



Probrand Procurement Platform Terms and Conditions

1. General

In these Terms and Conditions the following words have the following meanings unless the context requires otherwise:

1.1 "Contract" means any contract between the Company and the Customer for the sale and purchase of Goods formed in accordance with clause 3.4;

1.2 "Company" means Probrand Limited (Company Number: 02653446) trading through the e-commerce platform known as "Probrand Marketplace";

1.3 "Customer" means the person, firm or company who purchases Goods from the Company.

1.4 "Goods" means the goods, articles and materials which are to be supplied by the Company to the Customer pursuant to the Contract; and

1.5 "Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities.

2. Basis of Contract

2.1 These Terms and Conditions shall govern any Contract however made to the exclusion of any other terms or conditions. Accordingly, any terms or conditions the Customer may seek to impose shall not be incorporated into any Contract or have any effect.

2.2 Estimates or quotations accepted, or orders placed, by the Customer leading to a Contract which are not expressed to be subject to these Terms and Conditions shall still be subject to them.

2.3 No variation to these Terms and Conditions shall be binding on the Company unless agreed in writing between the Customer and a Director of the Company.

2.4 Except as set out in these Terms and Conditions, the Company's employees, sub-contractors and/or agents are not authorised to make any representations or warranties concerning the Goods unless confirmed by a Director of the Company in writing.

2.5 No warranties, statements, promises or representations shall bind the Company unless expressly agreed in writing and signed by a Director of the Company or set out in the Contract.

3. Orders

3.1 Any quotation or estimate is valid only for a period of 24 hours (or such longer period as may be specified in such quotation or estimate) and may be withdrawn by the Company by oral or written notice at any time during this period.

3.2 The acceptance of an estimate or quotation, and/or placing of an order, by the Customer shall be deemed to be an offer by the Customer to buy the Goods subject to these Terms and Conditions.

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3.3 No estimate or quotation accepted, or order placed, by the Customer shall be binding on or deemed to be accepted by the Company unless and until it is accepted by the Company in accordance with clause 3.4. The Company will be entitled to refuse any order placed by the Customer (including any order placed by the Customer by way of accepting an estimate or quotation issued by the Company), at its sole discretion.

3.4 Estimates or quotations accepted, or orders placed, by the Customer shall only be treated as having been accepted by the Company if the acceptance has been confirmed in writing by the Company or upon the Goods being delivered, whichever occurs first. The Contract is only formed upon such acceptance.

3.5 The Customer shall ensure that the terms of any order placed by the Customer and any specification supplied to the Company are complete and accurate.

3.6 The Company is under no obligation to accept the withdrawal or variation of a Customer's order or the cancellation of a Contract which has been accepted by the Company. If the Company agrees to accept the Customer's withdrawal or variation of any order or cancellation of a Contract, such agreement will only be effected if confirmed in writing signed by an authorised representative of the Company on such terms as the Company may stipulate.

4. Goods

4.1 The Customer shall be solely responsible for its selection of Goods and the fitness of the Goods for any particular purpose.

4.2 Subject to clause 4.3, the quantity and description of the Goods shall be as set out in the Company's written confirmation of order or, where the Company does not confirm in writing, the quantity and description of the Goods shall be as set out in the estimate or quotation provided by the Company or otherwise as quoted by the Company to the Customer when the Customer places its order.

4.3 The Company reserves the right to make any changes to the Contract due to changes in the specification of the Goods made by its suppliers or changes that are required to conform with any applicable safety or other statutory requirements. The Company will use its reasonable endeavours to advise the Customer of any such changes as soon as it receives notice of such changes from its suppliers. The Customer shall not be permitted to cancel the Contract if the changes do not materially alter the quality or performance of the Goods or any of the material terms of the Contract (in each case, in the Company's sole opinion). For all other types of changes, cancellation of the Contract may be possible at the Company's discretion and subject to such terms as the Company may require. The Company will not be liable in respect of any loss or damage caused by or resulting from any such changes to or cancellation of the Contract.

4.4 Unless otherwise agreed, the Goods are supplied in accordance with the manufacturer's standard specifications as may be substituted or modified from time to time in accordance with clause 4.3.

4.5 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures and/or website(s) are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract.

5. Price

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5.1 Notwithstanding any estimate, quotation, or price list, unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's written confirmation of order. If the Company does not confirm in writing the Customer's order (including an order placed by the Customer by way of accepting an estimate or quotation issued by the Company), the price for the Goods shall be the price specified in the estimate or quotation provided by the Company or, where no estimate or quotation was provided, as quoted by the Company to the Customer when the Customer placed its order.

5.2 The Company reserves the right to amend the price for the Goods after written confirmation of order but prior to delivery to the Customer and in this event the Company will provide at least 5 days' written notice to the Customer. If the Customer does not agree with the amended price then it may cancel the order within such 5 day period otherwise it will be deemed to have accepted the amended price.

5.3 The prices of the Goods are exclusive of Value Added Tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which the Customer shall pay in addition when it is due to pay for the Goods.

5.4 The Company shall be entitled to render an invoice to the Customer any time after the Goods have been despatched.

6. Payment

6.1 Unless otherwise agreed in writing by both parties, the price for the Goods (together with any sums due to the Company in respect of any or all of the items listed in clause 5.2) shall be payable in pounds sterling in cleared funds not later than 30 days from the date of the relevant invoice. No payment shall be deemed to have been received until the Company has received cleared funds in respect of the full amount outstanding.

6.2 Time for payment shall be of the essence.

6.3 The Company may in its absolute discretion set, and thereafter vary or withdraw, a credit limit for the Customer. The Company reserves the right to reject the Customer's order (including an order placed by the Customer by way of accepting an estimate or quotation issued by the Company) should the value of the Goods to be supplied cause the Customer's credit limit to be exceeded or if the Customer's credit limit is already exceeded (whether or not the Customer is aware of such limit and/or any payment is overdue).

6.4 Unless otherwise agreed in writing by both parties, the Customer shall make all payments due under the Contract in full without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise including but not limited to any amount claimed by or due to the Customer from the Company whether pursuant to the Contract or on any other account whatsoever.

6.5 Any monies received by the Company from the Customer may be applied by the Company at its option in any order against any handling charge and/or interest charged and/or principal sums due to the Company from the Customer.

6.6 If the Customer fails to pay the Company by the due date any sum due pursuant to the Contract, the Company reserves the right to charge interest at 3% above the Royal Bank of Scotland plc base rate for the time being accrued on a day to day basis from the due date for payment until payment is made.

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6.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

7. Delivery

7.1 Dates and times for despatch and/or delivery and/or re-delivery are estimates only and are not guaranteed. Time is not of the essence in relation to such dates and times, although the Company will use its reasonable endeavours to ensure despatch and/or delivery and/or re-delivery on the dates and times agreed between the parties.

7.2 The Goods will be delivered at the place specified in the Company's written confirmation of order. If no place of delivery is specified (or if no written confirmation is issued by the Company), delivery shall be at the Customer's place of business as shown in the Company's records immediately prior to receipt by the Company of the Customer's acceptance of a quotation or estimate and/or placement of an order.

7.3 The Company shall not be required to fulfil estimates or quotations accepted, or orders placed, by the Customer for Goods in the sequence in which they are placed.

7.4 Where Goods are to be or may be delivered in instalments, each delivery shall constitute a separate and distinct Contract and failure by the Company to deliver, and/or any claim by the Customer in respect of, any instalment shall not entitle the Customer to repudiate and/or terminate the Contract as a whole (or any other Contract or instalment).

7.5 The Customer shall procure during normal working hours that the Company and its carriers have free right of access to the address for the purpose of delivering the Goods.

7.6 If the Customer shall for any reason, refuse to take delivery of any Goods, then such Goods will be deemed to have been delivered on time and the Company may store the Goods at the Customer's risk until delivery and the Customer shall be liable for all related costs and expenses (including without limitation storage and insurance).

8. Acceptance of Goods

On delivery the Customer must inspect the Goods immediately and will be deemed to have accepted the Goods as being in conformity with the Contract, unless it notifies the Company otherwise in accordance with clauses 9.1, 9.2, 9.3 or 12.1.

9. Damaged and/or Missing Goods, Goods Not As Ordered, Late Delivery and Non-Delivery of Goods

9.1 If on delivery Goods are damaged and/or items are missing, the Customer must notify the Company of such damage and/or missing items in writing within 24 hours or by 11am on the day after delivery, whichever is earlier..

9.2 If on delivery the Goods are not as those ordered by the Customer, the Customer must notify the Company in writing within 24 hours of delivery.

9.3 If Goods are not delivered by the expected time of delivery, the Customer must notify the Company of such late or non-delivery in writing within 24 hours of the expected time of delivery.

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9.4 Any Liability of the Company for any damaged and/or missing Goods and/or any late or non-delivery of Goods and/or any Goods which are not those ordered by the Customer shall be limited, at the Company's sole option, to repairing or replacing such Goods within a reasonable time (or, in the case of late or non-delivery, delivering the Goods within a reasonable time) or issuing a refund or credit for the price paid by the Customer for such Goods, which shall be the Customer's sole remedy in respect of such Goods. If the Customer fails to provide written notice in accordance with clause 9.1, the Company shall have no liability whatsoever to Customer and the Customer shall be liable to pay for the Goods.

9.5 If the Company does not comply with clause 9.4, the Customer may cancel its order and the Company will refund the Customer any sums which the Customer has paid to the Company in respect of that order or part of the order which has been cancelled.

9.6 The Company shall not be required to repair, replace, credit or refund any Goods under clause 9.4 that it considers, in its sole opinion, have been altered or tampered with.

10. Title and Risk

10.1 Risk in the Goods shall pass to the Customer at the time of delivery. Delivery shall be deemed to occur on the earlier of:

10.1.1 at the time when the Goods arrive at the place of delivery if the Company delivers the Goods by its own transport or arranges transport (regardless of whether or not the Customer accepts such delivery); or

10.1.2 after the expiration of 3 working days from the Customer being notified that the Goods are ready for collection, if the Goods are to be collected from the Company's premises; or

10.1.3 when the Goods leave the Company's premises in any other circumstances.

10.2 The Company shall retain title to and ownership of the Goods until it has received payment in full of all sums due and/or owing for all Goods supplied to the Customer by the Company under this or any other Contract, despite the delivery of such Goods and/or the passing of risk in those Goods to the Customer.

10.3 Until ownership of the Goods has passed to the Customer, the Customer shall at its cost:

10.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

10.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

10.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.3.4 maintain the Goods in satisfactory condition, in conditions that adequately protect and preserve them, and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and

10.3.5 grant the Company free and unrestricted access to any premises of the Customer where Goods owned by the Company may be to inspect such Goods.

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10.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

10.4.1 any sale shall be effected in the ordinary course of the Customer's business; and

10.4.2 any such sale shall be a sale of the Customer's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

10.5 The Company shall be entitled to recover payment for the Goods despite ownership of any of the Goods not having passed from the Company.

10.6 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 10 shall remain in effect.

11. Warranties

11.1 The Company warrants that it has good title to or licence to supply all Goods to the Customer.

11.2 The Company does not manufacture the Goods (or where the Goods comprise of computer software does not publish or license the software) and subject to this clause only sells the Goods with the benefit of the manufacturer's, publisher's or licensor's warranty.

12. Defective Goods

12.1 Any defect or suspected defect in the Goods must be notified in writing to the Company within:

12.1.1 5 days of delivery where the defect should be apparent on a reasonable examination in accordance with clause 8; or

12.1.2 where the defect is not one which should be apparent on reasonable inspection, not later than 6 months from the date of delivery of the Goods and in any event within the manufacturer's warranty period for the relevant Goods.

If the Customer does not so notify the Company, the Goods shall be deemed to have been accepted by the Customer as having been delivered in all respects in accordance with the Contract and the Customer will not be entitled to reject the Goods and, subject to clause 15.9, the Company will have no liability whatsoever for such defect.

12.2 Upon the Customer notifying the Company of any defective Goods, the Company shall confirm whether the defective Goods are covered by the manufacturer's, publisher's or licensor's warranty. If the defective Goods are covered by a manufacturer's, publisher's or licensor's warranty, the Company will notify the Customer that the defective Goods are so covered and whether:

12.2.1 It is the policy of the manufacturer, publisher or licensor to deal with the Customer directly, in which case the Customer shall deal with the manufacturer, publisher or licensor direct and comply with any relevant procedures and instructions of the manufacturer, publisher or licensor and the Company shall have no further Liability to the Customer; or

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12.2.2 It is the policy of the manufacturer, publisher or licensor for the Company to deal with the Customer, in which case the Customer shall deal with the Company and comply with the instructions of the Company and any instructions of the manufacturer, publisher or licensor and clauses 12.3 to 12.5 will apply.

12.3 If the Goods are proved to the Company's satisfaction not to comply with the warranty at clause 11, the Company will either, at the Company's option, refund, credit, repair or replace such defective Goods in accordance with any refund, credit, repair or replacement obtained by the Company from the manufacturer, publisher or licensor of the Goods which will be the Customer's sole remedy in respect of such defective Goods under the warranty.

12.4 The Company will accept Liability for defective Goods only to the extent that the Company is entitled to make a claim under the manufacturer's, publisher's or licensor's warranty or other defective Goods terms and actually obtains from the manufacturer, publisher or licensor a refund, credit, repair or replacement of defective Goods.

12.5 The Company shall have no Liability in respect of:

12.5.1 defective Goods where the defect has been caused or contributed to by the Customer to the extent so contributed;

12.5.2 defective Goods, where the Customer continues to use such defective Goods after the defect has become apparent or suspected or should reasonably have become apparent to the Customer;

12.5.3 faults arising after risk in the Goods has passed to the Customer which are caused by any subsequent mechanical, chemical, electrolytic or other damage not due to a defect in the Goods as appropriate; and/or

12.5.4 faults or defects caused by wilful damage, abnormal working conditions, failure to follow the Company's, manufacturer's, licensor's and/or publisher's instructions, misuse, alteration or repair or modifications of Goods without the Company's approval, improper maintenance or negligence, in each case on the part of the Customer or a third party.

12.6 If the defective Goods are not covered by the manufacturer's, publisher's or licensor's warranty, the Company will notify the Customer that that is the case and the Company may in its sole discretion and on such terms as it may determine refund, credit, repair or replace such defective Goods but is not obliged to do so.

12.7 Any work carried out by the Company to the Goods which is not covered by the warranties contained in or referred to in this clause 12 will be payable by the Customer in accordance with the Company's standard rates in force at the time.

13. Returns

13.1 Unless clauses 9.4, 12.3 or 12.6 apply, the Company will not ordinarily accept returns of any Goods. Any returns will be at the Company's sole discretion and on such terms as the Company may require including but not limited to the payment of a handling charge.

13.2 The Customer agrees at its cost, at the Company's and/or the relevant manufacturer's, publisher's or licensor's request to return any defective Goods to the Company, manufacturer, publisher or licensor as appropriate for inspection and/or testing. Only if the Company requests that defective Goods are returned to it

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for inspection and/or testing and the Goods prove defective will the Company reimburse the Customer for the cost of returning the defective Goods. If the Goods do not prove to be defective, the Customer will be obliged to keep the Goods and will be responsible for and reimburse on demand by the Company the cost of the Company returning the Goods to the Customer and the Customer will immediately pay in full the price for the Goods if the Customer has not already done so.

14. Returning Goods (for whatever reason)

14.1 This clause will apply to all returns of Goods to the Company for whatever reason.

14.2 Any Goods returned to the Company must be returned in accordance with the following:

14.2.1 the prior written authority of the Company must be obtained;

14.2.2 the Goods must be returned, together with their original packaging, within 5 days of the Company's authority to return being given;

14.2.3 the Goods must be properly packed;

14.2.4 save for defective or damaged Goods, the Goods must be unopened and in a saleable condition and if they are not in a saleable condition the Company reserves the right to charge the Customer for bringing such Goods to a saleable condition;

14.2.5 the Goods must be accompanied by a list of the Goods returned and such other information as the Company may require; and

14.2.6 save for damaged Goods or defective Goods returned under clause 12.6, the Goods must still be covered by warranty in accordance with clause 11.2.

14.3 The Company shall not be required to repair, replace, credit or refund any Goods under clauses 9.4, 12.3 or 12.6 until after the original Goods have been returned in accordance with clause 14.2.

15. Liability

15.1 The Company shall have no Liability to the Customer if the price for the Goods has not been paid in full by the due date for payment.

15.2 Subject to clauses 15.9, the Company shall have no Liability to the Customer for defective Goods, Goods that are damaged and/or missing, Goods that are not as ordered and/or late or non-delivery of Goods unless the Company is notified of such within the appropriate time limit set out in these Terms and Conditions.

15.3 The Customer shall produce to the Company written evidence of any claims for which it is alleged that the Company is liable together with written details of how the loss was caused by the Company and the steps the Customer has taken to mitigate the loss before the Company shall have any Liability for the claim by the Customer.

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15.4 The Company shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Company.

15.5 The Company shall have no Liability to the Customer for any failure to perform, or delay in performance of, the Contract (other than in relation to payment) to the extent that such delay is due to any events outside the Company's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes or lock-outs (whether such labour disputes, strikes or lock-outs affect the workforce of the Company and/or any other person), riots, civil commotion, acts or threats of terrorism, malicious damage, explosion, governmental actions, delay or non-performance by third parties or suppliers and any other similar events. If the Company is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delay such performance. In the event that the time for performance shall be extended for a period in excess of 3 calendar months, either party shall be entitled to cancel the Contract or any outstanding part of the Contract by giving written notice to that effect to the other party, and the Customer shall pay the price for all Goods supplied to the date of termination.

15.6 Subject to clause 15.9, the Company shall have no Liability to the Customer for any:-

15.6.1 consequential losses;

15.6.2 loss of profits and/or damage to goodwill;

15.6.3 economic and/or other similar losses;

15.6.4 special damages and indirect losses; and/or

15.6.5 business interruption, loss of business, loss of contracts, loss of opportunity, loss of or damage to data and/or loss of production,

whether in contract, tort (including negligence and breach of statutory duty) and/or misrepresentation, under statute or otherwise, howsoever caused including any liability arising from a breach of, or a failure to perform, or a defect or delay in the performance of, any of the Company's obligations under the Contract and/or where caused by a deliberate repudiatory breach by the Company.

15.7 The Customer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer (including by maintaining an adequate stock of Goods).

15.8 The Company's total Liability to the Customer shall not exceed 125% of the total price of the Goods paid or payable by the Customer to the Company under the Contract, whether in contract, tort (including negligence and breach of statutory duty) and/or misrepresentation, under statute or otherwise, howsoever caused including any liability arising from a breach of, or a failure to perform, or a defect or delay in the performance of, any of the Company's obligations under the Contract and/or where caused by a deliberate repudiatory breach by the Company.

15.9 Nothing in the Contract shall exclude or limit the Liability of the Company for death or personal injury due to its negligence, fraud or fraudulent misinterpretations, or for any other liability which it is not permitted to exclude or limit as a matter of law.

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15.10 All warranties, terms, conditions and duties implied by law including, without limitation, those relating to fitness for purpose, quality or adequacy are excluded to the fullest extent permitted by law.

15.11 Nothing in the Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a consumer. Any provision which would be void under any consumer protection legislation or other legislation shall to that extent, have no force or effect.

15.12 The limitations in the Contract are necessary in order to allow the Company to provide the Goods at its current prices.

16. Default

16.1 If the Customer:-

16.1.1 fails to make any payment to the Company when due;

16.1.2 breaches the terms of the Contract (or any other Contract) and, if the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;

16.1.3 persistently breaches any one or more terms of the Contract (or any other Contract);

16.1.4 pledges or charges any Goods which remain the property of the Company, or ceases or threatens to cease to carry on business, or passes a resolution for its winding-up or a winding-up order is made against it by a court or it proposes to compound with its creditors, applies for an interim order under Section 252 Insolvency Act 1986 (the "Act") or has a bankruptcy petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets, or is unable to pay its debts within the meaning of section 123 of the Act, or takes or suffers any similar action in any jurisdiction;

16.1.5 appears to the Company due to the Customer's credit rating to be financially inadequate to meet its obligations under the Contract (or any other Contract);

16.1.6 places an order (including in response to an estimate or quotation issued by the Company) which, if accepted, would cause the Customer's credit limit to be exceeded, or where such credit limit has already been exceeded; and/or

16.1.7 appears reasonably to the Company to be about to suffer any of the above events;

then the Company shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 16.2.

16.2 If any of the events set out in clause 16.1 occurs in relation to the Customer then:-

16.2.1 the Company may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Goods owned by the Company may be and repossess and dispose of or sell any Goods found which are owned by the Company so as to discharge any sums due to the Company under this or any other Contract;

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16.2.2 the Customer automatically is no longer entitled to re-sell, use or part with the possession of any Goods owned by the Company until the Customer has paid in full all sums due to the Company under the Contract (or any other Contract) unless the Company gives its express written agreement to such use and/or disposal of the Goods;

16.2.3 the Company may withhold delivery of any undelivered Goods and stop any Goods in transit due under the Contract (or any other Contract);

16.2.4 the Company may cancel, terminate and/or suspend the Contract and/or any orders without Liability to the Customer under the Contract (or any other Contract); and/or

16.2.5 all monies owed by the Customer to the Company under the Contract (or any other Contract) shall forthwith become due and payable.

16.3 The Company shall have a lien over all property or goods belonging to the Customer which may be in the Company's possession in respect of all unpaid sums due from the Customer to the Company.

16.4 If any monies due to the Company from the Customer have not been paid within 14 days of the due date the Company shall be entitled on 14 days' notice to the Customer to dispose of any property or goods over which it has a lien in accordance with clause 16.3 (and the Customer agrees that the Company may give good title for such property and/or goods) as it thinks fit and shall apply the proceeds of sale firstly in discharging any costs or expenses of sale, secondly in repaying any interest owed by the Customer to the Company, thirdly in payment of any principal sums owed to the Company and fourthly the Company shall account to the Customer for the remainder (if any).

16.5 This clause 16 shall survive termination of the Contract for whatever reason.

17. Intellectual Property

17.1 The Customer hereby acknowledges that any intellectual property or other proprietary rights used on or in relation to the Goods supplied under the Contract, including but not limited to any title or ownership rights, patent rights, copyrights and trade secret rights, at all times and for all purposes vest and remain vested in the manufacturer, publisher and/or licensor of the Goods, not the Customer, and are not transferred to the Customer under any circumstances.

17.2 The Customer further acknowledges that the Company has no duty to defend, indemnify or hold the Customer harmless from any Liability incurred by the Customer or against any claims brought against the Customer arising out of or in connection with the infringement of a third party's intellectual property and/or proprietary rights.

17.3 The Customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of licence attached to any Goods supplied and delivered by the Company (including if so required the execution and return of a software licence) and that failure to comply with such terms and conditions could result in the Customer being refused a licence or having the same revoked by the proprietary owner. The Customer further agrees to indemnify and keep indemnified the Company in respect of any Liability incurred by the Company as a result of any breach by the Customer of such terms and conditions.

18. Confidentiality

Probrand Limited

Alpha Tower 11th Floor,
Suffolk Street Queensway, Birmingham, B1 1TT

Reception 0800 124 4701

Sales 0800 977 5969

probrand.co.uk

Registered in England & Wales, 2653446
Registered Office: Northern Assurance Buildings,
9-21 Princess Street, Manchester. M2 4DN.



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The Customer agrees that it will keep confidential and not use except for the purposes contemplated by the Contract all information relating to the Goods which may be disclosed to it or which it may learn except where such information is public knowledge or is required to be disclosed by law.

19. Data Protection

19.1 The parties are committed to respecting the privacy rights of individuals. Where either party collects and transfers any personal data to the other party, that party and the other party will comply with the relevant laws and regulations relating to that collection and transfer and agree also to comply with relevant laws and regulations relating to the storage, maintenance and processing of such personal data.

19.2 The Customer agrees that the Company may make such enquiries and searches and obtain such references as the Company considers necessary from any person, firm or company including any credit reference agency (which will keep a record of any search made) and may disclose the results of those enquiries, searches and references and any information given by the Customer to any credit reference agency or to any other company in any corporate group of which it is a member, to any company or business associated with it and to any person, firm or company acting on the Company's behalf for any purposes connected with the Company's business.

20. Weee

The Customer and the Company agree to comply with their respective obligations under the Waste Electrical and Electronic Equipment Regulations 2006/3289.

21. Access, Security and Fraud Prevention

21.1 Access to the Company's portal for ordering, and/or accepting estimates or quotations for, Goods may be subject to using passwords, smartcards, other security devices or arrangements for access ("Security Credentials") provided by the Company. Such Security Credentials must not be shared. The Company may change Security Credentials with notice to the Customer. The Customer will use its best endeavours to ensure that it secures its computing environments according to generally accepted industry standards to ensure that any Company online portal cannot be accessed by any unauthorised person or malicious software, and immediately remedy any security breach of which it becomes aware.

21.2 Without prejudice to the generality of clause 21.1, the Customer shall not pass any on-line or other login, access, user and/or security details and/or passwords to third parties under any circumstances and will ensure that these remain confidential.

21.3 The registration for and/or use of login, access, user and/or security details and/or passwords indicate that the Customer consents to orders and/or information placed by it and in its name.

21.4 The Customer agrees and acknowledges that it will be solely responsible for any orders placed by non-authorised users of the Company's ordering portal or for any other such fraudulent activity using its Security Credentials, and the Customer shall indemnify and keep indemnified the Company against any and all Liability incurred by the Company arising out of or in connection with any breach of the Customer's obligations under this clause 21 (including in respect of any orders and/or information placed using the Customer's Security Credentials).

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22. Export Limitation

22.1 The Customer acknowledges and agrees that the Goods subject to the Contract, may be subject to the export control laws and regulations of the United States, EU and England and Wales. The Customer will comply with all these laws and regulations.

22.2 The Customer shall not, without prior appropriate government authorisation, export, re-export, or transfer any Goods subject to the Contract, either directly or indirectly, to any country subject to a U.S. trade embargo or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury or any other comparable European or local regulation.

23. General

23.1 If at any time any one or more of the provisions of the Contract becomes invalid, illegal or unenforceable in whole or in part, such provision(s) shall be deemed severed from the Contract and the validity, legality and enforceability of the other provisions and the remainder of any affected provision shall be unaffected and shall remain in full force and effect.

23.2 The rights and remedies under the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure or delay by the Company in asserting or exercising any such rights or remedies.

23.3 The Contract (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in all respects in accordance with the English Law and subject to the non-exclusive jurisdiction of the English Courts.

23.4 The Customer agrees to indemnify and keep indemnified the Company against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including increased administration costs and legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Company and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.

23.5 The Customer shall not assign, sub-contract or otherwise transfer the Contract and/or any of its rights or obligations under it without the written consent of the Company. The Company may assign, sub-contract or otherwise transfer the Contract and/or any of its rights and/or obligations under it without the consent of the Customer.

23.6 All third party rights are excluded and no third party shall have any right to enforce the Contract. This shall not apply to members of the Company's group from time to time who shall, subject to the Company's consent, have the right to enforce the Contract as if they were the Company. Any rights of a third party to enforce the Contract may be varied and/or extinguished by agreement between the parties to the Contract without the consent of any such third party.

23.7 The Contract contains the whole agreement between the parties and it supersedes any prior written or oral agreement between them in respect of its subject matter and is not affected by any other promise, representation,

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warranty, usage, custom or course of dealing. Subject to clause 15.9, the parties confirm that they have not entered into the Contract in reliance upon, will not have any remedy in respect of, any representation that is not expressly incorporated into the Contract.

23.8 Any notice given in connection with the Contract must be in writing and must be delivered by hand or sent by prepaid first class or special delivery post to the relevant party, at its address provided by it to the other party in writing, or to its registered office. Notices will be deemed to have been received: if sent by pre-paid first class or special delivery post, at 9.00am on the second working day (in England) after posting (exclusive of the day of posting); and if delivered by hand, on the day of delivery, provided that, where such delivery occurs after 4.00pm on any working day (in England), service will be deemed to occur at 9.00am on the next following working day (in England).

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