

**STANDARD TERMS AND CONDITIONS  
FOR PURCHASE OF GOODS AND SERVICES**

**1. Definitions**

In these conditions, the following words have the following meanings:

**'Acceptance'** shall mean the date on which the Goods have been accepted by Proserv.

**'Affiliate'** shall mean any legal entity which controls, is controlled by, or is under common control with, another legal entity. "Control" and "controlled" means: (i) holding beneficially at least fifty per cent (50%) of the issued share capital of such other entity; or(ii) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to: (a) cast, or control the casting of, at least fifty per cent (50%) of the maximum number of votes that might be cast at a general meeting of such other entity; or (b) appoint or remove all, or the majority, of the directors or other equivalent officers of such other entity; or (c) give directions with respect to the operating and financial policies of such other entity with which the directors or other equivalent officers of such entity are obliged to comply.

**'Purchase Order Price'** shall mean the total sum payable to the Supplier in accordance with the Purchase Order.

**'Claims'** shall mean any and all claims, demands, suits, proceedings (including arbitral proceedings), causes of action, judgments, losses, liabilities, damages, fines, interest, penalties, cost and expenses (including legal expenses and court costs).

**'Consequential Loss'** shall mean:

- i. consequential or indirect loss under applicable law; and
- ii. loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in i. above and whether or not foreseeable at the Effective Date.

**'Delivery Date'** shall mean the delivery date for the Goods and/or Services specified in the Purchase Order or as otherwise agreed in writing between the parties.

**'Proserv'** shall mean the Proserv entity named in the Purchase Order to purchase the Goods or Services hereinafter defined and shall include Proserv's legal personal representatives, successors and permitted assigns.

**'Proserv Group'** shall mean Proserv, its and their respective Affiliates and its and their respective directors, officers and employees (including agency personnel) but shall not include any member of the Supplier Group.

**'Goods'** shall mean the goods, materials and/or equipment to be provided by the Supplier in accordance with this Purchase Order.

**'Purchase Order'** shall mean the contract formed by the acceptance of this Purchase Order issued and Services and shall incorporate these Terms and Conditions for Purchase of Goods and Services..

**'Services'** shall mean all services that the Supplier is contracted to perform in accordance with the provisions of the Purchase Order.

**'Supplier'** shall mean the person or persons, firm or company named in the Purchase Order to supply the Goods and/or Services and shall include the Supplier's legal personal representatives, successors and permitted assigns.

**'Supplier Group'** shall mean the Supplier, its Affiliates and its and their respective directors, officers and employees (including agency personnel) but shall not include any member of the Proserv Group.

**'Third Party'** shall mean any party other than a member of the Proserv Group or the Supplier Group.

**2. Acceptance**

Acceptance of the Goods shall be the time when a duly authorised employee or representative of Proserv accepts the Goods, delivered or collected where such Goods are not defective or damaged in any way and comply with the Purchase Order. In the event that a defect in or damage to the Goods or any other breach of the Purchase Order is identified, Proserv shall not accept the Goods until such time as such defect, damage or breach is remedied by the Supplier at its sole risk and expense in order to bring the Goods into compliance with the Purchase Order. Proserv will inform Supplier within five (5) working days of receipt by Proserv of the Goods if the Goods have not been accepted.

Payment for the Goods and/or signature of a delivery note by a person shall not constitute Acceptance.

**3. Delivery**

- a. the Goods shall be delivered to or collected by Proserv, as indicated on the Purchase Order, on or by the Delivery Date or in accordance with the Incoterms to be agreed between the parties.
- b. the Goods shall be labelled with the Purchase Order number, item number, manufacturer's part number, and brief description;
- c. the Goods shall be delivered under cover of a packing list showing the Purchase Order number and details of the Goods supplied;
- d. all corrodible parts are to be protected before packing;
- e. where the Goods are ordered to a particular specification or code, appropriate

- documentation shall be supplied to evidence adherence to such specification or code;
- f. any damage to the Goods in transit must be notified to Proserv immediately in writing;

**4. Time of Delivery**

Promptness of delivery of the Goods and performance of the Services is of the utmost importance. If at any time the Supplier has reason to believe that the Delivery Date shall not be met, written notice setting forth the cause of delay and the best probable delivery date must be given promptly to Proserv. If such failure or delay by the Supplier shall threaten to impair Proserv's ability to meet its own delivery schedules Proserv may at its sole discretion and without liability, cancel by written notice to the Supplier, the relevant Purchase Order, or the affected portions of the Agreement or the whole of the Agreement.

Liquidated damages (if any) relating to the Delivery Date shall be as set forth in the Purchase Order. Such liquidated damages are agreed as a genuine pre-estimate of the losses which may be sustained by Proserv in the event of delay and shall not be regarded as a penalty. Proserv shall have the right to cancel the relevant Purchase Order at any time notwithstanding the payment of liquidated damages by Supplier.

**5. Indemnities**

- a. The Supplier shall be liable for and shall release, save, defend, indemnify and hold harmless the Proserv Group in respect of Claims arising from, relating to or in connection with the performance or non-performance of the Purchase Order for:
  - i. personal injury, death, disease or illness of any member of Supplier Group;
  - ii. loss of or damage to the property belonging to any member of the Supplier Group whether owned, leased, hired or otherwise provided by the Supplier Group;
  - iii. personal injury including death or disease, loss of or damage to the property of any Third Party to the extent that such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of any member of the Supplier Group.

- b. Proserv shall be liable for and shall release, save, defend, indemnify and hold harmless Supplier Group in respect of Claims arising from, relating to or in connection with the performance or non-performance of the Purchase Order for:

- i. personal injury, death, disease or illness of any member of Proserv Group;
- ii. subject to Clauses 14 and 15, loss of or damage to the property belonging to Proserv Group whether owned, leased, hired or otherwise provided by Proserv;
- iii. personal injury including death or disease, loss of or damage to the property of any Third Party to the extent that such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of any member of Proserv Group.

- c. Notwithstanding any provision to the contrary elsewhere in the Purchase Order and except to the extent of any agreed liquidated damages (including, any predetermined termination fees), the Supplier shall release, save, defend, indemnify and hold harmless the Proserv Group from the Supplier Group's own Consequential Loss and Proserv shall release, save, defend, indemnify and hold harmless the Supplier Group from Proserv Group's own Consequential Loss arising from, relating to or in connection with the performance or non-performance of the Purchase Order.

- d. The indemnities given pursuant to the Purchase Order shall be full and primary irrespective of whether the parties carry insurance in respect of the indemnities given herein.

- e. Except as provided in Clauses 5.a.iii. and 5.b.iii. above, all exclusions and indemnities given under this Clause 5 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.

**6. Insurance**

The Supplier shall ensure that the following insurances are maintained by the Supplier with reputable insurers throughout the duration of the Purchase Order and any extension thereto:

If applicable:

- i. Employer's Liability or Workmen's Compensation Insurance as appropriate in full compliance with all applicable laws; and
- ii. General Public Liability Insurance with a limit of not less than five million United Kingdom pounds (£5,000,000) equivalent combined single limit any one occurrence covering all obligations of the Supplier under the Purchase Order; and
- iii. Automobile Insurance with a limit of not less than one million United Kingdom pounds (£1,000,000) combined single limit any one occurrence covering all vehicles used by the Supplier in performance of the Purchase Order and in full compliance with all applicable laws.

To the extent of the indemnity and release obligations assumed by the Supplier herein, the Supplier's insurance policies shall waive all rights of subrogation against the Proserv Group.

The Supplier shall ensure, where possible, that its insurance policies referred to above contain a clause requiring the insurer to notify Proserv within thirty (30) days of any material change in or cancellation of the insurance policy.

## 7. Invoicing and Payment

The Supplier acknowledges that its rates and prices set forth in the Purchase Order are fixed and firm for the duration of the Purchase Order and are sufficient to cover all its obligations whether expressed or implied under the Purchase Order. The Supplier shall be deemed to have satisfied itself as to all conditions and other factors that may in any way affect the performance of the Purchase Order.

In consideration of the Goods and/or Services being satisfactorily provided in accordance with the Purchase Order, Proserv shall pay the Purchase Order Price to the Supplier in accordance with the terms of the Purchase Order.

After delivery of the Goods and/or performance of the Services, the Supplier shall submit to Proserv an invoice in the amounts specified in the Purchase Order and Proserv shall pay the invoice within 60 days of receipt.

Proserv reserves the right to withhold payment for any of the Goods and/or Services supplied which are not in accordance with the Purchase Order.

If Proserv disputes any items on any invoice in whole or in part or if the invoice is prepared or submitted incorrectly in any respect, Proserv shall notify the Supplier and Proserv may withhold payment for the unaccepted part or whole of the invoice as applicable. Proserv shall pay the undisputed part of correctly prepared and submitted invoices within the time specified herein.

Proserv shall have the right at its own expense to audit all of the Supplier's records pertaining to any cost chargeable by the Supplier under the Purchase Order save only agreed lump sums and agreed unit rates. The Supplier shall keep and shall make such records available for 24 months after

completion of the Agreement, or, such other longer period as required by law.

## 8. Tax

The Supplier shall pay all taxes, charges, levies and contributions incurred by it in performance of the Purchase Order hereunder and shall release, save, defend, indemnify and hold harmless the Proserv Group from and against any and all Claims for any such taxes, charges, levies and contributions so levied against the Proserv Group.

## 9. Safety and Environment

Supplier shall comply with all relevant statutes, laws, regulations, by-laws and directives affecting the Goods and/or Services and shall comply with Proserv's safety and environmental regulations when performing Services at Proserv's premises. Supplier's failure to comply with the requirements of this Clause 9 shall constitute a material breach of the Purchase Order and Proserv shall be entitled to terminate the Purchase Order immediately with no liability towards the Supplier.

## 10. Inspection

Proserv and its representatives shall at all times during performance of the Services and manufacture of the Goods be granted access to any of the Supplier Group's premises and be allowed to inspect the Goods and Services at any time prior to acceptance or delivery, whichever is the later. No such inspection or lack of inspection shall relieve the Supplier of any of its obligations or liabilities under the Purchase Order.

Where Supplier defaults in its obligations as stated above, Proserv shall be entitled to undertake the Supplier's responsibilities in this respect and shall be entitled to recover from the Supplier all costs reasonably incurred by Proserv in carrying out such responsibilities.

## 11. Warranty

The Supplier represents and warrants that it possesses the skill, organisation, personnel and all other resources necessary for the provision of the Goods and/or Services.

The Supplier warrants that it shall supply the Goods and execute the Services with all due care and diligence and with the skill to be expected of a reputable contractor experienced in the types of service to be carried out under the Purchase Order, and shall meet the specifications or standards issued to the Supplier by Proserv, if any.

### i) Warranty for Goods

a. The Supplier warrants that the Goods supplied hereunder will conform to any codes, standards and specifications set forth in the Purchase Order and to any drawings or samples furnished by Proserv and will be of satisfactory quality and shall be fit for their intended purpose and free from defects in design, material and workmanship.

b. During a period of twenty-four (24) months after Acceptance, where Proserv has found the Goods or part thereof not to have been supplied in accordance with the Purchase Order, Proserv shall detail in writing the specific nature of the defect and upon receipt of such notice, the Supplier shall at its own risk and expense and within seven (7) days of receipt of such notice commence, at Proserv's option, to either replace or repair the Goods or any part thereof found to be defective, due to faulty material, workmanship or design or due to any act or omission of the Supplier Group. A further twelve (12) month warranty shall be given by the Supplier for those Goods where such Goods (or part thereof) have been replaced or repaired; such warranty shall commence as soon as the Goods (or part thereof) have been replaced or repaired and approved as such by Proserv. If such remedial work is not commenced within the said time period then Proserv may commence the remedial work itself or authorise others to do the same, and Supplier shall reimburse Proserv for all costs arising from there.

ii) Warranty for Services

Supplier shall be responsible for remedying at its expense any defect or failure caused by Supplier Group, that may arise in the Services within twelve (12) months from the completion of the Services. Supplier shall guarantee for a further period of twelve (12) months all remedial work carried out under this clause. If any defects or failures which Supplier is obliged to remedy under this clause are not remedied within a reasonable time, or circumstances render it impracticable for Supplier to do the same, Proserv may remedy such defects or failures itself or authorise others to do the same, and Supplier shall reimburse Proserv for all costs arising therefrom.

This warranty and Proserv's remedies hereunder are in addition to Proserv's other rights and remedies existing under the Purchase Order or at law.

**12. Assignment and Sub-Contracting**

- i. The Supplier shall not assign or subcontract all or any part of its rights or obligations hereunder without Proserv's prior written consent. Such consent shall not be unreasonably withheld or delayed. Proserv's consent to subcontract shall not relieve the Supplier of any liability or obligation hereunder.
- ii. Proserv may assign all or any part of its rights or obligations hereunder to any Affiliate or to Proserv's client, if any, without the Supplier's consent and to any other third party with the Supplier's prior written consent. Such consent shall not be unreasonably withheld or delayed.

**13. Changes**

Proserv may at any time make changes in writing relating to the supply of Services under the Purchase Order including changes to the Delivery Date. If such changes result in an increase or decrease in cost or time an equitable adjustment shall be made to the Purchase Order Price, Delivery Date or both. Any claim for adjustment by the Supplier must be approved by Proserv in writing before the Supplier proceeds with such change.

**14. Ownership and Risk**

The Supplier warrants full, clear and unrestricted title in the Goods, free and clear of any and all liens, restrictions, reservations, security interests and encumbrances. Title in the Goods shall pass to Proserv as soon as they have been allocated to the Purchase Order, delivered hereunder or paid for by Proserv whichever is the earliest and risk in the Goods shall pass on Acceptance.

**15. Proserv Property**

All tools, designs, patterns and equipment or materials of every description furnished by Proserv to the Supplier in connection with the manufacture of the Goods and/or the supply of the Services shall be and remain the property of Proserv. Such property shall be plainly marked or otherwise adequately identified by the Supplier as "Property of Proserv".

Such property whilst in the Supplier's custody or control shall be held at the Supplier's risk and shall be subject to removal at Proserv's written request in which event the Supplier shall prepare such property for shipment and shall redeliver to Proserv in the same condition as originally received by the Supplier, reasonable wear and tear excepted. Notwithstanding anything to the contrary contained in Clause 5, the Supplier shall reimburse Proserv for replacement or repair as appropriate, necessitated by any loss and/or damage to such property arising whilst in Supplier's custody or control, reasonable wear and tear excepted.

**16. Proprietary Rights**

The Supplier warrants to keep all designs, information, blueprints and engineering data with respect to the Goods confidential and not to make use of but to assign to Proserv each invention, improvement and discovery relating thereto (whether or not patentable) conceived or reduced to practice in the performance of the Purchase Order by any person employed by or working under the directions of the Supplier Group. Upon completion of the Purchase Order the Supplier shall hand over to Proserv all such designs, information, blueprints and engineering data in its possession and cause its employees to sign any and all papers necessary or required to enable Proserv to file applications for patents throughout the world and to obtain title thereto without prejudice to the other rights of Proserv hereunder

**17. Patents**

The Supplier shall be liable for and shall release, save, defend indemnify and hold harmless Proserv Group against all Claims arising from infringement of any patent, trademark, registered design, copyright or other proprietary right in respect of the performance by the Supplier of its obligations under the Purchase Order and this condition shall remain binding on the Supplier notwithstanding the completion or termination of the Purchase Order.

All copyrights, design rights, patents and related applications arising out of and developed in connection with the Agreement shall vest exclusively in Proserv.

#### **18. Force Majeure**

Neither party shall be responsible for any failure to fulfil any term or condition of the Purchase Order if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence whether or not foreseeable at the time of entering into the Purchase Order, which has been notified to the other party and which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence, the said party is unable to provide against

The term "force majeure", as used herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, terrorist acts, (whether actual, threatened or reasonably perceived), acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, fires, floods, civil disturbances, explosions and any other causes not within the control of the party claiming a suspension, which by the exercise of reasonable diligence such party shall not have been able to avoid or overcome. For the avoidance of doubt, industrial disputes solely amongst the employees of either of the parties shall not constitute force majeure.

#### **19. Termination**

##### **i) Termination for Supplier Default**

In the event of the Supplier's default in performance of any of its obligations under the Purchase Order, Proserv may give the Supplier notice to rectify such default within the time specified in Proserv's written notice.

If the Supplier fails to comply with the requirements of such notice or if, in Proserv's reasonable opinion such default is not capable of being rectified, or in the event of the Supplier's bankruptcy or insolvency, Proserv shall be entitled to terminate the Purchase Order in whole or in part forthwith by giving notice in writing to that effect. In the event that Proserv terminates the Purchase Order due to the Supplier's default or breach, the Supplier shall not be entitled to any further payment upon termination.

##### **ii) Termination for Proserv Convenience**

Proserv may at its absolute discretion suspend or terminate the Agreement without cause at any time

and, in the event of such termination, Proserv agrees to pay the Supplier for all Goods and Services satisfactorily completed up to the time of termination and reasonable and substantiated costs arising from such suspension or termination, as evidenced by documentation satisfactory to and verified by Proserv.

Without prejudice to Proserv's rights under the Purchase Order or at law, on termination of the Purchase Order, Proserv (or its authorised representatives) shall be entitled to enter the Supplier's premises or any place where the work under the Purchase Order is being performed and take possession of the whole or any part of the Goods and remove the same for completion by the Proserv Group or by a Third Party. If the cause of termination of the Purchase Order is Supplier Group's default, any additional costs reasonably incurred by the Proserv Group as a direct result of such termination shall be recoverable from the Supplier.

#### **20. Confidentiality**

All information obtained by the Supplier Group in the course of and in connection with the Purchase Order concerning the Proserv Group, shall be held confidential by the Supplier and shall remain the property of the Proserv Group and shall not be divulged by any member of the Supplier Group to any Third Party without the prior written consent of Proserv.

All such data must not be removed from the Proserv Group's premises without Proserv's approval. All documents, drawings and other records containing such information, and any copies thereof, shall upon completion of the Purchase Order or its earlier termination, be returned to Proserv. The Supplier agrees not to use for publicity purposes any photographs, drawings and/or materials in connection with the performance of the Purchase Order without obtaining the prior written consent of Proserv. This clause shall remain binding on the Supplier notwithstanding completion or termination of the Purchase Order.

#### **21. Business Ethics**

i. The parties shall uphold the highest standards of business ethics in the performance of the Agreement and shall comply with the terms of Proserv Global Business Ethics Policy.

ii. Neither party shall knowingly involve itself in any business or use information arising from the Purchase Order in any manner which conflicts with the interests of the other party. In particular, but without limitation, neither of the parties shall, directly or indirectly, receive, give, or offer to give, anything of material value from or to any employee, director or agent of the other party or its other contractors, sub-contractors and suppliers, government officials or any other persons, which could be regarded as an improper inducement to any party. Any breach of this Clause 21 shall constitute a material breach of the Purchase Order and entitle Proserv to terminate the Purchase Order with immediate effect.

## 22. Notices

Notices shall be validly given if sent by facsimile or received by recorded delivery post, delivered by hand and/or by courier, to the addresses of the parties stated in the Purchase Order or to an address subsequently notified in writing by one party to the other party.

and make all reasonable efforts to reach an agreement;

- b. if no agreement is reached under Clause 25a. the dispute shall be referred to the Managing Directors of the parties hereto.

If no agreement is reached the parties may take appropriate action in the English Courts to resolve the dispute at any time.

## 23. Contracts (Rights of Third Parties) Act

The parties to this Purchase Order agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Agreement, but only to the extent that a member of a party's Group (other than Proserv or Supplier) shall be entitled in its own right to enforce the benefit only of the indemnities given to it by virtue of Clause 5 but not in any other respect. Further, in making a claim under this Purchase Order, the remedies of any such members shall be limited to claiming damages; and no such member shall be entitled to assign any benefit conferred on it pursuant to this Purchase Order. The parties hereto may rescind or vary any term of this Agreement without the consent of any such member, even if as a result that member's right to enforce a term of this Purchase Order would be varied or extinguished.

## 24. General Legal Provisions

None of these terms and conditions of the Purchase Order shall be considered to be waived by either Proserv or the Supplier unless a waiver is given in writing by one party to the other. No failure on the part of either party to enforce any of the terms and conditions of the Purchase Order shall constitute a waiver of such terms.

The Purchase Order supersedes all prior negotiations, representations or agreements related to the Purchase Order, either written or oral. Terms and conditions set forth in Supplier's quotation, if any, shall be null and void and shall not apply to the Purchase Order.

Any provision herein which is or becomes illegal or unenforceable shall be severed from the Purchase Order and shall not affect the validity of the remaining provisions hereof.

The Purchase Order shall be governed and construed in accordance with the Laws of England and Wales excluding those conflict of law rules and choice of law principles which would deem otherwise and subject to the provisions of Clause 25, shall be subject to the exclusive jurisdiction of the English Courts.

## 25. Dispute Resolution

Any dispute between the parties hereto in connection with or arising out of the Purchase Order shall be resolved by means of the following procedure:

- a. the dispute shall initially be referred to the parties' respective representatives who shall discuss the matter in dispute