

GENERAL TERMS AND CONDITIONS OF SALE

1.- GENERAL

These General Terms and Conditions of Sale shall govern any sale, any delivery, and any offer made by Proseat (the "Offer").

Except as may be provided otherwise in the Offer, all Offers are open for acceptance thirty days from the date of the Offer. The Purchaser accepts the Offer by doing any of the following: (i) transmitting an order or release relating to the Offer, (ii) accepting the Offer in writing, or (iii) any other conduct or performance that recognizes the existence of a contract with respect to the subject matter of the Offer.

Acceptance is expressly limited to (i) these General Terms and Conditions of Sale, (ii) the Specific Terms and Conditions of Sale referred to in the Offer, and (iii) the particular conditions expressly provided in the Offer; the Offer is limited to and conditional upon Purchaser's acceptance of these terms and conditions exclusively. Any additional or different terms proposed by Purchaser whether in Purchaser's order, acknowledgement, invoice or otherwise are expressly rejected by Proseat.

The Offer is not subject to any terms and conditions of the Purchaser's company and does not constitute an acceptance of any Purchaser's order or offer.

2.- DEFINITIONS

For the purpose of the present General Terms and Conditions of Sale, the following terms shall have the meaning now defined :

"Proseat" shall mean either Proseat LLP., Proseat GmbH & Co KG, Proseat SA/NV, Proseat SAS, Proseat Sp.zo.o., Proseat Foam Manufacturing s.L., including its direct or indirect affiliate or subsidiary company, or Proseat Mladá Boleslav s.r.o., including its direct or indirect affiliate or subsidiary company, which makes an offer.

"Purchaser" shall mean the company to which an offer is made by Proseat.

"Offer" shall mean the offer made by Proseat to Purchaser.

"General Terms and Conditions of Sale" shall mean the present general terms and conditions of sale.

"Specific Terms and Conditions of Sale" shall mean the specific terms and conditions of sale which are referred to in the Offer.

"Sale Contract" shall mean the contract concluded between Proseat and Purchaser by Purchaser's acceptance of the Offer.

3.- CONTRACTUAL DOCUMENTS

All Offers are governed exclusively by (i) the General Terms and Conditions of Sale, (ii) the Specific Terms and Conditions of Sale referred to in the Offer, and (iii) the particular conditions expressly provided in the Offer.

In case of discrepancy between the particular conditions of the Offer and the General Terms and Conditions of Sale or the Specific Terms and Conditions of Sale, the particular conditions of the Offer shall prevail.



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In case of discrepancy between the General Terms and Conditions of Sale and the Specific Terms and Conditions of Sale, the Specific Terms and Conditions of Sale shall prevail.

The Sale Contract constitutes the entire agreement between Proseat and Purchaser and supersedes all prior written or oral representations and agreements. Any subsequent amendment must be in writing and signed by authorized representatives of both Proseat and Purchaser.

4.- DELIVERY AND PRICES

Except as maybe provided otherwise, the goods shall be delivered Ex Works (Incoterms 2010).

Applicable sales and use taxes, and import/export duties and other charges, are in addition to any prices quoted by Proseat and shall be paid by Purchaser.

Delivery schedules acknowledged by Proseat shall be contingent upon receipt by Proseat of all raw materials, components, tools, patterns and fixtures furnished by Purchaser or Proseat's suppliers in ample time to meet such delivery schedules.

The prices invoiced shall be Proseat's prices effective at the time of the Offer. Prices may be adjusted to compensate Proseat for any variation in Proseat's costs, including but not limited to (i) increase of raw material and labour costs, (ii) changes in design, processing, methods of packing and shipping, date or place of delivery, (iii) overtime requests, (iv) volume shortfalls, (v) unpredicted increase of costs due to an event beyond Proseat's reasonable control which renders Proseat's performance more onerous.

Proseat shall not maintain an inventory of the goods and, unless prior arrangements have been made between the parties, Proseat shall make delivery to Buyer, at Buyer's risk and expense, by a carrier of Proseat's choice (unless Buyer shall specify an alternate carrier reasonably acceptable to Proseat), at the address specified in the contract as soon as reasonably practicable after release by Proseat's quality control department. When prior arrangements have been made between the parties for specific delivery dates, any delivery made within ten (10) days after the dates specified shall constitute a delivery in time.

5.- ACCEPTANCE

Purchaser shall examine the goods upon delivery. If Purchaser notices a lack of conformity of the goods Purchaser shall give notice to Proseat no later than five days after the delivery. Failing to do so shall prevent Purchaser to rely on the lack of conformity to the Sale Contract's specifications and the goods shall be irrevocably deemed to have been accepted by Purchaser as being in good condition and in compliance with the Sale Contract's specifications.

At its own discretion Proseat shall send employees to Purchaser's facilities to participate in the examination by Purchaser of the delivered goods. Purchaser shall cooperate with Proseat's employees and shall grant them access to the premises where the goods are stored and examined.

6.- CREDIT

Proseat reserves the right to discontinue deliveries to Purchaser or cancel all or any part of this or other contracts if payment on any shipment is delayed or if amount of credit granted is exceeded. Interest at twelve (12%) percent per annum will be

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charged on all overdue accounts. Proseat reserves the right, even after partial payment on account of this contract with Proseat, to require from Buyer satisfactory security for due performance of its obligations. Refusal to furnish such satisfactory security or failure of Purchaser to perform any of its obligations under this or any other existing contract will entitle Proseat, upon notice to Purchaser, to suspend shipments, alter payment terms or cancel this contract without prejudice to any claim for damages to which Proseat may be entitled.

7.- WARRANTIES

Proseat warrants that, for a period determined in the applicable Specific Terms and Conditions of Sale, the goods delivered shall be of good material and workmanship, and shall conform substantially to the patterns, drawings and specifications provided by Proseat in the applicable Specific Terms and Conditions of Sale or in Proseat's catalogue. Proseat makes no other warranties, express or implied, written or oral, including but not limited to, warranties of merchantability or fitness for any particular purpose. If the applicable Specific Terms and Conditions of Sale do not contain any provision regarding the period of warranty, Proseat's warranty as set forth in the present Article shall last 36 months from the date of the delivery.

Any product claimed to be defective under the foregoing warranty must be returned to the facility designated by Proseat. The return shall be made promptly upon Purchaser's discovery of the alleged defect. Proseat shall perform its examination of the product so returned by Purchaser and Proseat shall record its warranty judgments and its decisions and appropriate comments regarding acceptance of liability for any warranty claim made by Purchaser. Proseat shall report the results of its examination to Purchaser within thirty days following its receipt of the product from Purchaser, or, if longer time is required to complete such examination, within such time as would be required through the exercise of reasonable diligence. Proseat shall be free to conduct such tests, investigations and analysis of any materials or the product returned to Proseat as it deems reasonable and proper in the exercise of its sole and absolute discretion to investigate. As a further condition to Proseat's obligations hereunder for breach of warranty and Purchaser's remedies for such breach with respect to any product, Purchaser shall offer its reasonable cooperation and assist Proseat in the course of Proseat's review of any warranty claim, including, by way of example only, providing all information and data to Proseat possessed or known to Purchaser which are relevant thereto. Proseat's review may also include inspection of other installed Proseat products that are not claimed as being defective. Proseat shall have the right to charge, and Purchaser shall promptly pay to Proseat upon Proseat's delivery of its statement or invoice, Proseat's reasonable cost and expenses for its review, failure analysis, or investigation of any warranty claim, including by way of example only, any inbound or outbound freight and handling costs or its costs to repair any product returned for warranty which is found not to be defective according to Proseat's warranty, and Purchaser shall also reimburse Proseat for any credit granted to Purchaser for, or refund of the purchase price for any replacement product provided by Proseat in good faith to Purchaser for a product returned for warranty which subsequently is found not to have been defective.

8.- REMEDY

The sole and exclusive remedy of Purchaser for any liability of Proseat of any kind, including but not limited to (i) warranty express or implied, (ii) contract, (iii) negligence, or (iv) otherwise, is limited to the repair or replacement by Proseat of the product for which a claim is made by Purchaser and which Proseat on proper examination decides to be defective.

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In the unlikely event that such repair or replacement is impractical or will not permit Purchaser to receive the benefits of the warranty contained in the above paragraph, Purchaser may return the material or parts to Proseat in which case Proseat, upon verification that such repair or replacement is impractical or will not permit Purchaser to receive the benefits of the warranty contained in the above paragraph, shall promptly pay to Purchaser the amount therefore paid to Proseat with respect to such material and parts. If requested by Purchaser, Proseat shall promptly repair or replace at its own expense the product that is found by Proseat to be non-conforming according to Proseat's warranty as set forth herein. Shipping costs for Purchaser's return of the product claimed as being defective and shipping costs for the return to Purchaser of any repaired or replaced product shall be borne by Proseat up to an amount equal to the original shipping costs. However, Proseat reserves the right to credit or reimburse Purchaser for an amount equal to the purchase price of any defective product in lieu of providing a repaired or replacement product.

9.- LIMITATION OF LIABILITY

Anything contained herein to the contrary notwithstanding, in no event shall Proseat be liable or obligated under any contract for breach of warranty or otherwise in any manner whatsoever for: (i) normal wear and tear or for any product which, following delivery by Proseat, has been subjected to accident, abuse, misapplication, improper repair or alteration, improper storage, installation or maintenance, neglect, excessive operating conditions; (ii) defects resulting from Purchaser's specifications or designs or those of its contractors or subcontractors other than Proseat; or (iii) defects resulting from the manufacture, distribution, promotion and sale of Purchaser's own products.

Except warranty of title and for the warranties and indemnities expressly set forth herein, it is understood and agreed that (a) Proseat makes no other indemnity, representation or warranty, either express or implied, including but not limited to any implied warranty of merchantability or fitness for a particular purpose; (b) in no event shall Proseat be liable or obligated for special, exemplary, indirect, progressive, or consequential damages (e.g. lost profits or savings, loss of business or loss of use and any other indirect damages and regardless of whether or not any of the same were foreseeable or that Proseat was advised as to the possibility of such damages) beyond the damages expressly provided herein; and (c) no person has been authorized by Proseat to make up any further or contrary indemnities, representations or warranties on behalf of Proseat.

10.- RISK

The risk of loss passes to Purchaser when the goods are placed at its disposal in Proseat's facilities and notice of it has been given to Purchaser.

However, if the Offer involves the carriage of the goods, the risk of loss passes to Purchaser when the goods are handed over to the first carrier.

Loss or damage to the goods after the risk has passed to Purchaser does not discharge Purchaser from its obligation to pay the price.

11.- RETENTION OF TITLE

Title to the goods shall not pass to Purchaser until Purchaser has fulfilled all liabilities arising from its business connection with Proseat, which shall include among other things payment of invoices, settling accessory claims and claims for damages.



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12.- TECHNICAL SUPPORT

The properties of the products shall as a general rule only include the properties as stated in the product descriptions, specifications and labelling of Proseat. Public statements, claims or advertising shall not be construed as information on properties of the products.

Technical advice provided by Proseat verbally or in writing is given in good faith but without warranty. This shall also apply when rights of third parties are involved. Proseat's technical advice shall not release Purchaser from the obligation to test the products supplied by Proseat as to their suitability for the intended processes and uses. The application, use and processing of the products by Purchaser are beyond Proseat's control and therefore entirely upon Purchaser's responsibility. Purchaser shall take responsibility for the lawful usage of the products as stipulated in laws, rules and stipulations applicable. Purchaser shall not remove any labels or warning signs from the products nor amend or change any manual or user's guide issued by Proseat.

13.- PAYMENT TERMS

Payment shall be made within thirty days from the date of the invoice, in the currency expressly stated in the Offer or in the applicable Specific Terms and Conditions of Sale; if no such currency is noted, payment shall be made in euro (EUR).

In case of late payment, Purchaser shall pay 1 % interest per month on unpaid invoices from their due date and Proseat's all relevant recovery costs incurred through Purchaser's late payment, including but not limited to, reasonable attorney's fees, with a minimum amount of 10 % of the unpaid invoice.

If Purchaser fails to make timely payment, Proseat may, without limiting its other remedies, (i) suspend shipments pending receipt of payment in advance, (ii) terminate the contract in which event unpaid invoices shall become immediately due and payable.

If Proseat suspects that Purchaser shall not be able to pay the invoice in due time on the grounds of financial difficulties or for any other reasons, Proseat shall be entitled to ask Purchaser to certify its financial standing or to provide Proseat with adequate assurance of its performance. If Purchaser fails to comply with Proseat's request, Proseat shall be entitled to terminate the contract in which event unpaid invoices shall become immediately due and payable.

14.- INSURANCE

Proseat maintains an insurance coverage of its general liability and product liability.

Upon Purchaser's request, Proseat shall within a reasonable time furnish an insurance certificate.

15.- CHANGES

Purchaser shall not be entitled to direct changes, or cause Proseat to make changes, to the products covered by the Offer, including but not limited to, changes in the design, processing, methods of packing and shipping and the date or place of delivery.

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Proseat shall be entitled to change (i) any supplier of services, raw materials or goods, (ii) the facility from which Proseat or its suppliers operates, (iii) the price of the products covered by the Offer in accordance with Article 4, (iv) the production method or any process used in the production of the products covered by the Offer.

All verbal information is only stipulated as obligatory after confirmation in writing.

16.- INSPECTION AND AUDIT

Purchaser shall have no right to (i) inspect Proseat's facilities, (ii) examine Proseat's books, records or other documents, or (iii) seek or obtain any information from Proseat deemed proprietary or confidential by Proseat in its sole discretion, without the express written consent of Proseat obtained in each instance, which consent may be withheld in Proseat's sole discretion.

Provided that Proseat has agreed to an audit or inspection in writing and Purchaser has agreed to a confidentiality undertaking on its own behalf and for any third party auditor Purchaser may engage, Purchaser shall be entitled, at its own expense, (a) to inspect the facilities, supplies, and raw materials used to produce the purchased goods and (b) to conduct an audit by a top tier audit firm for the purpose of quality and conformity verification.

Purchaser shall inform Proseat of the date of the inspection or audit at least fifteen days in advance. The inspection or audit shall take place during reasonable business hours. If Purchaser or any of its representatives, employees, agents, subcontractors or suppliers enter upon the premises owned or controlled by Proseat or its subsidiaries or affiliates, Purchaser shall:

- (a) indemnify and hold Proseat, and its representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any kind or nature (including legal and other professional fees) by reason or on account of property damage, death and/or personal injury, which is or are occasioned by Purchaser's actions, omissions or negligence, or of any of its representatives, employees, agents, subcontractors or suppliers;
- (b) ensure that Purchaser's representatives, employees, agents, subcontractors or suppliers entering Proseat's premises are in compliance with all requirements of any workers' compensation legislation of the jurisdictions in which Proseat's premises are located.

17.- TERMINATION FOR BREACH OR NON PERFORMANCE

Proseat may terminate all or part of the Sale Contract, without liability to Purchaser, if Purchaser:

- a) breaches any of the terms of the Sale Contract, including payment;
- b) fails to perform any of its obligation under the Sale Contract, including payment;
- c) has declared that it will not perform its obligations.

In no event shall Purchaser have the right to terminate the contract if Proseat enters or offers to enter into a transaction that includes (a) a sale of a substantial portion of its assets used for the production of supplies covered by the Offer, (b) a merger, sale or exchange of stock or other equity interests that would result in a change of control of Proseat.

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18.- OFFSET

Proseat shall be entitled to offset any amount owed by Purchaser to Proseat or any of Proseat's affiliates against any amount payable by Proseat in connection with the Sale Contract.

Setoff by Purchaser shall only be permitted with written agreement from Proseat and only with claims that are undisputed or have been finally upheld by a national court or an arbitral tribunal.

19.- INTELLECTUAL PROPERTY

In all cases where products are to be made to designs, processes or specifications furnished by Purchaser or adopted upon direction of Purchaser, Purchaser shall indemnify and hold harmless Proseat from and against all claims and damages for infringement of any patent, trademark, design, trade secret or proprietary process in the design or process of such products.

Any idea, invention, concept, discovery, work of authorship, patent, design, copyright, trademark, trade secret, know-how or other intellectual property, whether or not registered, owned by Proseat, or developed by Proseat in connection with the Offer shall remain the sole property of Proseat, even where the Offer is issued for the ad hoc creation of works that could be considered works made for hire.

Purchaser and Purchaser's subcontractors or customers shall not have the right to copy, repair, rebuild, or reconstruct nor to have copied, repaired, rebuilt, or reconstructed, the supplies delivered under the Sale Contract without Proseat's prior written consent.

20.- TOOLING

In case Purchaser furnishes Proseat with materials (e.g. tooling, packaging, standards, specifications, or other items) in order for Proseat to perform the Sale Contract, they shall remain Purchaser's property. Proseat shall not be liable for any damage or loss to the materials that occur beyond its reasonable control or reasonable wear and tear.

Purchaser remains liable for any injury to persons or property caused by the materials provided. The materials shall be maintained, repaired and replaced by Purchaser at its own expense. Purchaser shall insure the materials at its own expense at the replacement value (a) against all risks of destruction, damages, and theft, and (b) against all damage that such materials may cause. Upon Proseat's request, Purchaser shall provide a certificate of insurance evidencing the above mentioned coverage of the materials.

At Purchaser's request and provided that it will not bar the performance of the Sale Contract, the materials shall be returned to Purchaser at Purchaser's own expense.

21.- FORCE MAJEURE

Proseat shall not be liable for failure or delay in performance due in whole or in part to causes such as natural disasters, strike, lockout or other labour dispute, sabotage, fire, flood, explosion, acts of governments, wars, embargoes, unforeseen shortages or unavailability of fuel, power, transportation, raw materials or supplies, inability to obtain or delay in obtaining necessary equipment or governmental approval, permits,



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licences allocations, and any other causes which are not within the reasonable control of Proseat, whether or not of the kind specifically enumerated above.

If Proseat's failure is due to the failure by a third party (a) whose intervention is necessary in order for Proseat to perform the Sale Contract such as Proseat's suppliers or subcontractors or (b) whom Proseat has engaged to perform the whole or a part of the Sale Contract, Proseat shall be exempt from liability if the third party would be so exempt would the dispositions of the present article be applied to the third party.

If Proseat's suppliers fail to supply Proseat in whole or in part, Proseat shall not be under obligation to purchase from other sources.

22.- CONFIDENTIALITY

Unless otherwise stipulated in writing by Proseat, all information relating in any way to the technical or commercial documents, specifications, drawings, formulae, plans, data, tools, know-how, or samples issued or transmitted by Proseat or any of its affiliates shall be confidential, regardless of whether such information is marked or identified as confidential.

Purchaser agrees to keep all confidential information received from Proseat in strictest confidence, to use it in the sole purpose for which it has been transmitted, and not to disclose or permit to disclose it to others. Purchaser shall not allow any information to be reproduced, communicated or in any way used, in whole or in part, in connection with services or goods furnished to others, without Proseat's prior written consent. Purchaser expressly agrees that the obligation of confidentiality shall also be binding on Purchaser's employees, agents, subcontractors, and suppliers.

The obligation of confidentiality shall exist during the whole period of performance of the Sale Contract and shall continue during a period of three years thereafter.

23.- NON ASSIGNMENT

Purchaser shall not assign or delegate its obligations under the Sale Contract without Proseat's prior written consent. In any event, Purchaser remains liable in case of non-performance by the assignee or the delegate. Proseat is entitled to assign to a third party any claim Proseat has against Purchaser for collection.

24.- COMPLIANCE

Purchaser shall be solely and exclusively responsible for compliance with all national and foreign laws, statutory and regulatory requirements for the import, transport, storage and use of the products covered by the Offer.

25.- CLAIMS

Any action by Purchaser must be taken within one year after the date of delivery of the goods.

26.- SEVERABILITY

If any term of the Sale Contract is invalid or unenforceable under any statute, regulation, or other source of law, the term shall be deemed reformed or deleted, as



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the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Sale Contract shall remain in full force and effect.

27.- NOTICES

Any notice given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post, 48 hours after posting.

28.- WAIVER

Proseat's failure to enforce breach or to exercise its rights to such breach shall not be deemed a waiver of such rights to enforce any future breach.

29.- APPLICABLE LAW

The present General Terms and Conditions of Sale shall be governed by German law to the extent they apply to a Sale Contract of international nature.

National laws may apply to Sale Contracts between companies organized and existing under the same national law.

30.- JURISDICTION

Purchaser and Proseat agree that any dispute that may arise from or in connection with the Offer, the Sale Contract, or the present General Terms and Conditions of Sale shall be settled by the courts of the city, in which Proseat has its registered office.

Purchaser and Proseat agree to submit any dispute to the jurisdiction of such courts and agree that all claims in respect of such dispute may be heard and decided in such courts.