

PROFERRO GENERAL PURCHASE CONDITIONS

1. General provisions

These general purchase conditions (**Conditions**) apply to all offers requested and orders placed by PROFERRO NV for the supply of goods and the performance of services by the Seller, unless otherwise agreed upon in writing. By accepting orders from PROFERRO, Seller agrees that its own general terms & conditions of sale do not apply.

2. Offers, Purchase Order, order acceptance

1. An offer irrevocably binds the Seller for a period of 180 days, except purely budgetary offers.
2. Purchase Orders or call-orders (**PO**) are placed either by email or fax, or by electronic data interchange (**EDI**).
3. PO's that are not confirmed in writing or through EDI within 5 working days can be cancelled by PROFERRO without any compensation.
4. When the Seller accepts PROFERRO's PO and Conditions, either by acknowledgment, by tacit acceptance after 5 working days after the PO date, by performance or by any act consistent with fulfilling the PO, a binding contract (**Contract**) is formed.

3. Price, invoicing & payment

1. The prices are fixed and in the agreed currency. Prices are inclusive of all costs, charges, levies and taxes (except VAT).
2. Invoices shall be sent to the e-mail or post address specified in the PO.
3. Invoices need to state the PROFERRO order number and the item number.
4. The Seller will invoice PROFERRO on or after supply, resp. performance completion. Invoices are payable sixty (60) days from the date the compliant invoice is received.
5. Payment by PROFERRO does not imply the acceptance of the delivery or order. In case of rejection of goods or other complaints, PROFERRO reserves the right to delay payments proportionally until complete execution of the order.

4. Modalities of supply

1. Delivery is made in accordance with INCOTERMS 2010, DDP.
2. Without prejudice to article 5, title and risk are transferred to PROFERRO at the time of delivery of the goods, and, for services, at the time of their provisional acceptance by PROFERRO.
3. The packing of the goods needs to be adequate to protect the goods during handling, transportation and storage. The packing type of each item will be defined, wherever possible, by the Manufacturer Part Number (MPN). Other packing types will not be accepted by the Buyer. PROFERRO reserves the right to reject deliveries if the MPN is not identical to the MPN on the PO.
The PROFERRO part-number or other PROFERRO references mentioned on the PO and the quantities must be clearly indicated on each package.
4. Each delivery shall be accompanied by the appropriate, duly completed delivery and transport documents, including correct Packing Slip (delivery note), which needs to contain at least the PO number and number line, PROFERRO's part number and other references, original manufacturer, MPN, total quantity and weight, item data code, delivery note number (readable and in barcode format). The signature of the Packing Slip by PROFERRO is valid only as receipt of the number of parcels and does not imply acceptance of the amount, the quality or the services.
5. PROFERRO has the right to modify the delivery date, without any compensation or price increase, with a notice in writing 1 week prior to the originally planned date of delivery or performance. Goods may not be presented at PROFERRO's warehouse earlier than 8 days prior to the agreed delivery date.
6. If the binding delivery date in the PO is exceeded, the Seller will pay a fixed compensation of 1% percent of the total purchase price (excl. VAT) for every week of delay with a maximum up to 10% percent of total purchase price, notwithstanding a possible additional indemnity for actual loss or damages. These penalties can be deducted by PROFERRO on payment of the Seller's invoices.

5. Inspection and acceptance

1. The goods are provisionally accepted on delivery, subject to final acceptance after inspection and/or tests regarding conformity and quality.
2. If delivered goods are defective, or otherwise do not meet the requirements mentioned in article 6, PROFERRO will notify the Seller and can, at its sole discretion, without judicial intervention and at the Seller's cost: demand immediate replacement or repair; cancel the order in whole or in part; reclaim advance payments and/or claim damages for any costs, losses or expenses incurred. Following such notification, title and risk of the rejected goods return to the Seller. In case the Seller does not replace or repair the defective goods within the imperative time-limits imposed by the needs of PROFERRO's production or assembly departments, PROFERRO has the right to replace or repair the goods itself at the Seller's cost.
3. In case of repeated rejection of goods or services for reasons of conformity or quality, PROFERRO reserves the right to cancel all pending POs and/or call-orders, without any compensation due to Seller.

6. Quality, guarantees & warranty

1. The Seller guarantees that the supplied goods respectively services fully conform to the product specifications and technical documentation respectively the description mentioned in the PO, that they are of good quality, fit for any purpose held out by or made known to the Seller, free from imperfections, construction, manufacturing and material defects, offer the safety that may reasonably be expected and fully comply with all applicable laws and regulations (including published laws and regulations that enter into force within three months from date of shipment) and other standards generally accepted in the industry. In particular all goods need to satisfy the European standards for use in industrial surroundings. Machines, components and/or parts foreseen for application or integration, and which do not directly fall under the scope of the guidelines, must also satisfy the requirements of the European guidelines so that these applied or integrated parts to not endanger the conformity of the whole unit. In case of impossibility or problems PROFERRO has to be informed in writing.
The European Sellers must be able to submit the technical construction file foreseen in the guidelines, on justified demand, to an authorized official, up to 10 years after delivery of the goods.
The non-European Sellers must be able, on justified demand, to submit the technical construction file foreseen in the guidelines to an authorized official and/or, on justified demand, to PROFERRO, up to 10 years after delivery of the goods.
2. The Seller shall indemnify, hold harmless and defend PROFERRO from and against any liability and third party claims for damages, interests, penalties, legal costs and lawyers' fees that may directly or indirectly result from: defective goods, a breach of article 6, the infringement of third parties' intellectual property rights or rights in confidential information, or otherwise any breach, negligent performance or failure or delay in performance of the obligations of Seller.
3. The Seller guarantees that the supplied goods have been manufactured within an effective and demonstrable quality system, preferably one conforming to the requirements of the ISO9000 standards. PROFERRO is entitled, at its expense, to carry out, upon simple request and at the time to be agreed upon, all relevant audits, inspections and verifications it deems necessary in the workshops or stores of the Seller and his contractors or subcontractors during production and prior to delivery. PROFERRO shall be entitled to invite customer or government authority to participate on the audit.

4. The Seller shall not supply goods older than 6 months with respect to the Confirmed delivery date of the PO, unless written approval from the Seller is obtained at the moment the PO is confirmed.

5. The warranty period for hidden defects is 12 months as from the delivery or 18 months as from the utilization date (whichever term is longer), resp. the provisional acceptance of the services.

6. Parts that are changed, replaced or repaired under this warranty clause shall be covered by a warranty equal to the full original warranty period.

7. Force majeure

The parties will not be in breach or liable for delay in performing or failure to perform the Contract if such a delay or failure results from an event beyond its reasonable control. The affected party will immediately notify the other party and use all reasonable endeavors to mitigate the effect of such an event of the performance of its obligations. If force majeure prevents, hinders or delays the Seller's obligations for a period of more than 15 days, PROFERRO can terminate the relevant PO with immediate effect and without compensation.

8. Intellectual property & confidentiality

Both parties remain owner or entitled to their existing intellectual property rights. Nothing in the Contract implies any license, assignment of rights or transfer of technology or knowhow on or over such rights to the Seller. The Seller will use all technical and commercial know-how, specifications, inventions, processes, projects relating to PROFERRO's activities only for the performance of the Contracts and treat it as confidential during the cooperation between the parties and for a period of ten (10) years thereafter.

9. Models

Models, moulding plates, matrices and other tools (**Models**) put at the disposal of the Seller or made by Seller but reimbursed by PROFERRO are the exclusive property of PROFERRO and will be returned to PROFERRO at its request. The Seller will maintain the Models in good condition at his cost, will only use the Models for the execution of the Contracts and will insure the Models against any damage or risk. All shipping costs are borne by the Seller.

10. Product change & end-of-life notification

1. The Seller will provide PROFERRO with a Product Change Notice (PCN) for any relevant modifications that the Seller intends to carry out on the products, production methods and/or production site, and this prior to their implementation.
2. If the Seller intends to discontinue production or delivery of a product, the Seller will provide PROFERRO with an End Of Life (EOL) notification which will include a Last Time Buy (LTB) opportunity for PROFERRO. The EOL notification must be sent early enough to allow PROFERRO to take any required actions to ensure business continuity.
3. After termination of the Contract the Seller will keep spare parts available for 15 years.

11. Subcontracting

The Seller may not subcontract orders in whole or in part to third parties without prior written permission from PROFERRO. In any event the Seller remains liable to PROFERRO for the performance of the sub-contractor(s) of all obligations.

12. Insurance

The Seller will maintain a professional indemnity insurance and a public liability insurance in force with a reputable insurance company, to adequately cover the liabilities that may arise under or in connection with the Contract, and will on PROFERRO's request provide an insurance certificate.

13. Termination

Without limiting its other rights or remedies, PROFERRO can terminate the Contract with immediate effect and without any compensation: if the Seller commits a material breach of the Contract and fails to remedy that breach within 10 days of the receipt of a written notice to do so; if the Seller suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due; if a petition in bankruptcy or any other proceeding relating to insolvency, receivership or liquidation is filed; if the Seller suspends or ceases, or threatens to suspend or cease, all or a substantial part of its business or in the event of a change of control within the meaning of Article 5 of the Belgian Company Code, a takeover, merger or scission.

14. Enforceable law and disputes

The Contract will be governed by and construed in accordance with the laws of Belgium. The courts of Ypres, Belgium, will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract.

15. Environmental requirements

Seller is responsible for complying with ISO 9001, applicable regulatory and industry standards regarding environmental care, as well as European regulations on end-of-waste. Upon request, Seller will sign PROFERRO's Supplier Code of Conduct.

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