

PROFORM LASER SERVICES LIMITED

TERMS AND CONDITIONS OF SALE

In this contract 'the Company' refers to Proform Laser Services Limited. The 'Goods' refers to the goods or services sold or supplied by the Company to the Customer under this Contract. 'This Contract' means a Contract between the Customer and the Company incorporating these conditions. This Contract governs the sale of Goods by the Company to the exclusion of all other representations, statements, understanding, negotiations, proposals or agreements.

1. GENERAL

- a) Where a customer submits their own order form, the Company's terms and conditions shall prevail, even if the customer's conditions include similar conditions to this.
- b) No employee of the Company or its agents have authority to make any warranty, statement or promise concerning the goods, except in writing signed by a duly authorised employee of the company.
- c) The Customer's order is subject to acceptance by the Company.
- d) Orders are accepted and estimates of delivery given conditionally on the Company being able to secure the necessary labour, materials and without responsibility for delays or non-fulfilment arising through risk and uncertainties of manufacture, strikes, accidents, force majeure or otherwise however caused.
- e) All drawings, descriptive and forwarding specifications, particular of weights and dimensions are approximate only and not binding and illustrations contained in catalogues, sales literature and other advertising material are for the purpose of general description only and none of these shall form part of this contract.

2. QUOTATIONS AND TENDERS

Tenders submitted by the Company shall remain open for acceptance for a period of 30 days from the date of tender, unless in the tender some other period is specified or accepted.

3. PRICES

- a) The prices quoted are subject to any increase in the cost of labour or material between the date of quotation and despatch of goods, quotes do not include installation costs unless stated. Where the price of the goods is varied in accordance with condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.
- b) There shall be added to the price for the goods any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale and delivery of the goods and are payable by the Customer.
- c) All goods are sold "ex-works" unless otherwise stated. If the Company arranges or undertakes the carriage, freight, insurance or any other transport costs beyond the point of delivery such costs are the responsibility of the Customer.

d) All prices quoted are in pounds sterling unless otherwise stated.

4. TERMS OF PAYMENT

a) Prices quoted are net.

b) Where credit facilities exist, accounts are due for payment within 30 days of the end of the month of delivery. Where special discount terms are quoted, the terms must be strictly adhered to otherwise the account will be charged gross. The Customer shall, unless agreed in writing, pay all sums to the Company under the Contract prior to delivery in cash, by debit card payment or by BACS transfer in pounds sterling. If for any reason the Company does not receive unconditional payment in full, whether under any terms of credit facilities or otherwise, within 30 days of month end delivery, then the company may charge daily interest on such payments at a rate of 4% per annum above the based lending rate of the Barclays Bank plc., with such interest to run from day to day to accrue before as well as after any judgement. In the event of failure to pay for any goods or for any delivery or instalment or should a customer's credit limit be exceeded the Company shall be entitled to suspend further deliveries and work both on the same order and on any other orders from the Customer without prejudice to any other right the Company may have whether under Clause 10.

c) For all non-credit payments, payments must be received before despatch.

d) When deliveries are spread over a period, each consignment will be invoiced as despatched and each month's invoices will be treated as a separate account and be payable accordingly.

e) Without prejudice to the company's rights under clause 10, the Company reserves the right where genuine doubts arise as to a Customer's financial position or in the case of failure to pay for any goods or any delivery or instalment or to exceed the credit limit as aforesaid to suspend delivery of any part or instalment without liability until payment or satisfactory security for payment has been provided.

f) In the event of any dispute the Customer shall not be entitled to withhold payment of the price of the goods or any agreement payments or to any right or set-off against any payment due to the Company under this or any other contract.

g) Should the Company incur any third-party costs such as tracing, debt collection or legal proceedings to enforce our rights as a result of breach of this Contract, including but not limited to recovery of all sums due, the Customer will be liable to reimburse the Company such costs incurred on an indemnity basis.

h) Special terms will be quoted for overseas deliveries.

5. DELIVERY AND COMPLETION DATES

a) The delivery or performance dates specified are approximate only and, unless otherwise stated time is not of the essence for delivery.

b) No delay shall entitle the Customer to damages or to reject any delivery or any further instalment or part of the order or any other order from the Customer or to cancel or repudiate the contract or the order.

c) The Company cannot undertake to meet any schedule of Customer's requirements supplied after the date of the contract and will have no liability whatsoever for delay in meeting all or any such requirements (however such failure or delay may arise) unless and to the extent that the Company

expressly agrees to meet such requirements, in which event paragraph (1) of this condition will apply.

d) The Company does not accept responsibility for any damage, shortage or loss in transit unless:

i. Non-receipt of Goods is advised to the Company within 10 days from the date of the Company's advice / delivery note.

ii. Any breakage, damage or shortage is advised to the Company and Carriers within 3 days of receipt of goods, provided that the Carrier's not is marked "unexamined".

e) All sizes and finishing qualities are approximate. Variations during the course of manufacture cannot be avoided and liability is not accepted for them. Where exact and detailed dimensions / specifications on standard products are required, then please contact our Technical Department for details.

f) When goods are offered and supplied to a Customer's design and specification, no guarantee is given or implied of their suitability for the purpose of which they are intended.

g) In cases where fixings and holding down bolts are supplied, then it is the Customer's responsibility to ensure that the fabric being connected to is of suitable strength and quality to accept the fixings and equipment being connected to it. It is the Customer's onus to ensure that the fixings are fitted in the correct manner and to the manufacturer's guidelines.

h) If during a period of 12 months from delivery the Company is notified of a fault in the Goods which is due to the Company's faulty design or manufacturing, the Company will replace or (at its option) repair the faulty part free of charge provided that:

i. The Goods have been properly kept, used and maintained in strict accordance with the manufacturers of the Company's instructions, if any, and have not been modified.

ii. The fault is not due to accidental or wilful damage, interference with or maintenance of the Goods by persons other than the Company or its duly appointed agent.

iii. If the Goods have been manufactured to the Customer's design, and the fault is not due to faulty design or design issues which are the responsibility of the Customer.

iv. The guarantee does not cover wear and tear.

v. The Customer will be required to return the faulty Goods to the Company at the Customer's expense.

6. FORCE MAEJURE

In the event of the performance of any obligations by the Company being prevented, delayed or any way interfered with by any Act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Company's premises or elsewhere), hostilities, breakdowns, accidents, explosions, shortage of labour, materials, power or other supplied, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having the force or the law) or any other cause whatever beyond the Company's control or of an unexpected or exceptional nature the Company may suspend or treat as impossible the performance of any obligation to the Customer without any liability for any loss.

7. DELAYED ACCEPTANCE

If for any reason the Customer is unable to accept delivery of the goods when the goods are due and ready for delivery the Company may (but shall not be under any obligation to) arrange storage of the goods and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right which the Company may have in respect of the Customer's failure to take delivery of the goods or to pay for them in accordance with the contract when payment would have been due if the goods had been delivered when due and ready for delivery.

8. CANCELLATION

Cancellation or orders in whole or part will only be accepted by the Company in writing and on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other losses or damages resulting to the Company by reason of such cancellation will be reimbursed by the Customer to the Company forthwith.

9. NON-STANDARD ORDERS

Where the Customer orders goods or materials of a type, size or quality not normally supplied by the Company, the Company will use all reasonable endeavours to execute the order, but if it proves impossible, impracticable or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the uncompleted balance thereof in which event the Customer will only be liable for the proportion actually delivered.

10. TERMINATION

The Company shall be entitled without prejudice to the Company's other rights and remedies wither to terminate wholly or in any part of any contract between the Company and the Customer or to suspend any further deliveries in any of the following events:

- i. Non-compliance by the Customer with the Company's terms of payment in accordance with this or any other contract between the Company and the Customer.
- ii. If the Customer has failed to provide a letter of credit or guarantee, bill of exchange or other security required by the Company.
- ii. If the Company obtains unfavourable reports on the financial standing of the Customer or in the event of the Customer becomes insolvent, is voluntarily or compulsorily made bankrupt or has had a Receiver or Administrative Receiver appointed or if the Customer makes any composition with its creditors generally.

11. LIEN

In addition to any rights of lien which the Company may have, the Company shall in any of the events described in Clause 10, have a general lien over all goods relating to the Customer until the debt owed by the Customer is discharged.

12. TITLE TO GOODS

a) The Insurance risk in the goods shall pass to the Customer:

- i. When the goods are dispatched from the Company's premises at the request of the Customer.
- ii. If the goods are appropriated to the Customer but kept at the Company's premises at the request of the Customer

b) Notwithstanding sub clause (a) above, legal and equitable ownership of the goods shall remain with the Company until payment of the goods has been received by the Company in full.

c) At any time prior to full payment (whether or not payment is then overdue) the Company may (without prejudice to any of its other rights) retake possession of the goods or any part thereof and may enter on the Customer's premises by its employees or agents for that purpose.

d) In the event of threatened seizure of the Goods or appointment of a receiver or liquidator, or any other event entitling the Company to terminate this Contract under clause 8, the customer shall immediately notify the Company. The Company shall be entitled to enter the Company's premises and repossess the goods.

e) If the Customer delivers the goods to a third party, before payment has been made in full to the Company, the Customer shall hold all sums received for such goods as trustee for the Company and shall remit them to the Company on receipt.

13. LIMITS OF LIABILITY

a) Except where expressly contained in this Contract, all warranties, conditions, undertakings and representations, expressed or implied, statutory or otherwise, are excluded and the Company has no obligation, duty or liability in Contract, tort (including negligence or breach of statutory duty) or otherwise.

b) In any event, the Company's liability arising for any reason in connection with the Contract shall be limited to the original invoice value of the single item found to be defective.

c) In no circumstances will the Company be liable in Contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, or any indirect or consequential loss or damage whatsoever.

d) The Company does not exclude or restrict liability for death or personal injury resulting from its own negligence.

e) Each provision of this condition is to be construed as a separate limitation applying and surviving even if for any reason one or all of the said provisions is held unreasonable in any circumstances and shall remain in force notwithstanding termination of this contract.

14. HIREWORK; CUSTOMERS MATERIALS; WARRANTY; LIMIT OF COMPANY'S RESPONSIBILITY

Hirework and work involving the use of customer's materials is undertaken by the Company only on the express understanding that the Company cannot be responsible for any distortion, faults or defects which appear or develop during or are caused by the work howsoever arising even if resulting from any fault, negligence or mistake by the Company. The Company gives no guarantee or warranty of any kind however subject to the availability of capacity and facilities, it will endeavour to correct any such distortions, faults or defects at the Customer's expense and risk. The Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law.

15. ADVICE GIVEN TO CUSTOMERS

The Company shall be under no liability whatsoever in respect of any advice or views it offers or expresses to a Customer expressly or by implication as to the suitability or otherwise of the goods or any process to which the goods may be subject. Unless such advice is requested by the Customer in

writing and the Company relies in writing whereupon should such express recommendations be found to be wrong or inaccurate the liability of the Company will be limited to rectification or replacement of the goods and the Company shall not in any circumstances be liable for damages, compensation and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law.

16. TOLERANCES AND TESTS

a) The Company will supply to the Customer whatever information it receives from the manufacturer regarding gauges, weights, chemical composition and analysis, quantities and sizes as it is liable to provide. Any requirements as to gauges, weights, chemical composition and analysis, quantities and sizes which are communicated by the Customer to the Company in writing will so far as possible be adhered to, but reasonable excess and deficiencies thereof shall be accepted by the Customer who shall not be entitled to reject any goods or to replacement of any goods on the ground that they are not precisely as specified, so long as those goods are within pre-agreed tolerances and finishes. When tolerances and finishes have not been specified in writing then the goods will be manufactured to the Company's standard tolerances.

b) Unless otherwise specifically agreed, all tests and test pieces required by the Customer will be charged extra.

c) Unless otherwise specifically requested by the Customer, tests of chemical composition shall be based only on the ladle analysis which shall be final. Test and inspections shall take place under the manufacturer's standard testing arrangements and such tests shall be final. All tests are subject to analytical tolerances.

17. INFRINGEMENTS

a) The Customer shall indemnify the Company against all damages, penalties, costs and expenses arising out of any claim by any third party for any infringement or alleged infringement of any third party's industrial or intellectual property rights in any work carried out in accordance with the Customer's specification.

b) Copyright in all drawings or tracings prepared by the Company are the Company's property and copyright must be regarded as confidential. Such drawings and tracings must not be published or disclosed under any circumstances without the Company's permission in writing.

c) The Customer shall indemnify the Company against all actions, costs (including the costs of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Customer's instructions, whether express or implied.

18. PACKING

Unless otherwise specified packing cases and packing materials will be charged extra, but where stated to be returnable will be credited in full on return to the Company's works carriage paid in good condition, within one month of receipt by the Customer.

19. SUB-CONTRACTING

The Company reserves the right to sub-contract the whole or any part of the contract.

20. APPLICABLE LAW

The contract shall in all respects be governed by and construed in accordance with English law and the Customer hereby submits to the non-exclusive jurisdiction of the English Courts.