

Terms and Conditions of Purchase by Putzmeister America, Inc.**Issued _____ 2021****1. CONTROLLING TERMS**

These Terms and Conditions (these “Terms”) apply to any purchase order or contract (the “Purchase Order”) to which Putzmeister America, Inc. (“Buyer”) is a party which specifically references or incorporates these Terms, including as to any limited extent (e.g. as to particular sections). The other party to the Purchase Order is the “Seller” (together with Buyer, the “Parties”). The Purchase Order issued by Buyer to purchase goods described on the Purchase Order (the “Goods”) is not a confirmation or acceptance of any offer or proposal to sell goods. Any acceptance by Buyer of any offer by Seller is expressly conditioned on Seller’s agreement to comply with these Terms. Buyer expressly objects to any additional or different terms delivered by Seller in any quotation, acknowledgement, invoice or other form of communication previously or hereafter provided by Seller to Buyer. Any such additional or different terms issued or provided by Seller will have no force or effect and are expressly rejected by Buyer.

2. CANCELLATIONS AND CHANGES.

Buyer may cancel or modify the Purchase Order, or change the delivery destination for the Goods upon written notice to Seller at any time before the scheduled delivery or completion date, as applicable, at no cost to Buyer.

3. INVOICING; PAYMENT TERMS; TAXES

Upon delivery of the Goods, Seller will issue an invoice for the Goods to Buyer. The invoice shall contain a line item for price, taxes and shipping costs as applicable. Unless otherwise agreed in writing by the Parties, Buyer shall pay Seller for the Goods within sixty (60) days of the date of the invoice. Buyer may withhold, deduct or set-off all or a portion of a payment of the invoice for any breach by Seller of these Terms.

Unless otherwise provided in the Purchase Order, Seller shall pay all applicable taxes, charges, value added, tariffs, customs duties, use or other similar taxes, and charges, payable to any governmental authority (“Taxes”). Seller agrees to include a line item for all Taxes payable by Buyer on each invoice.

4. SHIPMENT AND DELIVERY.

The Goods sold to Buyer pursuant to these Terms shall be shipped according to the written terms of shipment stated on the Purchase Order. Seller shall deliver the Goods sold to Buyer to the address specified in the Purchase Order.

Seller will ship and deliver the Goods adequately packaged for shipment, preservation during shipment, and storage, including all documentation required for use, maintenance and upkeep. Seller is not responsible to pay for any costs of packaging, shipping, crating or related costs unless specified on the Purchase Order.

Seller must include the Purchase Order number on all correspondence, shipping documents, packing sheets, bills of lading, air bills, and invoices.

Seller agrees to inspect the Goods prior to shipment to ensure the Goods meet the specifications set forth in the Purchase Order and comply with the Warranty on the Goods stated herein.

5. TIME IS OF THE ESSENCE.

Seller acknowledges that time is of the essence for the delivery of the Goods. Seller agrees to provide Buyer with prompt written notice if there will be a shipment delay or if Seller is unable to comply with the delivery date stated in the Purchase Order. If deliveries are not made at the time specified in the Purchase Order, such failure constitutes a material breach of the Purchase Order and Buyer reserves the right to cancel the Purchase Order without further obligation to Buyer. In addition to any other rights and remedies that Buyer has, in the event of Seller's nonconformance with any of the requirements under this Section, Section 4, or any other delivery obligation, Seller shall be liable for Buyer's actual costs, expenses and damages relating to or arising from such nonconformance.

6. RISK OF LOSS.

Unless otherwise provided in the Purchase Order, title and risk of loss or damage to the Goods will pass to Buyer upon physical delivery to Buyer at the delivery location identified on the Purchase Order. Seller will not retain any security interest in the Goods and will deliver the Goods free and clear of any liens and encumbrances. Buyer may return or reject shipments of the Goods which are nonconforming, damaged, or late at Seller's sole expense and Seller shall continue to bear the risk of loss.

7. OWNERSHIP OF SPECIFICATIONS; CONFIDENTIALITY.

Buyer shall at all times own and retain title to all specifications, drawings, prototypes and other documents furnished by Buyer to Seller hereunder. Seller shall hold the specifications, drawings, prototypes and other documents in confidence and use the same only to the extent necessary for execution of this Purchase Order and shall, upon Buyer's request, promptly return to Buyer all copies of the same.

Any specifications, drawings, prototypes or other documents which Buyer furnishes to Seller hereunder shall be confidential and may also be subject to a separate confidentiality agreement between Buyer and Seller.

8. WARRANTY.

Seller warrants that the Goods delivered to Buyer pursuant to these Terms shall: (a) be made from specified and traceable material; (b) be free from defects in materials, workmanship and design (if designed by Seller or at its direction); (c) comply with any specifications, drawings, prototypes or other documents provided to Seller by Buyer; (d) be fit for the purpose for which purchased if the purpose is identified to Seller; (e) be merchantable; (f) be free and

clear of all Claims, liens, security interests and encumbrances; and (g) comply with the Applicable Laws set forth herein (collectively the “Warranty”).

Seller also assigns to Buyer any and all warranties received by Seller from Seller's suppliers with respect to the Goods, and Seller agrees to enforce such warranties on Buyer's behalf if requested to do so by Buyer.

The Warranty shall survive any inspection by, delivery to, acceptance by, and payment by (in each case) Buyer.

9. REMEDIES FOR BREACH OF WARRANTY.

If Buyer concludes that any of the Goods fail to conform to the Warranty, in addition to any other rights it may have at law or in equity, Buyer has the right to do any one or more of the following: (i) return the Goods and receive a replacement at Seller’s expense; (ii) return the Goods to Seller at Seller’s expense and obtain a refund of the purchase price; (iii) promptly repair the Goods at Seller’s expense, (iv) pursue any other remedy available at law or in equity, including, but not limited to, the right to obtain actual, incidental or consequential damages as a result of a breach of the Warranty, including but not limited to costs incurred by Buyer for inspecting, repairing, transporting, expediting, removing, disassembling, reinstalling or replacing such Goods, resulting from production interruptions, resulting from a recall, or resulting from claims for personal injury or property damage resulting from the Goods. In all cases, Buyer shall be reimbursed by Seller for its expenses in returning the Goods which do not comply with the Warranty. Seller assumes all risk of loss or damage in transit with regard to the Goods returned to Seller.

10. RECALL.

In the event Seller issues a recall of the Goods, Seller will be responsible to pay all damages and out-of-pocket expenses incurred by Buyer as a result of the recall, including but not limited to costs of notifying Buyer’s customers, return of the Goods, refunds, lost profits, and other damages incurred by Buyer.

11. SELLER’S REPRESENTATIONS. Seller represents to Buyer that:

- **a.** Seller holds title to the Goods and any associated software and transfers to Buyer that title and all interest in and to the Goods and any associated software, free and clear of any Claims, liens, security interests and encumbrances;
- **b.** The Goods do not and will not infringe or violate any intellectual property rights of any third party;
- **c.** There are no pending or threatened lawsuits, demands or Claims related to the Goods which are the subject matter of these Terms, including, but not limited to, claims for negligence, product liability, strict liability or intellectual property infringement;
- **d.** The manufacture, sale, distribution and use of the Goods comply with all applicable international, federal, state and local laws, rules, regulations and ordinances, including, but not limited to those set forth in Section 14 of these Terms;

- **e.** None of the Goods contain any Conflict Minerals as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and further explained in Section 14 of these Terms.

12. INDEMNIFICATION.

Seller agrees to indemnify, defend and hold harmless Buyer as well as its parents, subsidiaries, affiliates, customers, officers, directors, employees, attorneys, and agents (collectively, the “Indemnified Parties”) from and against all claims, allegations, lawsuits, losses, damages, verdicts, settlements, costs, penalties, expenses and attorneys’ fees (“Claims”) brought by a third party against any Indemnified Party arising out of or related to: (i) any breach of or inaccuracy in the Warranty and any inaccuracy or breach of any of Seller’s representations or agreements herein; (ii) personal injury or property damage caused by or arising on account of the Goods, including but not limited to claims for negligence, strict liability or products liability; (iii) infringement of any patent, copyright, trademark, trade secret or other types of intellectual property as to the Goods (unless Buyer designed the Goods); (iv) violations of Seller’s obligations to protect confidential information; or (v) Seller’s violation of any Applicable Laws (as defined below).

13. INSURANCE.

From the date of the Purchase Order and for a period of three (3) years following the date of delivery of the Goods, Seller shall obtain and maintain in place the following insurance coverage: (i) worker’s compensation and employer liability insurance within statutory requirements of Applicable Law, as defined herein; (ii) broad form commercial general liability insurance, including premises and operations, products and completed operations, blanket contractual liability, and personal and advertising injury with minimum coverage of \$2,000,000 per occurrence; and (iii) umbrella insurance coverage with a minimum coverage of \$10,000,000.

Seller agrees that it is responsible for any applicable self-insured retention or deductible related to any claim under an insurance policy subject to these Terms. Upon request, Seller shall provide Buyer with a certificate of insurance issued by an authorized representative of Seller’s insurance company, naming Buyer as an “Additional Insured” under each policy and providing a waiver of subrogation in favor of Buyer.

14. COMPLIANCE WITH LAWS. Seller has complied and will comply with all international, federal, state and local laws, orders, rules and regulations of any governmental authorities which regulate, affect or relate to the manufacture, sale, packaging, delivery or distribution of the Goods or the performance of its obligations hereunder, except to the extent inconsistent with U.S. anti-boycott laws. These laws shall include, but are not limited to (the foregoing, including the following, being collectively the “Applicable Laws”):

- **a. Export Laws.** Seller agrees to obtain all necessary licenses, permits or other approvals as may be required to export the Goods from their country of manufacture to the delivery destination, and will comply with all applicable international or national export, import or re-export laws, rules and regulations which cover the Goods. If any

Purchase Order requires either party to obtain government-approved export authorization to facilitate activities and obligations set forth under such Purchase Order, the Parties shall mutually exercise reasonable efforts to support the preparation and management of the authorization in full compliance with Applicable Laws. The Parties shall respond to requests for supporting documentation, including clarifying questionnaires' and any other required information necessary to secure government authorization. The Seller shall be individually responsible for obtaining required documentation or other information from any third party required by such party to perform its obligations under the Purchase Order. Upon request, the Parties shall exchange copies of all government export authorizations related to the Goods or services, and all provisions, conditions, limitations, or information relating to the authorization. The Seller shall be individually responsible for compliance with all government export authorizations, including without limitation ensuring that all export-related paperwork and documentation are properly completed and timely filed.

- **b. Bribery Laws.** Seller agrees to comply with the Foreign Corrupt Practices Act, 15 U.S.C. § 78 *et seq.* (the “FCPA”), the UK Bribery Act of 2010 and all comparable laws and regulations of Seller’s country and all other applicable commercial and public anti-bribery laws.
- **c. Employment Laws.** Seller agrees to comply with Applicable Laws regarding minimum wage, living conditions, overtime, working conditions, and labor and employment including, but not limited to, the Occupational Safety and Health Act of 1970, as amended. Seller will not use any child labor or prison inmates in manufacturing, selling, packaging, delivery or distribution of the Goods.
- **d. Environmental Laws and Safety Standards.** Seller agrees to comply with all applicable environmental, health and safety laws, standards, requirements and restrictions, including without limitation adhering to Buyer’s safety instructions when at Buyer’s jobsites or facilities.
- **e. Conflict Minerals.** Seller recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten and gold (“Conflict Materials”) from the Democratic Republic of the Congo and adjoining countries (“DRC countries”). Accordingly, Seller commits to comply with Section 1502 and its implementing regulations; to the extent the Seller is not a “Registrant” as defined in the Act, Seller shall comply with Section 1502 and its implementation regulations except for the filing requirements. In particular, Seller commits to have in place a supply chain policy and processes to undertake (i) a reasonable inquiry into the country of origin of Conflict Materials incorporated into the Goods; (ii) due diligence of its supply chain, following a nationally or international recognized due diligence framework, as necessary to determine if Conflict Materials sourced from DRC countries directly or indirectly support unlawful conflict there, and (iii) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. In addition, Seller will provide Buyer with assistance and cooperation with a country-of-origin inquiry for any minerals used in the Goods purchased by Buyer, and provide information and documentation requested by Buyer or any third party hired by Buyer to assist with compliance with the Conflict Minerals laws.

- **f. Human Trafficking.** Seller warrants all materials incorporated into the Goods comply with the Applicable Laws regarding or related to human trafficking and slavery of the countries in which the Seller is doing business or will do business in fulfilling any Purchase Order.
- **g. Chemical Regulations and Materials of Concern.** To the extent the Goods contain, or the manufacturing process for the Goods use, any waste, substance or material that is classified, regulated, defined or designated, including under any applicable environmental law, as radioactive, explosive, highly flammable, hazardous or toxic or as a contaminant or a pollutant, or for which liability or standards of conduct may be imposed (“Materials of Concern”), Seller shall comply with the Applicable Laws, including but not limited to any (i) registration, notification, authorization, restriction, or ban and (ii) hazard classification, labeling, packaging, or safe use compliance and communication obligation. Further, Seller shall cooperate with Buyer’s efforts to comply with such laws, including but not limited to (i) investigating and communicating to Buyer the nature and extent of any Materials of Concern contained in the Goods or in the processes used to manufacture, assemble, use, maintain, or repair any Goods; (ii) providing all reasonably necessary documentation to verify the material composition, on a substance by substance basis; (iii) promptly responding to Buyer’s requests for information, in the form requested by Buyer, regarding Materials of Concern used or intended to be used in connection with the Goods and related regulatory controls.
- **h. Embargo or Sanction.** Seller shall not engage any employees, agents, representatives, subcontractors, or any other person used in the performance under the Purchase Order, who is ineligible to perform thereunder or hereunder because of any embargo, sanction, debarment or designation as a Specially Designated National or a denied party, as maintained by the U.S. government. In furtherance of the foregoing, Seller shall perform denied party screenings on said personnel and promptly notify Buyer in writing if any such personnel has been identified as ineligible because of the reasons listed above.
- **i. Data Privacy.** Seller shall comply with all laws related to data privacy, the protection or personal information or data, and the cross-border transfer of personal information or data and shall be responsible for providing any notice required by law to the data subjects whose personal data it provides to Buyer.

In addition, Seller shall be responsible for securing and maintaining at its cost any governmental or regulatory approvals necessary in order to manufacture, sell, deliver, package or distribute the Goods.

Seller shall promptly notify Buyer if it becomes aware of any failure by Seller or its subcontractors to comply with this Section and shall cooperate fully with Buyer in any investigation of such failure to comply.

15. TERMINATION.

Either party may terminate its obligations under the Purchase Order (a) at any time if the other party has materially breached the Purchase Order (including without limitation breach of any Warranty), but only after providing written notice of the alleged breach and providing the other

party a thirty (30) day opportunity to cure the breach, and the breach is not fully cured within that time period or (b) upon a party's discovery of a material misrepresentation by the other party.

In addition, either party may terminate the Purchase Order upon the insolvency, receivership or institution of bankruptcy proceedings by or against the other party or upon such other party's dissolution or ceasing to do business.

In any case, however, termination shall not affect any rights arising prior to the date of termination.

16. ASSIGNMENT.

Neither party shall assign, transfer or otherwise dispose of its rights under the Purchase Order in whole or in part, without the prior written consent of the other party. Any purported assignment or transfer in violation of this provision shall be deemed null and void.

17. SEVERABILITY.

If any provision of the Purchase Order or these Terms shall be declared void, illegal or unenforceable, the remainder of the Purchase Order and these Terms shall be valid and enforceable to the extent permitted by applicable law. In such event, the Parties shall use commercially reasonable efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by a court of appropriate jurisdiction according to Section 19 of these Terms, achieves the purposes intended under the invalid or unenforceable provision.

18. DISPUTE RESOLUTION.

In the event that a dispute arises between Seller and Buyer arising out of these Terms, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute.

In the event the dispute is not resolved within thirty (30) days of the date one party notified the other party in writing of the dispute, the Parties agree to submit the dispute to mediation with the Judicial Arbitration and Mediation Service ("JAMS"), or its successor, for mediation to take place in Milwaukee, Wisconsin with each party to pay its own legal fees and each party to equally share the mediation costs. The Parties agree that JAMS will appoint a mediator who is a licensed attorney and has substantial experience with resolving disputes regarding the sales of goods and the Uniform Commercial Code, but whether the appointed mediator has these qualities is within JAMS' discretion.

If the Parties are unable to resolve a dispute through mediation and the mediator has declared an impasse in writing, any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of these Terms to arbitrate, shall be determined by arbitration in Milwaukee, Wisconsin before one arbitrator.

The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitrator must be a licensed attorney with substantial experience with resolving disputes regarding the sales of goods and the Uniform Commercial Code, but whether the appointed arbitrator has these qualities is within JAMS' discretion. Judgment on the arbitration award may be entered in any court having jurisdiction. This section shall not preclude or delay the Parties from seeking provisional remedies from a court of appropriate jurisdiction according to Section 19 of these Terms.

19. CHOICE OF LAW AND FORUM.

These Terms, the Purchase Order, and all matters arising out of or relating to these Terms or the Purchase Order, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with the laws of the State of Wisconsin, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any other jurisdiction other than those of the State of Wisconsin.

The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms, the Purchase Order, or any matters arising out of or relating to these Terms or the Purchase Order.

Seller acknowledges the chosen law and forum, and all other terms of this Section, are reasonable and fair.

20. SUBMISSION TO JURISDICTION.

Any legal suit, action or proceeding arising out of or relating to these Terms shall be instituted in the federal courts of the United States of America located in Milwaukee County, Wisconsin (the Federal District Court for the Eastern District of Wisconsin) or in the courts of the State of Wisconsin located in the County of Racine or the County of Milwaukee, and each party irrevocably submits and consents to the exclusive personal jurisdiction of such courts in any such suit, action or proceeding.

21. ENGLISH LANGUAGE.

These Terms were written in English and should be interpreted using the English language. Any notices required under these Terms shall be provided in the English language.

22. NO THIRD PARTY BENEFICIARIES.

These Terms do not confer any benefits on any third party, and no third party may rely on any of these Terms.

23. AMENDMENTS

The Purchase Order may only be amended by written change orders signed by Buyer. Delivery of the Goods to, or pursuant to the direction of, Buyer shall constitute acknowledgement and acceptance of these Terms.

24. PRIOR AGREEMENTS

These Terms supersede and replace any previously issued Terms and Conditions or other agreements related to the subject matter hereof.