



TERMS & CONDITIONS

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In these terms and conditions ("Terms"), the following words shall have the following meanings:-

- "the Buyer"** shall mean the corporate entity, firm or person seeking to purchase the Goods from the Company;
- "the Company"** shall mean Profast Limited whose registered office is at Unit 11 Western Industrial Estate, Naas Road, Dublin 12 Ireland;
- "the Contract"** shall mean any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Terms;
- "the Goods"** shall mean the goods to be supplied to the Buyer by the Company (including any part or parts of them).

1. THE CONTRACT

- 1.1 All orders for the Goods, whether by way of telephone, email, fax, post or any other method, placed by the Buyer are accepted by the Company under these Terms.
- 1.2 These Terms exclude any other terms and conditions inconsistent therewith which the Buyer might seek to impose even if such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms and conditions inconsistent with them or may be contained in any offer acceptance or counter offer made by the Buyer.
- 1.3 No variation of these Terms is permitted unless expressly accepted by a Director of the Company and confirmed in writing.
- 1.4 No order placed by the Buyer (whether based on a price stated in the Company's Catalogue, Price list, Quotation or otherwise) shall be deemed to be accepted by the Company until the Company has confirmed such order or dispatches the Goods to the Buyer.
- 1.5 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2. PRICE

- 2.1 The price of the Goods shall be as agreed between the Buyer and the Company at the time of order or as set out in the Company's current price lists applicable as at the date of the order, unless otherwise agreed by the Company in writing. All prices are exclusive of VAT and all such amounts shall be paid by the Buyer in addition to the price for the Goods unless valid exemption certificates as issued by the Revenue Commissioners (Inspector of Taxes) are provided or the goods are being exported from the State.
- 2.2 No additional charge will be made by the Company for delivery/carriage of the Goods unless:
- 2.2.1 The value of such goods falls below the required value threshold, as from time to time set by the Company for excluding additional carriage charges
- 2.2.2 The Buyer has specified particular requirements relating to the delivery/carriage of the Goods; and
- 2.2.3 such carriage requirements have been agreed to by the Company

3. PAYMENT

- 3.1 Payment of all sums payable under these Terms shall be due within 30 days of the end of such month in which the transaction occurs and detailed on the Company's invoice. No payment shall be deemed to have been received until the Company has received cleared funds. Time for payment shall be of the essence.
- 3.2 The Company reserves the right to charge interest at 2 per cent per annum above the base rate of Ulster Bank Ireland Ltd from time to time in force on all overdue accounts, such interest being deemed to accrue on a day to day basis from the due date for payment under Clause 3.1 until receipt by the Company of the full amount (including accrued interest) whether before or after judgment together with any reasonable legal or other recovery costs.
- 3.3 The Buyer shall not be entitled to withhold payment of any amount payable to the Company by reason of any dispute or claim by the Buyer and in the case of any shortfall in the delivery, or delivery of damaged goods, shall remain liable to pay the full invoice price of all other goods delivered or available for delivery.
- 3.4 The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering the Goods in satisfaction of any order notwithstanding any subsisting agreement to provide credit to the Buyer.
- 3.5 The Buyer shall reimburse to the Company the entire costs of re-presenting any cheque or other instrument delivered to it in payment of any sum due by the Buyer.
- 3.6 Queries on invoices must be received in writing by the Company within 21 days from the date of invoice and verbal notification will only be accepted subject to being confirmed in writing.
- 3.7

If the Buyer (being a company) has a petition presented for its winding up or the Appointment of an Administrator or passes a resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction or enters a scheme of arrangement or voluntary arrangement compounds or makes any proposal to or enters into any arrangement with its creditors or has a Receiver or Manager or an Administrative Receiver appointed of all or any part of its assets or (being an individual) has a petition presented for his bankruptcy or becomes bankrupt or insolvent or enters into any arrangement with his creditors or makes or has made an application for an Interim Order in connection with a proposal to Creditors for a voluntary arrangement or commits in either case a material or serious breach of this Contract (and in the case of such a breach being capable of remedy fails to remedy it within 7 days of receiving notice to do so), then without limiting any other right or remedy available to the company, the Company may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and all sums owing to the Company on any account shall become due and payable forthwith without requirement for any notice to be given, and further in either case the Buyer's licence to sell and use in clause 7.4 shall automatically cease.

4. DELIVERY

- 4.1 Delivery will be deemed to have been effected when the Goods leave the premises of the Company.
- 4.2 Any dates quoted by the Company for delivery of Goods are made in good faith and intended to be an estimate and time of delivery is not of the essence of the Contract
- 4.3 Any delay in delivery will not entitle the Buyer to terminate or rescind the Contract nor to claim damages unless such delay exceeds 30 days, and unless the delay exceeds such number of days, the Buyer shall be bound to accept delivery and pay for the Goods in full. The same will apply if delivery is made by instalments (whether by agreement or by the Company exercising its right under Clause 4.43).
- 4.4 The Company reserves the right to make multiple deliveries (instalments) and to tender a separate invoice in respect of each delivery (instalment). Where the Buyer elects to collect the goods from our premises, delivery will be deemed to have been effected when the Goods leave the premises of the Company having been signed for by an agent or representative of the buyer.
- 4.6 The Buyer shall either, by itself or by its duly authorised representative sign The delivery docket as acknowledgement of delivery, provided that on delivery to the address nominated by the Buyer, the Company shall be entitled to assume that any signature given is that of the Buyer or such representative. The Buyer shall notify the Company within 3 working days of the date of delivery of the Goods if the consignment of the Goods delivered is incomplete. Notwithstanding the receipt by the Company of any such notice, a clear signature on a carrier's delivery sheet by such representative shall be deemed to signify receipt of the quantity of Goods indicated on the advice note.
- 4.7 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time to the designated address because the Buyer has not made adequate arrangements to facilitate receipt or provided appropriate instructions, documents, or authorisations:
- 4.7.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence)
- 4.7.2 the Goods will be deemed to be delivered; and
- 4.7.3 the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation, storage, insurance and subsequent delivery charges).

5. DESCRIPTION

- 5.1 The description of the Goods provided in the Buyer's order, and accepted by the Company, ("Description") shall determine the goods to be supplied by the company.
- 5.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving information on Goods described in them. They will not form part of the Contract. The implied terms set out in Sections 13 and 15 of the Sale of Goods Act 1893 (as amended) are hereby excluded to the fullest extent permitted by law

6. INSPECTION

- 6.1 The Buyer shall inspect the Goods on delivery and shall within 3 working days of the date of delivery notify the Company in writing of any shortages in quantity or failure to comply with the Description. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the Contract and the Buyer shall be deemed to have accepted the Goods.
- 6.2 In all cases where the Company receives details of such shortages or notice of failure to comply with the Description in accordance with Clause 6.1, the Company shall be under no liability in respect thereof unless a reasonable opportunity to inspect the Goods is provided to the Company before any use made thereof or any alteration or modification is made to the Goods by the Buyer.
- 6.3 Subject to clauses 6.1 and 6.2, the Company shall make good any of the above defects, and where appropriate replace any Goods damaged in transit or otherwise, as soon as it is reasonably able to do so, but otherwise, except as otherwise provided in these Terms, shall be under no liability whatsoever or howsoever arising for such defects or damage.

7. TITLE AND RISK

- 7.1 Risk in the Goods shall pass to the Buyer at the time of delivery which is determined in accordance with Clause 4.1
- 7.2 Title of the Goods sold by the Company to the Buyer shall remain with the Company until the Buyer has paid the full price plus VAT and any other agreed charges in full (by way of cash or cleared funds) for those Goods. For the purpose of these Terms all liquidated sums owed by the Buyer to the Company on any account or goods whatsoever shall be deemed to form part of the said price.
- 7.4 The Buyer is licensed by the Company to use or to agree to sell the Goods delivered to the Buyer subject to the express conditions that the sale shall be effected in the ordinary course of the Buyer's business at full market value and that the entire proceeds of any sale are held in trust for the Company and are not mixed with other moneys or paid into an overdrawn bank account and shall at all times be identifiable as the Company's money.
- 7.5 Until title to the Goods passes to the Buyer in accordance with Clause 7.2:
- 7.5.1 the Buyer will hold the Goods and each of them on a fiduciary basis as bailee for the Company;
- 7.5.2 the Goods shall, subject to clause 7.4, be kept separate and distinct from all other property of the Buyer and of third parties and in good and substantial repair and condition and be stored in such a way as to be clearly identifiable as belonging to the Company and the Buyer will not allow any interference with any identification marks or serial number of the Goods;

- 7.5.3 without prejudice to any other rights the Company may at any time revoke the licence to sell and use contained in clause 7.4 by notice to the Buyer if the Buyer is in default for longer than 14 days in the payment of any sum whatsoever due to the Company whether in respect of the Goods or any other goods supplied at any time to the Buyer or if the Company has bona fide doubts as to the solvency of the Buyer;
- 7.6 Until such time as title in the Goods passes from the Company to the Buyer, the Buyer shall place any of the Goods in its possession or under its control and unsold at the disposal of the Company and the Company by its servants or agents shall be entitled to enter upon any premises of the Buyer or any premises under the Buyer's control or to which the Buyer has a right of access for the purpose of inspection, repossession and removal of such Goods at any time.
- 7.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 7.8 The Company shall at any time be entitled to appropriate any payment made by the Buyer in respect of any goods in settlement of such invoices or accounts in respect of such goods as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer
- 8. WARRANTIES**
- 8.1 The Company warrants that it has title to and the unencumbered right to sell the Goods.
- 8.2 Subject to Clause 9.2.5, no representation or warranty is given as to the suitability or fitness of the Goods for any or any particular purpose and the Buyer shall satisfy itself in this respect and shall be totally responsible therefore. The implied terms set out in Section 14 of the Sales of Goods Act 1893 (as amended) are hereby excluded to the fullest extent permitted by law.
- 9. LIABILITY**
- 9.1 Introduction
- 9.1.1 Nothing in this Clause 9 shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from the Company's negligence or wilful misconduct;
- 9.1.2 Each of the sub-clauses in Clause 9 is to be treated as separate and independent and capable of severance.
- 9.2 EXCLUSION**
- 9.2.1 Clause 9.2 only covers defects in goods supplied caused by faulty design, manufacture, materials or workmanship. It does not cover defects caused by abnormal use, misuse or neglect by the Buyer;
- 9.2.2 The Company agrees that if any defect covered by Clause 9.2.1 is discovered, the Company will in its absolute discretion either:- repair the Goods at its own expense; or replace the Goods; or refund the purchase price of the Goods.
- 9.2.3 The Buyer cannot claim the benefit of this clause unless:-the defect is discovered during the warranty period applicable to the goods and such warranty period commences from the date of *despatch;* On certain goods purchased for resale, the manufacturers warranty commences from the date of sale by the reseller, evidence of which must be provided at the time of a claim. the Buyer informs the Company of the relevant defect in writing within 3 working days of discovering it; and
- 9.2.4 The risk of accidental loss whilst the Goods are being returned will be borne by the Buyer.
- 9.2.5 Subject as expressly provided in these Terms, no other terms, whether conditions, warranties or innominate terms, implied by statute or common law, shall form part of this Contract and are excluded to the fullest extent permitted by law.
(For the avoidance of doubt, nothing in this clause shall serve to exclude from the Contract any contractual rights which the Buyer may enjoy by virtue of Section 12 of the Sale of Goods Act 1893 (as amended)).
- 9.3 Exclusion of Consequential Loss:
- 9.3.1 The Company shall not be liable for any consequential loss or indirect loss, damage and/or expense suffered by the Buyer or any customer of or purchaser from the Buyer (for which the Buyer shall hold the Company full and effectually indemnified) arising out of a breach by the Company of this Contract or tort or any other way (including loss arising from the Company's negligence). Non-exhaustive illustrations of consequential or indirect loss would be
- 9.3.1.1 loss of profits
- 9.3.1.2 loss of or penalties on contracts
- 9.3.1.3 damage to property of the Buyer or anyone else; and
- 9.3.1.4 personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Company's negligence or fraudulent misrepresentation)
- 9.4 LIMITATION**
- Without prejudice to any other provision in these Terms in any event the Company's total liability for any one claim or for the total of all claims arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed the Contract price of the Goods.
- 10. FORCE MAJEURE**
- The Company shall not be liable for any failure to deliver the goods arising from circumstances outside its reasonable control including without limitation an Act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, acts, restrictions, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, accidents and shortage of materials, labour or manufacturing facilities.
- 11. NOTICES**
- Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to:
- 11.1 the Company at Unit 10-11, Western Industrial Estate, Naas Road , Dublin 12 or such other address as the Company may from time to time notify in writing and
- 11.2 the Buyer at the address specified in its trade account application form or such other address as the Buyer may from time to time notify in writing and such notices shall be deemed to have been served, if sent by post, 48 hours after posting or if by telex or facsimile transmission at the time of sending.
- 12. PROPER LAW AND JURISDICTION**
- The Contract shall be governed by and construed in accordance with Irish law and all disputes arising in connection with the Contract shall be submitted to the non-exclusive jurisdiction of the Irish Courts.
- 13. HEADINGS**
- The headings of these Terms are for convenience only and shall have no effect on the interpretation thereof.
- 14. SEVERANCE**
- If any provision of the Contract shall be void or unenforceable in whole or in part, the remaining provisions and the remainder of the provision affected shall remain in full force and effect.
- 15. ASSIGNMENT**
- 15.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 15.2 The Company may assign the Contract or any part of it to any person, firm or company.
- 16. WAIVER**
- 16.1 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 16.2 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 17. THIRD PARTY RIGHTS**
- The parties to the Contract do not intend that any terms of this Contract will be enforceable by any person who is not a party to it.