

## Proflo Limited– Terms & Conditions of Trade

- 1. Definitions**
  - 1.1 "Company" shall mean Proflo Limited its successors and assigns or any person acting on behalf of and with the authority of Proflo Limited.
  - 1.2 "Buyer/Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
  - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer/Customer on a principal debtor basis.
  - 1.4 "Goods" shall mean Goods supplied by the Company to the Buyer/Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Buyer/Customer.
  - 1.5 "Services" shall mean all services supplied by the Company to the Buyer/Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
  - 1.6 "Price" shall mean the cost of the Goods as agreed between the Company and the Buyer/Customer subject to clause 3 of this contract.
- 2. Acceptance**
  - 2.1 Any instructions received by the Company from the Buyer/Customer for the supply of Goods and/or the Buyer/Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
  - 2.2 Where more than one Buyer/Customer has entered into this agreement, the Buyer/Customers shall be jointly and severally liable for all payments of the Price.
  - 2.3 Upon acceptance of these terms and conditions by the Buyer/Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Company.
  - 2.4 The Buyer/Customer undertakes to give the Company at least fourteen (14) days notice of any change in the Buyer/Customer's name, address and/or any other change in the Buyer/Customer's details.
- 3. Price And Payment**
  - 3.1 At the Company's sole discretion the Price shall be either;
    - (a) as indicated on invoices provided by the Company to the Buyer/Customer in respect of Goods supplied; or
    - (b) the Company's quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Buyer/Customer shall accept the Company's quotation in writing within thirty (30) days.
  - 3.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation.
  - 3.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due:
    - (a) on presentation of an invoice for cash accounts; and
    - (b) thirty (30) days following the end of the month in which an invoice is raised to the Buyer/Customer for pre-approved credit accounts.
  - 3.4 At the Company's sole discretion payment shall be due on delivery of the Goods.
  - 3.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit or electronic banking, or by any other method as agreed to between the Buyer/Customer and the Company.
  - 3.6 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Delivery Of Goods**
  - 4.1 At the Company's sole discretion delivery of the Goods shall take place when;
    - (a) In the event that the Goods are delivered by the Company or the Company's nominated carrier the Buyer/Customer takes possession of the Goods:
      - (i) at the Buyer/Customer's address; or
      - (ii) at an address/site nominated by the Buyer/Customer; or
    - (b) the Buyer/Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Buyer/Customer's agent.
  - 4.2 At the Company's sole discretion the costs of delivery are included in the Price.
  - 4.3 The Buyer/Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer/Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
  - 4.4 Delivery of the Goods to a third party nominated by the Buyer/Customer is deemed to be delivery to the Buyer/Customer for the purposes of this agreement.
  - 4.5 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
  - 4.6 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
  - 4.7 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.
  - 4.8 When Goods are to be delivered to site the Goods will be delivered to the kerbside adjacent to the delivery site. If at the Customer's request, the delivery vehicle leaves the road and enters the delivery site to unload the Buyer/Customer is responsible for providing suitable and safe access for the Company's delivery vehicle and agrees to indemnify the Company for all damage and injury to any person and to any public or private property which may result, including any costs associated with enabling the delivery vehicle to leave the site.
- 4.9 It is the responsibility of the Buyer/Customer to provide adequate and safe access to the delivery area for all workmen, equipment and vehicles necessary for the delivery of the Goods.
- 5. Risk**
  - 5.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer/Customer on delivery.
  - 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer/Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 6. Title**
  - 6.1 It is the intention of the Company and agreed by the Buyer/Customer that ownership of the Goods shall not pass until:
    - (a) the Buyer/Customer has paid all amounts owing for the particular Goods, and
    - (b) the Buyer/Customer has met all other obligations due by the Buyer/Customer to the Company in respect of all contracts between the Company and the Buyer/Customer.
  - 6.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.
  - 6.3 It is further agreed that:
    - (a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Buyer/Customer are met; and
    - (b) until such time as ownership of the Goods shall pass from the Company to the Buyer/Customer the Company may give notice in writing to the Buyer/Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Buyer/Customer to obtain ownership or any other interest in the Goods shall cease; and the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
    - (d) if the Buyer/Customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Buyer/Customer, or any premises as the invitee of the Buyer/Customer, where the Goods are situated and take possession of the Goods; and
    - (e) the Buyer/Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Buyer/Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company; and
    - (f) the Buyer/Customer shall not deal with the money of the Company in any way which may be adverse to the Company; and
    - (g) the Buyer/Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
    - (h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer/Customer; and
    - (i) until such time that ownership in the Goods passes to the Buyer/Customer, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.
- 7. Buyer/Customer's Disclaimer**
  - 7.1 The Buyer/Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer/Customer by the Company and the Buyer/Customer acknowledges that the Goods are bought relying solely upon the Buyer/Customer's skill and judgment.
- 8. Defects**
  - 8.1 The Buyer/Customer shall inspect the Goods on delivery and shall within seven (7) days notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer/Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer/Customer believes the Goods are defective in any way. If the Buyer/Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Buyer/Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.
  - 8.2 No Goods shall be accepted for return except in accordance with 8.1 above.
- 9. Returns**
  - 9.1 Returns will only be accepted provided that:
    - (a) the Buyer/Customer has complied with the provisions of clause 8.1; and
    - (b) the Company has agreed in writing to accept the return of the Goods; and
    - (c) the Goods are returned at the Buyer/Customer's cost within ten (10) days of the delivery date; and
    - (d) the Company will not be liable for Goods which have not been stored or used in a proper manner; and
    - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

## Proflo Limited– Terms & Conditions of Trade

- 9.2 The Company may (in its discretion) accept the return of Goods for credit or refund but this may incur a handling fee of 15% of the value of the returned Goods plus any freight.
- 10. Warranty**
- 10.1 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 11. Tolerances, Specifications and Certification**
- 11.1 All customary industry tolerances shall apply to the weight, dimensions, measurements quality and finish of the Goods rendered unless the Company and the Buyer/Customer agree otherwise in writing.
- 12. Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980**
- 12.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Buyer/Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 12.2 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.
- 12.3 In particular where the Buyer/Customer buys Goods as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.
- 13. Agreement to Pay**
- 13.1 We the authorised signatories being a Director/Directors of the applicant company jointly and severally guarantee the due and punctual payment to Proflo Ltd of all monies which are owing. If for any reason the applicant does not pay any amount owing we the Directors will pay the relevant amount to the company being Proflo Ltd
- 13.2 The Buyer/Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Buyer/Customer's order.
- 14. Default & Consequences Of Default**
- 14.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 14.2 Failure by the Customer to make payment within the stipulated period will render all other outstanding monies liable under this and/or any other agreement between the Company and the Customer due forthwith, and any previously agreed settlement terms will be terminated; and
- 14.3 If the Customer defaults in payment of any invoice when due the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 14.4 If the Buyer/Customer defaults in payment of any invoice when due, the Buyer/Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 14.5 Without prejudice to any other remedies the Company may have, if at any time the Buyer/Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Buyer/Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Buyer/Customer for any loss or damage the Buyer/Customer suffers because the Company exercised its rights under this clause.
- 14.6 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.7 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Buyer/Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to the Company becomes overdue, or in the Company's opinion the Buyer/Customer will be unable to meet its payments as they fall due; or
  - the Buyer/Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer/Customer or any asset of the Buyer/Customer.
- 15. Security And Charge**
- 15.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- where the Buyer/Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer/Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer/Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer/Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
  - The Buyer/Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Buyer/Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.
- 16. Cancellation**
- 16.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Company shall repay to the Buyer/Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 16.2 In the event that the Buyer/Customer cancels delivery of Goods the Buyer/Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.
- 17. Data Protection Act 1988 & Data Protection Act 2003**
- 17.1 The Buyer/Customer and the Guarantor/s (if separate to the Buyer/Customer) authorises the Company to:
- collect, retain and use any information about the Buyer/Customer, for the purpose of assessing the Buyer/Customer's creditworthiness or marketing products and services to the Buyer/Customer; and
  - to disclose information about the Buyer/Customer, whether collected by the Company from the Buyer/Customer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Buyer/Customer on publicly accessible credit reporting databases.
- 17.2 Where the Buyer/Customer is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.
- 17.3 The Buyer/Customer shall have the right to request the Company for a copy of the information about the Buyer/Customer retained by the Company and the right to request the Company to correct any incorrect information about the Buyer/Customer held by the Company.
- 18. Unpaid Company's Rights**
- 18.1 Where the Buyer/Customer has left any item with the Company for repair, modification, exchange or for the Company to perform any other Service in relation to the item and the Company has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Company shall have:
- a lien on the item;
  - the right to retain the item for the Price while the Company is in possession of the item;
  - a right to sell the item,
- 18.2 The lien of the Company shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
- 19. General**
- 19.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
- 19.3 The Company shall be under no liability whatever to the Buyer/Customer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer/Customer arising out of a breach by the Company of these terms and conditions.
- 19.4 In the event of any breach of this contract by the Company the remedies of the Buyer/Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Goods.
- 19.5 The Buyer/Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer/Customer by the Company.
- 19.6 The Company may license or sub-contract all or any part of its rights and obligations without the Buyer/Customer's consent.
- 19.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Buyer/Customer of such change. Except where the Company supplies further Goods to the Buyer/Customer and the Buyer/Customer accepts such Goods, the Buyer/Customer shall be under no obligation to accept such changes.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.