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ARTICLE 1: APPLICABILITY

1. These terms apply to all offers and deliveries and to all agreements for purchases and/or sales and/or to all agreements relating to advising and assistance and/or to all agreements relating to the performance of work, including for example - but not limited to - the manufacture or design of items and the provision of technical training for the construction or assembly of items delivered by Prolyte Group established in Leek, hereinafter referred to as 'Prolyte'.
2. Terms to the contrary shall only constitute part of the agreement entered into between the parties if and in so far as both parties shall expressly agree them in writing.
3. In these general terms, the term 'written' or 'in writing' shall also be deemed to mean: by e-mail, fax or any other means of communication that may be deemed equivalent given the state of technology and according to generally accepted standards.
4. The client shall be deemed to have accepted a proposal or order confirmation that refers to these general terms if he accepts and retains it without comment.
5. The fact that a provision or part thereof of these general terms may not be applicable shall not affect the applicability of the other provisions.
6. Should these terms be drawn up in a language other than in Dutch then in the case of differences the Dutch text shall in all cases prevail.

ARTICLE 2: AGREEMENTS

1. An agreement shall not be formed until Prolyte has confirmed the order in writing. This shall also apply in respect of orders that have already been accepted on Prolyte's behalf by representatives or intermediaries and verbal undertakings given by representatives or intermediaries on Prolyte's behalf.
2. Unless the parties agree otherwise in writing, the order confirmation referred to in paragraph 1 of this Article shall be deemed to be an accurate and complete representation of the agreement entered into between the parties.
3. Additions or amendments to the general terms or other amendments or additions to the agreement shall be binding once confirmed in writing by Prolyte.
4. Should payment by letter of credit be agreed then the agreement shall not be formed until Prolyte has accepted in writing the irrevocable (confirmed) letter of credit.

ARTICLE 3: OFFERS

1. All Prolyte offers, proposals, price lists etc. shall be without obligation even if the proposal contains a deadline for acceptance. Prolyte may revoke a proposal or offer up to 2 working days after receipt of the acceptance.
2. The prices used by Prolyte and those stated in the offers, proposals, price lists etc. are quoted exclusive of BTW (turnover tax) and any costs and are based on ex works, Leek, the Netherlands (EXW) delivery in line with the most recent version of the Incoterms. These costs may include - amongst other items - travelling expenses, transportation costs and declarations by third parties brought in. The above shall apply unless expressly stated otherwise in writing.
3. If a price agreed between Prolyte and the client is denominated in a currency other than the euro then the conversion rate into euros on the date of delivery shall apply.

4. Samples shown and/or provided, brochures, drawings, examples of documents, models, specifications of colours, dimensions, weights and other descriptions are as accurate as possible but may only be deemed to be an indication. No rights may be derived from them, unless the parties expressly agree otherwise in writing.
5. The samples, brochures, drawings, examples of documents etc. referred to in the previous paragraph of this Article shall at all times remain the property of Prolyte, unless the parties expressly agree otherwise in writing. They must be returned to Prolyte upon the latter's initial request. They may not be duplicated without Prolyte's written consent nor may they be given to third parties to inspect.
6. Proposals made by Prolyte are based on the information provided by the client. The client shall warrant that to the best of his knowledge he has provided Prolyte with all essential information needed for the drafting and implementation of the agreement.
7. With regard to the proposal, Prolyte shall neither accept responsibility for documents elaborated on by or on behalf of the client and/or third parties nor for any specifications regarding dimensions, weights and materials provided with these documents.
8. Prolyte shall be entitled to charge the client the costs associated with the offer or proposal, provided that Prolyte has informed the client beforehand in writing of these costs.
9. If between the date of the entering into of the agreement and its performance there is a change in one or more of the factors determining the cost base such as purchase prices, currency conversion rates, import duties, wages, employment conditions, employed persons' insurance contributions etc. then Prolyte shall be entitled to charge on these increases to the client. Should it be the case that a new price list is issued by Prolyte and/or suppliers that comes into force between these dates then Prolyte shall be entitled to charge the client the prices stated therein.
10. If the client rejects an offer or proposal then he is obliged to immediately return to Prolyte all descriptions, drawings and/or calculations provided with it.

ARTICLE 4: ENGAGING THIRD PARTIES

If and in so far as a proper performance of the agreement should require it, Prolyte shall be entitled to have particular work or deliveries performed by third parties.

ARTICLE 5: OBLIGATIONS ON THE PART OF THE CLIENT

1. The client must ensure that Prolyte has at its disposal in a timely way the information and approvals (such as permits, exemptions and rulings) needed to perform the agreement.
2. The client must ensure that the information provided is accurate and complete. The client shall indemnify Prolyte for the consequences of the inaccurate nature and/or incompleteness of the information.
3. If Prolyte and the client are agreed that Prolyte is to deliver the items to the client's premises or to a location chosen by the latter then the client must ensure that Prolyte can gain access at the pre-announced (work) times to the location(s) to where the items are to be delivered.
4. The location(s) to where the items are to be delivered

- must be free of superfluous materials and must be easily accessible for the loading or unloading of the items. The client shall be responsible for the loading or unloading.
5. The client must ensure that when performing the agreement Prolyte has at its disposal the power terminals and other connections needed for the work, including for electrical machines, lighting, heating, gas, compressed air, water, and so on. The power costs shall be at the client's expense.
 6. The client shall be liable for any loss of and/or damage to the items, materials, tools and machines etc. that Prolyte stores on the client's premises during the performance of the agreement.
 7. In the event of a failure to fulfil the obligations referred to in this Article in a timely way, Prolyte shall be entitled to suspend performance of the agreement until such time as the client has fulfilled these obligations after all. The costs associated with the delay or with the performance of any additional work shall be at the client's expense.

ARTICLE 6: DELIVERY, COMPLETION AND DELIVERY DEADLINES

1. On no account may quoted deadlines for the delivery of items or for the performance of the agreement be viewed as strict deadlines. Prolyte shall not be in default in respect of the delivery deadline until it has been given a written notice of default by the client that shall also give Prolyte an opportunity to deliver after all within a reasonable period of time, and until Prolyte has failed to comply with this.
2. In the case of subdeliveries, each delivery or phase will be viewed as a standalone transaction that Prolyte may invoice for separately. Prolyte shall be entitled to require payment for the subdeliveries before performing the remaining subdeliveries.
3. The agreed delivery period shall commence when the agreement has been formed in accordance with Article 2 and the client has provided Prolyte with all necessary documents, information, materials, permits etc. needed for the performance of the agreement and Prolyte has received any payment or progress payment agreed. Delays occurring in this will lead to a proportionate adjustment in the stated delivery and completion dates.
4. The risk relating to the delivered items shall pass to the client at the moment of delivery. Delivery shall be performed on the basis of Carriage Paid To, agreed place of destination (CPT), in line with the most recent version of the Incoterms, unless expressly agreed otherwise with the client in writing.
5. Prolyte shall not be liable for losses arising from late delivery, if and in so far as this late delivery shall be due to circumstances that are not at the expense and risk of Prolyte, this to include non-performance or late performance by suppliers.
6. If it proves impossible to deliver the items to the client or to perform the agreement for a reason that lies within the client's domain then Prolyte shall reserve the right to store the ordered items and/or the materials purchased for the performance of the agreement at the client's expense and risk. Prolyte shall inform the client in writing about this storage and/or about the impediment to the performance of the agreement and in doing so shall set a reasonable deadline by which the client must place Prolyte in a position whereby it can resume the work and/or deliver the items.

7. Should the client remain in default even after the expiry of the reasonable deadline set by Prolyte as laid down in the previous paragraph of this Article then the simple expiry of this deadline shall mean that the client is in default and Prolyte shall be entitled to terminate the agreement in whole or part in writing with immediate effect without prior or further notice of default, without judicial intervention and without being obliged to reimburse losses, costs or interest.
8. The above shall not affect the client's obligation to reimburse Prolyte for the storage and other costs and/or losses incurred (including any loss of income).
9. The agreement shall in all cases be entered into under the suspensive condition that Prolyte judges the client's creditworthiness to be satisfactory based on the information obtained by Prolyte.

In respect of the fulfilment of the client's financial obligations, Prolyte shall be authorised to demand prepayment or collateral from the client before proceeding to deliver or start performing the agreement. If the client refuses to provide the collateral demanded then Prolyte shall be entitled to suspend its obligations and shall ultimately be entitled to terminate the agreement in whole or part without notice of default or judicial intervention and without prejudice to its entitlement to compensation for any losses it has incurred.

ARTICLE 7: PROGRESS, PERFORMANCE OF THE AGREEMENT

1. If the deliveries or the work cannot be performed normally or without interruption for reasons that are not Prolyte's fault then Prolyte shall be entitled to charge the client the resulting costs.
2. During its performance, should the agreement prove to be unperformable, whether due to circumstances that Prolyte is unaware of or to any type of force majeure then Prolyte shall be entitled to demand that the agreement be amended such that it becomes possible to perform it, apart from when this should never be possible due to the above-mentioned unknown circumstances or force majeure. Prolyte shall then be entitled to full reimbursement for the work or deliveries it has already performed.
3. Where possible, Prolyte shall inform the client of any shortcomings in designs, constructions and procedures prescribed by or on behalf of the client and in any orders and instructions issued by or on behalf of the client, as well as about any defects in building materials and devices provided by or prescribed by the client, in so far as Prolyte is aware of these defects or should have reasonably been aware of them.
4. All expenses incurred by Prolyte at the client's request shall be entirely at the latter's expense, unless the parties expressly agree otherwise in writing.

ARTICLE 8: CONFIDENTIAL INFORMATION

1. The parties are reciprocally obliged to maintain confidentiality about all information that they obtain in the context of entering into and executing the agreement and where they know or (should) suspect that this information had to/had to be treated confidentially. The above shall apply unless one of the parties by virtue of legislation and/or regulations or a judicial ruling is obliged to provide the above information to any third party and this party is unable to invoke any right of non-disclosure permitted by law or by a court.
2. Each party shall take all reasonable precautions to keep confidential the information of a confidential nature it receives from the other party.
3. The parties shall warrant that their personnel and other persons who are under their supervision and who are in any way involved in the performance of the agreement shall comply with the duty of confidentiality as referred to in this Article.

ARTICLE 9: PACKAGING

1. The packaging intended for multiple use in which the items are delivered or handed over shall remain the property of Prolyte and may not be used by the client for purposes other than that/those for which they were intended.
2. Prolyte shall be entitled to charge the client a deposit for this packaging. Prolyte shall be obliged to take back this packaging, provided that it is returned postage paid at the price charged to the client during a period of time after the delivery date that is set by Prolyte.
3. If packaging is damaged, incomplete or lost then the client shall be liable for this loss and shall lose his right to have his deposit returned.

4. If - in Prolyte's opinion - it proves necessary to do so then packaging shall be charged to the client at cost and shall not be taken back.

ARTICLE 10: COMPLAINTS AND RETURN SHIPMENTS

1. The client is obliged to check the items as soon as he receives them. If any visible defects, faults, shortcomings and/or flaws etc. are found then these must be noted on the consignment note or covering note and brought to Prolyte's notice immediately. In any case, the client should do this no later than 48 hours after receiving the items and should follow this with immediate written confirmation to Prolyte. Prolyte must be informed in writing of hidden defects as soon as they are found.
2. Other complaints must be submitted to Prolyte by registered letter no later than one week after receipt of the items or after the end of the work.
3. If the above-mentioned complaints are not drawn to Prolyte's attention by the relevant deadlines then the items will be deemed to have been received in good condition or the work will be deemed to have been performed properly. If the items are put to use then they will be deemed to have been accepted.
4. Complaints will not suspend the client's obligation to pay.
5. Prolyte must be placed in a position whereby it can investigate the complaint. In all cases, a return shipment may only be sent once Prolyte has consented to this in writing, the shipment being performed in a way to be determined by Prolyte and made in the original packing/packaging, in so far as possible. Return shipment shall be at the client's expense and risk, unless Prolyte declares the complaint to be valid.
6. If after handover the items have been changed in their nature and/or composition, have been worked or processed in whole or part, or have been damaged or overpacked then any right to complaint shall lapse.
7. In the event of a valid complaint, the loss shall be settled in accordance with the provisions of Article 11.

ARTICLE 11: LIABILITY AND GUARANTEE

1. Prolyte shall discharge its duties in a way that may be expected of a company in its industry but shall not accept any liability for any loss suffered by the client that is the consequence of the actions and omissions of Prolyte, its personnel or of third parties it has brought in, apart from in the case of intent or gross negligence and apart from the statutory liability by virtue of mandatory provisions. Furthermore, Prolyte expressly excludes liability for consequential damage or loss, trading loss, lost profits and/or standstill loss.
2. Without prejudice to the provisions in the other paragraphs of this Article, Prolyte's liability - from whatever cause - shall be limited to the amount of the net price of the delivered items or of the work performed.
3. Without prejudice to the provisions in the previous paragraph of this Article, on no account shall Prolyte be obliged to pay compensation that exceeds € 1,000,000.00 per claim. When it comes to the application of this Article, a series of related harmful events shall be deemed to be a single event/claim.
4. Prolyte shall warrant the usual normal quality and reliability of the items but their actual life can never be guaranteed, apart from when expressly agreed otherwise in writing.
5. If visible faults, shortcomings and/or defects are present in the delivered items that must have already been present at the point in time of delivery then at its option Prolyte shall undertake to repair or replace them free of charge.
6. In all cases, the deadline by when compensation or established loss can be claimed from Prolyte is limited to 3 months, which period starts when the obligation to pay the compensation is established.
7. The client shall lose his rights vis-à-vis Prolyte, shall be liable for all loss and shall indemnify Prolyte against all claims by third parties in respect of compensation for losses if and in so far as:
 - A. the above-mentioned loss has arisen through the inexpert use and/or use contrary to instructions and/or advice issued by Prolyte and/or inexpert safekeeping (storage) of the delivered items by the client;
 - B. the above-mentioned loss has arisen through errors, incompleteness or inaccuracies in information, equipment, materials, data carriers etc. provided to or prescribed to Prolyte by or on behalf of the client;
 - C. the above-mentioned loss has arisen due to instructions issued to Prolyte by or on behalf of the client;

- D. the above-mentioned loss has arisen because the client himself or a third party acting on the client's instructions has modified the installed items without Prolyte's prior consent;
- E. the above-mentioned loss has arisen because the client has provided Prolyte with insufficient or incorrect information and Prolyte has carried out its work based on the above information.

ARTICLE 12: PAYMENT

1. Payment must be made no later than 21 days after the invoice date, unless the parties expressly agree otherwise in writing.
2. If an invoice has not been fully paid by the time the deadline referred to in paragraph 1 of this Article has elapsed then the client shall be in default by operation of law and:
 - A. from that point in time the client shall be charged an amount equivalent to the amount of a 2% prompt payment discount, without any further notice of default being required;
 - B. from the time the default commences onwards the client shall owe Prolyte default interest in the amount of the statutory interest for commercial transactions per month to be calculated cumulatively on the principal.
 - C. once Prolyte has demanded that he do so, in respect of extrajudicial costs the client shall owe at least 15% of the amount of the principal and the default interest with an absolute minimum of € 500.00;
 - D. Prolyte shall be entitled to charge the client a sum to cover administrative costs in the amount of at least € 20.00 for each payment reminder, demand etc. sent to the client. Prolyte shall state this in the agreement and/or on the invoice.
 - E. all judicial costs relating to the collection shall be at the client's expense.
3. At Prolyte's option, in the above or corresponding circumstances it may terminate the agreement in whole or part without further notice of default or judicial intervention and may combine this with a demand for compensation.
4. Should the client fail to fulfil his payment obligations in time then Prolyte shall be authorised to suspend the performance of its obligations vis-à-vis the client regarding delivery or work performance that it has agreed - including the assembly or installation of items already delivered but not yet paid for - until the payment has been made or suitable collateral has been provided. The same also applies before the actual point in time of default if Prolyte has reasonable grounds for suspecting that there are reasons to doubt the client's creditworthiness.
5. Payments made by the client shall in all cases be first used to settle all interest and costs owed and then for the due and payable invoices that are outstanding the longest, unless when paying the client expressly states in writing that the payment relates to a later invoice.
6. If the client for whatever reason has or will have one or more counterclaims on Prolyte then the client shall waive his right to setoff in respect of this/these claim(s). The above-mentioned waiving of the right to setoff shall also apply should the client have applied for a moratorium or gone into liquidation.

ARTICLE 13: INTELLECTUAL PROPERTY RIGHTS

1. Prolyte is and shall remain the party entitled to all existing and/or future intellectual property rights in respect of the content and form of designs, reports, drawings and software models etc. compiled and assembled by Prolyte that relate to these configurations.
2. The exercising of the rights referred to in the previous paragraph - including the disclosure or transfer of data - shall be expressly and exclusively retained by Prolyte both during and after the performance of the order.
3. The client's provision of information to Prolyte signifies that he is declaring that there is no violation of the copyright or of any other intellectual property right of third parties and shall indemnify Prolyte both in court and extrajudicially for all financial and other consequences that may arise from this.
4. The client is not permitted to modify the delivered items in whole or part or give them another brandname or to use the mark in another way or to register it in his own name.

ARTICLE 14: RETENTION OF TITLE (Note: a different arrangement applies for German customers - see Article 20)

1. Prolyte shall retain ownership of items already delivered and to be delivered until such time as when the client

has fulfilled his payment obligations vis-à-vis ProlYTE arising from these or similar agreements. These payment obligations consists of the payment of the purchase price, to which may be added claims relating to the work performed in connection with this delivery, as well as claims relating to possible compensation due to the client's failure to fulfil his obligations.

2. Items covered by the retention of title may only be resold by the client in the context of normal business operations. However, the client is not permitted to sell the items in the context of his normal business operations as soon as he applies for a moratorium or has been gone into liquidation.
3. Should ProlYTE invoke retention of title then the relevant agreement entered into shall be deemed to be terminated, this without prejudice to ProlYTE's right to claim compensation for losses, lost profits and interest.
4. The client is obliged to inform ProlYTE immediately in writing of the fact that third parties are enforcing their rights in respect of items in which a right of retention is vested by virtue of this Article.

ARTICLE 15: PLEDGING/WARRANTAGE

Until such time as the client has fully fulfilled his related payment obligations vis-à-vis ProlYTE, he (i.e. the client) shall not be authorised to give delivered items to third parties as security and/or to encumber said items with a nonpossessory pledge and/or to give the actual control over items in storage to one or more financiers (warrantage), as such action would be deemed to be an attributable failure to perform on the client's part.

ProlYTE may then immediately, without any notice of default being required, suspend its obligations under the agreement or terminate the agreement, without prejudice to its right to obtain compensation for losses, lost profits and interest.

ARTICLE 16: LIQUIDATION, HAVING NO POWER OF DISPOSITION ETC.

Without prejudice to the provisions in the other articles of these terms, the agreement entered into between the client and ProlYTE will be terminated without judicial intervention or any notice of default being required as soon as the client goes into liquidation, applies for an actual or provisional moratorium, is affected by a seizure of possession under a warrant of execution, is placed under curatorship or other administration or otherwise loses the power of disposition or legal capacity in respect of his assets or portions thereof, unless the bankruptcy trustee or administrator deems the obligations arising from the agreement to be an insolvent company's debts.

ARTICLE 17: FORCE MAJEURE

1. Should ProlYTE be unable to fulfil its obligations under the agreement entered into with the client and should this not be due to non-attributable non-performance on the part of ProlYTE and/or third parties or suppliers brought in for the performance of the agreement, or should ProlYTE have another compelling reason for this then ProlYTE shall be entitled to terminate the agreement entered into between the parties or to suspend fulfilment of its (ProlYTE's) obligations vis-à-vis the client for a period that seems reasonable to it (ProlYTE), without being obliged to pay any compensation. Should the above-mentioned situation occur when the agreement has already been performed in part then the client shall be obliged to fulfil his obligations vis-à-vis ProlYTE up to that point in time.
2. Circumstances where there is said to be a non-attributable non-performance shall include: war, riots, mobilisation, disturbances at home or abroad, government measures, strikes and lockouts by workers or the threat of such and similar circumstances; disruption of the currency exchange rates prevalent at the time the agreement was entered into; operational failures due to fire, accident or other incidents and natural phenomena, the above irrespective of whether the non-performance or late performance occurs at ProlYTE or at its suppliers or third parties brought in to perform the obligation in question.

ARTICLE 18: CANCELLATION/TERMINATION

1. Within the context of these general terms, 'cancellation' will be deemed to mean the ending of the agreement by one of the parties before performance of the agreement commences.
2. Within the context of these general terms, 'termination' will be deemed to mean the ending of the agreement by

one of the parties after performance of the agreement commences.

3. In principle, it is not possible for a client to cancel or terminate an order. Should the client nevertheless cancel or terminate the agreement then he shall owe ProlYTE a reimbursement that the latter shall determine. The client shall be obliged to reimburse ProlYTE for all costs, losses and lost profits. ProlYTE shall be entitled to fix the amount of the costs, losses and lost profits and - at its option and depending on the work already performed or deliveries already made - to charge the client between 20% and 100% of the agreed price.
4. The client shall be liable vis-à-vis third parties for the consequences of the cancellation or termination and shall indemnify ProlYTE in this respect.
5. Amounts already paid by the client shall not be refunded.

ARTICLE 19: APPLICABLE LAW AND COMPETENT COURT

1. These general terms and the agreement entered into between ProlYTE and the client shall be solely governed by Dutch law. Furthermore, any disputes arising from the agreement shall be settled under Dutch law.
2. Contrary to the provisions of paragraph 1 of this Article, the property law-related consequences of a retention of title in respect of items intended for export shall be governed by the laws of the country being exported to, if the legal system of that country or of the items' country of destination is more favourable to ProlYTE.
3. Any disputes will be settled by the Dutch court competent for ProlYTE's business location region, this without prejudice to ProlYTE's right to have the dispute submitted to another court should it so desire. Disputes between ProlYTE and clients who are established outside the EU shall be definitively settled in accordance with the ICC's Arbitration Regulations by one or more arbitrators appointed in accordance with these Regulations. The language used shall be English. The arbitration proceedings shall be held in Amsterdam.

Contrary to the provisions of Article 14, the following shall apply in respect of German clients:

ARTICLE 20: RETENTION OF TITLE

1. We reserve the title to the goods supplied until all receivables against the client and his affiliated companies arising under the present and future business relationship have been paid. Our property rights shall extend to any new product created by the processing of the goods under retention of title. The client shall manufacture and store the new product on our behalf without acquiring the property in the product. This shall not give rise to any claims against us. The exclusion of Section 449, Paragraph 2 of the German Civil Code (BGB) shall be deemed as agreed.
2. For any reserved goods combined with goods from other suppliers whose property rights also extend to the new product, the property rights shall be jointly acquired by us and said suppliers – under exclusion of any acquisition of property by the client – to the proportion of the invoice amount of our reserved goods in relation to the total invoice amount for all reserved goods processed.
3. The client, by way of security, already now assigns to us all receivables from the sale of the reserved goods from our present and future deliveries, including all ancillary rights, to the amount of our proportional share in the property.
4. For processing under a service contract, the service remuneration claim shall already now be assigned to us to the amount of the proportional sum of our invoice for the reserved goods processed. As long as the client duly fulfils his obligations arising towards us from the business relation, he may in the course of ordinary business dispose of the goods that are our property and collect himself the receivables assigned to us.
5. In the event of default payment or reasonable doubt in the client's ability to pay or creditworthiness we shall be entitled to collect the assigned claims and take the reserved goods back.
6. Cheque or draft payments shall be deemed as completed not until the appropriated amount has been cleared by the client.
7. The seller commits himself to release his goods under retention of title if and so far as the value of these goods exceeds the claims of the seller by 150% or more.
8. With regard to the agreement of retention of title rights, the applicability of the law of the Federal Republic of Germany, excluding the Convention on Contracts for the

International Sale of Goods (CISG), shall be expressly agreed.

9. The supplier shall be entitled at any time to transfer the rights and claims arising from the business relationship to a third party.