

## PROVIRON GENERAL TERMS AND CONDITIONS OF SALE

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### 1. Applicability

- 1.1 These General Terms and Conditions of Sale (hereafter "GTCS") shall apply to all agreements and transactions between Proviron (hereafter "Seller") and Buyer concerning the sale of goods or provision of services.
- 1.2. Every order entails a legal acknowledgement that Buyer accepts the GTCS and expressly renounces his own general terms and conditions of purchase, even if these would be posterior to the present GTCS and regardless of any statement to the contrary in any purchase order, acknowledgement, confirmation, release or other form submitted by the Buyer.
- 1.3. Neither party shall claim any modification, limitation or release from any of the terms and conditions contained herein except by written agreement to that effect signed by Seller and Buyer. Any lack of reaction or lack of protest from the Seller's side shall under no condition be considered an acceptance of such deviation.
- 1.4. These GTCS automatically apply to all similar future commercial relations and legal transactions between the Seller and the Buyer without it being necessary to expressly refer to these GTCS.

### 2. Offers, orders and agreements

- 2.1 Our offers are made without engagement and do not imply any commitment as to prices, quantities and times of delivery and execution, which are always indicated approximately.
- 2.2. The sale is concluded only when acceptance of the order has been given in writing by the Seller to the Buyer. If any information supplied by the Buyer is insufficient, incorrect, inaccurate or misleading, the Seller shall be entitled to amend the price, the terms of payment and/or delivery as the Seller shall consider fair and reasonable or to terminate the agreement with immediate effect and without being due any indemnities, compensation or damages, by giving written notice to the Buyer.
- 2.3. The Seller is entitled to refuse orders, without having to explain such refusal.
- 2.4. If the Buyer annuls the order before delivery of the goods and/or services, it will in any event be due payment of the following fixed amounts to the Seller:
  - (i) in case of sale of standard goods: 40% of the invoice amount;
  - (ii) in case of tolling/contract manufacturing: 100% of the invoice amount.The aforementioned fixed amounts are without prejudice, however, to the Seller's right to claim additional damages, upon proof of the existence and the amount of such additional damages.
- 2.5. Any variation or amendment to an order requested by the Buyer shall only be valid when accepted by the Supplier in writing. Such amendments shall be subject to appropriate adjustment in price, delivery dates and other matters as the Seller shall consider fair and reasonable.
- 2.6. The Seller retains full rights of ownership and copyrights on all documents enclosed with its offers and the Buyer shall not remit any such documents to third parties without prior written approval from the Seller.

### 3. Delivery

- 3.1. Terms of delivery shall be indicative and not binding. A delay in the delivery will not give the Buyer the right to not comply with his obligations as laid down herein, nor will it entitle the Buyer to any indemnification whatsoever or the cancellation of the order.
- 3.2. Unless stated otherwise in the written order confirmation, deliveries shall be at the Seller's premises. Irrespective of the delivery terms agreed upon between the parties, the Buyer shall be solely responsible for the unloading of the goods at the destination. In the event the transport charges are for the account of the Seller and the Buyer fails to unload the goods within two (2) hours after their arrival at the destination, the Buyer may be charged demurrage costs at the carrier's demurrage rate in force at that time.

- 3.3. In any case, and notwithstanding any delivery term stipulated in the written order confirmation or other contractual documents, the risk of the goods passes onto the Buyer as from the moment the goods leave Seller's warehouse, even when the transport charges are for Seller's account. All costs and damage, of every nature whatsoever, arisen during or because of the transportation, unloading or loading, shall never be at the expense of the Seller, but solely and fully for the account and risk of the Buyer, who in this respect renounces all of its claims regarding indemnification vis-à-vis the Seller. In the event the goods are damaged during transport, after the delivery to Buyer, or are fully or partially destroyed or are lost, the Buyer remains obliged to pay the full invoice amount.
- 3.4. In the absence of Buyer's instructions within a reasonable time before the goods are at the disposal of the Buyer, the Seller may at his own discretion organize the transport of the goods at Buyer's account. Additionally, the Buyer shall indemnify the Seller against any and all charges and expenses in respect of any delay in delivery of the goods or services where such delay is due to the Buyer's failure to provide in sufficient time all necessary instructions and means, licenses, guarantees, payments and all such assistance and information as may be required for delivering the goods or services at the agreed destination.
- 3.5. The Seller shall have the right to perform partial deliveries. For the purpose of these GTCS, each partial delivery shall be regarded as an independent delivery.
- 3.6. The Seller may deliver against any order a variation of up to fifteen (15) % of the weight or volume ordered. The Buyer will be invoiced for the quantity actually delivered which will be stated in the invoice.

#### **4. Price and payment**

- 4.1. Prices are quoted exclusive of VAT, any accessory charges, such as transport and insurance charges, customs duties and charges, taxes, etc. All such costs, taxes, levies or rights imposed on the goods by any authority are for the account of the Buyer.
- 4.2. The Seller may at any time upon notice change the price payable for the goods or modify delivery terms or terms of payment and such modified price, delivery terms or terms of payment shall apply for all delivery of goods or services after the effective date of such change or modification. If the Seller is prevented by law or other governmental restriction from increasing the price or from continuing any price already in effect, the Seller may terminate the agreement with immediate effect and without being due any indemnities, compensation or damages, by giving written notice to the Buyer.
- 4.3. Invoices shall be payable, without deduction or discount, to the bank account, in the currency and on the due date indicated in the invoice.
- 4.4. In case of partial or full non-payment of an invoice at its expiration date:
  - (i) the amount due will automatically and without prior notice be increased with the interests as stipulated in the Belgian Act on combating late payment in commercial transactions of 2 August 2002. Without prejudice to payment of these interests, the Buyer will also be due a lump-sum compensation in the amount of 10% of the unpaid or overdue paid invoice amounts, as well as other applicable legal and extralegal recovery expenses, including any cost relating to bills of exchange, reminders and protest and also legal costs in accordance with the provisions of the Belgian Judicial Code and the aforementioned Act dated 2 August 2002;
  - (ii) any other non-expired debt of the Buyer will become due automatically and without prior notice;
  - (iii) the Seller is entitled to immediately suspend the execution of all pending orders and deliveries without prior notice.
- 4.5. Any form of set-off, between the credits and debts that exist mutually between the Seller and the Buyer, by the Buyer is expressly excluded. Nevertheless, the Seller can at any moment, even in the event of bankruptcy, judicial reorganization or any other form of insolvency procedure with respect to the Buyer, execute a set-off between the credits and debts that exist mutually between the Seller and the Buyer. This set-off can be executed, whatever may be the object, form or origin of the mutual credits and debts. This set-off will be calculated in Euros after, if necessary, conversion of the foreign currency at the expense of the Buyer.
- 4.6. The Seller may at any time demand guaranties and securities, such as but not limited to advance payments, of the Buyer which it deems appropriate in view of the good execution of the Buyer's commitments. Should the Buyer omit to give such a guarantee, the Seller is entitled to immediately suspend the execution of all pending orders and deliveries without prior notice.

## 5. Retention of title

- 5.1. All deliveries will be done with reservation of ownership. The goods will only become the property of the Buyer after full discharge of his obligations, including payment of the price, the costs, interests, possible compensations, etc.
- 5.2. The arrangements regarding the retention of title shall not affect the passage of risk as provided under clause 3.3.
- 5.3. During the retention of title period, the Buyer shall be responsible for storing and keeping the goods in good condition, any loss and damage, including events of force majeure, being at its risk. As from the delivery, the Buyer is obliged to insure the goods for their full replacement value against all risks at its expense and to provide the Seller with a copy of the insurance policy. The Buyer will store the goods separately or affix a sign on the goods so that they may be readily identified as the property of the Seller. The Buyer will immediately inform the Seller of any seizure or any other act of intervention by a third party.
- 5.4. In case of resale of the goods, the retention of title is transferred to the resale price.
- 5.5. The (partial) non-payment of any invoice at its expiration date entitles the Seller to take back the goods. As from such moment, the Buyer will allow the Seller to enter its premises and to take back the goods, at the risk and cost of the Buyer.
- 5.6. Each payment by the Buyer shall in first instance be used as payment for the unpaid invoices relating to goods which have been used, converted or resold by the Buyer.

## 6. Warranty and complaints

- 6.1. The Seller warrants only that the goods shall conform to the description given in the written order confirmation, or in the absence thereof, to the standard specifications for the goods. The Seller's certified weights shall govern. All recommendations or statements about the goods by the Seller, including statements concerning substances present or not present in the goods, or anticipated performance of the goods, are based upon the Seller's research and experience and are believed to be reliable, but such recommendations or statement shall not constitute a warranty, and no employee, agent or representative of the Seller is authorized to give any such warranty. The Buyer must determine for itself, by tests or otherwise, the suitability of the goods for the Buyer's purpose. The Seller makes no warranty that the goods are merchantable or fit for any particular purpose. The Seller makes no other warranty, express or implied.
- 6.2. The Buyer is obliged to verify the goods at their delivery (cf. clause 3.2) with regard to conformity, quantity and quality. Complaints regarding the aforementioned elements are only valid if (i) they are communicated by the Buyer to the Seller immediately by indicating such alleged defect on the carrier's documents, (ii) they are confirmed by giving written notice thereof to the Seller at the latest within eight (8) calendar days after the delivery of the goods, (iii) such goods remain available for the Seller's inspection effected by the Seller or its representative and (iv) the Buyer undertakes all necessary and reasonable measures to restrict the damage. The use or conversion of the goods by the Buyer implies its irrevocable acceptance of the goods.
- 6.3. Complaints regarding hidden lacks in conformity are only valid if they are communicated in writing to the Seller within three (3) calendar days after discovery of the flaw, and under the express condition that such goods remain available for the Seller's inspection effected by the Seller or its representative. Such complaints shall no longer be admissible (i) upon expiration of the shelve life of the good(s) as indicated in the product data sheets, (ii) within ten days after delivery or (iii) after the use or conversion of the goods, whichever date is earlier.
- 6.4. The Buyer is responsible for the correct transportation and storage of the goods. In default of which, the Seller will not take into account the Buyer's claim (even in the event of non-conformity or flaws in the goods) and the complaint will be deemed unfounded. A complaint shall further be deemed unfounded in case of (i) insignificant deviations from the agreed quality, (ii) only minor impairment of usability, (iii) natural wear and tear, (iv) damage arising after the passing of the risk, (v) faulty or negligent handling, (vi) excessive strain, (vii) unsuitable equipment, (viii) failure on behalf of the Buyer to give notice of the alleged defect within the terms as referred to in clauses 6.2 and 6.3, (ix) failure on behalf of the Buyer to allow the Seller to inspect the goods in the state they were upon delivery, etc.
- 6.5. In the event a complaint is considered unfounded, the Seller's costs for inspection of the goods shall be borne by the Buyer.

- 6.6. In the event a complaint is considered founded by the Seller, such good(s) shall, at the Seller's option, either be replaced free of charge or reimbursed in part or in full, excluding any compensation for consequential damages or any other damages whatsoever.
- 6.7. Each complaint regarding the content of the Seller's invoices is only valid if communicated to the Seller in writing within eight (8) calendar days as from the invoice date.
- 6.8. The Buyer cannot invoke any complaint in order to suspend or refuse payments.

## **7. Liability and indemnity**

- 7.1 To the largest extent permitted by the relevant laws, the Seller shall have no liability for loss of profits, loss of production, loss of business, loss of productivity or other special, incidental or consequential damages.
- 7.2. The Seller's liability and the Buyer's exclusive remedy for any cause of action arising out of the sale, use or non-delivery of the goods is expressly limited to, at the Seller's option, either the replacement or reimbursement in part or in full (cf. clause 6 above).
- 7.3. If the Seller is liable to pay damages, these damages shall not exceed the lower amount of the invoice for the goods that caused the damage, or if the damage is covered by insurance, the amount actually paid by the insurance to the Seller.
- 7.4. The Buyer shall indemnify, defend and hold the Seller and its directors, officers, employees, agents, suppliers, parents, affiliates, subsidiaries, successors and assigns harmless from any and all fines, penalties, suits, actions, claims, liabilities, judgments, costs and expenses (including attorney's fees) resulting or arising from (i) the Buyer's negligence, (ii) the Buyer's use, sale, handling, storage or disposal of the goods or any other product or waste derived therefrom, (iii) the Buyer's discharge or release of the goods or any product or waste derived therefrom into water, onto land or into the air, (iv) the Buyer's exposing any person (including the Buyer's employees) to the goods or any product or waste derived therefrom, including failure to warn of such exposure, or (v) the transportation of the goods to the Buyer after tender of the goods by the Seller to the carrier at the Seller's shipping point. The foregoing shall apply, without limitation, to injury to person (including death) or damage or harm to property or the environment. This indemnity shall not apply to any fine, penalty, suit, action, claim, liability, judgment, cost or expense caused by the Seller's sole gross negligence or willful misconduct, but shall apply where there is concurrent negligence or willful misconduct of the Seller and the Buyer.

## **8. Packages**

- 8.1 The Seller lends the shuttle packaging to the Buyer free of charge in order to contain the goods. Buyer must return the packaging to the shipping plant in good condition, carriage paid, as soon as possible and at the latest two months after delivery.
- 8.2. The packaging remains the exclusive property of the Seller, shall be used in compliance with the Seller's instructions and shall not be used for storage or shipment of any other material than the reasonable storage of the goods originally delivered therein.
- 8.3. Loss or damage to the packages whilst in the Buyer's possession or control shall be the Buyer's responsibility and for the Buyer's account.

## **9. Export control**

- 9.1 The Buyer shall comply with all applicable export control and trade embargo laws, rules and regulations and shall not resell export, re-export, distribute, transfer or otherwise dispose of materials, directly or indirectly without first obtaining all necessary written consents, permits and authorizations and completing such formalities as may be required by any such laws, rules and regulations.

## **10. REACH**

- 10.1 The Seller shall have no obligation to obtain authorization under the Regulation of the European Parliament and the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) 1907/2006/EC, except for any goods as agreed by the Seller and the Buyer in writing.

- 10.2. If the parties have concluded such written agreement as mentioned in clause 10.1 and to the extent required under REACH, the Seller shall ensure that the goods are or will be timely pre-registered and then registered for the use(s) as identified by the Buyer, provided that (i) the use(s) are identified by the Buyer to the Seller in writing within the timeframe specified in the REACH Regulation, (ii) the Buyer provides all information on the use and exposure of the substance needed for the Seller to perform a realistic risk assessment of the substance, (iii) the Seller agrees to cover such use(s) on the basis of the risk assessment made, (iv) the parties can agree on the payment of the costs associated with the specific coverage by the Seller of such use(s) and (v) such use(s) represent sufficient economic interest for the Seller to justify registration.

## **11. Intellectual property**

- 11.1 To the best of the Seller's knowledge, the goods, except as specifically made for the Buyer according to the Buyer's design, do not infringe any valid EU patent. The Buyer agrees that it shall promptly notify the Seller of any claim or suit alleging patent infringement, shall permit the Seller to control the defense or compromise of such claim or suit, and shall provide the Seller with all necessary information, authority and assistance.
- 11.2. The Seller does not warrant that the Buyer's particular use of the goods in any process or in combination with any other materials not supplied by the Seller will not infringe a patent.
- 11.3. The Seller's instructions and recommendations are not intended to suggest operations that would infringe any patents, and the Seller assumes no responsibility for any such infringement.
- 11.4. The Seller may, without breach of these GTCS and without liability to the Buyer, decline to continue deliveries of any goods where the manufacture, sale or use of the goods would, in the Seller's reasonable opinion, infringe any patent now or hereinafter issued.
- 11.5. Unless expressly stated otherwise, nothing in these GTCS vests in or confers on the Buyer any right or license in intellectual property of any kind, including without limitation any patent, trade mark, copyright or design right, whether or not registered.

## **12. Force majeure and hardship**

- 12.1 In case a party is prevented from executing the agreement, with the exception of a payment obligation, in full or in part due to force majeure or circumstances out of its control, it is entitled to suspend its obligations or to terminate the agreement or transaction without judicial intervention. This shall not give the other party the right to any indemnification.
- 12.2. For the purpose of this clause, force majeure will be considered as all circumstances which according to the law or prevailing opinions of society, are beyond the parties' reasonable control, such as: action by government, war, riots, strikes, lock-outs, fire, breakdown of machines, inadequate supply of raw materials or energy, failure or disturbance of electricity supply, failure or disturbance of telecommunication networks, exceptional climatic circumstances, partial or total default of third persons who have to deliver the necessary materials or services, interruption in transport or any other circumstances beyond a party's control, which hinder the normal production or shipment of the goods. This list is illustrative and not exhaustive.
- 12.3. Equal to force majeure are unforeseeable events beyond the Seller's control, which substantially change the economic importance or contents of the delivery, considerably affect the Seller's business or render the Seller's contractual duties excessively onerous. In such circumstances, the agreement or transaction shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not economically justifiable, the Seller shall have the right to rescind the agreement or transaction without being due any indemnification to the Buyer.

### **13. Assignment**

- 13.1 Neither party shall assign or transfer any of its rights or obligations under these GTCS, either in whole or in part, to any third party without the prior written consent of the other party. Any such assignment or transfer without the prior written consent of the other party shall be deemed null and void.
- 13.2. However, the Seller shall be entitled to assign or transfer the agreement or transaction with the Buyer to any of its Affiliates, or subcontract its contractual obligations as it sees fit.

### **14. Severability**

- 14.1 If any (part of a) provision of the present GTCS is held to be invalid or unenforceable, or contrary to imperative law or the public order, then such provision will (so far as it is invalid or unenforceable) have no effect and will be deemed not to be included in the present GTCS, but without invalidating any of the remaining provisions.
- 14.2. The parties must then use all reasonable endeavors to replace the invalid or unenforceable provision by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

### **15. Waivers**

- 15.1 No failure or delay by any party in exercising any right or remedy provided by law or pursuant to these GTCS will impair such right or remedy or be construed as a waiver of it and will not preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy will preclude any further exercise of it or the exercise of any other remedy.

### **16. Governing law and jurisdiction**

- 16.1 All transactions and agreement with the Buyer, irrespective of the Buyer's location, shall be exclusively governed by Belgian law.
- 16.2. Any disputes relative to the existence, validity, interpretation, performance or termination of any agreement or transaction with the Buyer shall come under the exclusive jurisdiction of the Courts of the Seller's domicile, unless the Seller, in its capacity as plaintiff should prefer to bring the dispute before the courts of the Buyer's domicile.