

Proceq USA, Inc. Standard Terms and Conditions of Sale

1. Contract

Unless otherwise stated, all sales transactions are expressly subject to these terms and conditions. Modification or additions will be recognized only if accepted in writing by an authorized officer of Proceq USA, Inc. (hereinafter referred to as Proceq or the Company), or an officially designated representative. PROVISIONS OF BUYER'S PURCHASE ORDER OR OTHER DOCUMENTS THAT ADD TO OR DIFFER FROM THESE TERMS AND CONDITIONS ARE EXPRESSLY REJECTED. NO WAIVER OF THESE TERMS AND CONDITIONS OR ACCEPTANCE OF OTHERS SHALL BE CONSTRUED AS FAILURE OF THE COMPANY TO RAISE OBJECTIONS.

2. Quotations and Published Prices

Quotations automatically expire 60 calendar days from the date issued unless otherwise stated in the quotation and are subject to withdrawal by notice within that period. The Company reserves the right to extend such quotation up to 6 months from the date of issuance. Prices shown on the published price lists and other published literature issued by the Company are not unconditional offers to sell, and are subject to change without notice. The Company's prices for equipment, unless otherwise specified, do not include an allowance for installation and or final on site adjustment. Prices shall be subject to adjustment to those in effect at time of shipment.

3. Taxes

The Company's prices do not include any applicable sales, goods and services, use, excise or similar taxes and the amount of any such tax which the Company may be required to pay or collect will be added to each invoice and paid by the Buyer unless the Buyer has furnished the Company with a valid tax exemption certificate acceptable to the taxing authorities prior to shipment. If, upon subsequent sales, use, excise, or similar tax audit, an exemption certificate provided to the Company by Buyer is, through no fault of the Company, determined to be invalid, the Company will attempt to acquire a valid exemption certificate, notarized affidavit of exempt use or other necessary documentation from Buyer. If Buyer fails to furnish a valid exemption certificate, notarized affidavit or other necessary documentation, in a timely manner, the previously unpaid sales, use or similar excise tax will be billed to and paid by the Buyer.

4. Terms of Payment

Unless explicitly agreed to elsewhere in writing, terms are cash net 30 days from date of invoice. Amounts past due are subject to a service charge of 1.5% per month (or fraction thereof) or maximum contract rate permitted by law. If the Company deems that by reason of the financial condition of the Buyer or otherwise, the continuance or production or shipment on the terms specified is not justified, the Company may require full or partial payment in advance.

On orders of \$30,000 or more, or having a delivery schedule of four (4) months or longer from date of order, the Company payment terms will be progressive payments in accordance with the Company's stated terms for such payments as may be in effect from time to time, unless otherwise agreed in writing.

5. Delivery

Delivery dates indicated in the contract documents are approximate and are based on prompt receipt of all necessary information regarding the equipment covered by the contract. The Company will use reasonable efforts to meet the indicated delivery dates, but cannot be held responsible for its failure to do so. Title to the equipment and risk of loss shall pass to Buyer upon delivery to a carrier. The Company has the right to make partial shipments and bill for those shipments, the Buyer will make payment in accordance with terms referenced in Article 4 above.

6. Shipping and Handling Charges

Shipments are F.C.A. Aliquippa, PA. Unless the Buyer elects a freight collect shipment, shipping charges plus the Company's applicable handling charge will be prepaid and billed as a separate item on the equipment invoice.

7. Changes

Buyer may, with the express written consent of the Company, make changes in the specifications for equipment or work covered by the contract. In such event the contract price and delivery dates shall be equitably adjusted. The Company shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.

8. Cancellation

Delivered or undelivered parts of any order may be cancelled by the Buyer only with the written approval of the Company. If the Buyer makes an assignment for the benefit of creditors, or in the event that the Company for any reason feels insecure about the Buyer's willingness or ability to perform, the Company shall have the unconditional right to cancel this sales transaction. In the event of any cancellation of this order by either party, the Buyer shall pay to the Company the reasonable costs and expenses (including engineering expenses and all commitments to its suppliers and subcontractors) incurred by the Company prior to receipt of notice of any such cancellation, plus the Company's usual rate of profit for similar work. The minimum cancellation charge shall be 15% of the contract price. Returns must be made within thirty (30) days of the date of purchase.

9. Security Interest

Buyer agrees to pay for the equipment according to the Company's payment terms and does hereby grant to the Company a purchase money security interest in the equipment and other items supplied by Company until such time as Company is fully paid. Buyer will assist the Company in taking the necessary action to perfect and protect the Company's security interest. Buyer hereby irrevocably appoints Company as attorney-in-fact of the Buyer in order to execute and deliver such financing and other documents and instruments as Company may, at any time, and from time to time, desire in connection therewith. Buyer agrees to extend such cooperation as Company may require, at any time, or from time to time, with respect to the execution of such financing statements or other documents necessary, in the opinion of Company, in order to cause such security interest to be perfected against third parties. In the event of a default by Buyer, Company shall have available to it all rights afforded, at law or in equity, to a secured seller including, but not limited to, the right to enter upon the premises where such goods shall be located for purposes of recovering the same and Buyer shall cooperate with respect to any such action. Regardless of Buyer's title to such goods, risk of loss thereof shall be controlled by the conditions recited above.

10. Default

Upon default and placing of the Buyer's account for collection or repossession of equipment, the Buyer agrees to reimburse the Company for all collection costs, legal fees, and court costs incurred by the Company in connection therewith.

11. Warranties

Company only warrants the equipment manufactured or supplied by Company as set forth herein. Company makes no other warranties, either expressed or implied (including without limitation, warranties as to merchantability or fitness for a particular purpose). In no event shall Company be liable for any type of special, consequential, incidental, or penal damages, whether such damages arise out of or are a result

of breach of contract, warranty, negligence, strict liability or otherwise. Warranty shall not apply where the equipment manufactured or supplied has been subject to accident, alteration, misuse, abuse, improper storage, packing, force majeure, improper operation, installation, or servicing. In addition, the following shall constitute the sole and exclusive remedies of Buyer for any breach by Company of its warranty hereunder.

(a) New Products

Proceq warrants the equipment manufactured or supplied by Proceq as set forth herein. This limited warranty can only be exercised by the original purchaser of the equipment from Proceq or authorized Proceq Agent and is not transferable to any subsequent owner or party. This limited warranty gives you specific legal rights, and you may also have other rights which vary from case to case.

(i) For Proceq Instruments

Proceq warrants that Proceq's instruments will be free from defects in material and workmanship for a period of twenty-four (24) months on the electronic portion and six (6) months on the mechanical portion from the date of shipment of material from Proceq to Buyer. Should any defects be found and reported by the Buyer during the applicable limited warranty period, the defect will be corrected upon return of the item to Proceq. Proceq will, during the applicable new product warranty period, provide the necessary replacement parts and labor to correct the defect. Should the Buyer request correction of the defect at Buyer's facility, Proceq will provide the necessary parts to correct the defect. Buyer is responsible for labor and travel costs billed in accordance with Proceq customer service rates and policies in effect at the time of the event.

Excluded from the new product warranty are all consumable and wear and tear items such as impact bodies, penetrators, connection cables, etc. These items are subject to usual wear and tear during usage. Refer to the Consumable, Wear and Tear Items section of this warranty document.

Option For Extended Limited Warranty Coverage

The original purchaser of any new instruments of Proceq which have been identified or labeled by Proceq from time to time in Proceq's sole discretion as being eligible for extended warranty coverage shall have the option to purchase certain extensions of the applicable limited warranty provided hereunder to the electronic portion of any such items for either a twelve (12), twenty-four (24) or thirty-six (36) month period (up to a possible maximum limited warranty coverage period for the electronic portions of such new Proceq instruments of sixty (60) months) by purchasing any such twelve (12), twenty-four (24) or thirty-six (36) month

limited warranty extension period either at the time of the purchase of any such item(s) or within ninety (90) days from the date of delivery of the subject item(s) to the original purchaser of such item(s). The price for each such extended limited warranty coverage period shall be as determined by the Company from time to time and all such purchases of any extended warranty coverage periods shall only be effective upon a completed purchase order and payment directly between Proceq and the original purchaser of any such item(s). The extended warranty coverage periods are only valid with respect to the original purchaser of such item(s) from the Company and such extended warranty coverage is not transferable to subsequent owners of the subject item(s) or any other parties. Upon the purchase of any extended limited warranty coverage period, the Company will issue a certificate to Buyer evidencing the details of the applicable extended warranty coverage period purchased by the Buyer.

(ii) For Other Manufacturer's Products Supplied by Proceq

Products of other manufacturers supplied as such by Proceq are warranted by Proceq only to the extent of any warranty provided by the original manufacturer, if any.

(iii) For Parts and Sub Assemblies

Parts or sub assemblies purchased by the Buyer to perform its own repair work etc. are warranted as provided hereunder by Proceq for six (6) months from date of shipment of material from Proceq to Buyer.

(iv) For Consumables, Wear and Tear Items

Proceq supplies consumable items and items subject to wear and tear during normal usage of Proceq supplied products. These items are not covered under warranty. Buyer is to check for proper fit, form and function of such items upon receipt of such items. In case of a defect condition, Buyer can return the item to Proceq for evaluation within thirty (30) days of the date of shipment to the Buyer. Proceq reserves the exclusive right to issue full, partial, or no credit to the Buyer based on the condition of the returned item and circumstances related to the return. Examples of items in this category: connection cables, test blocks, impact bodies, penetrators, recording paper, etc

(b) Calibration and Repairs

(i) For Calibration Services

Proceq does not warrant the calibration of any equipment. Proceq does however warrant the equipment manufactured by it, in proper working condition, to be capable of being adjusted to meet Proceq printed specifications, if any, for accuracy and performance as to the particular model/type during the period of warranty applicable as stated above.

(ii) For Repair Services

Proceq warrants repair work performed under the direct control and supervision of Proceq personnel for a period of three (3) months from the date repairs are completed either at Proceq or at the customer site. Should the defect for which the repair work was performed reoccur within this period, Proceq will supply the necessary parts and labor (repair at Proceq facility) or parts (repair at Buyer facility) required to repair the original equipment defect for which the repair parts and labor were required. Additional repair charges that may be incurred in conjunction with any repair service warranty event will be invoiced at the Proceq customer service rates and policies in effect at the time of the event.

Excluded are all consumable and wear and tear items such as impact bodies, penetrators, connection cables, etc. These items are subject to usual wear and tear during usage. Refer to the Consumable Wear and Tear Item section of this warranty document.

(c) Warranty Claims

(i) For Warranty Claim Processing

Proceq has established Proceq organizations in the Americas, Asia, and Europe. Please visit the Proceq web site www.proceq.com for latest address and contact information for the Proceq organization nearest you

12. Indemnity

The Company agrees to indemnify the Buyer and hold it harmless from and against any direct loss suffered and any liability to third parties whenever such loss or liability is directly due to bodily injury (including death) to any person or direct damage to any property occurring in the course of and caused by the negligent act or omission of the Company in the performance of any work on the premises of Buyer. This indemnity shall include legal fees and settlements of claim or suit reasonable under the circumstances.

13. Patent infringement

The Company shall defend any suit or proceeding brought against the Buyer so far as the same is based on a claim that any equipment of the Company's design furnished hereunder, or any part thereof, constitutes an infringement of any United States or Canadian patent, if notified promptly in writing and given authority information and assistance (at the Company's expense) for the defense of the same and if such alleged infringement is not the result of a design or other special requirement specified by the Buyer or the result of the application or the use to which such equipment is put by the Buyer or others. The Company will pay all damages and costs awarded in such suit or proceeding against the Buyer provided that the Company shall have the sole and exclusive right to defend, settle or compromise any suit or proceedings and the Buyer takes no action which would materially detract from the Company's ability to conduct an effective defense, settlement or compromise. In case such equipment or part in such suit held to infringe any such patent and the use thereof is enjoined, the Company shall at its expense either, at its option:

- a) obtain for the Buyer the right to continue using such equipment or part or
- b) replace the same with non-infringing equipment, or
- c) modify the same so that it becomes non-infringing, or
- d) remove said equipment and refund the purchase price and the transportation and installation costs thereof.

The foregoing states the entire liability of the Company to the Buyer for any patent infringement related matters.

14. Regulatory Laws and/or Standards

The performance of the parties hereto is subject to the applicable laws of the United States or Canada, depending on the location of delivery of the product or service. The Company takes reasonable steps to keep its products in conformity with various nationally recognized standards and such regulations, which may affect its products. However, the Company recognizes that its products are utilized in many regulated applications and that from time to time standards and regulations are in conflict with each other. The Company makes no promise or representation that its product will conform to any federal, provincial, state or local laws, ordinances, regulations, codes or standards except as particularly specified and agreed upon for compliance in writing as a part of the contract between Buyer and the Company. The Company prices do not include the cost of any related inspections or permits or inspection fees.

14.1. Export Control

The customer hereby agrees and warrants that:

- (a) it will comply, and will ensure that its relevant personnel comply, with all applicable laws and regulations, including without limitations any law, regulation, statute, prohibition, or wider measure applicable to the goods, services and/or to either party relating to the adoption, application, implementation and enforcement of economic sanctions, export controls, trade embargoes or any other restrictive measures (hereinafter collectively "LAWS AND REGULATIONS") to ensure at all times that goods are sold, supplied, imported, exported, re-exported, transferred, used, disclosed and/or transported only in accordance with all applicable Laws and Regulations;
- (b) it will immediately notify Proceq if it becomes aware that it or any of its personnel or to the extent it is a re-seller of the goods, any of its clients may have breached any applicable Laws and Regulations;
- (c) it will not supply any goods of Proceq, in any form, directly or indirectly, to any person or entity that is not compliant with applicable Laws and Regulations;
- (d) it will indemnify and hold Proceq harmless from and against any claim, loss, liability or direct or indirect damage suffered or incurred by Proceq resulting from or related to customers, its personnel or to the extent it is a re-seller of the goods, any of its clients' breach of this article 14.1.

15. Limitation of Nuclear Use

The equipment is not for use in or with any nuclear facility unless expressly stated in the Company's Quotation. Buyer accepts the responsibility for insuring that the equipment is not used in violation of this limitation and Buyer shall defend, indemnify and hold harmless the Company and its owners, directors, officers, employees and agents from any and all liability (including such liability resulting from Company's negligence) and related actions, claims, costs, demands, expenses and losses arising out of said improper use.

16. Disclaimer of Damages

IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY TYPE OF SPECIAL CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. Such damages shall include but not be limited to loss of profits or revenues, loss of use of the equipment or associated equipment, cost of substitute equipment, facilities, down time costs, increased construction costs or claims of Buyer's customers or contractors for such damages. Buyer agrees that in the event of a transfer, assignment, or lease of the equipment sold hereunder Buyer shall secure for the Company the protection afforded to it in this Article 16 and in Article 17 below.

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Subject to change without notice

17. Limitation of Liability

The Company shall not be liable for any loss, claim, expense or damage caused by, contributed to or arising out of the acts or omissions of Buyer or third parties, whether negligent or otherwise, and in no event shall the Company's liability for any cause of action whatsoever exceed the cost of the item purchased from Proceq that gives rise to any such claim, whether based in contract (including, but not limited to, failure or delay in performance or delivery due to any cause whatsoever), warranty, indemnity, tort (including, but not limited to, negligence or strict liability), or otherwise. Any suit arising hereunder must be commenced within one (1 year) from the date in which the cause of action accrues. Except as provided in Article 12 and Article 13, the Company shall not indemnify any party for anything.

18. No Responsibility for Gratuitous Information or Assistance

If Company provides Buyer with assistance or advice which concerns any parts, products, service supplied hereunder or any system or equipment in which any such parts, products, or services may be installed and which is not required pursuant hereto, the furnishing of such assistance or advice shall not subject Company or any of its owners, directors, officers, employees or agents to any liability, whether based in contract, warranty, tort (including negligence) or otherwise.

19. Interpretation

Should any term or provision contained in the contract contravene or be invalid under applicable law, the contract shall not fail by reason thereof but shall be construed in the same manner as if such term or provision had not appeared therein.

20. Notices

Notice by either Company or Buyer will be made only by facsimile or similar electronic transmission, effective on the first business day after confirmed receipt, or by letter addressed to the other party at its address as provided in this Agreement, effective three (3) business days after deposit with the U.S. Postal Services, postage prepaid, or one (1) business day after deposit with a recognized overnight express service.

21. Assignability

Neither this contract nor any claim arising directly or indirectly out of or in connection herewith shall be assignable by Buyer or by operation of law, without the prior written consent of Company. This document shall be binding upon and inure to the benefit of each party hereto and their respective permitted successors and assigns.

22. Governing Law

This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions. Buyer and Company expressly agree to submit to the personal jurisdiction of the federal and/or state courts sitting in Pittsburgh, Pennsylvania, U.S.A. and agree that such courts may be utilized if necessary to obtain injunctive or any other relief. The Hague Convention and the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the construction or interpretation of these Standard Terms and Conditions or affect any of its provisions.

23. Miscellaneous

Company may in its sole discretion immediately terminate Buyer's ability to purchase merchandise on credit or otherwise at any time. Prices and other terms and conditions are subject to change by Company without prior notice. Company reserves the right to discontinue any of its products or services and to make changes in any of its products and services at any time. This Agreement constitutes the entire agreement of the parties with respect to the transactions contemplated herein. No person is authorized to make any oral modification of these Standard Terms and Conditions and any written modification of these Standard Terms and Conditions may only be made by a duly authorized officer of Company. In the event of any conflict or variance between these Standard Terms and Conditions and Buyer's business terms, these Standard Terms and Conditions shall govern.