

## TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES

### 1 APPLICABILITY

- 1.1 These terms and conditions (the “**Terms**”) are the only terms which govern the sale of goods (“**Goods**”) and services (“**Services**”) by Prolyte B.V. (“**Seller**”) to you (“**Buyer**”). Each of Seller and Buyer are individually referred to as a “**Party**” or together as the “**Parties.**”
- 1.2 The Terms, together with the basic order information in the Seller's quote or accepted purchase order and any applicable master agreement signed by the Parties covering the sale of Goods or Services (“**Master Agreement**”), form the entire agreement between the Parties with respect to sales of Goods and/or Services and supersede all other agreements, understandings and communications between the Parties. To the extent that these Terms are inconsistent with any Master Agreement or purchase order, these Terms shall prevail unless provided otherwise.
- 1.3 Any of Buyer’s terms and conditions of purchase or any other terms and conditions attached to or referenced in any purchase order are rejected and excluded. Any fulfilment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not modify these Terms.

### 2 DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

- 2.1 The Goods will be delivered within a reasonable time after acceptance of Buyer’s purchase order. Seller shall not be liable for any delays, loss or damage in transit.
- 2.2 Unless otherwise agreed in writing by the Parties, Seller shall make the Goods available for pick-up at Seller’s dock (the “**Delivery Point**”) using Seller’s standard methods for packaging such Goods. If Buyer elects, Seller shall arrange for shipment of the Goods to Buyer via Buyer's nominated carrier provided that Buyer or Buyer’s carrier shall take delivery of the Goods within five (5) days of Seller’s written notice that the Goods have been delivered to the Delivery Point. In any event, Buyer shall be responsible for all shipping and handling charges and shall provide reasonably suitable equipment and labour for receipt of the Goods at the Delivery Point.
- 2.3 Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.
- 2.4 Seller shall use reasonable efforts to meet any performance dates to render the Services specified in the purchase order or sales confirmation, but any such dates shall be deemed estimates only.
- 2.5 With respect to the Services, Buyer shall:
  - (a) cooperate with Seller in all matters relating to the Services and provide such access to Buyer’s premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services;
  - (b) respond promptly to any Seller request for information, materials or instructions that are reasonably necessary for Seller to perform the Services in a timely manner and ensure that such information, materials or instructions are complete and accurate in all material respects; and

(c) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

2.6 Notwithstanding anything to the contrary contained in these Terms, Seller may from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the applicable purchase order or Master Agreement.

### **3 DESIGNS**

3.1 In these Terms, “**Design**” means any design or advice (technical or otherwise) provided by Seller in connection with the sale of Goods or provision of Services. All Designs provided by Seller are specific to the Buyer’s project (“**Project**”).

3.2 In providing any Design, Buyer acknowledges Seller has relied upon information supplied by Buyer and its advisers, agents and contractors. Seller takes no responsibility for any failure or defect arising directly or indirectly from incomplete, inaccurate or misleading information provided to Seller, or arising as a consequence of any act, omission or failure by Buyer or any third party engaged in relation to the Project. In all events, Buyer is responsible to ensure the relevant Design has been checked and approved in all respects prior to installation by a qualified professional familiar with the Project acting on behalf of Buyer.

3.3 Any Design provided by Seller has been prepared and delivered on the basis that Seller’s Goods are explicitly specified and will be used in the Project. If Buyer uses any other manufacturer’s products, Seller accepts no responsibility whatsoever for the performance of those products, and Seller gives no assurances that any Design Seller provides will be suitable for use with those products.

3.4 Seller shall not be liable for any failure in Seller’s Goods caused by (a) the actions or omissions of third parties or (b) the treatment of Seller’s Goods on site and in use.

### **4 SHIPPING TERMS**

4.1 Unless otherwise agreed by the Seller, delivery of the Goods shall be made EXW (Incoterms® 2010). Risk of loss of the Goods shall pass from Seller to Buyer EXW (Incoterms® 2010). Title to the Goods shall pass from Seller to Buyer upon payment in full for the Goods being received by Seller.

### **5 BUYER’S ACTS OR OMISSIONS**

5.1 If Seller’s performance of its obligations is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, Seller shall not be deemed in breach of any of its obligations or otherwise liable for any costs, charges or losses sustained or incurred by Buyer to the extent arising directly or indirectly from such prevention or delay.

### **6 INSPECTION AND REJECTION OF NONCONFORMING GOODS; NON-DELIVERY**

6.1 Buyer shall inspect the Goods promptly and in any event within five (5) days after receipt (“**Inspection Period**”). All Goods shall be in good order upon release to the carrier. Any claim for damage or loss in transit must be brought by Buyer against the carrier in accordance with the shipping policy.

- 6.2 Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and provides the Seller with such evidence or other documentation reasonably required by Seller. For these purposes, “**Nonconforming Goods**” shall only mean instances where:
- (a) the products shipped are different to those identified in Buyer’s purchase order; or
  - (b) the product’s label or packaging incorrectly identifies its contents.
- 6.3 If Buyer notifies Seller of any Nonconforming Goods during the Inspection Period, Seller shall, in its sole discretion and as Buyer’s sole and exclusive remedy:
- (a) replace such Nonconforming Goods with conforming Goods; or
  - (b) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer.
- 6.4 Buyer shall ship the Nonconforming Goods to Seller in accordance with the Seller’s instructions at Seller’s expense and risk of loss. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer the replacement Goods at Seller’s expense and risk of loss.
- 6.5 The quantity of any instalment of Goods as recorded by Seller on dispatch from Seller’s place of business is conclusive evidence of the quantity received by Buyer unless Buyer can provide conclusive evidence establishing a different quantity.
- 6.6 Seller shall not be liable for any non-delivery of Goods (even if caused by Seller’s negligence) unless Buyer gives written notice to Seller of the non-delivery within three (3) days of the date when the Goods would in the ordinary course of events have been received.
- 6.7 Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the relevant invoice to reflect the actual quantity delivered.
- 6.8 Buyer acknowledges and agrees that the remedies set out in Section 0 are Buyer’s sole and exclusive remedies for non-delivery of Goods. Buyer shall have no right to return purchased Goods to Seller other than as provided in Section 0.

## **7 PRICE**

- 7.1 The price for the Goods and Services (“**Price**”) will be set out in the Seller’s accepted quote or purchase order.
- 7.2 Buyer agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of the Services.
- 7.3 All Prices are exclusive of all sales, use, excise and other applicable taxes, duties or charges. Buyer shall be responsible for all such charges, costs and taxes except for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, personnel or real or personal property or other assets.

## **8 PAYMENT TERMS**

- 8.1 If the Seller agrees to extend the Buyer credit, Buyer shall pay all invoiced amounts due to Seller in accordance with the agreed credit terms. Buyer shall make all payments in EUR in accordance with the Seller's invoice.
- 8.2 Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including attorneys' fees.
- 8.3 In addition to all other remedies available under these Terms or at law, Seller shall be entitled to suspend the delivery of any Goods or performance of any Services if Buyer fails to pay any amounts when due and such failure continues for five (5) days following written notice.
- 8.4 Buyer shall not be entitled to withhold or set-off payment of any amounts due and payable to Seller, whether relating to any claim or dispute or Seller's breach, bankruptcy or otherwise.

## **9 PROPERTY**

- 9.1 Unless otherwise agreed in writing by the Parties, Seller (or its licensors) will retain all intellectual property rights used to create, embodied in, used in and otherwise relating to any Designs and/or Goods and any of their component parts.
- 9.2 Seller hereby grants Buyer a non-exclusive, perpetual, worldwide, fully paid-up license to any such intellectual property only to the extent necessary to use, sell, offer for sale, import, export and incorporate into Buyer's products any Goods purchased from Seller. To the extent necessary to fulfil the foregoing provisions, Buyer hereby assigns all right, title and interest in and to any such intellectual property to Seller.
- 9.3 Buyer hereby grants Seller a limited license to Buyer's intellectual property to the extent necessary to perform any Services.
- 9.4 Each Party shall return all property of the other Party upon request, including all memoranda, notebooks, drawings, blueprints and confidential information provided by the other Party.

## **10 LIMITED WARRANTY**

- 10.1 Seller warrants to Buyer that for a period of one (1) year from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will be free from material defects in material and workmanship.
- 10.2 Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognised industry standards for similar services and shall devote adequate resources to meet its obligations under these Terms. No warranty is made with respect to any Designs or any advice provided to Buyer by Seller in connection with a Project.
- 10.3 Except for the warranties set out in Sections 0 and 0, Seller makes no warranty in relation to the Goods, Designs or Services, whether express or implied by law or course of dealing.

- 10.4 Products manufactured by a third party ("**Third Party Product**") may constitute, contain, or be incorporated into or attached to the Goods. For the avoidance of doubt, Third Party Products are not covered by the warranty in Section 0 and Seller makes no warranty in relation to Third Party Products, whether express or implied by law or course of dealing.
- 10.5 Seller shall not be liable for a breach of the warranties set out in Sections 0 or 0 unless:
- (a) Buyer provides written notice and a reasonable description of the defective Goods or Services to Seller within fifteen (15) days of the time when Buyer discovers or ought to have discovered the defect;
  - (b) if applicable, Seller is given a reasonable opportunity to examine such Goods after Buyer (if requested to do so by Seller) has returned such Goods to the Seller; and
  - (c) Seller reasonably verifies Buyer's claim that the Goods or Services are defective.
- 10.6 Seller shall not be liable for a breach of the warranties set out in Sections 0 or 0 if:
- (a) Buyer makes any further use of the Goods after giving notice under Section 0;
  - (b) the defect arises because Buyer failed to follow Seller's instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or
  - (c) Buyer alters or repairs such Goods without the prior written consent of Seller.
- 10.7 Subject to Sections 0 and 0 above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either:
- (a) repair or replace such defective Goods (or the defective part); or
  - (b) credit or refund the price of such defective Goods provided that Buyer returns such Goods to Seller if Seller so requests.
- 10.8 Subject to Sections 0 and 0 above, with respect to any Services subject to a claim under the warranty set out in Section 0, Seller shall, in its sole discretion and as Buyer's sole and exclusive remedy:
- (a) repair or re-perform such defective Services; or
  - (b) credit or refund the price of such defective Services.

## **11 LIMITATION OF LIABILITY**

- 11.1 In no event shall Seller be liable to Buyer or any third party for any loss of use, revenue or profit or diminution in value, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not Seller has been advised of the possibility of such damages.

11.2 In no event shall Seller's aggregate liability arising out of or related to any sale or proposed sale of Goods and/or Services, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total amount paid to Seller for the Goods and Services at issue.

## **12 COMPLIANCE WITH LAW**

12.1 Buyer shall comply with all applicable laws, statutes, and regulations in force from time to time. Buyer shall maintain in effect all the licenses, permissions, authorisations, consents and permits that it needs to carry out its obligations under these Terms.

## **13 TERMINATION**

13.1 In addition to any remedies that may be provided under these Terms, Seller may terminate any order for Goods and/or Services with immediate effect upon written notice, if Buyer:

- (a) fails to pay any amount when due and such failure continues for two (2) days after Buyer's receipt of written notice of non-payment;
- (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or
- (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganisation or assignment for the benefit of creditors.

## **14 WAIVER**

14.1 Any waiver by Seller of any right or remedy is only effective if set out in writing and signed by Seller. Any delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **15 CONFIDENTIAL INFORMATION**

15.1 All non-public, confidential or proprietary information of Seller, including any specifications, samples, Designs, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer in any form and whether or not identified as "confidential", shall be treated by Buyer as confidential ("**Confidential Information**"). Confidential Information shall not include any information that is in the public domain or known to Buyer at the time of disclosure or rightfully obtained by Buyer on a non-confidential basis from a third party.

15.2 Buyer shall only use the Confidential Information in connection with a sale or proposed sale of Goods and/or Services from Seller to Buyer and may not be disclosed or copied unless authorised in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all Confidential Information received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section 0.

## **16 FORCE MAJEURE**

16.1 Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached any of its obligations, for any failure or delay in fulfilling or performing any of its obligations when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller, including acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

## **17 ASSIGNMENT**

17.1 Buyer shall not assign any of its rights or delegate its obligations under these Terms without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under these Terms.

## **18 RELATIONSHIP OF THE PARTIES**

18.1 The relationship between the Parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to bind the other Party in any manner whatsoever.

## **19 NO THIRD-PARTY BENEFICIARIES**

19.1 No person or entity other than the Parties shall have any right to enforce any of the Terms.

## **20 GOVERNING LAW**

20.1 All matters arising out of or relating to any sale or proposed sale of Goods and/or Services and any Goods and/or Services sold to Buyer are governed by and construed in accordance with the laws of the Netherlands without giving effect to any choice or conflict of law provision or rule and without regard to the United Nations Convention on Contracts for the International Sale of Goods (the "CISG"), the CISG is excluded in its entirety and shall not apply to matters arising out of or relating to any sale or proposed sale of Goods and/or Services and any Goods and/or Services sold to Buyer.

## **21 JURISDICTION**

21.1 Any legal suit, action or proceeding arising out of or relating to these Terms shall be instituted by the courts of Netherlands and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

## **22 NOTICES**

22.1 Any notices or other communications in connection with these Terms shall be in writing and addressed to the Party's address set out on the purchase order or as otherwise notified in writing. All notices shall be delivered personally or by pre-paid nationally recognised overnight courier or pre-

paid registered mail. Unless otherwise provided in these Terms, a notice is only effective upon receipt by the receiving Party and the notifying Party having complied with this Section.

**23 SEVERABILITY**

23.1 If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

**24 CONSTRUCTION**

24.1 Unless the context otherwise requires: (a) words in the singular shall include the plural and vice versa; (b) a reference to one gender shall include a reference to the other genders; (c) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”; (d) the words “any” shall mean “any and all”; and (e) all references to Articles, Sections or Exhibits shall refer to Articles, Sections and Exhibits of these Terms.

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**ADDITIONAL TERMS AND CONDITIONS**  
**FOR THE ONLINE SALE OF GOODS AND SERVICES**

**1 APPLICABILITY**

- 1.1 The following terms and conditions (“**Online Terms**”) supplement the Terms and apply to any sale of Goods or Services online through <http://www.areafourindustries.com> (“**Website**”). In the event of any inconsistency between these Online Terms and the Terms, these Online Terms shall prevail.
- 1.2 The Online Terms contain important information regarding Buyer's rights and obligations, please read them carefully.
- 1.3 By placing an order for Goods or Services through the Website, Buyer confirms that it is of legal age to place such order and is bound by these Online Terms. If Buyer places an order on behalf of an organisation or company, Buyer confirms that it has the legal authority to bind such organization or company to these Online Terms.
- 1.4 Buyer may not order Goods or Services from the Website if Buyer is prohibited from accessing or using the Website or any of the Website’s contents, Goods or Services by applicable law.
- 1.5 These Online Terms are subject to change by Seller at its sole discretion without prior written notice at any time. Any changes to these Online Terms will be in effect as of the “Last Updated Date” referenced on the Website. Buyer should review these Online Terms prior to purchasing any Goods or Services that are available through the Website. Buyer's continued use of the Website after the “Last Updated Date” will constitute agreement to such changes.
- 1.6 These Online Terms are an integral part of the Website Terms of Use that apply generally to the use of the Website. Buyer should also carefully review the Website Terms of Use before placing an order for Goods or Services through the Website.

**2 ORDER ACCEPTANCE AND CANCELLATION**

- 2.1 All orders placed by Buyer must be accepted by Seller and Seller may choose not to accept any order at its sole discretion, even after Seller sends a confirmation email with Buyer’s order number and details of the items Buyer has ordered.

**3 PRICES AND PAYMENT TERMS**

- 3.1 All prices, discounts, and promotions posted on the Website are subject to change without notice. The price charged for a Good or Service will be the price advertised on the Website at the time the order is placed and stated in Buyer's order confirmation email, subject to the terms of any applicable promotions or discounts. Price increases will only apply to orders placed after the time of the increase.
- 3.2 Advertised prices do not include any taxes or shipping or handling charges, which will be added to Buyer’s total price, and itemized in Buyer's shopping cart and order confirmation email.
- 3.3 Seller will use reasonable endeavours to display accurate price information, inadvertent typographical errors, inaccuracies or omissions relating to pricing and availability may occur. Seller reserves the right to correct any errors, inaccuracies, or omissions at any time and to cancel any orders arising from such occurrences.

- 3.4 Terms of payment are at Seller's sole discretion, and payment must be received by Seller before Seller's acceptance of an order. If payment is made by credit card, Buyer represents and warrants that:
- (a) the credit card information provided by Buyer is true, correct and complete;
  - (b) Buyer is authorised to use such credit card for the purchase,
  - (c) charges incurred by Buyer will be honoured by Buyer's credit card company; and
  - (d) Buyer will pay the incurred charges, including shipping and handling charges and all applicable taxes.

#### **4 PRIVACY**

- 4.1 The Website Terms of Use, <https://www.prolyte.com/> , governs the processing of all personal data collected.