

# GENERAL TERMS OF SALE

## I. APPLICATION

1. These General Terms Of Sale („GTS“) apply to all contracts concluded by Proseat Ltd. & Co. KG, Proseat Schwarzheide Ltd., Proseat N.V. (Belgium), Proseat SAS (France), Proseat Sp.Z.o.o. (Poland), Proseat foam manufacturing S.L.U. (Spain) and Proseat S.r.o. (Czech Republic) (hereafter „Proseat“) towards their customers.
2. They apply only to contracts with entrepreneurs (§ 14 BGB) and legal entities. They are part of all offers and contracts for sales and services of Proseat. The GTS in force and published on the website of Proseat under [www.proseat.eu](http://www.proseat.eu) at the time of an order shall also govern all future business relationships, even if Proseat did not explicitly point out to them in each individual case.
3. All orders, contracts and declarations are binding only if made in writing and text form f.e. letter, e-mail, telefax). Individual agreements (side agreements, modifications and supplements) between the parties shall prevail. For the content of such agreements the written confirmation of Proseat shall be binding, unless a different content is proven.
4. These GTS shall apply exclusively. Differing or contrary or amending terms of the customer shall apply if and to the extent expressly agreed upon by Proseat. Proseat's delivery without reservation despite its knowledge of the customer's GTS shall not replace such express consent.

## II. CONCLUSION OF CONTRACT

1. Proseat's offers are non-binding and subject to order confirmation in writing. This shall also apply in case Proseat provides catalogues, technical documentation, other product descriptions or documents to the customer, to which Proseat reserves ownership rights and copyrights.
2. Customer's orders shall be considered binding offers for a contract. Proseat may accept such offer within two (2) weeks of the date of receipt.
3. Proseat may declare acceptance expressly in writing (e.g. order confirmation) or implicitly by delivery of the products.
4. Orders accepted by Proseat may not be cancelled unless expressly agreed in writing by Proseat and on the terms that the customer shall indemnify Proseat in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by Proseat as a result of cancellation.

## III. DELIVERY TERMS

1. The time of delivery shall be agreed individually or shall be indicated by Proseat upon acceptance of the order. If this is not the case, the delivery period shall be approx. 4 weeks after conclusion of the contract.
2. If any agreed time of delivery will be exceeded by Proseat for reasons not attributable to Proseat (non-availability), Proseat shall inform the customer without undue delay and indicate the estimated new time of delivery. If the products are not deliverable within the

new time of delivery or not deliverable at all, Proseat is entitled to fully or in part rescind the contract; Proseat shall reimburse the customer without undue delay for payments already made. Non-availability of the performance shall be deemed to exist, for example, in the event of late delivery by the supplier, if Proseat has concluded a congruent hedging transaction or in the event of other disruptions in the supply chain, for example due to force majeure.

3. Default in delivery shall be governed by the relevant statutory provisions. However, a notice of warning by the customer is required in all cases. The rights of the customer according to Section VIII. of these GTS remain unaffected.
4. Proseat reserves the right to make partial deliveries.
5. Unless otherwise agreed individually, delivery shall take place according to "FCA" Incoterms 2022. On demand and at expense of the customer the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Proseat is entitled to determine the means of transport (carrier, transportation route, packaging).
6. The risk for the loss and the damage of the products shall be transferred upon delivery of the products to the customer at the latest. In case of sale by dispatch, the risk for the loss and the damage of the products as well as for a delay in delivery shall be transferred upon handover of the products to the carrier or the freight forwarder.
7. If the customer is in default in acceptance, Proseat is entitled to damages and additional expenditures (e.g. warehousing costs).

#### **IV. PRICES/ PAYMENT TERMS**

1. Unless otherwise agreed in individual cases, Proseat's current prices at the time of conclusion of the contract shall apply, plus statutory value added tax. Any customs duties, fees, taxes and other public charges shall be borne by the customer.
2. In the case of sale by delivery to a place other than the place of performance (Section III.5), the customer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the customer. If Proseat does not invoice the transport costs actually incurred in the individual case, a transport cost flat rate (excluding transport insurance) in the amount of EUR 6,00 per km shall be deemed agreed.
3. Unless otherwise agreed individually, the purchase price is due and payable within thirty (30) days from the invoice date following delivery. Proseat reserves the right to make delivery subject to advance payment, also in the course of a continuous business relationship. Proseat will declare such reservation together with the acceptance of the order at the latest.
4. Upon expiry of the aforementioned payment term, the customer will be in default. Default interest in the amount of the statutory default interest rate shall accrue as from the due date on.
5. The customer shall be entitled to offset or retention only to the extent that the customer's claim is undisputed or assessed in a legally binding judgment. The customer's rights in case of defects of the delivery (in particular those under section VII.) shall remain unaffected.

6. If, following conclusion of the contract, it becomes foreseeable that the payment of the purchase price is at risk (e.g. due to customer's filing for insolvency), Proseat reserves the right to suspend or – subject to a notification – rescind the contract.

## **V. RETENTION OF THE TITLE**

1. Proseat retains title to the products until full payment of all claims resulting from the business relationship (secured claims).
2. As long as the **secured claims** have not been paid in full, the products shall not be pledged or transferred for security to any third party. The customer shall inform Proseat without undue delay in writing, if an application for insolvency is filed or if the products are seized by third parties.
3. In case of non-payment of the purchase price when due by the customer, Proseat is – after payment notification – entitled to rescind the contract and request possession of the products based on the rescission and the retention of title.
4. The customer may resell and transfer title to the products and/or install the products subject to the above retention of title in the course of his regular business. For this case, the following provisions shall apply:
  - a) With installation of the products in other products, Proseat shall become joint owner of the new products in proportion of the value of the products subject to retention of title to the new products.
  - b) The customer hereby assigns to Proseat all claims arising from such resale and transfer of title or resulting from the installation either in full or in proportion to the value of the joint ownership. Proseat hereby accepts such assignment. As long as the customer fulfills his payment obligations vis-à-vis Proseat, the customer remains entitled to collect the claims.
  - c) Insofar as the securities exceed the secured claims by more than ten (10) percent, Proseat shall – upon customer's request – release securities to be chosen by Proseat.

## **VI. COPYRIGHT**

1. Proseat retains all rights, including copyright and rights for filing proprietary rights, to its technical documentation (in particular pictures, illustrations and drawings) and any other description of the products as well as of other product descriptions as well as ideas, inventions and concepts. This applies even if Proseat delivers goods that could be considered commissioned works.
2. The customer and its subcontractors or customers shall not be entitled to rebuild or remodel the goods without Proseat's prior written consent.
3. In case Proseat provides software for the intended use of the products, the customer shall be granted a user right which cannot be transferred without the consent of Proseat. All other rights remain with Proseat. The customer shall ensure that the software is not made accessible to third parties without the prior written consent of Proseat.

## **VII. CLAIMS FOR DEFECTS OF THE CUSTOMER**

1. The statutory provisions shall apply to the customer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated below. In all cases, the rights of the customer arising from separately issued guarantees shall remain unaffected.
2. The basis of Proseat's liability for defects is above all the agreement reached on the quality and the presumed use of the goods. All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were publicly announced by Proseat (in particular in catalogs or on the homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on quality in this sense.
3. Customer's warranty claims are subject to the customer's fulfillment of his obligations to inspect the products and notify Proseat of any defects (Section 377, 381 of the German Commercial Code). In the case of goods intended for installation or other further processing, an inspection must in any case be carried out immediately before installation/processing. If a defect becomes apparent upon delivery, inspection or at any later time, the customer shall notify us thereof in writing without undue delay. In any case, obvious defects shall be notified in writing within five (5) working days from delivery and defects not apparent upon inspection within the same period from discovery. If the customer fails to duly inspect and/or notify the defect, Proseat's liability for the defect not notified or not notified in time or not notified properly shall be excluded in accordance with the statutory provisions. In the case of goods intended for installation/processing, this shall also apply if the defect became apparent as a result of the breach of one of these obligations only after the corresponding processing; in this case, the customer shall in particular have no claims for reimbursement of corresponding costs ("removal and installation costs").
4. If the delivered goods are defective, Proseat shall - at Proseat's option - provide subsequent performance by repair (subsequent improvement) or by delivery of a defect-free item (replacement delivery). If the type of subsequent performance chosen by Proseat is unreasonable for the Proseat in the individual case, the customer may reject it. Proseat's right to refuse subsequent performance under the statutory conditions shall remain unaffected.
5. Proseat shall be entitled to make the subsequent performance owed dependent on the customer paying the purchase price due. However, the customer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.
6. The customer shall give Proseat the time and opportunity necessary for subsequent performance, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the customer shall return the defective item at Proseat's request in accordance with the statutory provisions; however, the customer shall not have a claim for return. Subsequent performance shall not include the dismantling, removal or disassembly of the defective item or the installation, fitting or assembly of a defect-free item if Proseat was not originally obliged to perform these services. Claims of the customer for reimbursement of corresponding costs ("removal and installation costs") shall remain unaffected.
7. Proseat shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions and these GTC if there is actually a defect. Otherwise Proseat may demand reimbursement from the customer of the costs incurred as a result of the unjustified request to remedy the defect if the customer knew or could have known that there was actually no defect.

8. If a reasonable period to be set by the customer for subsequent performance has expired unsuccessfully or is dispensable in accordance with the statutory provisions, the customer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right of withdrawal.
9. Claims of the customer for damages or reimbursement of futile expenses (§ 284 German Civil Code) shall also exist in the event of defects in the goods only in accordance with the following Sections VIII and IX.

#### **VIII. OTHER LIABILITY**

1. Unless otherwise provided in these GTC including the following provisions, Proseat shall be liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
2. Proseat shall be liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence. In the case of simple negligence Proseat shall only be liable for
  - a) for damages arising from injury to life, limb or health, and
  - b) for damages arising from the breach of a material contractual obligation (obligation the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, the liability of Proseat shall be limited to compensation for the foreseeable, typically occurring damage.
- (3) The limitations of liability resulting from para. 2 shall not apply if a defect was fraudulently concealed or a guarantee for the quality of the goods was assumed and for claims of the customer under the Product Liability Act.
- (4) The customer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if Proseat is responsible for the breach of duty. A free right of termination on the part of the customer shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

#### **IX. STATUTE OF LIMITATIONS**

1. Deviating from Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title shall be one (1) year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance. 2.
2. The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the customer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. Claims for damages of the customer pursuant to Clause VIII.2 S. 1 and S. 2(a) as well as pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

#### **X. CHOICE OF LAW, JURISDICTION**

1. German law shall apply exclusively, excluding the conflict of law provisions and excluding the CISG.
2. The exclusive place of jurisdiction for all claims arising directly or indirectly from the business relationship of the parties shall be the place of business of Proseat GmbH & Co. KG. in Mörfelden-Walldorf . However, Proseat shall also be entitled to bring an action at the place of performance of the delivery obligation or at the customer's general place of jurisdiction.