

General Terms and Conditions of Sale (valid from 1 June 2011 – 2021 version)

General provisions

The term “Seller” or “we”, “us”, “our” etc. refers to Produx concepts & services AG, Industriestrasse 27, 4703 Kestenholz, Switzerland.

Our “General Terms and Conditions of Sale” apply to all – including future – contracts, supplies and services, including consulting and information services.

Any contrary terms and conditions of business or purchase shall only be binding on us if we have expressly acknowledged them in a signed, written document.

Conclusion of a contract

Our non-binding price lists and non-binding offers constitute invitations to the Buyer to submit a binding offer. The information provided by us concerning goods and services as well as the related prices (plus VAT) is indicative and not binding.

An order placed by the Buyer, whether orally or in writing, shall be deemed to constitute a binding offer.

However, a contract shall only be concluded upon the issuance of our express written order confirmation. If the particulars contained therein differ from the Buyer’s order, the Buyer must inform us in writing within 5 calendar days if it does not wish the particulars contained in the order confirmation to apply; otherwise, we shall be entitled to assume in good faith that the Buyer accepts such particulars and that a contract has accordingly been concluded with the particulars contained in the order confirmation.

Services

The obligations of the parties, the place of performance and the transfer of benefit and risk from the Seller to the Buyer in relation to the goods shall be governed by the agreed INCOTERM and shall occur at the location agreed to in this context. If no INCOTERM has been agreed to, EXW shall apply.

The Seller may offer and/or provide additional services (e.g. loading and/or organisation of transport in case of EXW, FCA, FOB) either in exchange for payment or on a goodwill basis. Likewise, the Seller shall endeavour, where possible, to comply with special requests of the Buyer in relation to packaging or shipment (type of shipment, urgent shipments, partial deliveries, insurance etc.). However, both shall occur under all circumstances at the risk and cost of and, where applicable, on behalf of the Buyer, without altering the validity and consequences of the agreed INCOTERM.

If the agreed INCOTERM includes a requirement of importation and/or customs clearance for the Seller (DAP, DPU, DDP), the Buyer shall draw the Seller’s attention to any special customs and import rules in the country of destination.

Price changes due to unforeseeable events or after conclusion of the contract

Any costs not foreseen at the time of conclusion of the contract (e.g. foreign customs duties, taxes or other statutory duties) and/or any increase in works prices, taxes, customs duties or other statutory duties, transport costs, insurance premiums etc. between conclusion of the contract

and the time of performance shall be borne by the Buyer.

Dates

The desired date specified by us in the non-binding offer or the desired date or confirmed delivery date contained in the order confirmation shall be construed as indicative; we shall nevertheless make our best effort to meet this date. A desired date or a confirmed delivery date shall be deemed to have been met if the goods are made available or arrive at the place of performance according to the corresponding INCOTERM and this has been notified to the Buyer in writing.

If the Seller, through no fault of its own, is unable for any reason to obtain the goods from its own supplier, warehouse operator or carrier, or is unable to do so in a timely manner, the Seller will have every interest in remedying this consequence as soon as possible. In such cases, the Seller shall be entitled to extend the desired date or confirmed delivery date for performance by up to a maximum of 12 months. The Buyer shall not be entitled to claim compensation for any losses caused by the delay or for any other losses resulting from such procurement difficulties of the Seller.

Delay in acceptance by the Buyer

The Buyer shall be obliged to accept the goods at the place of performance at the time specified and shall cooperate as necessary for this purpose, failing which it shall be deemed to have defaulted on acceptance without any further grace period and shall bear the costs of storing the goods purchased by it (where applicable, at the Seller’s

discretion, in an external warehouse) and transportation to the place of storage.

The Seller shall be deemed to have fulfilled its duty or to have delivered, as the case may be, if and as soon as the goods are made available or delivered at the place of performance at the time specified, regardless of whether or not acceptance by the Buyer or handover to it or to its carrier has occurred.

In the event of default on acceptance on the part of the Buyer, the Seller shall also have the right, within 10 calendar days of default on acceptance, (i) to dispense with subsequent acceptance and to claim damages (value of performance), (ii) to withdraw from the contract and claim damages (position as if the contract had not been concluded) or (iii) to continue to insist on acceptance and compensation for any losses resulting from default.

Force majeure

“Force majeure” means the occurrence of any event or circumstance that prevents a party from fulfilling one or more of its contractual duties or its incumbencies (in German “Obliegenheiten”; in French “incombances”) under the contract other than a payment obligation, if and insofar as that party proves that: (a) the impediment is beyond its reasonable control; and (b) it was not reasonably foreseeable upon conclusion of the contract; and (c) the effects of the impediment could not reasonably have been avoided or overcome by the affected party.

Unless and until proven otherwise, the following events affecting a party shall be presumed to meet the prerequisites set out in (a) and (b) of paragraph 1 of this clause: war (whether declared or not), armed conflict and serious threat thereof (including but not limited to hostile attacks, blockades, military embargo); armed hostilities; invasion; acts of a foreign enemy; military mobilisation;

civil war; rebellion; revolution; military/police or a usurpation of power; insurrection; civil unrest or disturbances; plundering; acts of civil disobedience; acts of terrorism; sabotage; piracy; sovereign acts, official orders/provisions/measures adopted by governments, courts or authorities regardless of their legality (e.g. laws, orders, embargos, currency devaluations, punitive duties, export restrictions, etc.); curfews; expropriation; compulsory purchase; appropriation; confiscation; nationalisation; acts of God; plague; epidemic/pandemic; natural disasters (including, but not limited to, major storms, cyclones, typhoons, hurricanes, tornados, snowstorms, earthquakes, volcanic activity, landslides, tidal waves, tsunamis, flooding, damage, or destruction by lightning, drought); explosion; fire; destruction of machinery, equipment, factories and any type of installations; extended unavailability of means of transportation, telecommunications or electricity, water, etc.; industrial unrest, including but not limited to boycotts; strikes and lockouts; go-slow strikes; occupation of factories and buildings; as well as events similarly affecting the performance of duties.

Force majeure incurred by a supplier or carrier of the Seller may be invoked by the Seller against the Buyer in the same way as its own force majeure.

If a party successfully invokes this clause, this party shall be released from its obligation to comply with the contractual obligations (except for the payment of the purchase price) and from any obligation to pay damages or any other contractual remedy for breach of contract from such time when the impediment prevents it from performing, provided it gives notice thereof within 10 calendar days. If such notice is not given within this period, the release shall take effect from the date on which the notice reaches the other party.

If the effect of the impediment or event invoked is temporary, the consequences set out above shall only

apply for as long as the impediment invoked prevents a party from fulfilling the contract.

If the duration of the impediment exceeds 12 months, each party shall have the right to terminate the contract upon giving notice to the other party, without incurring liability whatsoever.

Hardship clause

If the occurrence of events fundamentally changes the equilibrium under the contract, and (a) such events occurred or became known to the disadvantaged party after the conclusion of the contract, and (b) such events could not reasonably have been taken into account by the disadvantaged party upon conclusion of the contract; and (c) if such events are beyond the control of the disadvantaged party, it may request, indicating the relevant reasons, that within a reasonable period after the invocation of this clause, the parties negotiate alternative contractual terms that allow for a reasonable and equitable balancing of their interests. The Buyer's invocation of this clause shall in no event release it from its obligation to pay the purchase price in the interim.

If paragraph 1 of this clause applies but the parties have been unable to agree on alternative contractual terms under that paragraph, the Seller shall have the right (a) to request a court or arbitral tribunal to amend the contract with a view to restoring equilibrium, or (b) to withdraw from the contract without incurring any liability whatsoever to pay damages. The Buyer shall be entitled to request a court or arbitral tribunal to amend the contract with a view to restoring the equilibrium.

Payment terms

Unless otherwise agreed in writing, the Buyer shall make payments net within 30 days of the invoice date. In the event of late payment, in addition default interest of 5% p.a. shall be owed. Any delay in the delivery of goods, force majeure or a hardship occurrence shall not establish any entitlement to withhold payment. In the event of delayed payment, we shall be entitled to withhold any outstanding items of goods (particularly those provided for under other contracts) immediately and without any further action and/or to withdraw from the contract. The Buyer shall be liable without limitation for any losses incurred by us as a result of late payment.

We shall be entitled to offset all our claims against any claims of the Buyer, regardless of the legal basis for such claims. However, the Buyer shall not be entitled to use its claims against us to set off its payment obligation towards us.

Retention of title

The goods shall remain our property until all amounts due to us by the Buyer have been paid, or until all bills and cheques given to us in payment have been honoured in full. This means that the retention of title shall remain in effect as long as we have claims against the Buyer (for any legal reason whatsoever) in connection with the business relationship. For an open account, the retention of title shall constitute security for our claim to the balance. Our retention of title shall extend to the item in its entirety if the Buyer combines our goods with another object belonging to it or incorporates our goods into it.

The Buyer's claim arising from any onward sale or further processing of the goods subject to retention of title is hereby assigned to us upon conclusion of the contract as collateral for our claims under the existing business relationship, irrespective of whether the goods subject to

retention of title are sold before or after further processing or to one or more buyers.

Notice of defects

The Buyer shall immediately inspect the goods in an orderly and diligent manner at the place of performance, i.e. within eight (8) calendar days of the stated time of performance, and prior to transportation away from the place of performance, and to notify the Seller immediately in writing and in detail concerning any defects or breach of contract, indicating precisely the defect or breach of contract.

Furthermore, the period for reporting defects shall be deemed to have expired unless the Buyer proves that (a) the goods were already defective or non-compliant at the place of performance and at the time of performance (and that the defect or breach of contract could not have arisen (also) during transportation away from the place of performance), and (b) that the defect or breach of contract constitutes a latent defect/a latent breach of contract

that could not be identified notwithstanding orderly and diligent inspection at the time of performance at the place of performance, and (c) that it objected to the defect or breach of contract in writing and in detail within eight (8) calendar days (receipt by the Seller) of the time when the latent defect or the latent breach of contract could have been discovered exercising due care, and in any case within two (2) years of the time of performance.

Any special information provided by the Seller in the non-binding offer (invitation to submit an offer) or in the order confirmation concerning the characteristics of the goods shall only be deemed to constitute warranted characteristics insofar as the Seller is required to provide goods of the same type and quality as the goods ordered. Minor deviations of +/- 5% from the agreed weight, number and/or dimensions shall not constitute a defect.

In relation to any defects or breach of

contract recognised by our suppliers (i.e. sellers to the Seller) we shall, at our option, (a) replace the goods, (b) repair them or (c) take back the goods without replacement and credit the purchase price to the Buyer. No further claims may be brought. If our supplier does not acknowledge the defect or the breach of contract, no warranty shall be provided.

In any case, all warranty claims shall lapse two years after performance.

If remedying identified defects or the breach of contract is unsuccessful, the Seller shall have a further right to attempt rectification, to make a replacement delivery or to take back the goods and credit the purchase price.

The Buyer shall, at its own expense, carefully store the goods that are defective or in breach of contract and, upon request, shall provide us or our supplier with the goods objected to or samples thereof and, upon request, also allow us the opportunity to inspect in situ the defects or breach of contract objected to. If the Buyer fails to provide us with this opportunity or, in particular, fails to provide the goods objected to or samples thereof upon request, all warranty claims shall lapse. The warranty claims shall also be forfeited if any changes are made to the goods objected to or if they are sold on or destroyed without our express written approval.

Disclaimer

Any claims for damages against the Seller, whether under contract or tort, are hereby waived unless otherwise required by law (in particular Articles 100 and 101 of the Swiss Code of Obligations). In all situations in which such claims cannot be waived, only direct, foreseeable losses typical for the contract shall be compensated, and it shall be the Buyer's responsibility to prove that the loss is typical for the contract and foreseeable for the Seller, and that the Seller was at fault.

Written form

Any agreements that conflict with these terms and conditions, as well as any amendments to the contract, including this clause, shall only be valid if confirmed by us in a signed, written document.

Severability

Should any terms of this contract be or become invalid either in full or in part, this shall not affect the validity of the remaining terms. The invalid term(s) shall be replaced in such a manner as to safeguard its/their economic purpose, as far as permitted.

Place of performance, applicable law and jurisdiction/arbitration clause

Irrespective of the place of performance for delivery of goods, the place of performance for all payment and/or damages obligations of the Buyer shall in any case be the seat of the Seller (currently Kestenholz, Switzerland). For the purposes of the above, the Buyer chooses a special domicile in Kestenholz, including in relation to Article 50(2) of the Swiss Debt Enforcement and Bankruptcy Act, which special domicile shall not exclude or impair attachment (in German "Arrestlegung"; in French "séquestre") by the Seller.

This contract shall be governed exclusively by Swiss substantive law, excluding its provisions on the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.

Any differences of opinion, disputes or claims arising out of or in connection with this contract, including its validity, invalidity, breach or termination, as well as any claims under quasi contract or tort, up to an amount in dispute of

CHF 500,000 – which shall be based exclusively on the value of the Claimant's claim – shall fall under the

exclusive jurisdiction of the ordinary courts at the seat of the Seller (currently Kestenholz, Switzerland). Above this threshold for the amount in dispute, any differences of opinion, disputes or claims arising out of or in connection with this contract, including its validity, invalidity, breach or termination, as well as any claims under quasi contract or tort, shall be settled through arbitration in accordance with the Rules of Arbitration of the Swiss Chambers' Arbitration Institution ("Swiss Rules"). The applicable version of the Rules of Arbitration shall be that valid at the time the request for arbitration is submitted. Up to an amount in dispute of CHF 3,000,000, Article 42(2) of the Swiss Rules (as at 2012) shall apply (single arbitral tribunal, expedited proceedings). In all other cases, the arbitral tribunal shall be comprised of three persons. The seat of the arbitration shall be in Solothurn. The language of the arbitration shall be English or, if both contracting parties are German-speaking, German. The Respondent must file its answer to the request for arbitration, including any counterclaim or claims to offsetting (which are otherwise forfeited) within thirty (30) days of receipt of the request for arbitration. If a three-member arbitral tribunal is competent, the Claimant and the Respondent shall each appoint one member of the arbitral tribunal; Claimant in their request for arbitration and Respondent in their answer to the request for arbitration, failing which the arbitrator shall be automatically appointed by the SCAI Court for any party that has failed to act. The SCAI Court may only extend those time limits where there are valid reasons for doing so. The sole arbitrator or, if a three-member arbitral tribunal has competence, the chairperson of the three-member arbitral tribunal, shall be a Swiss lawyer trained in Swiss law under the age of 65 at the time of the request for arbitration with at least 10 years' experience in settling disputes relating to the purchase of goods before arbitral tribunals. The arbitral proceedings and any grounds for

appeal shall be governed by Chapter 12 of the Swiss Federal Act on Private International Law [PILA] and not Part 3 of the Swiss Civil Procedure Code [CPC] (Article 353(2) CPC; Article 176(1) PILA). The parties may request at any time, notwithstanding any other proceedings, that any dispute arising out of or in connection with this contract be settled through mediation in accordance with the Swiss Mediation Rules.