

## PROSOUND – TERMS AND CONDITIONS (SALE OF GOODS)

### Definitions

- **"Client"** means the person who enters into these terms, and whose name appears on the Quotation/Invoice, and/or person who accepts the Quotation and/or Invoice;
- **"Equipment"** shall mean those goods, as they so appear in the Quotation/Invoice, which the Client has requested Prosound to sell to the Client, and which Equipment the Client has agreed to purchase from Prosound;
- **"Proudound"** means Prosound (Pty) Ltd, Reg No: 1974/004021/07, a limited liability company duly incorporated in terms of the laws of South Africa with its place of business at Unit 39, Hillfox Centre, Rooodepoort, Johannesburg ("the Premise"), and where applicable shall include any holding or subsidiary company of Prosound;
- **"Quotation"** shall mean the quotation to which these terms and conditions relate in respect of the Equipment and **"Invoice"** shall mean the invoice prepared by Prosound after the acceptance by the Client of the Quotation (or part thereof), which invoice shall be payable in accordance with these terms and conditions, or as otherwise agreed to between Prosound and the Client, in writing.
- **"Services"** shall include those services, apart from the sale of the Equipment, which Prosound renders to the Client or is able to render to the Client and shall include the maintenance of the Equipment subject to the terms and conditions as contained herein.
- A "person" includes any individual, company, corporation, firm, partnership, joint venture, association, organization or trust (in each case, whether or not having separate legal personality) and references to any of the them shall include a reference to the others.
- Reference to "these terms" or to any other agreement or document referred to in these terms mean these terms or such other agreement or document as amended, varied, supplemented, modified or novated from time to time, and include the annexes.
- The singular includes the plural and *vice versa* and the masculine includes the feminine and *vice versa*.
- The headings and sub-headings are inserted for convenience only and shall not affect the construction of these terms.
- These terms shall be subject to the Consumer Protection Act 68 of 2008 ("CPA"), insofar as any of the provision of the CPA may be applicable to these terms.
- Any advice or recommendations given by Prosound or its employees/agents, to the Client or its representative(s) as to the storage, application, installation or use of the Equipment which is not confirmed in writing by Prosound, is followed/acted at the Client's own risk and Prosound shall not be liable for any such advice or recommendations which are not so confirmed in writing.

### Equipment sold by Prosound

- Prosound agrees to sell the Equipment to the Client and the Client agrees to purchase the Equipment from Prosound for the amount as stipulated in the Quotation/Invoice;
- Prosound shall accept a request for the sale of the Equipment if the Client, in writing, accepts the Quotation for such Equipment. Any terms or conditions in the Client's documentation, of whatsoever kind, which are inconsistent with the terms and conditions contained in this document shall have no effect.
- Upon 24 hours notice to the Client, Prosound reserves the right to supply Equipment of a similar design or standard to the Equipment detailed in the Quotation/Invoice to the Client.
- All descriptions and specifications, drawings and particulars of weights and dimensions issued by Prosound are approximates and are intended only to be an estimate of the Equipment to which they refer and shall not form part of these terms nor be binding upon Prosound.

### Payment

- Within 7 (seven) days of the Client accepting the Quotation of Prosound, Prosound shall prepare and deliver an Invoice to the Client for payment of the amount(s) as they appear for the sale of the Equipment. The Client shall be liable to Prosound for the amount, as it so appears on the Invoice, without deduction or set-off.
- Should Prosound incur any cost, which does not appear on the Quotation, in packing the Equipment or delivering the Equipment to the Client, the Client shall be liable for these costs incurred by Prosound and Prosound reserves the right to render an additional invoice for these costs, which invoice shall be subject to these terms and conditions.
- Any other request by the Client for additional Equipment or Services to be rendered by Prosound at the Client's special instance and request, which do not form part of the Quotation/Invoice to which these terms and conditions apply shall be invoiced separately by Prosound and these terms and conditions shall equally apply.
- All payments to Prosound, shall be due and payable within 30 (thirty) days of Prosound preparing and delivering the Invoice to the Client, unless otherwise agreed thereto in writing by Prosound.
- The Client may be required to make an initial payment of 50% of the amount of Prosound's Quotation/Invoice, or such other amount within the discretion of Prosound, before Prosound shall release the Equipment for delivery. Prosound shall be entitled to waive this requirement, in writing, at its election.
- Only if agreed thereto in writing between the parties shall the Client be entitled to make payment of the Invoices of Prosound in weekly or monthly installments. Prosound reserves the right to cancel this entitlement on 3 (three) days written notice to the Client, in which event the total amount of the invoice(s) rendered by Prosound shall become immediately due and payable.
- All payments to Prosound by the Client shall either be by cash, Electronic Funds Transfer, Credit Card or bank guaranteed cheque. Prosound shall be entitled to waive this provision at its election.
- If the price of the Equipment or any cost in relation to the sale of the Equipment increases, for whatever reason, before payment by the Client of the full invoice amount or while the Client is still in possession of the Equipment, Prosound reserves the right to render an additional invoice detailing the increased amount, which amount shall be due and payable by the Client.
- Should the Client fail to make any payment, or fail to make payment of the balance of the amount reflected on any Invoice, interest at a rate of 15.5% per annum will be levied against such amount outstanding from the date the amount or balance of the amount became due and payable.
- Should a Client cancel a request made to Prosound for the sale of the Equipment, and Prosound has incurred a cost or a loss in terms of the cancelled request, the Client shall be liable to Prosound for a reasonable cancellation fee or for the loss incurred to Prosound, whichever is the highest.

### Delivery

- Delivery in terms hereof shall be deemed to be at that moment the Client takes possession of the Equipment itself or through an agent elected by it, or partial payment of the purchase price is received by Prosound. The risk in the equipment shall lie with the Client as from the earliest of the aforesaid times.
- Should the Client request Prosound to deliver the Equipment to the Client's premise or to an alternate location, the Client shall be liable for the costs incurred in packaging and delivering of the Equipment to that location and the risk in the Equipment shall vest with the Client upon the Equipment being dispatched by Prosound from its Premise.
- The Client shall conduct a reasonable inspection of the Equipment before delivery of the Equipment takes place. If such inspection reveals that the Equipment is damaged, or that some of the Equipment is damaged, the Client shall notify Prosound, in writing, within 1 (one) hour

of delivery. The Client shall then be entitled to request alternative Equipment to the damaged Equipment. Should the Client fail to notify Prosound in accordance with these terms, or fail to demand alternative equipment, the Client shall be deemed to have accepted the Equipment in good, proper and working order.

- The times within which the Client can collect and deliver the Equipment from Prosound shall be between the hours of 08h00 – 17h00, Monday to Thursday of 08h00 – 16h00 on Fridays and shall exclude a public holiday.

### Installation of Equipment

- The Client can elect to utilise Prosound to install and set-up any Equipment purchased from Prosound. Prosound shall not be obliged and/or required to install or set-up any Equipment which has not been purchased from Prosound, unless otherwise agreed to between Prosound and the Client in writing.
- Should the service and fee for installation and set-up of the Equipment not form part of the Quotation/Invoice, Prosound reserves the right to prepare and submit a further Quotation and/or Invoice to the Client for approval and payment thereof before Prosound shall render any services to the Client for the purposes of installation and set-up of Equipment.
- Should the services of installation and set-up require Prosound and/or any of its employees to travel, the Client shall be liable for all such costs incurred or to be incurred by Prosound in this respect to render the Services.
- The Client furthermore indemnifies Prosound for any damage and/or loss caused by Prosound in the performance of its services of installation and set-up of the Equipment.

### Reservation of Ownership

- The Client does hereby agree that all Equipment purchased from Prosound shall remain the sole and exclusive property of Prosound until all amounts due and owing by the Client has been paid to Prosound, including any Invoices in relation to services to be rendered by Prosound to the Client at the Client's special instance and request.
- Should the Client fail and/or refuse and/or neglect to make payment of any amount due and owing to Prosound in terms of any Invoices prepared and submitted by Prosound to the Client, Prosound shall be entitled, without notice to the Client, to attend the premise of the Client or such other premise at which the Equipment is located and remove so much of the Equipment as Prosound deems necessary to discharge the obligation(s) of the Client to Prosound (including any interest or costs incidental thereto) and sell or otherwise be entitled to dispose of such Equipment in order to reduce the Client's obligation(s) to Prosound. Should there still be a balance due and payable to Prosound after Prosound has removed and sold such Equipment removed, the Client and Signatory shall continue to remain bound to Prosound for such amounts due and owing to Prosound, both jointly and severally.
- The Client shall not do, nor permit, nor cause to be done, any matter or thing whereby the rights of Prosound in respect of the Equipment is or may be prejudicially affected. The Client shall further ensure and notify all interested parties of the ownership of the Equipment and shall further ensure that the Equipment is free from any attachment/encumbrance whatsoever.

### Guarantees

- It is recorded that certain of the Equipment sold by Prosound is subject to a manufacturers guarantee and upon request by the Client, Prosound shall make available the details of such guarantee.
- Should any Equipment sold by Prosound to the Client still be subject to a guarantee and should the Client have complied with the conditions of the guarantee, Prosound shall assist the Client in submitting any faulty, defective or damaged Equipment to the manufacturer for repairs and/or replacement as the case may be and subject to a guarantee being applicable.
- The Client agrees that any repairs performed on goods sold shall be subject to Prosound's Standard Repair Terms and Conditions.

### Use of the Equipment

- Until full payment of any and all Invoices has been made to Prosound:
- (1) The Client shall ensure that the Equipment is installed and used by competent and qualified personnel in a manner, which complies with any applicable statute and regulation from time to time in force affecting or in relation to the Equipment or any written instruction received from Prosound.
- (2) The Client shall at its own expense keep the Equipment in good repair, condition and working order, fair wear and tear excepted. The Client shall on a very regular basis and certainly every week: (a) inspect, test and clean the equipment; (b) check and maintain wiring to and fixing and rigging of the Equipment.
- (3) The Client shall not without the prior written consent of Prosound make any modification or alteration to the Equipment, or take the equipment outside South Africa.
- (4) The Client shall allow Prosound to inspect the Equipment upon request during Prosound's normal working hours.

### Warranties

- In the implementation of these terms, the parties undertake to observe the utmost good faith, and they warrant in their dealings with each other that they will not do anything, nor refrain from doing anything, which might prejudice or detract from their rights or interests.
- The Client warrants that it and any of its directors and/or officers have full capacity to enter into these terms and to act independently without the need to refer to, or seek approval from, any other party in the performance of its obligations hereunder.
- The Client does hereby consent to Prosound submitting its details to ITC TransUnion or any other Credit Bureau, either for the Client being in default with its obligations in terms of these terms, or for any other reason whatsoever.

### Legal and Domicilium and Notices

- The parties to these terms do hereby consent to the jurisdiction of the Magistrate court in terms of Section 45 of the Magistrates Court Act 34 of 1944, in the event of any legal dispute arising out of or incidental to these terms. Should Prosound institute legal proceedings against the Client for any breach in terms of these terms, the Client shall be liable for Prosound's legal costs and collection commission on the scale as between Attorney and Own Client.
- The parties choose their respective *domicilium citandi et executandi* for all purposes relating to these terms, including the giving of any notice, the payment of any sum, the serving of any process, as follows: (a) Prosound: the premise; (b) Client: the address as it appears on the Quotation.

### General

- Each provision of these terms is severable, and should any court or body of competent jurisdiction declare any provision of these terms to be illegal, void, invalid or unenforceable, all other provisions shall remain in full force and effect.
- No addition to, variation, novation or agreed cancellation of any provision of these terms shall be binding upon the parties, unless reduced to writing and signed by or on behalf of the parties.
- No indulgence or extension of time which any party may grant to any other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

- Without prejudice to any other provision of these terms, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee, of any party shall be bound by these terms.
- These terms shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of South Africa.
- Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in these terms.
- Prosound shall use all reasonable endeavours to discharge its obligations in terms of these terms in a prompt and efficient manner, it does however not accept responsibility for any failure or delay caused by circumstances beyond its control.

### Breach

- Should any party breach any of its obligations in terms hereof or if the Client is declared insolvent/liquidated, or convenes a meeting of or makes or proposes to make any arrangement or compositions with its creditors or if the Client shall do or cause to be done or permit or suffer any act or thing whereby the rights of Prosound over the Equipment may be prejudiced or put in jeopardy and persist in such breach for a period of 24 hours after written notice will have been given to it by the other party, then the aggrieved party shall be entitled without prejudice to any rights, which it may have in terms hereof or at law, to: (a) an order for specific performance and damages; or (b) cancel these terms and claim damages.

### Surety

- The signatory of the Quotation and/or these terms and conditions by his signature does hereto interpose and bind himself as surety and co-principal debtor *in solidum*, in favour of Prosound for the due performance of all obligations of the Client. The signatory and the Client do hereby renounce all the benefits of the legal exceptions, cession of action, *non causa debiti, excussio*, division, no value received and revision of accounts, with the full force, meaning and effect whereof the signatory declares himself to be fully acquainted.

### Indemnification

- In the event of any third party making any claim against Prosound for any loss or damage, whether direct, indirect, consequential or otherwise, arising from any cause in connection with these terms (including without limitation, any cause in connection with anything done or not done pursuant to these terms), whether such loss or damage results from breach of contract (whether material, fundamental or otherwise), delictual, negligence or any other cause without limitation, and whether these terms is cancelled or not, the Client hereby indemnifies Prosound against any such claim, unless it is finally determined that the loss or damage was caused by fraud or willful misconduct on the part of Prosound or any of its employees or agents.

**The Client does hereby acknowledge that Prosound has explained the contents, nature and consequences of the above terms and conditions, especially those provisions which have been highlighted and/or underlined and that the Client has dutifully read through the above terms and conditions.**