



# Profact Holding

## Terms and conditions

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF PROFAC T  
(PRODUCTS AND SERVICES) FOR COMPANIES**

**1. GENERAL**

- 1.1 The present General Terms and Conditions of Sale and Delivery ("Terms and Conditions") shall apply to all offers and agreements, deliveries and services to be provided of the private companies with limited liability that form part of the group of companies including and around Profact Holding B.V. ("Profact"), having its registered office in Breda, as referred to in article 24b Volume 2 'Burgerlijk Wetboek' (The Netherlands Civil Code). The most recent version of said Terms and Conditions shall always apply.
- 1.2 The Terms and Conditions shall be sent to the Client for no consideration at the Client's first request to that effect. The Terms and Conditions can also be consulted at the url [www.profact-international.com](http://www.profact-international.com).
- 1.3 In the present Terms and Conditions, the following shall be understood to be:
- a) Agreement: each and every agreement that comes into being between Profact and the Client, each change or supplement thereto, as well as all (legal) acts in preparation and/or execution of the Agreement
  - b) Client: each and every natural person or legal entity who or that requests Profact to provide a service or to deliver goods;
  - c) Products: all the goods delivered or goods to be delivered by Profact, not being products that are made available to Profact by the Client within the framework of the provision of Services agreed upon ("Goods");
  - d) Services: all activities (in any form or shape whatsoever and no matter what they be called) that Profact carries out for or for the benefit of the Client, in connection with the production of Products or not;
  - e) Terms and Conditions: the most recent version of the present general terms and conditions of sale and delivery for companies as filed at the office of the Chamber of Commerce under file number 64794504. The present Terms and Conditions shall be sent to the Client for no consideration at the Client's first request to that effect.
- 1.4 Unless explicitly otherwise agreed upon, the present Terms and Conditions shall apply to all offers, orders, order confirmations, arrangements, services and all agreements of any kind whatsoever resulting therefrom.
- 1.5 The Client shall accept the applicability of the present Terms and Conditions by the mere fact that a request for information is put in and/or Profact is requested to submit an offer. General uniform or specific general terms and conditions (of purchase) of a (potential) Client of Profact, shall be explicitly rejected by Profact in all cases, including in the event the other party refers to the latter general terms and conditions in a request to Profact to submit an offer.
- 1.6 Profact shall see to it that all the quotes, brochures, order confirmations, invoices and other information submitted in any form or shape whatsoever, be as accurate as possible. The information shall not be binding. Profact can also not be held liable for any typing error or printing error or any similar error in the aforementioned material.
- 1.7 If any stipulation of the present Terms and Conditions is wholly or partially null and void or is nullified for any reason whatsoever, the other stipulations of the present Terms and Conditions shall remain in full effect. The case ensuing, Profact and the Client shall consult each other in order to agree on stipulations that replace the null and void stipulations and/or the nullified stipulations, whereby the purpose and the tenor of the null and void stipulation and/or the nullified stipulation, shall be observed to the maximum possible

**2. OFFER AND ACCEPTANCE**

- 2.1 All offers made, quotes given and conditions imposed by Profact, shall be without any obligation, unless explicitly stated otherwise.
- 2.2 The Client can accept an offer during a term of thirty (30) days from the date of the offer, subject to another explicitly stated term of acceptance.
- 2.3 An offer or proposal shall state the result of the Services.
- 2.4 An Agreement shall only come into being after acceptance of the offer by the Client and a written confirmation thereof by Profact.
- 2.5 (Supplementary) arrangements or promises potentially made and changes

- potentially introduced shall only bind Profact if the authorised representative of Profact has confirmed them explicitly in writing.
- 2.6 The Client can only cancel and annul the Agreement if Profact consents to it in writing. The Client shall then be under the obligation to compensate the costs incurred by Profact in preparation – and partial – execution, as well as to compensate the adverse financial effects for Profact due to the non-execution of the Agreement. Said compensations shall jointly amount to minimum 10% of the contract value agreed upon.
  - 2.7 If the change to the Agreement or the agreement resulting therefrom lead to an increase of the costs, said costs shall be stated separately on the invoice to be sent to the Client.
  - 2.8 In the event of on-call agreements and/or framework agreements, the Agreement shall each time come into being the moment Profact receives the order for (partial) delivery within the framework of the on-call agreement or framework agreement and Profact confirms it in writing.
  - 2.9 If drawings, models, specifications, instructions, inspection instructions and the like, are made available by the Client and/or Profact during the execution of the Agreement, they shall form part of the Agreement.

### **3. SERVICES**

- 3.1 Profact shall guarantee that:
  - a) it disposes of the licences and/or certificates required for the provision of the Services, to the extent such apply;
  - b) the Services to be provided by or on behalf of Profact shall be provided in an expeditious, skilled and professional manner that may be expected of Profact and that the results shall be in conformity with the specifications and/or descriptions agreed upon;
  - c) the Services shall be provided having due regard to all the current legislation and rules and regulations, subject to the fact and to the extent non-compliance is to be blamed on the Client.
- 3.2 The Services that shall be provided, shall contain the services and/or deliveries listed in the Agreement.
- 3.3 If the Client wishes to purchase Services from Profact that are not listed in the Agreement, a new offer can be submitted for said Services.
- 3.4 Profact may provide incidental Services at the request of the Client, which shall afterwards be charged to the Client on the basis of the current rates or on the basis of an accepted offer or another written arrangement. Exceeding existing arrangements shall be considered to be incidental services.
- 3.5 The Services shall be provided at the location and the time agreed upon.
- 3.6 Profact shall see to it that only equipment, machines and/or components that are suited for the purpose to be realised, shall be used for the provision of the Services.

### **4. DELIVERY (PERIOD)**

- 4.1 Delivery period shall be understood to be the terms stipulated in the Agreement within which the Services have to be provided and/or the Products have to be delivered.
- 4.2 Delivery periods shall only be given approximately and shall only be indicative. The consequences of hindrance, non-reaction or non-appearance, shall be for the risk and account of the Client.
- 4.3 Exceeding the delivery period, including but not exclusively, exceeding the term due to complications during the transport of the Products or Goods, shall not entitle the Client to damages, including but not exclusively, consequential damage, nor to non-compliance with any obligation resulting from the present Agreement or another agreement linked to it, nor to the dissolution of the Agreement.
- 4.4 In the event of imminent exceeding of the delivery period agreed upon or the inability to provide the Services in due time, Profact shall quickly notify the Client thereof. The Contractor shall state in this respect the nature of the imminent exceeding of the delivery period, the measures he has taken and the anticipated duration of the delay.
- 4.5 The Products shall be delivered "Ex Works" as worded in the latest version of the ICC Incoterms 2000, unless explicitly agreed upon otherwise.
- 4.6 Completion shall be deemed to have taken place the moment the Products are

made available to the Client's customer by Profact. When the customer refuses to take delivery of the Products, they shall be stored for the risk and account of the Client, if the storage capacity of Profact allows for it. Products shall be stored for a period of maximum six (6) months. Upon expiry of said term, Profact shall be entitled to destroy the Products or to re-use them in a manner to be determined by Profact.

- 4.7 All deliveries shall be made in accordance with the customs and habits going with agreements regarding the delivery of optical media, meaning that maximum 5% more, or less, of the ordered quantity may be delivered with a maximum of 1,000, whereby the quantity actually delivered shall be charged.
- 4.8 In the event Products are delivered, Profact can deliver at its own discretion the batch of the order that is already ready or wait until the entire order is ready.
- 4.9 In the event of delivery of orders that relate to Products, in batches in accordance with the above, as well as in the event of deliveries of successive batches of an order by virtue of the Agreement, each delivery (completion) shall be deemed to constitute a separate agreement on which the Client can no longer go back in the event of acceptance of the goods delivered.
- 4.10 Unless otherwise agreed upon, the Client or the Client's customer shall be under the obligation to immediately take delivery of the order executed and after completion thereof.

## **5. PRICE**

- 5.1 All quotes and offers shall at all times be free of obligation, unless explicitly agreed upon and/or stated otherwise.
- 5.2 All prices offered by Profact shall be net prices in cash without discount and/or other levies, duties, excises, costs and surcharges owed at the time the Service concerned is provided or the Product concerned is delivered.
- 5.3 Any potential subsequent or supplementary tax, tax levy, duty, excise or other increase of any kind whatsoever and no matter how it may be called, or a potential increase of the above, or a potential price increase or a potential increase of the supplementary costs borne by Profact that materialize after the agreement has come into being, shall be charged on to the Client as yet, provided Profact send the Client a notification of this tenor.
- 5.4 If Profact is not able to provide the Services in circumstances that are normal for Profact and during office hours, the prices shall be increased by the corresponding potential extra costs. Said increase shall first be communicated and agreed upon.
- 5.5 All extra costs Profact incurs in connection with the Services and costs that are not listed in overviews of rates, offers, proposals, etc., shall be compensated by the Client.
- 5.6 The costs of third parties called in in consultation with and following approval of the Client, shall be for the Client's account and if Profact charges them on to the Client, they shall be increased by the corresponding additional costs for Profact in this respect.
- 5.7 If three (3) months have expired since the conclusion of the Agreement, Profact shall be entitled to adjust the price to changes to cost-deciding factors not being the increases as referred to in article 5.3, such as the costs of raw materials, wages and the exchange rate, that have possibly come into being during the period of time in between the conclusion of the Agreement and the delivery and/or payment.
- 5.8 All prices and/or rates shall be in Euro and exclusive of VAT, copyrights potentially owed and taxes, levies, duties and charges imposed by government and/or semi-government bodies, unless explicitly otherwise agreed upon in writing.
- 5.9 Unless explicitly otherwise agreed upon in writing, the costs relating to the installation and/or implementation of the Products delivered by Profact, shall exclusively be for the Client's account.

## **6. INVOICING AND PAYMENT**

- 6.1 Immediately after providing the Services or delivery of the Products, Profact shall send the Client an invoice for the Services that were provided and/or the Products that were delivered by Profact, unless otherwise agreed upon.
- 6.2 The Client shall pay the invoice within thirty (30) days from the date of invoice into a bank account stated by Profact unless otherwise agreed upon, in the absence of which the Client shall be in default without any notice of default and shall owe the

statutory commercial interest increased by 1.5% for each day or part thereof that payment remains forthcoming, commencing on the expiry date of the invoice up to and including the day of payment in full.

- 6.3 In addition to the principal and the interest for overdue payment, the Client shall owe all the costs, both judicial and extrajudicial costs, Profact incurs to collect its claim as well as to safeguard its rights. Judicial costs shall in any case be understood to include the statements of expenses of lawyers, experts and all those Profact has instructed to assist with the collection and/or whom Profact has instructed to conduct proceedings in this respect, even though the statements of expenses concerned are potentially higher than the amount the Court in the proceedings has budgeted due to costs at the expense of the party ruled against. Extrajudicial costs shall in any case be understood to include the statements of expenses and bills of expert (legal) advisors, debt-collection agencies, bailiffs and all those Profact has instructed to assist with the collection out of court.
- 6.4 Profact shall have the right to only deliver, at its own discretion, on condition of payment in advance or on conditions that deviate from those set out in the present article 6.
- 6.5 The Client shall never be entitled to suspend the payment of any invoice or to set it off against any claim on Profact.
- 6.6 If the Client is in default, applies for suspension of payments, is bankrupt, ceases his business (activities) or if Profact has any serious doubt that the Client shall be able to comply with his obligations in a proper and timely manner, the claims Profact has on the client shall be immediately due and payable.
- 6.7 Profact shall at all times be entitled to demand security for compliance by the Client with the latter's (financial) obligations vis à vis Profact, if Profact has good grounds to fear that the Client shall not comply with his obligations to pay or shall not comply with them in a timely manner. If the Client fails to furnish security, Profact shall have the right to stop the (further) execution of the Agreement(s) until the demanded security has been furnished.
- 6.8 Payment by the Client at an earlier point in time, shall primarily serve to pay the interest owed by the Client and the collection costs incurred by Profact and subsequently to pay the longest outstanding claims, even if the other party states that the payment relates to an invoice of a later date.
- 6.9 Profact shall be entitled to have a company forming part of the Profact group of companies other than the company with which the Client entered into the Agreement, make out the invoices. Payment of the invoice thus received by the Client, shall not relieve the Client of his obligations by virtue of the invoice also vis à vis the company with which the Client entered into the Agreement.

## **7. PACKAGING**

- 7.1 Profact shall be entitled to calculate the packaging at cost price.
- 7.2 The Client shall be under the obligation to return all packaging empty and in an undamaged condition within thirty (30) days after delivery for his own risk and account, in the absence of which Profact shall be entitled to charge the purchase costs of new packaging to the Client, increased by a fixed surcharge of 20% for all other direct and indirect costs, without prejudice to Profact's right to charge the costs actually incurred, to the Client.
- 7.3 The Client shall not change the labelling of the packaging, nor shall he provide it with other labels or print, subject to mandatory rules of law in the country where the Client is established. In the event of such statutory obligations, the Client shall comply with them and forthwith inform Profact thereof.
- 7.4 The obligations set out in the present article, shall apply accordingly to the Client's customers. The Client shall guarantee compliance by said customers with the present obligations vis à vis Profact.

## **8. COMPLAINTS AND GUARANTEES**

- 8.1 Profact shall guarantee the good quality of the Products delivered by Profact and shall guarantee that the Products can be used for the purpose for which they have been manufactured. The components used shall meet the standards imposed on them and shall be in accordance with the specifications potentially given and/or with the known specifications.
- 8.2 Profact shall account for the Services whose result can normally be guaranteed due to their nature. The Services whose result can normally not be guaranteed due to

- their nature, shall be provided to the best of Profact's knowledge and ability and in accordance with the requirements of proper workmanship, but Profact cannot give any guarantee in respect of the results of the Services provided.
- 8.3 Should the Products show any unacceptable deviations, damage, shortcomings and/or or other defects, Profact shall be prepared to repair and/or compensate them on the terms and conditions set out in the present article.
- 8.4 Considering the stipulations of article 8.3, the Client shall be under the obligation to check the Products delivered and the Services provided, within seven (7) after delivery for potential shortcomings and report them forthwith, but not later than within 48 hours after delivery, to Profact in writing and by registered mail, in the absence of which Profact shall be deemed to have fully complied with its obligations in respect of the Products and the Services and all of the Client's rights in that respect shall lapse.
- 8.5 If and to the extent there is a matter of a complaint filed in due time, whereby the proof of timely filing as well as the correctness of the complaint shall be on the Client, which has been accepted and found justified by Profact, the Client shall have to return the Products to Profact within eight (8) days from the day the complaint is accepted, whereby the Products shall have to be accompanied by a return advice stating the date and number of the delivery invoice and the reason for the return shipment. Profact shall subsequently be held to replace the initial Products by Products of the quality agreed upon, or to repair the Products, all this at the discretion of Profact. Each and every other or more far-reaching liability on the part of Profact, shall be excluded.
- 8.6 If complaints prove to be unfounded, the examination costs may be charged to the Client, who shall be held to take back the Products he complained about for his own risk and account.
- 8.7 Complaints about invoices or the scope of a delivery, shall have to be filed in writing with Profact within fourteen (14) days from the date of invoice accurately stating the nature of and the grounds for the complaint(s).
- 8.8 Complaints about shortcomings in and damage to a shipment received by or on behalf of the Client, shall have to be mentioned on the consignment note, in the absence of which any complaint in this respect shall lapse.
- 8.9 In the event a complaint is filed, the Client shall not be entitled to suspend compliance with his obligations vis à vis Profact.

## **9. LIABILITY / DAMAGES**

- 9.1 Profact shall not be liable for any damage, both direct and indirect, including but not limited to, trading loss, consequential damage, damage to movable and immovable goods (of third parties) or people by any cause whatsoever on the part of the Client or the third party in connection with the Products delivered or the Services provided by Profact, unless the damage has arisen as a consequence of intent or gross negligence on the part of Profact.
- 9.2 Profact shall not be liable for the contents of data that are or shall be affixed to Products with the intervention of Profact or not (image, sound or data).
- 9.3 Profact shall not accept any liability for damage being the consequence of the failure on the part of the Client to provide the information and/or materials required to provide the Services, or the overdue or improper provision of said information and/or materials by the Client.
- 9.4 Profact shall not accept any liability for damage being the consequence of Goods delivered to Profact.
- 9.5 In the event Profact is held liable despite the stipulations of the present article, to compensate any damage, the liability for the compensation shall be limited to the net value of the invoice concerning the individual transaction or the maximum payment to be made by the insurer of Profact if the net value of the invoice exceeds the amount to be paid by the insurer.
- 9.6 Profact shall not accept any liability for faulty (components of) products it uses for the provision of the Services.
- 9.7 If the ratio of the performances to be delivered by Profact compared to the scope of the damage sustained by the Client gives rise to do so, the damage to be compensated by Profact shall be moderated.
- 9.8 The Client shall indemnify Profact against any claim lodged by any third party in respect of damage that is the consequence of the Products delivered and/or the Services provided by Profact.

## **10. INTELLECTUAL AND INDUSTRIAL PROPERTY**

- 10.1 All industrial and intellectual property rights to (parts of) the Services provided by Profact and to goods that are the property of Profact (including possible documentation going with them), shall be vested in Profact. Unless otherwise explicitly agreed upon, Profact shall not grant the Client a right of use and/or a licence in respect of the intellectual and industrial property rights the title to which is vested in Profact or that are vested in Profact by virtue of a licence.
- 10.2 Without prior consent to that effect in writing of Profact, the Client shall not be allowed to make any changes to the Profact products or the packaging thereof and/or to affix his own trademark(s) or trade name(s) or to introduce any other changes on or in them or to otherwise infringe or prejudice the intellectual and industrial property of Profact.
- 10.3 The Client shall guarantee Profact that he holds all the rights – including industrial and intellectual property rights – to the materials delivered and/or made available to Profact by the Client, that are required to comply with the obligations of Profact by virtue of the Agreement and/or that the Client has the right to allow Profact to make use of said materials and to use them as set out in the Agreement.
- 10.4 Profact shall not accept any liability vis à vis the Client for any infringement as referred to in the present article if the infringement relates to the fact that Profact has adjusted or changed the products concerned or has instructed third parties to do so, on the instructions of the Client.
- 10.5 The Client shall indemnify Profact against any liability, loss, damage, claim, costs or expenses (including but not limited to costs of legal assistance) that result directly or indirectly from or are connected with the publication, processing, use, distribution, contents or exposition of materials delivered to Profact by the Client or the latter's representatives, including but not limited to, any liability for defamation, insult, violation of privacy, infringement of a patent, copyrights, trademark rights or any other industrial and intellectual property rights, or fraudulent acts in respect of business secrets.
- 10.6 The Client shall guarantee that the products and materials supplied to Profact for the provision of the Services do not infringe any industrial and intellectual property rights of any third party. If an action is instituted on the ground of an infringement of any such rights or if that possibility exists, the Client shall have to replace or modify the products concerned, or acquire the right to continue to use them or to take them back wholly or partially. The Client shall forthwith notify Profact in writing of any event in which Profact would be held liable or of any legal measure based on the argument that the use of said Products is an infringement of intellectual or industrial property rights.
- 10.7 Profact shall retain all the rights to all computer programmes, specifications and/or data Profact uses or has developed for the execution of the Agreement regardless whether said computer programmes, specifications or data have been developed by Profact for the provision of Services and/or the delivery of Products to the Client by virtue of the Agreement or otherwise.
- 10.8 Profact shall retain all rights to treatments, including but not limited to, all model and trial treatments produced by Profact, regardless whether they have been produced for the provision of the Services and/or the delivery of the Products to the Client by virtue of the Agreement or otherwise.
- 10.9 The Client shall declare that he enjoys all the duplication rights, including the right to mechanical duplication and the right to use certain film and sound data and other software recordings, etc., and he shall also guarantee that all the costs pertaining to copyrights and other amounts owed, have been paid in full either to the owner concerned or to the authorised bodies that represent the owners and he shall furthermore guarantee that no claims shall be lodged against Profact in this respect. The Client shall indemnify Profact in every aspect, in particular against claims lodged by third parties, including claims of copyright organisations or other organisations as well as against costs resulting from legal proceedings regarding alleged or actual infringements of the aforementioned rights. The Client shall declare he is prepared to give the statements required to that effect for no consideration at Profact's first request to that effect or to supply them for no consideration at Profact's first request to that effect. The aforementioned indemnification shall include production costs potentially incurred by Profact. The Client shall agree that Profact, at the request of the parties concerned, give information about individual orders to organisations in the field of the exercise of

copyrights and to other organisations that occupy themselves with the protection of intellectual and industrial property rights, which said information said organisations need in order to guarantee a proper licence arrangement and/or the administration of the protection of any intellectual or industrial property right.

## **11. PLEDGE AND RETENTION OF TITLE**

- 11.1 All The Goods Profact keeps in custody for the Client, shall be deemed to have been pledged to Profact with respect to all the current and future amounts the Client owes or shall owe Profact by any virtue whatsoever in accordance with the administration of Profact.
- 11.2 All Products delivered by Profact, not being Goods the Client has delivered to Profact within the framework of the provision of the Services, shall remain the property of Profact up to the moment the Client has paid all the claims of Profact regarding the consideration for the products delivered or to be delivered or the Services provided or to be Provided or activities carried out or to be carried out by Profact to or for the Client by virtue of the Agreement as well as by virtue of all other agreements concluded and still to be concluded with the Client, as well as the claims regarding the failure to perform such agreements. Notwithstanding the retention of title, the Client shall be allowed to sell the Products within the framework of his normal business activities. However, normal business activities shall not be understood to be closing-down sales, sales at dumping prices and the like.
- 11.3 If and the moment the Client is in default with the compliance with one or more of his obligations or acts in violation of the stipulations of the present article, Profact shall be entitled to recover the Products delivered as referred to in the present article, as the property of Profact without judicial intervention and the Client shall have to lend his co-operation to said recovery. All the costs of recovering the goods encumbered by a retention of title, shall be for the account of the Client. If the Client refuses to lend his co-operation to said recovery of the Products despite a warning to do so, the Client shall be in default in this respect and shall forfeit an immediately due and payable penalty of € 500.00 for each day he is / continues to be in default in this respect.
- 11.4 When the Client has complied with all of his obligations by virtue of the claims referred to hereinbefore under section 2, Profact shall grant the Client the title to the products on reservation of the pledge in favour of Profact by way of further security for all the current and future claims by any virtue whatsoever, which Profact has and/or shall acquire on the Client. To the extent such be required, the Client shall lend his co- operation to all actions required within this framework, at Profact's first request to that effect.
- 11.5 The Client shall be under the obligation to properly insure the Products, against risks of theft, damaging and loss at any rate. A pledge in favour of Profact shall herewith be stipulated with respect to the payment of damages and loss of the Products referred to in the present article, which said payment shall take the place of the Products concerned.

## **12. FORCE MAJEURE**

- 12.1 Each and every obligation on the part of Profact to perform the Agreement, shall be suspended for the duration of the period during which it is impossible to perform the Agreement or to perform it properly, due to circumstances of force majeure.
- 12.2 In this respect, force majeure shall be understood to be: each and every unforeseen and/or or foreseeable circumstance or not beyond the will of Profact, due to which the Client can no longer demand in reason that Profact still perform the Agreement.
- 12.3 Force majeure shall in any case be concerned, but not exclusively, in the event of fire, flooding, industrial action, epidemics, (civil) war, riots, floods, water damage, terrorism, government measures, the unavailability (non-timely availability) of permits, trade embargos, labour unrest, power cuts, interruptions of operations, transport difficulties, unforeseen technical complications, breach of contract by or delays on the part of the suppliers and subcontractors of Profact and unavailability or overdue or insufficient availability of materials, transport, fuel, energy and labour force.
- 12.4 If the performance of the Agreement has been suspended for three (3) months or



the moment it becomes a certainty that it will last three (3) months, either party can claim by registered mail that the Agreement either be adjusted to the circumstances, or be dissolved taking effect immediately for the part concerned, without the parties being held to reciprocally pay damages.

- 12.5 If the moment the force majeure took effect Profact had already complied with part of its obligations agreed upon, Profact shall be entitled to invoice the activities already carried out, separately and prematurely and the Client shall have to pay said invoice as if a separate transaction were concerned.

### **13. END OF THE AGREEMENT**

- 13.1 Profact shall have the right to either terminate each Agreement and to claim the goods delivered back as its property, or to claim any amount the Client owes Profact in its entirety or to claim damages from the Client, by the mere fact that one of the circumstances listed hereinafter arises and without the need for any judicial intervention or notice of default, if:
- a) the Client fails to comply with any of his obligations vis à vis Profact or fails to comply with it in a timely or proper manner and has not remedied the shortcoming within fourteen (14) days from the moment Profact has sent the Client a written notice of default, or;
  - b) the Client is declared bankrupt or a request to that effect has been filed, suspension of payments has been filed for or granted, application of the debt rescheduling arrangement has been filed for or granted, or;
  - c) a prejudgement attachment and/or execution is levied at the expense of the Client, or;
  - d) force majeure as referred to in article 12 lasts longer than three (3) months, or;
  - e) the financial position of the Client entails risks in the opinion of Profact, unless the Client furnishes sufficient security upon the first warning of Profact and to the satisfaction of Profact, or;
  - f) the Client is dissolved or wound up and a merger or a demerger (split-off) takes place, or,
  - g) the data provided to Profact by the Client prove to be inconsistent with the actual situation.
- 13.2 In the event the Client does not take action on which the progress of the Agreement depends during the execution of the Agreement for a period of two (2) months, Profact can consider the Agreement to be terminated. In the latter case, Profact shall retain the right to invoice the part of the Services already provided and/or the part of the Products already delivered to the Client. If Profact finds that the Client does not take action, Profact shall inform the Client in writing of its intent to consider the Agreement to be terminated whereby it shall offer a reasonable term, which shall serve as a term to be observed on penalty of forfeiture of rights, to take action as yet.

### **14. AUXILIARY MEANS**

- 14.1 Designs delivered to order, can be charged separately to the Client, unless otherwise explicitly agreed upon in writing. Stamps, plates, moulds, tapes, negatives, printing plates and all other auxiliary means shall remain the property of Profact, unless they were made available by the Client.

### **15. QUALITY /COMPONENTS**

- 15.1 To the extent Profact needs materials of the Client to provide the Services and/or to deliver the Products, the Client shall have to supply materials to Profact that are strictly consistent with the specifications submitted by Profact. If the materials are not consistent with the specifications of Profact, Profact shall be entitled to complete, improve or return said materials, all this at its own discretion, for the risk and account of the Client.
- 15.2 Printing materials supplied by the Client shall have to meet the specifications of Profact. Profact shall not be liable for the loss of printing material, image carriers, sound carriers and other data carriers during the manufacturing process, and this up to a percentage of 5%.
- 15.3 The Client shall guarantee that Profact will receive a master copy and the films as well as the digital files to print printing materials. The liability of Profact for the loss of or damage to the aforementioned materials, shall be limited to a maximum amount of € 1,000.-- regardless whether or not the Client has informed Profact of

- the value of the materials.
- 15.4 If the image carriers, sound carriers or other data carriers supplied by the Client do not meet the specifications of Profact and if Profact then nevertheless executes what has been agreed upon at the Client's request, Profact shall never be liable for the result and shall never be liable for any damage that arises or might arise at the Client's or at third parties' due to a lesser quality of the Product.
- 15.5 All the masters, digital files and label films supplied by the Client and/or produced by Profact, shall be kept for one (1) year and subsequently be destroyed. Upon the Client's request to that effect in writing not later than one (1) month prior to expiry of the aforementioned term, said term can be once extended by a term agreed upon between parties, whereby the storage costs shall be for the account of the Client.

## **16. APPLICABLE LAW / COMPETENT COURT**

- 16.1 Dutch law exclusively, shall apply to the Agreement between Profact and the Client and all the agreements resulting therefrom, with the exclusion of the applicability of the Vienna Sales Convention 1980 (CISG) shall be explicitly excluded.
- 16.2 All disputes relating to or in connection with an Agreement, shall in the first instance have to be settled by the competent Court in the District of 's Hertogenbosch. However, Profact shall reserve the right to summon the Client to appear before another designated Court if Profact is of the opinion that the Client is held to indemnify Profact.
- 16.1 Contrary to article 16.2, the rule shall apply that if the Client has his place of residence, his place of business at any rate, outside the member states of the Convention on the Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters or the Convention of Lugano (Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters of September 16<sup>th</sup>, 1988), disputes that may arise further to the present Agreement and all the agreements resulting therefrom, shall be ruled upon in accordance with the Arbitration Regulations of the "Nederlands Arbitrage Instituut" (Netherlands Arbitration Institute). In principle, the arbitration tribunal shall consist of one arbitrator; If a financial interest in excess of EUR 100,000.- (one hundred thousand Euro) is concerned, the arbitration tribunal shall consist of three arbitrators. The location of arbitration shall be Rotterdam. The proceedings shall be conducted in Dutch.

## **17. MISCELLANEOUS**

- 17.1 The Client shall not be entitled to assign or delegate his rights or obligations by virtue of the Agreement without prior consent in writing to that effect of Profact. Profact shall not refuse its consent on unreasonable grounds.
- 17.2 If Profact has concluded one Agreement with two or more (legal) persons, each of said (legal) persons shall be jointly and severally liable for the full performance of the obligation that results for them from said Agreement. The conclusion of one Agreement with two or more (legal) persons shall equally be concerned when Profact is requested to forward deliveries and/or invoices to affiliated companies. The latter shall then also be deemed to have bound themselves jointly and severally. Upon the first request to that effect, said (legal) persons shall sign a statement in which they confirm that they have bound themselves jointly and severally for the fulfilment of the obligations by virtue of the Agreement.
- 17.3 The text of the Dutch version of the present Terms and Conditions shall be decisive in the event of any lack of clarity in the translated version.
- 17.4 Information provided and advice given by Profact, shall be of a general nature and without any obligation. The Client himself shall be responsible for the implementation of the advice given by Profact.