

proFagus GmbH
General Terms and Conditions of Sale, Delivery and Payment

§ 1 Validity of the conditions

(1) The deliveries, services and offers of proFagus GmbH are made exclusively on the basis of these terms and conditions. These shall therefore also apply to all future business relations, even if they are not expressly agreed again. These terms and conditions shall be deemed to be accepted at the latest upon receipt of the goods or services. Counter-confirmations of the purchaser with reference to his own terms and conditions of business or purchase are hereby contradicted. Any deviating or conflicting terms and conditions are not to be recognised by proFagus GmbH unless proFagus GmbH has expressly agreed to them in writing.

(2) All agreements made between proFagus GmbH and the purchaser for the purpose of executing this contract must be recorded in writing.

§ 2 Offer and conclusion of contract

(1) The offers of proFagus GmbH are subject to change and non-binding. All orders placed by the purchaser shall only be deemed accepted when they have been confirmed by proFagus GmbH in writing or by telex. proFagus GmbH shall be entitled to accept orders within 14 days of their receipt.

(2) Drawings, illustrations, gauges, weights or other performance characteristics are only binding if this is expressly agreed in writing. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements as well as the replacement of components with equivalent parts are permissible insofar as they do not impair the usability for the contractually intended purpose.

(3) The legal relationship between the seller and the client shall be governed solely by the written purchase contract, including these General Terms and Conditions. This contract fully includes all agreements between the contracting parties on the subject matter of the contract. Oral promises made by the seller prior to the conclusion of this contract are not legally binding and oral agreements between the contracting parties are replaced by the written contract, unless expressly agreed otherwise between the contracting parties.

(4) With the exception of managing directors or authorised signatories as well as the head of purchasing/SCM and the overall sales manager, the Seller's employees are not entitled to make verbal agreements deviating from the written agreement.

§ 3 Prices

(1) Unless otherwise agreed in individual cases, the current prices of proFagus at the time of signing of the contract shall apply. Additional deliveries and services shall be charged separately.

(2) Unless otherwise agreed, the prices are ex works and exclusive of packaging and freight and plus the respective statutory value added tax.

(3) In the case of contracts with an agreed delivery period of more than 4 months, proFagus GmbH reserves the right to increase the prices in accordance with the cost increases that have occurred due to collective agreements or material price increases.

§ 4 Delivery and performance time

(1) Delivery dates or periods that are not expressly agreed as binding are without exception non-binding information. Delivery dates or periods expressly agreed as binding must be agreed in writing. The delivery period stated by proFagus GmbH shall commence upon receipt of the order confirmation from proFagus by the customer, but not before all technical questions have been clarified and this has been confirmed in writing by proFagus GmbH and all other preconditions to be fulfilled by the purchaser have been met, in particular agreed advance payments or securities and necessary cooperation services have been provided in full. If the customer has requested changes after the order has been placed, a new reasonable delivery period shall begin with the confirmation of the change by proFagus.

(2) If proFagus GmbH is culpably in default with bindingly agreed deadlines and dates, the Purchaser shall be entitled to a lump-sum compensation for default in the amount of 0.5% of the net invoice value of the deliveries and services affected by the default for each full week of the default, but in total not more than 5% of the net invoice value of the deliveries and services affected by the default. Any further claims of the purchaser for compensation for the damage caused by the delay are excluded. This shall not apply in the event of intentional, grossly negligent or fraudulent conduct on the part of proFagus GmbH, in the event of claims for injury to life, limb or health, in the event of delay in the event of an agreed fixed delivery date in the legal sense and the assumption of a performance guarantee or a procurement risk in accordance with § 276 of the German Civil Code, in the event of justified assertion by the Purchaser of the discontinuation of his interest in the further performance of the contract as a result of a delay in delivery for which proFagus GmbH is responsible and in the event of mandatory liability under the law. In these cases, § 10 shall apply to the further liability of proFagus GmbH.

(3) Delays in delivery and performance due to force majeure and due to unforeseeable events which not only temporarily make performance substantially more difficult or impossible for proFagus GmbH, insofar as proFagus is not responsible for them - these include in particular strikes, lawful lockouts, difficulties in the procurement of materials or energy, transport delays in the supply chain, shortages of labour, energy or raw materials, official orders, pandemics or epidemics etc., even if they occur at suppliers of proFagus GmbH or their sub-suppliers - shall not lead to a delay in delivery or performance even in the case of bindingly agreed periods and dates. They entitle proFagus GmbH to postpone the delivery or service for the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract in whole or in part because of the part not yet fulfilled.

(4) If the obstruction within the meaning of the above paragraph (3) lasts longer than 3 months, the purchaser is entitled, after setting a reasonable grace period, to withdraw from the contract with regard to the part not yet fulfilled. If the delivery time is extended in accordance with § 4 (3) or if proFagus GmbH is released from its obligation, the purchaser cannot derive any claims for damages from this. proFagus GmbH may only refer to the aforementioned obstructions within the meaning of the above paragraph (3) if it notifies the purchaser immediately.

(5) proFagus GmbH is entitled to make partial deliveries and render partial services at any time, unless the partial delivery or partial service is obviously not of interest to the purchaser.

(6) Compliance with the delivery and performance obligations of proFagus GmbH shall require the timely and proper fulfilment of the purchaser's obligations. proFagus GmbH may demand from the purchaser an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period of time during which the purchaser fails to comply with its contractual obligations towards proFagus GmbH. If the purchaser is in default of acceptance, fails to cooperate or if the delivery by proFagus is delayed for other reasons for which the purchaser is responsible, proFagus GmbH shall be entitled to claim compensation for the resulting damage, including additional expenses (e.g. storage costs). For this purpose, proFagus GmbH shall charge a lump sum compensation in the amount of 0.5% of the net invoice value of the deliveries and services affected by the delay in acceptance for each week or part thereof of the delay in acceptance, starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch, but in total not exceeding 10% of the net invoice value of the deliveries and services affected by the delay in acceptance. The proof of a higher damage and the legal claims of proFagus GmbH (in particular compensation for additional expenses) shall remain unaffected; however, the lump sum shall be set off against further monetary damage claims. The purchaser shall be entitled to prove that proFagus GmbH has not suffered any damage at all or that the damage is significantly less than the aforementioned lump sum.

§ 5 Transfer of risk, security

(1) The risk of accidental loss and accidental deterioration of the goods shall pass to the purchaser at the latest upon handover. In the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the purchaser as soon as the consignment has been handed over to the person carrying out the transport or has left the warehouse of proFagus GmbH for the purpose of shipment. If the shipment is delayed at the request of the purchaser, the risk shall pass to the purchaser upon notification of readiness for shipment. If the purchaser is in default of acceptance, the risk of accidental deterioration and accidental loss shall pass to the purchaser upon occurrence of the default of acceptance.

(2) Insofar as the delivered goods fall under the Ordinance on Hazardous Substances, the purchaser is obliged to observe the product-specific safety data sheet of proFagus GmbH when storing and processing them or to provide the purchaser with corresponding data when reselling the goods. The goods classified as hazardous goods may only be stored and (further) transported in the packaging and means of transport approved for this purpose and with the prescribed labelling.

§ 6 Rights of the purchaser due to defects

(1) The products are delivered free of manufacturing and material defects. The period for asserting claims for defects (limitation period) is one year from the transfer of risk in the products. This period shall not apply to claims for damages by the Customer arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty by the Seller or its vicarious agents, which shall each be time-barred in accordance with the statutory provisions.

(2) If operating, storage and maintenance instructions of proFagus GmbH are not followed, modifications to the products. If the purchaser has made changes to the products, replaced parts or used consumables that do not comply with the original specifications, claims for defects in the products shall not apply if the purchaser does not refute a substantiated claim that one of these circumstances caused the defect.

(3) The purchaser's rights in respect of defects shall only exist if the purchaser has duly complied with its duties of inspection and notification of defects owed under § 377 of the German Commercial Code (HGB). The purchaser must notify the customer service management of proFagus GmbH of defects in writing without delay, but no later than one week after delivery of the delivery item. Defects which cannot be discovered within this period even after careful inspection must be notified to proFagus GmbH in writing immediately after discovery. If the purchaser fails to notify proFagus GmbH, the goods shall be deemed to have been approved.

(4) In the event of notification by the purchaser that the products have a defect, proFagus GmbH shall, at its option and expense, demand that:

- a) the defective part or device is sent to proFagus GmbH for repair and subsequent return; or
- b) the purchaser keeps the defective part or device ready and a service technician from proFagus GmbH is sent to the purchaser to carry out the repair.

If the purchaser requests that remedy work be carried out at a place specified by him which is not the place of performance, proFagus GmbH may comply with this request, whereby any additional expenses incurred by proFagus GmbH as a result shall be borne by the purchaser.

(5) If the remedy of the defect fails after a reasonable period of time, the purchaser may, at his discretion, demand a reduction of the purchase price or withdraw from the contract. If a defect is due to the fault of the seller, the purchaser may claim damages under the conditions specified in § 10.

(6) Liability for normal wear and tear is excluded.

(7) Only the direct purchaser shall be entitled to claims for defects against proFagus GmbH and such claims are not assignable.

§ 7 Packaging

The purchaser shall properly dispose of the disposable packaging delivered with the goods at his own expense. If, in individual cases, a return to proFagus GmbH is agreed, this shall take place at the registered office of proFagus GmbH and at the expense of the purchaser. Insofar as this packaging is reused by the customer, the purchaser shall ensure that the packaging is properly cleaned and released by proFagus GmbH; in addition, any product and company information affixed to it shall be rendered unrecognisable.

§ 8 Retention of title

(1) Until all claims (including all balance claims from current account) to which proFagus GmbH is entitled against the purchaser for any legal reason now or in the future have been satisfied, proFagus GmbH shall be granted the following securities, which it shall release at its discretion on request, insofar as their value exceeds the claims by more than 50% on a sustained basis.

(2) The goods shall remain the property of proFagus GmbH. Processing or transformation shall always be carried out for proFagus GmbH as sole manufacturer, but without any obligation on its part, and proFagus GmbH shall acquire direct ownership or - if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the reserved goods - co-ownership of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should occur at proFagus GmbH as well as in the event that the (co-)ownership of proFagus GmbH expires through combination or mixing, it is already now agreed that the (co-)ownership of the purchaser in the uniform object shall pass to proFagus GmbH pro rata (invoice value). The purchaser shall safekeep the (co-)ownership of proFagus GmbH free of charge. Goods of which proFagus GmbH is entitled to (co-)ownership are hereinafter referred to as "goods subject to retention of title".

(3) The purchaser is entitled to process and sell the reserved goods in the ordinary course of business as long as he is not in default. Pledges or transfers of ownership by way of security are not permitted. The purchaser hereby assigns to proFagus GmbH by way of security all claims arising from the resale or any other legal reason (insurance, tort) in respect of the goods subject to retention of title (including all current account balance claims). proFagus GmbH revocably authorises him to collect the claims assigned to proFagus GmbH for his account in his own name. This collection authorisation can only be revoked if the purchaser does not duly fulfil his payment obligations towards proFagus GmbH.

(4) In the event of third party infringement to the goods subject to retention of title, in particular seizure, the purchaser shall point out the ownership of proFagus GmbH and notify proFagus GmbH immediately so that proFagus GmbH can enforce its ownership rights. Insofar as the third party is not in a position to reimburse proFagus GmbH for court or out-of-court costs incurred in this connection, the purchaser shall be liable for these.

(5) In the event of breach of contract by the purchaser - in particular default of payment - proFagus GmbH shall be entitled to withdraw from the contract and to demand the return of the goods subject to retention of title.

§ 9 Terms of payment

(1) Unless otherwise agreed, invoices of proFagus GmbH are due for payment within 14 days of receipt by the purchaser without deduction. Upon expiry of the aforementioned payment period, the purchaser shall be automatically in default. A cash discount deduction is only permissible with a special written agreement.

(2) Despite any provisions of the Purchaser to the contrary, proFagus GmbH shall be entitled to set off payments first against the Purchaser's older debts and shall inform the Purchaser of the type of set-off made. If costs and interest have already been incurred, proFagus GmbH shall be entitled to set off the payment first against the costs, then against the interest and finally against the main performance.

(3) A payment shall only be deemed to have been made when proFagus GmbH can freely use the amount. In the case of cheques, payment shall only be deemed to have been made when the cheque is cashed.

(4) If the purchaser defaults on his payment obligations, proFagus GmbH shall be entitled to charge interest at the statutory default interest rate from the relevant date. The assertion of further damages in the event of default shall remain unaffected.

(5) If proFagus GmbH becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the purchaser, in particular if a cheque cannot be cashed, if the purchaser ceases payments or if proceedings under the German

Insolvency Code or comparable legislative acts in other countries are applied for, proFagus GmbH shall be entitled to declare the purchaser's entire remaining debt from the business relationship immediately due and payable, even if it has accepted the cheques. In this case, proFagus GmbH shall also be entitled to demand advance payments or securities.

(6) The purchaser is only then entitled to set-off and retention, even if notices of defects or counterclaims are asserted, if the counterclaims have been legally established or are undisputed. However, the purchaser shall also be entitled to retention on the basis of counterclaims arising from the same contractual relationship.

§ 10 Liability

(1) Liability on the part of proFagus, for whatever reason, is excluded unless otherwise regulated below.

(2) In the event of intent or gross negligence, proFagus GmbH shall be liable in accordance with the statutory provisions.

(3) In the event of a breach of material contractual obligations, proFagus GmbH shall also be liable in accordance with the statutory provisions, provided that liability in the event of simple negligence shall be limited to the foreseeable, typically occurring damage, but no more than the simple value of the goods excluding transport costs, duties or taxes.

(4) The liability of proFagus GmbH is limited to damages which the Seller could have foreseen as a possible consequence of a breach of contract at the time of the conclusion of the contract or which it should have foreseen by exercising due care. Indirect damage and consequential damage which are the result of defects in the delivery item are also only eligible for compensation insofar as such damage is typically to be expected when the delivery item is used as intended.

(5) The limitations and exclusions of liability in paragraphs 1 to 4 do not apply to claims arising from fraudulent conduct on the part of proFagus GmbH, or in the case of liability for guaranteed characteristics, for claims under any Product Liability Act or damages arising from injury to life, limb or health.

(6) Insofar as the liability of proFagus GmbH is excluded or limited, this exclusion shall also apply to employees, representatives and vicarious agents of proFagus GmbH.

§ 11 Applicable law, place of jurisdiction, partial invalidity

(1) The law of the Federal Republic of Germany shall apply to the terms and conditions and all legal relations between proFagus GmbH and the purchaser. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

(2) Insofar as the purchaser is a merchant, a legal entity under public law or a special fund under public law, the place of performance and jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of proFagus GmbH. However, proFagus GmbH shall also be entitled to sue the purchaser at the purchaser's place of residence and/or place of business.

(3) Should any provision in these Terms and Conditions or any provision within the scope of other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements.