

GENERAL TERMS AND CONDITIONS OF SALE & DELIVERY OF PROCUDAN A/S



1. Scope of application

1.1 These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "the Terms") shall apply as exclusive conditions to all deliveries of goods and services incidental thereto (hereinafter referred to as "the Goods") made by Procudan A/S (hereinafter referred to as "Procudan").

1.2 Any deviating terms and conditions of purchase of the buyer or additions, modifications or limitations of these Terms shall apply only if expressly approved by Procudan in writing.

2. Formation of the Contract

2.1 Unless otherwise agreed or stated by Procudan, all written offers and quotations given by Procudan shall be open for acceptance for a period of 14 days from the date of dispatch. After the expiry of said period of time, Procudan is no longer bound by the contents of such offer or quotation.

2.2 A binding contract for the sale and delivery of the Goods shall be deemed to exist only when Procudan has confirmed such in writing or when Procudan has delivered the Goods subject in either case to these Terms.

2.3 In the event that Procudan's order confirmation does not conform with the buyer's purchase offer, the buyer shall without undue delay object to such nonconformity in writing. If the buyer fails to object, the sales contract shall be entered into on the terms indicated in Procudan's order confirmation, including these Terms.

2.4 Procudan shall accept no liability for any typographical, typing or other errors or omissions in any sales literature, quotation, price list, order confirmation, invoice or other document or information issued by Procudan. Procudan reserves the right to correct any such errors and omissions.

2.5 No order accepted by Procudan may be cancelled by the buyer except with the prior written acceptance thereof by Procudan and provided always that the buyer shall indemnify Procudan for all costs and losses sustained as a result hereof.

3. Prices

3.1 The price of the Goods shall be Procudan's quoted price. Unless otherwise stated, all prices quoted shall be valid for a period of 14 days only.

3.2 Unless otherwise stated in writing, prices quoted shall be net prices for delivery, exclusive of taxes and duties.

3.3 Quotations shall be based on the prices, rates of exchange and customs tariffs for raw materials and auxiliary materials in force on the date of the quotation. In the event of material changes in such prices, rates or tariffs, Procudan reserves the right to adjust the price accordingly.

3.4 In the event of material changes in the production costs or in the subsidies and/or export restitutions granted by public authorities, including the EU's authorities, Procudan reserves the right to adjust the price of the goods included in the quotation accordingly.

3.5 A fee of DKK 250.00 per invoice exclusive of VAT shall be charged in relation to all orders with a value of less than DKK 5,000.00 per invoice.

4. Payment

4.1 Unless otherwise agreed upon in writing, the terms of payment shall be 30 days net.

4.2 Payment shall be deemed to have been effected once the sums due without deduction are made available to Procudan in Procudan's designated account.

4.3 In the event of late payment, penalty interest shall be charged from the due date of payment at the monthly rate of 1.75 per cent calculated on a quarterly basis.

4.4 Unless otherwise agreed in writing between the parties, the buyer shall not be entitled to make any deductions, set-offs or counterclaims in sums due to Procudan.

4.5 Procudan shall be entitled to cancel the sales contract and/or suspend any further deliveries under any current contract until any and all outstanding sums due have been paid in full.

4.6 Title in the Goods shall pass from Procudan to the buyer only when payment of all sums due has been made in full.

5. Delivery

5.1 Unless otherwise agreed in writing, the terms of delivery shall be: In Denmark: Orders with a value of more than DKK 5,000.00: DDU Buyer's address (Incoterms 2010). Orders with a value of less than DKK 5,000.00: Ex Works Kolding (Incoterms 2010). Outside Denmark: Ex Works Kolding (Incoterms 2010).

5.2 All dates quoted for delivery of the Goods shall be approximately only, and Procudan shall not be liable for any losses suffered due to any delay in delivery of the Goods howsoever caused.

5.3 The Goods may be delivered in advance of the quoted delivery date upon giving reasonable notice to the buyer.

5.4 If the buyer fails to take delivery of the Goods - or where the buyer is to give delivery instructions, the buyer fails to give such instructions - Procudan may, at its discretion, invoice the carrier's current waiting fee at any time, extend the time of delivery or shipment of the Goods, storing the Goods at the buyer's cost and risk until actual delivery or cancel the sales contract or any part thereof, in either case without prejudice to any other right or remedy available to Procudan.

5.5 Partial shipment or partial delivery and/or transshipment shall be permitted. Each partial shipment or delivery shall be regarded as fulfillment of a separate and independent sales contract.

5.6 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery, or if the buyer wrongfully fails to take delivery of the Goods, at the time when Procudan has tendered delivery of the Goods.

5.7 The buyer undertakes to provide to Procudan, as and when requested by Procudan, all relevant documents, including but not limited to export/import documents from EU member states and/or for the entitlement to EU export refunds or other subsidies. The buyer shall be liable for all costs and losses suffered or incurred by Procudan as a result of the buyer's breach of this undertaking.

5.8 Empty returns shall remain Procudan's property. Packaging which is paid for by the buyer and returned to Procudan in good condition within two months after delivery shall be repurchased at full price.

5.9 Unless otherwise agreed in writing, the goods are transported at ambient temperature.

6. Examination and notice

6.1 Immediately upon receipt of the Goods, the buyer shall carry out a thorough examination of the Goods in order to ascertain whether the Goods are in conformity with the specifications. Such examination shall include relevant laboratory tests and inspections.

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6.2 The buyer shall lose the right to rely on a non-conformity of the Goods if the buyer fails to notify Procudan thereof in writing, specifying the nature of the non-conformity immediately after the buyer has discovered or ought to have discovered such non-conformity, and in any case before the best-before date of the Goods.

7. Indemnification and Liability

7.1 In the event of delay in delivery, the buyer may terminate the sales contract only if the delay is material. Such termination shall be the only remedy available to the buyer in the event of delay. Once delivery has been effected by Procudan, the sales contract cannot be terminated by the buyer.

7.2 Unless otherwise agreed in writing, all Goods are sold according to the current specifications. If the Goods do not conform to the Specifications, the buyer may - subject to the time limits contained in clause 6.2 - at its discretion reject the Goods and require Procudan to take back the Goods at the expense of Procudan and

- a) require Procudan to replace such Goods with conforming Goods; or
- b) require Procudan to issue a credit note in respect of such non-conforming Goods; or
- c) require Procudan forthwith to repay all money paid by the buyer in respect of such Goods.

No further remedy is available to the buyer in the event of any non-conformity of the Goods, howsoever caused.

Non-conforming Goods rejected by the buyer are the property of Procudan and shall be made available to Procudan.

7.3 Procudan shall never be liable for any operating loss, loss of orders, loss of income, loss of profits, loss of time, loss of public subsidies, loss of goodwill or any other special, indirect or consequential losses whatsoever, howsoever caused, whether or not Procudan has committed any fault or negligence.

7.4 The buyer shall be responsible for complying with any and all legislation and regulations governing the importation of the Goods into the country of distribution and subsequent processing, marketing, distribution or resale thereof.

7.5 Procudan is not liable for the fitness for intended purpose of the Goods and the buyer is responsible that the Goods are suitable for the purpose for which they are purchased.

7.6 Procudan is not liable for the compliance of the Goods with the requirements of statutes, government legislation, administrative rules and/or regulations applicable in the country of delivery or destination and undertakes no liability in respect hereof.

7.7 Force majeure: Notwithstanding the above provisions, Procudan shall not be liable for a failure to perform any of Procudan's obligations or deemed in breach thereof if Procudan proves that the failure was due to an impediment beyond the control of Procudan. The occurrence of such an event relieves Procudan from its duty to pay damages, penalties and other contractual sanctions.

Such events shall include in particular, but shall not be limited to strikes, lockouts, labor disputes, interruptions of operations, explosion, fire, natural disasters, governmental measures and restrictions imposed by national or foreign authorities, confiscation, embargoes, etc., currency restrictions, lack of transport, environmental measures and defective or delayed supplies by sub-contractors.

Further, it postpones the time for performance for such period as may be reasonable, thereby excluding the buyer's right, if any, to terminate or revoke the sales contract.

7.8 Where the performance of a sales contract becomes onerous on Procudan due to the occurrence of events that fundamentally alter the preconditions of the contract either because the costs of performance have increased or the performance for other reasons is subject to hardship Procudan shall be entitled to withhold performance or be released of such sales contract without incurring liability.

8. Product liability

8.1 The buyer agrees to hold harmless and indemnify Procudan and Procudan's parent company and any other group company and representatives against and from all costs, losses, liabilities, damages and expenses arising out of or resulting from the death of or injury to any person or from any damage to or loss of property due to the acts and/or omissions of the buyer.

8.2 Procudan shall only be liable for personal injury and/or damage to property caused by the Goods if it is proved that the injury or damage results from willful conduct or gross negligence on the part of Procudan or such liability follows from applicable mandatory law.

8.3 Procudan shall never be liable for any operating loss, loss of time, loss of orders, loss of profits, loss of public subsidies, loss of goodwill or any other special, indirect or consequential loss whatsoever whether or not Procudan has committed any fault or negligence.

9. Intellectual Property Rights

9.1 The buyer acquires no intellectual property rights in or to the Goods.

10. General

10.1 If any provision contained in these Terms should be held to be void or unenforceable, the validity of the other provisions shall not be affected thereby.

10.2 No waiver by Procudan of any breach of contract by the buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 The buyer shall hold in confidence and not disclose to any third party any confidential information disclosed by Procudan. The buyer shall not use such information for the buyer's own benefit or the benefit of any third party.

10.4 Nothing in the relationship between Procudan and the Buyer shall create an agency, partnership or joint venture between the parties and in specific the buyer shall not be entitled to make any representation or warranty on behalf of Procudan.

11. Governing Law and Jurisdiction

11.1 The validity, performance and construction of any agreement with Procudan shall be governed by Danish law. Any disputes arising out of or in connection with any offer, quotation or order confirmation issued by Procudan or in connection with the delivery of the Goods to the buyer, including but not limited to disputes relating to the construction of these Terms shall be settled in accordance with Danish legislation.

11.2 Any dispute shall fall under the jurisdiction of the Maritime and Commercial Court in Copenhagen (Sø- og Handelsretten).

11.3 Notwithstanding the above, Procudan shall at all times be entitled to initiate legal proceedings against the buyer in the country in which the registered office of the buyer is located.