risk of loss shall pass to Prufrex after delivery of the Goods conforming to the Order to Prufrex at the DDP delivery point. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE CONTRACT. Prufrex's acceptance of a partial, excess or late delivery shall not constitute a waiver of any damages Prufrex may be entitled to recover as a result of such nonconforming delivery.

**§ 7 Inspection:** Prufrex shall have the right, but shall be under no duty, to inspect or test the Goods before its processing, use or resale thereof, and Prufrex's processing, use or resale thereof shall not constitute a waiver of any claim. Rejection of, or notice of defects in, the Goods shall be considered timely if made within a reasonable period after discovery by Prufrex of such defects. A reasonable period for the rejection of, or notice of defects in, Goods with obvious defects shall not be less than ten (10) days following delivery of the Goods to Prufrex at its Virginia Beach, Virginia facility. A reasonable period for the rejection of, or notice of defects in, Goods with non-obvious defects shall not begin until such non-obvious defects are discovered by Prufrex. Payment for any of the Goods shall not be deemed an acceptance of such Goods. The failure of any of the Goods to conform to any of the warranties in Section 4 shall, if Prufrex has accepted the Goods, constitute a nonconformity that substantially impairs such Goods' value to Prufrex for which Prufrex may revoke acceptance.

**§ 8 Payment:** Payment terms shall be as shown in the Contract Documents. Unless specified otherwise in the Contract Documents, payment shall be due within forty-five (45) days after receipt by Prufrex of Goods conforming to the Order together with Seller's proper invoice therefor. Prufrex shall be entitled to a three percent (3%) discount against the invoice amount on all payments made by Prufrex within twenty (20) days after receipt of the conforming Goods together with the proper invoice therefor. Seller shall apply each payment by Prufrex to the invoice(s) for which such payment is made.

**§ 9 Compliance with Laws:** Seller agrees that it shall strictly comply with all applicable foreign, federal, state, and local laws, rules, regulations, codes, and ordinances, including all applicable laws and regulations regarding worker safety, employment discrimination, wage-hour matters and product safety. Seller shall arrange for all required inspections and approvals by governmental officials, including without limitation Customs clearance, export licenses and any other import or export obligations, if necessary.

**§ 10 Protection of Intellectual Property:** Prufrex retains all right, title, interest, claim and ownership in and to any and all samples, drawings, models, technical data, specifications or documents furnished by Prufrex to Seller. Seller shall not reproduce, modify or distribute any documents furnished by Prufrex regarding its products without Prufrex's prior written consent. Seller shall maintain all such samples, drawings, models, technical data, specifications and documents in strictest confidence and shall not transfer to, or permit access to same by, any third parties without Prufrex's prior written consent.

In no event shall Seller produce, supply or deliver any products (whether in finished or unfinished condition) for the benefit of any third party based upon or utilizing, in whole or in part, any of the samples, drawings, models, technical data, specifications or documents furnished by Prufrex.

**§ 11 Tooling:** Prufrex may provide to Seller, for Seller's use, tools or parts to be used in producing the Goods. Prufrex hereby reserves all right, title and ownership in such tools and parts and shall be entitled to recover possession thereof, on demand; provided, however, Seller shall insure such tools or parts, at Seller's sole expense, against fire or other casualty, with such carrier and with such coverage as shall be acceptable to Prufrex. Such insurance policy shall name Prufrex as a loss payee, as its interests may appear, and Seller shall furnish Prufrex evidence of such insurance coverage at Prufrex's request. Seller shall maintain the tools or parts in good condition and repair, at Seller's sole expense, and Seller shall immediately notify Prufrex of any damage or loss to such tools or parts. Seller shall not use any such tool or parts to make products for any person or entity other than Prufrex without Prufrex's prior written consent. If Seller or any party acting by or under Seller modifies or combines Prufrex's tools or parts with other items to make a machine or other tool, then Prufrex shall jointly own such machine or other tool with Seller and, unless such right is waived in the Contract Documents, Prufrex shall be entitled to take possession thereof upon demand. Seller shall not sell, transfer or otherwise dispose of any of Prufrex's tools or parts or any machine or tool incorporating Prufrex's tools or parts, or any interest in the foregoing, without Prufrex's prior written consent, and unless otherwise agreed by Prufrex in the Contract Documents, Prufrex shall be sole owner of any proceeds from the sale or other disposition of any Prufrex tools and parts and the joint owner of any proceeds from the sale or other disposition of Seller's machines or tools incorporating Prufrex tools or parts, and all such proceeds shall be paid over to Prufrex, to be held by Prufrex to the extent of its interest therein. Seller shall furnish such performance bond, letter of credit or other security as Prufrex may require to secure Seller's obligations and Prufrex's rights under this paragraph. Without limitation of the foregoing, in order to secure Prufrex's rights under this paragraph, Seller hereby grants Prufrex a security interest and lien against all machines and tools of Seller incorporating Prufrex tools or parts and used in the production of Goods, together with a security interest and lien against the proceeds thereof, and Prufrex is hereby authorized to file any UCC financing statements or other documents which Prufrex determines to be necessary or appropriate in order to effect, evidence, perfect or enforce its security interest and lien against such machines, tools and the proceeds thereof.

**§ 12 Remedies:** Except as otherwise provided in the Contract Documents, Prufrex and Seller shall have those rights and remedies provided by applicable law; provided, however, that if the Goods or any installment thereof are not supplied in accordance with the Contract Documents and by the delivery date or dates specified therein or Seller otherwise fails to observe strictly or to comply strictly with any of the Contract Documents,

Prufrex shall be entitled to avail itself of any one or more of the following remedies at its discretion, regardless of whether Prufrex has accepted the Goods in whole or in part: (a) to cancel the Contract, in whole or in part; (b) to reject the Goods, in whole or in part, and return them to Seller, at Seller's risk of loss and cost of carriage and insurance, for a full refund to be paid promptly by Seller; (c) to refuse to accept any further deliveries of any Goods, without any liability to Seller; or (d) to claim any damages available to Prufrex as may have been sustained, including without limitation any consequential loss or damage. Prufrex may offset any costs, losses, damages or other amounts for which Seller is or becomes liable hereunder against any current or future invoice amount for Goods delivered or to be delivered by Seller. Notwithstanding any contrary provision in the Contract Documents or any other statement of whatever nature, whether written or oral, Prufrex, through its agents or otherwise, does not assume any responsibility or liability to indemnify, defend, save, or hold harmless Seller or any other person, firm or party from or against any loss, damage, or injury, including any indirect, incidental, consequential, special, or punitive damages, losses, or injuries whatsoever, regardless of any language by which such assumption purports to be expressed or implied.

**§ 13 Dispute Resolution:** All disputes, controversies, claims or differences between the parties arising out of or relating to the Contract Documents, including the breach, validity or termination thereof, or the purchase, sale, use or condition of Prufrex's products, shall be finally and solely determined and settled by binding arbitration in Norfolk or Virginia Beach, Virginia, U.S.A. in accordance with the International Institute for Conflict Prevention & Resolution ("CPR") Rules for Non-Administered Arbitration (the "Rules"). The arbitration shall be conducted by a sole arbitrator. The arbitrator need not be a member of any of the CPR Panels of Distinguished Neutrals. The arbitrator is hereby instructed, directed and commanded to assume case management initiative and to initiate early scheduling of all events and proceedings so as to resolve any dispute as expeditiously as possible. In rendering the award, the arbitrator shall determine the rights, remedies, liabilities and obligations of the parties according to the laws of the Commonwealth of Virginia including, without limitation, the provisions thereof with respect to evidence. The arbitrator shall have no power to make awards or issue orders of any kind inconsistent with the provisions of the Contract Documents. The language of the arbitration shall be English. Judgment upon any arbitration award may be entered and enforced in any court of competent jurisdiction. Notwithstanding anything herein to the contrary, Prufrex shall in its discretion be entitled to bring suit in a court of competent jurisdiction against Seller in order to obtain injunctive relief or other equitable remedies or interim measures to prevent, mitigate or stop irreparable harm to Prufrex's rights. Seller hereby irrevocably submits to the personal jurisdiction and venue of the federal and state courts of Norfolk and Virginia Beach, Virginia, with respect to any action brought by Prufrex (i) to enforce the agreement herein to arbitrate, (ii) to enforce the arbitrator's award, (iii) seeking injunctive relief or other equitable remedies or interim measures, or

(iv) claiming any amounts owed by Seller. Prufrex shall be entitled to recover its reasonable attorneys' fees and other expenses incurred in the enforcement or defense of its rights and remedies.

**§ 14 Governing Law:** The internal laws of the Commonwealth of Virginia, without regard to its conflict of laws principles, shall govern the Contract and the rights and obligations of the parties hereunder. Questions that are not expressly settled in the Contract are to be settled in conformity with the internal laws of the Commonwealth of Virginia, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.

**§ 15 Notice:** Unless specified otherwise elsewhere in the Contract, all notices and similar communications provided hereunder shall be in the English language and delivered by any means that are reasonable under the circumstances.

**§ 16 Assignment and Subcontracts:** Seller may not transfer, assign or subcontract any of its rights, duties or obligations under the Contract, whether by operation of law or otherwise, without the prior express written consent of Prufrex. Any attempted transfer, assignment, or subcontracting by Seller without such consent shall be void and without force or effect.

**§ 17 Force Majeure:** Seller shall not be liable in damages for any failure to perform its obligations under the Contract Documents that is due to any extraordinary cause beyond its reasonable control (a "Force Majeure Event"); provided, however: (a) Seller shall not be excused from any such obligations due merely to economic hardship, changes in market conditions, insufficiency of funds, unavailability or increased cost of equipment or supplies, or labor difficulties; and (b) in order to assert the occurrence of a Force Majeure Event, Seller must give immediate notice to Prufrex of any alleged Force Majeure Event, together with a good-faith estimate of its expected duration. As a result of any Force Majeure Event, Prufrex may (but is not obligated to), and without liability to Seller: (a) terminate the Contract in whole or in part; (b) reject any delivered Goods, in whole or in part, and return such Goods to Seller at Seller's risk and cost for a full refund to be paid promptly by Seller; or (c) refuse to accept any further deliveries of any Goods.

**§ 18 General:** The Contract Documents supersede all prior communications, written and oral, between Prufrex and Seller governing the sale and purchase of the Goods. The Contract Documents constitute the entire agreement of the Seller and Prufrex with respect to the subject matter thereof; provided, however, all rights and remedies available to Prufrex under the Contract Documents shall be in addition to all other rights and remedies of Prufrex under applicable law, all of which rights and remedies shall be nonexclusive and cumulative. No waiver by either party of any default shall be deemed a waiver of any subsequent default. If any provision of the Contract Documents is determined to be invalid, such invalidity shall not affect the validity of the remaining

portions of the Contract. In the event of any translation of the Contract Documents into a language other than English, the provisions of the English-language version shall prevail and govern in the events of any conflict or inconsistency in interpretation. Prufrex shall not be bound by any modification of the Contract Documents unless set forth in a writing signed by Prufrex.

**As of: 07/2016**