

## **General Terms and Conditions for Sale and Delivery for Prodan A/S**

### **1. General terms and conditions:**

These terms of sale and delivery apply in any event for the customer/supplier relationship with Prodan A/S, CVR no. 32667678 ("Prodan") with Prodan as the seller, unless Prodan and the relevant customer have concluded a different written agreement that deviates from one or more of the terms of sale and delivery below.

Regardless of any purchase terms relied upon or submitted by the customer, below terms of sale and delivery rank prior to such terms, unless expressly accepted in writing by Prodan.

### **2. Offer and acceptance:**

On acceptance of Prodan's offer, the customer also accepts that Prodan may be entitled to demand a higher price from the customer than the price stated in the offer, if the conditions for this are satisfied, see clause 3 below.

### **3. Prices:**

If Prodan receives the customer's acceptance of Prodan's offer later than five days after Prodan making the offer to the customer, Prodan is entitled to demand a higher price than the price stated in the offer, to the extent that the prices of raw materials or similar required for Prodan's performance of the delivery to the customer have increased since the time of Prodan making the offer to the customer and until the time of the customer's acceptance of Prodan's offer, see clause 2

Prodan's prices do not include packaging, shipping, insurance or VAT.

### **4. Payment terms:**

All payments must be made no later than 30 days net unless otherwise stated in the order confirmation from Prodan. Default interest in accordance with the Danish Interest Act (*renteloven*) will accrue from the time when payment should have been made and until payment takes place.

### **5. Retention of title:**

Prodan retains title to the delivery until payment is made in full to the extent that such retention of title is applicable under applicable law.

### **6. Delivery and shipping:**

To the extent possible, delivery times are in accordance with the customer's requests. Prodan will determine the estimated delivery time. However, Prodan assumes no obligation as regards exact compliance with the delivery time requested by the customer. Delivery is ex works (Incoterms 2012) unless otherwise stated in Prodan's order confirmation. At the customer's request, Prodan will, at the expense and risk of the customer, arrange for transportation of the products to a place in Denmark designated by the customer and to which the roads are open to traffic.

### **7. Cancellation, postponement and returns:**

Cancellation and postponement of the delivery of orders at the customer's request is subject to prior agreement and against payment of Prodan's expenses in that connection. Stock items are accepted returned only on prior agreement and only on payment of a fee. Any return of items will be at the expense and risk of the customer. Bespoke or specifically procured items cannot be returned.

### **8. Delay:**

Any fixed time of delivery is to be understood as an estimated time of delivery, see clause 6 above, and thus Prodan is not in delay if the estimated delivery time is exceeded, for instance due to strike, lockout, fire or other force majeure preventing delivery at the estimated time, or as a result of the delivery otherwise being hindered on delayed delivery of required items, unforeseen delays in manufacturing or other circumstances due to Prodan's suppliers. In the event of delay, the customer is not entitled to apply any remedies for breach against Prodan. Thus the customer is not entitled to cancel the purchase, demand compensation or a proportional reduction of the purchase price.

### **9. Liability for defects:**

#### **a) Defects in quantity:**

If the agreed quantity is not delivered in full, the customer must give notice immediately after receipt in order to claim defects. Notice must be given directly to Prodan and by endorsement on any consignment note. The customer's only remedy for defects is to demand that the defect be remedied by subsequent delivery as soon as possible. If subsequent delivery is not effected within reasonable time, the customer may demand compensation for documented loss, albeit maximised by the deviating quantity's proportion of the invoice amount.

#### **b) Defects in quality:**

Defects in quality are solely documented defects in construction, manufacturing and material of the delivered items and defectively performed work services. Defects in quality owing to the customer's directions, any material provided by the customer or unclear identification of correct version of drawing cannot be relied upon. Consequently, the customer must ensure that any such instruction or material is correct. The customer must, as soon as possible, carry out a reasonable inspection of the products. Defects in quality which could have been detected by way of such inspection may be relied upon only if the customer gives notice of such defects directly to Prodan within eight days from the time when the defect was or should have been ascertained by the customer, however, no later than 30 days after the product was delivered to the customer.

In the event of visible defects and damage incurred in transit, the customer must also endorse any consignment note and immediately contact the transport business responsible for the transport (post office, railway, carrier, etc.) and Prodan, as the customer will otherwise forfeit the right to rely on such defects. The customer's notice of defects in the delivered product must in any event be in writing and be received by Prodan no later than one year after the time of delivery of the relevant products. Prodan may at any time plead delay of the customer's notice of defects, even though Prodan has initiated negotiations with the customer in respect of the defects in question. The customer does not have any remedies other than a claim for remedy of the defects to take place as soon as possible after the notice of defects has reached Prodan by way of repair, replacement delivery or subsequent delivery. Prodan will decide which remedial action to be taken. The costs of dismounting, installation, etc., in connection with the remedial work is paid by the customer.

#### **c) In the event that the customer delivers any material to Prodan, either as raw materials or as partially processed material, and if such material is damaged or lost, Prodan may be held liable as a maximum for payment of the cost price of the material exclusive of the processing and cannot be committed to paying any amount in excess of the cost price.**

### **10. General limitation of liability:**

Prodan's overall liability for the delivery, including in the event of damage to or loss of material delivered by the customer to Prodan, see in that respect clause 9, c), is at all times limited to a total maximum of 30% of the sales price of the relevant delivery, exclusive of VAT, freight, etc. Prodan is in no event liable for (i) operating loss, (ii) loss of time, (iii) loss of profits, (iv) production loss, (v) loss of earnings, or (vi) any claims against the customer from third parties as a consequence of the customer's contracts with third parties, including, for instance, agreed penalties, irrespective of whether the customer's losses in (i)-(vi) are qualified as direct or indirect losses, or any form of indirect losses and/or consequential losses, unless the loss is caused by deliberate acts or gross negligence on the part of Prodan.

**11. Product liability:**

Prodan is liable only for damage caused to real estate and movable property by the products delivered, provided that it is proved that the damage is owing to the errors or neglect of Prodan, and Prodan's liability is at all times limited to a maximum amount of DKK 5m for each event of damage. Prodan is not liable for any damage to or damage caused by products manufactured by the customer or for damage to or damage caused by products in which the products delivered by Prodan are included. To the extent that Prodan incurs product liability vis-à-vis third parties, the customer is obligated to indemnify and hold Prodan harmless to the same extent as Prodan's liability is limited pursuant to this clause 11.

Prodan is in no event liable for (i) operating loss, (ii) loss of time, (iii) loss of profits, (iv) production loss, (v) loss of earnings, or (vi) any claims against the customer from third parties as a consequence of the customer's contracts with third parties, including, for instance, agreed penalties, irrespective of whether the customer's losses in (i)-(vi) are qualified as direct or indirect losses, or any form of indirect losses and/or consequential losses, unless the loss is caused by deliberate acts or gross negligence on the part of Prodan.

The customer is under an obligation to accept that legal proceedings are commenced against the customer before a court or an arbitration tribunal that hears claims for damages brought against Prodan on the basis of damage or loss allegedly caused by defects in the products delivered by Prodan.

**12. Certification, etc.:**

Prodan does not assume liability for the products and/or services delivered by Prodan or any product in which the product delivered by Prodan is included or planned to be included being able to achieve and/or fulfil the requirements to any form of certification, labelling, authorisation, etc., unless otherwise expressly agreed by and between Prodan and the customer.

**13. Intellectual property rights:**

Any intellectual property right or other rights, including patents, utility models, designs, trademarks, copyright, know-how, etc., developed by Prodan in connection with the performance of contracts between Prodan and the customer will at all times remain the exclusive property of Prodan, unless otherwise expressly agreed in writing.

No intellectual property rights is assigned in connection with the delivery of products. Prodan consequently retains all its intellectual property rights and other rights, including patents, utility models, designs, trademarks, copyright, know-how, etc., relating to the products, and all documentation prepared by Prodan relating to the products will at all times remain the exclusive property of Prodan, and the customer must at all times respect such rights, irrespective of whether such rights have been registered.

**14. Exemption from liability:**

The following circumstances result in exemption from liability on the part of Prodan, provided that they prevent Prodan from fulfilling its obligations towards the customer or make such fulfilment particularly onerous: Fire, explosion, natural disasters, epidemics, war, riots, unrest, states of emergency, mobilisation or similar military arrangements, confiscation, currency restrictions, import or export prohibitions, strikes, lockouts or other similar circumstances outside the powers of Prodan, irrespective of whether they apply to Prodan or to Prodan's suppliers.

**15. Invalidity:**

In the event that one or more provisions of these terms of sale and delivery should be declared unlawful, null and void and consequently cannot be enforced, this will not affect the validity and enforcement of the remaining part of these terms of sale and delivery.

**16. Governing law and venue:**

These terms of sale and delivery, any contracts between Prodan and the customer as well as any dispute or disagreement arising as a result are settled according to Danish law by the ordinary courts in Prodan's venue, except for the international conflict of laws rules and CISG.

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