

# GENERAL TERMS AND CONDITIONS FOR BUSINESS, DELIVERY AND PAYMENT



# 1. SCOPE AND VALIDITY

- 1.1. These General Terms and Conditions (“Terms”) in effect at the time of purchase shall apply to all commercial transactions between pro aqua Diamantelektroden Produktion GmbH, Parkring 1, 8712 Niklasdorf, Fn 243229s („pro aqua“) and the Customer.
- 1.2. “Customer” means a natural or legal person, public or private, who makes use of pro aqua’s services or purchases products and who is in a contractual relationship with pro aqua or who is about to enter into one in accordance with section 2.
- 1.3. “Business-to-Business Customer” or “B2B Customer” means a Customer who has entered into a contractual relationship with pro aqua as part of the business of their company, in accordance with Sec. 1 Austrian Consumer Protection Act (“KSchG”).
- 1.4. “Business-to-Consumer Customer” or “B2C Customer” means a Customer who has entered into a contractual relationship with pro aqua that is not part of the business of their company and for whom the provisions of the Austrian Consumer Protection Act (“KSchG”) apply.
- 1.5. “Business-to-Consumer Transaction” or “B2C Transaction” means a transaction with a Customer which is not part of the business of the Customer’s company, and where the Customer purchases the products or services for their private use.
- 1.6. If a transaction is not a B2C Transaction, pro aqua recognises conditions or agreements deviating from the contract only if they have been confirmed in writing.
- 1.7. If the Customer’s General Terms and Conditions conflict with these General Terms and Conditions, all corresponding provisions shall become part of the contract, while any conflicting provisions shall be replaced by the applicable statutory default provisions.

# 2. ORDERING AND CONTRACT CONCLUSION

- 2.1. Products or services may only be ordered by natural persons of unlimited legal capacity, or, if by a legal entity, only through an authorised natural person who must be named.
- 2.2. Any data requested in the ordering documents must be entered completely and correctly. If the data changes at any point after the order has been submitted, the Customer shall correct the data at the earliest opportunity in a written communication to pro aqua.
- 2.3. By placing an order, the Customer submits a binding offer for the conclusion of a contract for the purchase and/or delivery of products from pro aqua. Upon receipt of the Customer’s offer, pro aqua will send the Customer an email or a letter by post, confirming the receipt of the order or specifying the details thereof (“Order Confirmation”).
- 2.4. The Order Confirmation does not constitute the acceptance of the order, but merely informs the Customer that pro aqua has received the order. A contract is deemed concluded with a B2B Customer when pro aqua dispatches the ordered product to the Customer. A contract is deemed concluded with a B2C Customer when the product is dispatched to the Customer and this dispatch has been confirmed with a second email (“Dispatch Confirmation”). Customers who are consumers within the meaning of the Austrian Consumer Protection Act (KSchG) shall remain bound by their offer for 10 working days. Business customers (B2B) shall remain bound by their offer for 14 working days. Products from the same order, if not specified in the Dispatch Confirmation or the Order Confirmation, are not included in the contract. Upon receipt of the Dispatch Confirmation and/or the Order Confirmation the Customer acknowledges and agrees to accept electronic invoices.

### 3. RIGHT OF WITHDRAWAL AND CANCELLATION

3.1. If the Customer is a consumer within the meaning of the Austrian Consumer Protection Act (KSchG), the Customer may withdraw from purchase contracts and other contracts aimed at the acquisition of goods against payment within 14 days, calculated from the day on which the consumer customer or a third party designated by the consumer customer, who is not the carrier, obtains possession of the goods, without stating any reasons. In the case of contracts for services, the 14-day withdrawal period begins on the day the contract is concluded. A B2C Customer may declare withdrawal from the contract („Withdrawal“) before the contract comes into force, or within 14 working days, Saturday not being a workday, after the contract has come into force. The Withdrawal shall not be bound to any specific form or reasons. To exercise their right to withdraw, the Customer must inform pro aqua by means of an unequivocal declaration of their decision to withdraw from the contract. The Customer may use the withdrawal form provided by pro aqua downloadable at [www.proaqua.at](http://www.proaqua.at), and may submit the completed form electronically. The prescribed time limit shall be deemed observed if the declaration of withdrawal has been sent within the deadline.

3.2. The Withdrawal, by written declaration or return of the products, shall be addressed to pro aqua Diamantelektroden Produktion GmbH, Parkring 1, 8712 Niklasdorf, Austria, [info@proaqua.at](mailto:info@proaqua.at).

3.3. The B2C Customer acknowledges and agrees that pro aqua begins the performance of the contract during the withdrawal period, so that in the case of a Withdrawal, pro aqua may request a proportionate fee as compensation for services rendered.

3.4. In the case of a Withdrawal, pro aqua shall refund all payments that the B2C Customer has made for the product(s), within 14 days of receipt of the returned product(s) without any charges or deductions. Unless otherwise agreed, the refund shall be made by the same means of payment used in the initial transaction.

3.5. Products suitable for parcel dispatch must be returned. The Customer agrees to bear the cost of the return delivery if the products delivered correspond to the order specifications. If not, the return shall be free of charge for the Customer.

3.6. The right of withdrawal does not apply to products manufactured according to specific customer requirements, or to goods delivered sealed which are not suitable for return for reasons of health protection or hygiene, provided that the seal has been removed after delivery.

3.7. A Customer the transaction with whom is not a B2C Transaction, or a B2C Customer outside of his statutory rights to withdraw, may only withdraw from the contract if pro aqua agrees in writing and is reimbursed for all costs incurred in relation to the withdrawal.

### 4. DELIVERY

4.1. Unless otherwise agreed, delivery will be made to the address specified by the Customer within 30 days of the issuance of the Dispatch Confirmation.

4.2. The place of performance shall be deemed to be the registered office of pro aqua, irrespective of the place of delivery or performance. For Customers who are consumers within the meaning of the Austrian Consumer Protection Act (KSchG), Section 8 KSchG shall remain unaffected.

4.3. pro aqua explicitly points out that any information on availability, dispatch, or delivery of a product or service is only an estimate and an approximation. This data shall not be binding. Exceptions may only be made if explicitly stated in writing.

4.4. If pro aqua is unable to fulfil a delivery or a service through no fault of their own (for example, by force majeure, traffic disruption, strike, non-fulfilment of a contract by a supplier, or unavailability of ma-

materials), the delivery period shall be extended by the period of delay. Legal rights shall remain unaffected.

4.5. Should a delivery to a Customer be impossible, for example the delivered item cannot be received by the Customer due to its size or weight, or the recipient is not present at the specified address, even though the product specifications and time of delivery were announced within a reasonable time, the Customer shall bear the cost of the unsuccessful delivery.

4.6. For non-consumer transactions and in the absence of an agreement to the contrary, all offers or quotations shall be in writing, time-restricted, non-binding and for consideration. Cost estimates are deemed to be non-binding and free of charge.

4.7. Any plans, sketches, designs, or information regarding measurements and weights, as well as technical descriptions, brochures, leaflets, samples, and so on, shall remain the property including intellectual property of pro aqua. The details specified therein – unless indicated to the contrary – are general guidelines and are in no way guaranteed characteristics. Any unauthorised use of the aforementioned documents entitles pro aqua to compensation for damages and/or injunctive relief.

4.8. pro aqua agrees to deliver the product or perform the service ordered once the Customer has fulfilled all of their contractual obligations.

## 5. PRICES AND PRICE CHANGES

5.1. The sales price of any product is specified in Euro and is intended to be the final price for the product. Value-added tax is included.

5.2. The sales price does not include delivery, shipping, or packaging costs. Delivery and shipping costs are calculated depending on the shipping provider and the type of transport (e.g. sea freight, air freight, truck, etc.) and—together with any additional packaging costs incurred—will be indicated and charged separately.

5.3. In the event of returns, pro aqua reserves the right to subsequently charge the standard shipping costs if the value of the order, after deduction of the returned items, falls below the free-shipping threshold.

## 6. PAYMENT, MATURITY AND DEFAULT

6.1. The Customer may pay the purchase price in cash, by bank transfer, credit card or prepayment. Unless otherwise agreed, all payments must be made within 7 days of receipt of the invoice. In the online shop, it is only possible to pay by prepayment using the provided payment methods.

6.2. pro aqua reserves the right to insist on a particular method of payment, or exclude a method of payment on a case-by-case basis.

6.3. In the event of default in payment, the consumer customer shall be obliged to pay the statutory default interest of 4% p.a., whereas the business customer shall be obliged to pay statutory default interest of 9.2% above the base interest rate p.a. pursuant to Section 456 UGB.

6.4. Unallocated payments will be allocated first to interest on costs, then costs, then interest on principal, and lastly on principal.

## 7. RETENTION OF TITLE

7.1. The ordered goods remain the property of pro aqua, even after delivery and handover to the Customer, until the full payment of the purchase price and all related charges and costs, whereby the price risk shall pass to the Customer. Upon delivery of the goods to the customer, the risk of loss, da-

mage, theft, deterioration in quality, and any similar impairment of the goods shall pass to the customer.

7.2. Before payment is made in full, the Customer agrees not to pawn the goods, pledge them as a security or grant any rights to the goods to third parties. The Customer shall immediately notify pro aqua in writing of any enforcement measures or any other third party actions affecting pro aqua's legal rights to the goods subject to retention of title. The Customer must object to such measures immediately, with reference to the title being retained by pro aqua.

## 8. SET-OFF

8.1. A B2C Customer shall only be entitled to set-off claims against amounts owed by the Customer to pro aqua, if these claims are legally related to the claims of pro aqua, established by a court of law, recognised by pro aqua or in the event of contractual partner's insolvency. B2B Customers shall not be entitled to any set-off.

8.2. B2C Customers shall be entitled to assert a right of retention only on the basis of counterclaims against pro aqua that are legally related to the claims of pro aqua. B2B Customers shall not be entitled to assert any right of retention.

## 9. DEFECTS, LIABILITY AND WARRANTY

9.1. If the underlying transaction constitutes a consumer transaction, the statutory claims shall remain unaffected. However, pro aqua shall not be liable to the consumer customer for any damage caused by pro aqua through slight negligence, except in the case of personal injury.

9.2. If a transaction is not a B2C Transaction, the following deviating provisions shall apply against the statutory warranty requirements:

- a.) Ascertainable or ascertained defects must be reported to pro aqua within 14 days of delivery or discovery. After this period, claims for warranty, damages or error can no longer be made, in accordance with Sec. 377 Paras. 2 and 3 UGB (Austrian Business Code).
- b.) If the defective parts have been altered by any party other than pro aqua, the Customer's claims shall not be covered by warranty.
- c.) The period for asserting warranty claims shall be six months from delivery of the goods. After this period, the assertion of any claims for damages based on warranty law shall also be excluded.
- d.) The occurrence of a defect during the delivery period must be proven by the Customer, contrary to the presumption rule of Sec. 924 ABGB (Austrian Civil Code).
- e.) In the event of a warranty claim, pro aqua may choose either to repair or to replace the item.
- f.) Contesting an order that pro aqua has already accepted on the grounds of error shall be excluded.
- g.) Deadlines for warranty claims by the Customer shall be agreed on a case-by-case basis.
- h.) pro aqua shall be fully liable for damages if pro aqua has acted intentionally or with gross negligence.
- i.) Furthermore, pro aqua shall be liable for negligent violation of material obligations, if such violation endangers the achievement of the contract purpose, or for the violation of duties whose fulfilment enables the proper implementation of the contract and whose compliance can generally be relied upon. In these cases pro aqua shall be liable, but only for foreseeable, typical damages. pro aqua shall not be liable for slightly negligent violations other than the duties mentioned above.

- j.) The aforementioned limitations on liability shall not apply to harm body and health, to defect after the acceptance of the warranty obligation, to the quality of the product and in cases of malicious nondisclosure of defect. Liability shall remain unaffected in accordance with Austrian product liability law.
- k.) A warranty obligation by pro aqua only exists when and to the extent that this has been indicated explicitly in a written offer or a written confirmation where the warranty obligation is stated in detail.
- l.) In addition, liability to B2B Customers shall exclude force majeure, consequential damages and loss of profits.
- m.) B2B Customers may not enforce laesio enormis against pro aqua.
- n.) Any liability for consequential damages and indirect damages shall be excluded.

## 10. DATA PROTECTION

pro aqua shall retain any information necessary for the successful completion of the transaction. All personal information shall be kept confidential.

## 11. OWNERSHIP AND COPYRIGHT

11.1. The design of pro aqua's products is partly design right protected. The presentation of the products in brochures, leaflets and transmitted pictures, drawings, sketches or any such documents are the intellectual property of pro aqua and their trading partners. All aforementioned documents as well as any other related documents made available during business transactions may not be used in other ways, or copied or made available to third parties without pro aqua's written consent. They must be handed over immediately upon request.

11.2. If pro aqua is not commissioned after a presentation, all pro aqua's services, especially the presentation documents and their content shall remain the property of pro aqua. The Customer is not entitled to use them further in whatever form. Furthermore, the documents must be returned to pro aqua immediately. Sharing the presentation documents with third parties, as well as their publication, realisation, reproduction, distribution or any such use is prohibited except by explicit permission of pro aqua.

11.3. In the same way, the Customer is not permitted to use any of the ideas and concepts introduced during the presentation, regardless of whether the ideas or concepts are copyright protected.

11.4. For the use of any deliverables provided by pro aqua that exceed the originally arranged purpose and scope of use, pro aqua's consent is necessary, regardless of whether these deliverables are copyright protected or not. pro aqua and the creator shall be entitled to a separate and appropriate remuneration.

11.5. For the use of pro aqua's deliverables and/or concepts, for which pro aqua has prepared concept or design drafts, it is also necessary to obtain pro aqua's consent, regardless of whether the deliverables are copyright protected or not.

## 12. REMINDER AND COLLECTION CHARGES

The Customer shall bear all necessary, reasonable and appropriate costs in the event that lawyers or collection agencies are required to intervene. The Customer is obligated under his contractual obligations to reimburse pro aqua for any incurred reminder and collection fees in the case of a default. With regard to the collection agency engaged, the Customer is not obliged to pay more than the maximum compensation, in accordance with the provisions of the Minister of Economic Affairs regarding the maximum rates for

collection agencies due compensation (Austrian Federal Law Gazette BGBl. No. 141/1996 as amended). If a lawyer is engaged, the Customer is obliged to pay the maximum compensation, in respect of the AHR 1976 as amended (Autonomous Tariff Guidelines of the Austrian Professional Association of Lawyers) guidelines and the Austrian Lawyers Tariff Act (BGBl. No. 189/1969 as amended). These guidelines can be downloaded at [www.oerak.at](http://www.oerak.at).

## 13. APPLICABLE LAW AND PLACE OF JURISDICTION

13.1. The contractual relationship between pro aqua and the Customer, as well as these Terms, are subject to Austrian Law. Other national laws as well as the United Nations Convention on Contracts for the International Sale of Goods (UN-CISG), are excluded.

13.2. Leoben shall be the place of jurisdiction for all conflicts arising from the contractual relationship between pro aqua and the Customer. For actions against B2C Customers under the Consumer Protection Act whose domicile or habitual place of residence is in Austria or whose place of employment is in Austria, the place of jurisdiction will be that of the district in which the B2C Customer has their domicile, habitual place of residence or place of employment.

13.3. Customers who do not speak German shall receive these Terms in English or, where appropriate, in their native language. In the case of uncertainty or doubt, especially regarding the acknowledgement or interpretation of these Terms, the German version of these Terms shall prevail.

## 14. ONLINE DISPUTE RESOLUTION PLATFORM

14.1. Customers have the option to submit complaints to the European Commission's Online Dispute Resolution (ODR) platform at: <http://ec.europa.eu/>.

14.2. You may also submit your complaint directly via email to: [info@proaqua.at](mailto:info@proaqua.at).

## 15. MISCELLANEOUS

15.1. By submitting an order, the Customer acknowledges the validity of these Terms.

15.2. All communications, requests, requirements, prompts and other notifications shall be submitted in writing and sent to the business address of the respective contractual partner.

15.3. pro aqua reserves the right to make changes to these Terms at any time without giving reasons.

15.4. Should one of the provisions in these Terms be invalid, a valid provision shall take its place. For B2C Customers, this provision will be provided by statute. For B2B Customers, the provision closest to the original provision shall be deemed valid. All other provisions of these Terms shall remain effective.

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