

## PROAQUA PTY LTD GENERAL TERMS AND CONDITIONS

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Proaqua's Goods are only available for purchase upon the terms and conditions set out below (**Terms**).

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In these Terms:

- (a) **Australian Consumer Law** means Schedule 2 of Competition and Consumer Act 2010 (Clth) (as amended).
- (b) **Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Goods are delivered.
- (c) **Customer** means the person or company identified in an Order Confirmation as the customer and includes the Customer's agents and permitted assigns.
- (d) **Customer Delivery Address** means the address, which the Customer has requested the Goods be delivered as specified in each Order Confirmation.
- (e) **Electrical Equipment** has the meaning given to it by the *Electrical Safety Act 2002* (Qld).
- (f) **Fault Notice** has the meaning given to it by clause 9.1.
- (g) **Freight Fee** means the fee payable in connection with the delivery of the Goods to the Customer's Delivery Address which, if applicable, will be specified in each Order Confirmation.
- (h) **Goods** means any goods supplied by Proaqua.
- (i) **Loss** includes, but is not limited to, costs (including party to party legal costs and Proaqua's legal costs), expenses, lost profits, award of damages, personal injury and property damage.
- (j) **Order** means a purchase order for Goods placed by a Customer and as varied in writing from time to time by the parties.
- (k) **Order Confirmation** means a written confirmation issued by Proaqua confirming an Order, the applicable price of the Goods (reflecting any Quote or pricing guide published by Proaqua from time to time) and any applicable Freight Fee and/or Port Clearance Fee.
- (l) **Port** means the Port that the Goods may be delivered to as specified in each Order Confirmation.
- (m) **Port Clearance Fee** means the fees payable from time to time in connection with the arrival and clearance of the Goods including clearance fees, customs duty and other taxes which, if applicable, will be specified in each Order Confirmation.
- (n) **PPSA** means the Personal Property Security Act 2009 (Cth) and any regulation made at any time under that Act (each as amended from time to time).

- (o) **Proaqua** means Proaqua Pty Ltd ACN 130 941 454 in its capacity as trustee of The Proaqua Trust ABN 47 395 623 589.
- (p) **Quote** means any quote that may be provided by Proaqua to a Customer regarding Goods to be supplied by Proaqua to the Customer as well as the price of the Goods and which may include an estimate of the Freight Fee and Port Clearance Fee.

## 1.2 Interpretation

In these Terms, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through Proaqua's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms;
- (d) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
  - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
  - (ii) in all other cases, must be done on the next Business Day.

## 2. GENERAL

- 2.1 These Terms apply to all transactions between the Customer and Proaqua relating to the provision of Goods. This includes all quotations, contracts and variations. These Terms take precedence over any other terms and conditions contained in any document of the Customer or elsewhere.
- 2.2 The variation or waiver of a provision of these Terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.

## 3. QUOTES

- 3.1 Subject to receiving a request from the Customer, Proaqua may provide the Customer with a Quote. Unless expressly agreed otherwise in writing, a Quote does not include fees associated with storage or insurance of the Goods.
- 3.2 If the Customer requires Proaqua to arrange storage of the Goods, the Customer must notify Proaqua to allow Proaqua to amend the Quote to incorporate the additional fees.
- 3.3 Unless specified otherwise all fees specified in a Quote are exclusive of GST. The Customer must pay any applicable GST in addition to the quoted fee upon receipt of a valid tax invoice.

3.4 Proaqua may update or amend the Quote by written notice to the Customer at any time prior to receiving an Order from a Customer.

#### 4. **ORDERS**

4.1 Upon receiving an Order from a Customer, Proaqua will issue the Customer with an Order Confirmation.

4.2 The Customer may confirm its acceptance of the Order Confirmation by giving written notice to Proaqua.

4.3 If, following a period of 24 hours commencing on the date of the Order Confirmation, the Customer has neither accepted the Order Confirmation, nor requested that the Order be amended, then the Customer will be deemed to have accepted the Order Confirmation.

4.4 Any indication in an Order Confirmation of the time frame for the supply of Goods (including any indication obtained from shipping schedules provided to the Customer by Proaqua) is an estimate only and is not a fixed time frame.

4.5 Proaqua may in its absolute discretion refuse to progress an Order where:

- (a) Goods are unavailable for any reason whatsoever;
- (b) the Customer's credit limits cannot be agreed upon or have been exceeded or the Customer is unable to provide a letter of credit on acceptable terms following a request in accordance with clause 5;
- (c) payment for Goods previously supplied to the Customer or any related corporation of the Customer has not been received by Proaqua; or
- (d) it elects to terminate an Order in accordance with clause 14 or 17.

#### 5. **LETTERS OF CREDIT**

5.1 Proaqua may at any time (in its absolute discretion) require the Customer to provide a letter of credit prior to progressing an Order. If Proaqua notifies the Customer that it requires a letter of credit, the Customer must first:

- (a) contact Proaqua to discuss the form and terms of the letter of credit; and
- (b) advise its financier that Proaqua shall provide a tax invoice in lieu of a commercial invoice.

5.2 If requested, the Customer must provide the proposed form of the letter of credit to Proaqua for review and approval prior to Proaqua accepting the letter of credit. Proaqua may request any changes to the letter of credit as it deems necessary.

5.3 For the avoidance of doubt, Proaqua is not obliged to progress an Order until such time as it is satisfied with the form of the letter of credit provided by the Customer.

#### 6. **VARIATION OR CANCELLATION OF AN ORDER**

6.1 The Customer may request that an Order be varied at any time prior to receiving notification from Proaqua that the Order is ready for delivery. A request for a variation must be agreed to in writing by Proaqua in order to have any effect.

6.2 An Order cannot be cancelled without the prior written consent of Proaqua. Where an Order is cancelled the Customer indemnifies Proaqua against any Losses which it may incur as a

result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

## 7. INVOICING AND PAYMENT

- 7.1 Unless otherwise agreed, following acceptance of an Order Confirmation by the Customer pursuant to clause 4.2 or 4.3, Proaqua will issue the Customer with a tax invoice detailing all amounts payable by the Customer to Proaqua in accordance with the Order Confirmation, including the agreed currency for payment (as specified in the Order Confirmation) (**Customer Invoice**).
- 7.2 All Customer Invoices are due within 30 days of the date of issue unless agreed otherwise.
- 7.3 If any invoice is due but unpaid, Proaqua may withhold the provision of any further Goods until all overdue amounts are paid in full.
- 7.4 Proaqua may in its absolute discretion apply any payment received from the Customer to any amount owed by the Customer to Proaqua.
- 7.5 The Customer is not entitled to retain any money owing to Proaqua notwithstanding any default or alleged default by Proaqua of these Terms including (but not limited to) the supply of allegedly sub-standard or imperfect Goods or a delay in the provision of the Goods. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- 7.6 The Customer must pay Proaqua on demand interest at the rate of 12% per annum on all overdue amounts owed by the Customer to Proaqua, calculated daily.
- 7.7 All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of Proaqua, are to be paid by the Customer as a debt due and payable under these Terms.

## 8. CONSIGNMENT

- 8.1 In the event that the Customer seeks to vary or cancel an Order in accordance with clause 6 and Proaqua does not agree to the variation or cancellation Proaqua may, in its absolute discretion, offer to assist the Customer to distribute for resale, part or all of the Goods to which the requested variation or cancellation relates (**Resale Goods**), within its existing customer network (**Resale**).
- 8.2 Should Proaqua agree to assist the Customer with a Resale, the Resale Goods will be held by Proaqua on consignment for a period of 60 days (**Consignment Period**).
- 8.3 The Customer agrees to reimburse Proaqua for any costs incurred by Proaqua in connection with the storage of the Resale Goods during the Consignment Period immediately upon receipt of a valid invoice from Proaqua, which may be provided on an interim basis.
- 8.4 Should Proaqua receive a request from a third party to purchase part or all of the Resale Goods (**Resale Offer**) Proaqua must first obtain written confirmation from the Customer to the terms of the Resale Offer prior to accepting the Resale Offer.
- 8.5 Proaqua will be entitled to retain any money received in connection with the sale of the Resale Goods.
- 8.6 If at the expiry of the Consignment Period, part or all of the Resale Goods remain unsold, Proaqua shall arrange for the delivery of the remaining Resale Goods to the Customer's Delivery Address at the Customers' cost. In addition to the delivery fee, the Customer must pay to Proaqua, the difference between the price of the Goods specified in the relevant Order

Confirmation and the amount received by Proaqua for the sale of the Resale Goods (if any) (**Balance**) within 30 days of receiving notice from Proaqua detailing the Balance.

## 9. ACCEPTANCE OF GOODS

9.1 If the Customer fails to advise Proaqua in writing of any failure of the Goods to conform with an Order within 7 days of delivery (**Fault Notice**), the Customer is deemed to have accepted the Goods and to have accepted that the Goods conform with the Order.

9.2 A Fault Notice must be accompanied by:

- (a) reasonable photographic evidence of the fault claimed by the Customer; and
- (b) in the case of feed products, a 1kg sample of the Goods taken from the Order.

for the avoidance of doubt, the Customer will be solely liable for any costs incurred in issuing a Fault Notice to Proaqua.

9.3 Upon receipt of a Fault Notice Proaqua will liaise with the Customer in relation to the alleged fault with a view to reaching a resolution subject always to the provisions of clause 15.

9.4 Nothing in this clause 9 affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

## 10. TITLE AND RISK

10.1 Risk in the Goods passes to the Customer immediately upon the Customer receiving notification from Proaqua that the Port has approved the clearance of the Goods.

10.2 Property and title in the Goods supplied to the Customer under these Terms does not pass to the Customer until all money (including money owing in respect of other transactions between Proaqua and the Customer) due and payable to Proaqua by the Customer have been paid in full.

10.3 The Customer acknowledges and agrees that any Goods, which are Electrical Equipment:

- (a) must be installed by a qualified licensed electrician and otherwise in accordance with the requirements of the *Electrical Safety Act 2002* (Qld), including any supporting regulations or other relevant legislation or regulations which are in force in the State which the Customer is located. It is the Customer's responsibility to arrange for installation and the Customer assumes all risk associated with such installation;
- (b) must be stored and used in a way that complies with any safety information provided by Proaqua at the time the Goods are supplied to the Customer.

10.4 Where Goods are supplied by Proaqua to the Customer without payment in full, the Customer:

- (a) is a bailee of the Goods until property in them passes to the Customer;
- (b) must be able upon demand by Proaqua to separate and identify the Goods supplied by Proaqua from other goods which are held by the Customer;
- (c) must not allow any person to have or acquire any security interest in the Goods;
- (d) agrees that Proaqua may repossess the Goods if it fails to pay for any Goods when payment is due; and

- (e) the Customer grants an irrevocable licence to Proaqua and its agent/s to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies Proaqua for any damage to property or personal injury which occurs as a result of Proaqua and/or its agent/s entering the Customer's premises.

## 11. **PPSA**

11.1 Capitalised expressions used in this clause 11 that are defined in the PPSA have the same meaning as in the PPSA.

11.2 For the purposes of the PPSA:

- (a) the Customer acknowledges that these Terms constitute a Security Agreement and that Proaqua has a Purchase Money Security Interest in:
  - (i) the Goods supplied or to be supplied by Proaqua to the Customer; and
  - (ii) in the proceeds of sale of any such Goods;
- (b) Proaqua's Security Interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time.

11.3 The Customer must immediately upon Proaqua's request:

- (a) do all things and execute all documents necessary to perfect and give effect to the Security Interest created under these Terms; and
- (b) procure from any person considered by Proaqua to be relevant to its security position such agreements and waivers as Proaqua may at any time require.

11.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

11.5 Proaqua and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

11.6 To the extent permitted by the PPSA, the Customer agrees that the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Proaqua will apply only to the extent that they are mandatory or Proaqua agrees to their application in writing.

11.7 The rights Proaqua may have under the PPSA are supplementary and in addition to those set out in these Terms and do not derogate from the rights and remedies of Proaqua under these Terms or under any other statute or under general law.

12. Proaqua may allocate amounts received from the Customer in any manner Proaqua determines, including in any manner required to preserve any Purchase Money Security Interest it has in Goods supplied by Proaqua.

12.1 The Customer agrees to immediately notify Proaqua of any changes to its name or address.

## 13. **AGENCY AND ASSIGNMENT**

13.1 The Customer agrees that Proaqua may at any time appoint or engage an agent to perform an obligation of Proaqua arising out of or pursuant to these Terms.

- 13.2 Proaqua has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms provided that the assignee agrees to assume any duties and obligations of Proaqua owed to the Customer under these Terms.
- 13.3 The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms without the prior written consent of Proaqua.
14. **DEFAULT BY CUSTOMER**
- 14.1 Each of the following occurrences constitutes an event of default:
- (a) the Customer defaults on any payment due under these Terms;
  - (b) the Customer breaches or is alleged to have breached these Terms for any reason (other than defaulting on any payment due under these Terms) and fails to remedy that breach within 14 days of being given notice by Proaqua to do so;
  - (c) the Customer, being a natural person, commits an act of bankruptcy;
  - (d) the Customer, being a corporation, is subject to:
    - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
    - (ii) a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* (Cth) being appointed to all or any part of the Customer's property and undertaking;
    - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
    - (iv) any assignment for the benefit of creditors;
    - (v) the Customer purports to assign its rights under these Terms without Proaqua's prior written consent; or
    - (vi) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- 14.2 Where an event of default occurs, except where prohibited by law or payment in full has been received by Proaqua, Proaqua may:
- (a) terminate these Terms;
  - (b) terminate any or all outstanding Orders and credit arrangements (if any) with the Customer;
  - (c) refuse to deliver the Goods;
  - (d) pursuant to clause 10.3, repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
  - (e) retain (where applicable) all money paid by the Customer on account of Goods or otherwise.



14.3 In addition to any action permitted to be taken by Proaqua under paragraph 14.2, on the occurrence of an event of default all invoices will become immediately due and payable.

## 15. EXCLUSIONS AND LIMITATION OF LIABILITY

15.1 The Customer expressly acknowledges and agrees that it uses the Goods at its own risk. To the extent permitted by law, Proaqua's liability for breach of any term implied into these Terms by any law is excluded.

15.2 All information, specifications and samples provided by Proaqua in relation to the Goods are approximations only and, subject to any guarantees under the Australian Consumer Law which cannot be excluded, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods will not entitle the Customer to reject the Goods upon delivery, or to issue a Fault Notice or make any claim in respect of them.

15.3 While Proaqua warrants that the Goods will conform with the Order it gives no other warranty in relation to the Goods supplied including in relation to delivery times. To the extent permitted by law neither Proaqua or any of its related body corporates or agents will be liable or responsible in any way to the Customer or any other person unless Proaqua receives a Fault Notice in accordance with clause 9.1 and it is established that the Goods do not conform with the Order.

15.4 Any advice, recommendation, information, assistance or service given by Proaqua in relation to Goods, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. Proaqua does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.

15.5 To the fullest extent permissible at law, Proaqua is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide the Goods, or otherwise arising out of the provision of the Goods, whether based on negligence, strict liability or otherwise, even if Proaqua has been advised of the possibility of damages.

15.6 The Australian Consumer Law may give to the Customer certain guarantees which cannot be excluded in accordance with clause 15.1. Where liability for breach of any such guarantee can be limited, Proaqua's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of the Goods, to the replacement of the Goods or the costs of resupply or replacement of the Goods.

15.7 In addition to the above, notwithstanding anything to the contrary in these Terms, or any other document, to the extent permitted by law the total aggregate liability of Proaqua to the Customer under or in connection with these Terms, whether for breach of these Terms, negligence or any other tort, breach of statutory duty or otherwise, is limited to the price payable by the Customer for the relevant delivery of Goods if delivered, or, if liability arises from a failure to deliver, the price payable had the Goods been delivered.

15.8 The Customer acknowledges that the Goods are not for personal, domestic or household purposes.

## 16. INDEMNITY

16.1 The Customer indemnifies and keeps indemnified Proaqua, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against Proaqua or, for which Proaqua is liable, in connection with any Loss arising from or incidental to the provision of Goods, any Order or the subject matter of these



Terms except to the extent that the Loss is caused or contributed to by Proaqua's negligence or breach of these Terms. This includes, but is not limited to, any legal costs incurred by Proaqua in relation to meeting any claim or demand or any party/party legal costs for which Proaqua is liable in connection with any such claim or demand.

16.2 This provision remains in force after the termination of these Terms.

## 17. **FORCE MAJEURE**

17.1 If circumstances beyond Proaqua's control prevent or hinder its provision of the Goods, Proaqua is free from any obligation to provide the Goods while those circumstances continue. Proaqua may elect to terminate an Order or keep an Order on foot until such circumstances have ceased.

17.2 Circumstances beyond Proaqua's control include, but are not limited to, unavailability of materials, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

## 18. **DISPUTE RESOLUTION**

18.1 In the event of any dispute between the Customer and Proaqua arising out of or under these Terms (**Dispute**) either party may give the other party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution in accordance with this clause 18.

18.2 If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other party, each party must nominate one representative from its senior management to actively seek to resolve the Dispute (each a **Dispute Representative**).

18.3 If the Dispute is not resolved within 21 days of the Dispute being referred to the respective Dispute Representatives, then the Dispute must be referred to mediation and the parties must request that the President of the Queensland Law Society appoint a mediator as soon as practicable to mediate the Dispute. The request shall also include a copy of the Dispute Notice.

18.4 Each party will bear its own legal costs incurred in connection with the mediation. The costs incidental to the mediation, including the mediation fees, will be apportioned equally between the parties.

18.5 The parties must comply with this clause 18 prior to referring the Dispute to arbitration or litigation (except in circumstances in which a party is seeking interlocutory relief).

## 19. **MISCELLANEOUS**

19.1 These Terms are governed by the laws of Queensland and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.

19.2 These Terms and any Order Confirmations and written variations agreed to in writing by Proaqua represent the whole agreement between the parties relating to the subject matter of these Terms.

19.3 These Terms supersede all oral and written negotiations and communications by and on behalf of either of the parties.

19.4 In entering into these Terms, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by Proaqua or any of its employees or agents relating to or in connection with the subject matter of these Terms.

- 19.5 If any provision of these Terms at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- 19.6 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 19.7 A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on the Order Confirmation (or as varied pursuant to this paragraph) and delivered by one or more of the following methods:
- (a) personally;
  - (b) sent by pre-paid mail to the address of the addressee specified in the relevant Order Confirmation;
  - (c) sent by fax to the fax number of the addressee specified in the relevant Order Confirmation with acknowledgment of receipt from the facsimile machine of the addressee; or
  - (d) sent by email to the email address of the addressee specified in the relevant Order Confirmation with acknowledgement of delivery.
- 19.8 A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 19.9 A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.