

PRO-SERIES LTD TERMS OF TRADE

The terms of trade set out below govern all of the supplies of Products from Pro-Series Limited (“Pro-Series”, “we”, “us”) to the customer (“you”). They are effective from 1 January 2016. Your acceptance of any Products from Pro-Series indicates your continuing acceptance of these terms of trade.

1. General

- 1.1. In these conditions, “**Supplier**” means Pro-Series’s suppliers; “**Products**” means lighting equipment, parts, accessories, consumables and services which are supplied by Pro-Series to you either for resupply by you or for your own use.
- 1.2. These terms will replace all earlier Pro-Series terms of trade and any conditions contained in any document used by you and purporting to have contractual effect.

2. Price and Orders

- 2.1. Quoted prices are valid for 30 days from date of issue. Prices may be increased by the amount of any increase in our cost which is beyond our reasonable control between the date of quotation and the date of supply.
- 2.2. You must pay all delivery costs, applicable taxes and duties. We may ask you to pay a deposit for goods, and where you ask us to indent Products, we may require you to pay some or all of the price in advance.
- 2.3. Pro-Series reserves the right to refuse to accept any order or any part of an order, and to deliver Products by instalments, in which case each instalment will comprise a separate contract and shall be paid for as if it were a separate order.

3. Risk and delivery

- 3.1. You are responsible for insurance and risk in the Products from the earlier of the time they are delivered to the address requested by you, or (if you arrange delivery) the time they are collected by you or your agent.
- 3.2. Where Products appear to be damaged or missing on delivery, you must contact and Pro-Series immediately and supply to Pro-Series a copy of the proof of delivery with the loss or damage described on it. All claims for shortage or damage during delivery must be confirmed in writing to Pro-Series within 5 days of the date of delivery. Damaged Products must be made available for inspection.
- 3.3. We will make every effort to ensure delivery of Products, or performance of services, is on time, but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance. Delay in delivery or performance does not entitle you to cancel any order.

- 3.4. Unless otherwise stated in writing, all Products will be shipped boxed and it is your responsibility to assemble, configure and install them. If we are asked to deliver goods outside New Zealand, it is your responsibility to pay all shipping costs and warehousing costs, duties and taxes in the destination country.
- 3.5. Where you ask us to deliver goods directly to another person, that person takes possession of the goods for you as your agent, and you are still directly responsible to us under these terms of trade.

4. Payment

- 4.1. Unless we have agreed in writing to extend credit to you, you must pay by direct credit into a bank account nominated by us or by credit card before supply.
- 4.2. Where we have agreed in writing to extend credit to you, you must pay in full by the due date checked under "terms of payment" on your application form (or if no due date is checked, by the 20th day of the month following the date of invoice), unless we have agreed in writing to different payment terms. Your payment is made only when funds have fully cleared through the banking system into our bank account. Payments which you make to us will be considered to be applied first to any amount owing in respect of service work, then to payment for any goods which have been purchased as inventory and which have been sold by you, then to payment for goods supplied by us which have not been sold by you. We may allocate your payments in this manner at any time after receipt even if we have sent you a statement which indicates payments are allocated in a different manner.
- 4.3. We have sole discretion to determine the amount of credit we will extend to you at any time.
- 4.4. You agree to pay for the Products in full without deduction or setoff and to pay goods and services tax and any other government duties, levies or taxes in respect of the Products.
- 4.5. If payment is not made in full by the due date we may charge you costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further Products or performance of further services until the account is paid.
- 4.6. Notwithstanding clause 4.2 above, all payments shall immediately become due to us if you refuse to accept delivery of any Products without reasonable cause, if we reasonably believe that the information which you have given us in your application for credit is incorrect or no longer correct and you have failed to give us correct information satisfactory to us within 5 days of our request, if you sell or otherwise dispose of any goods which have not been paid for without our consent, if you become insolvent, commit any act of bankruptcy, if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you make or attempt to make an arrangement or composition with creditors, or if you fail to comply with any of the provisions of clause 6.

5. **Property**

- 5.1. Property and ownership in Products, whether in their original form or incorporated in or attached to another product will not pass to you but will remain with us until we receive payment in full of the purchase price of the Products and all other amounts that you owe to us for any reason.
- 5.2. Until property passes to you, you shall hold any Products in trust as fiduciary bailee for us, and store them in a manner to enable them to be identified and cross referenced to particular invoices.
- 5.3. You must not resell or part with possession of those Products before you have paid for them in full, unless we have given you written consent.
- 5.4. Where Products are supplied to you as inventory or otherwise for resupply (including by way of attachment to or incorporation into manufactured or assembled goods), if we have agreed in writing you may sell the Products in the ordinary course of your business, but you must hold any accounts receivable or other proceeds for our benefit. If you use any money proceeds to purchase replacement inventory, whether from Pro-Series or a third party, you hold that replacement inventory and its proceeds as collateral for our benefit until all sums owing to us are paid.
- 5.5. Where Pro-Series reasonably believes you are or will be in breach of any part of clauses 4, 5 or 6 of these terms of trade Pro-Series or its agent may without notice enter any premises under your control to remove any Products which are the property of Pro-Series or which are subject to Pro-Series' security interest, including Products installed in or attached to any other goods, using such force as is necessary, and without prejudice to any other of Pro-Series's rights. You indemnify Pro-Series against all costs and claims in respect of its exercise of rights under this clause 5.

6. **Security interests**

- 6.1. If we already have a perfected security interest in the products we supply to you together with their proceeds of all kinds that security interest is continued under these terms of trade. Otherwise, you grant us a security interest in the Products that we supply to you. Our security interest covers the Products together with all proceeds (including, without limitation, accounts receivable), whether or not those Products have become accessions to other goods or processed or commingled into or mixed with other goods. The goods and services subject to the security interest will be described on our invoices. Where Products that we supply to you have become mixed with other similar goods supplied by other persons, you grant us a security interest in the mixed goods to the value of the Products in the mixture that we have supplied to you but which have not yet been paid for.
- 6.2. You agree that you will do all acts necessary and provide to us on request all information we require to register a financing statement over the Products and their proceeds of all kinds, and that you will advise us immediately in writing of any changes to that information. You waive all rights to receive a copy of any verification statement of a financing statement.

- 6.3. You agree that we may require you to pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or amendment of any financing statement registered by us, whether or not the change was initiated by you.
- 6.4. If we repossess any Products under this agreement, we may retain those Products or dispose of them, and, after deducting reasonable costs of sale, we may credit any surplus by way of setoff against any sums owing to us. We shall not be obliged to pay to any person other than you or your receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obliged to reinstate this agreement or resupply any goods to you.
- 6.5. You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

7. Customer Warranties

- 7.1. If you acquire any goods or services from Pro-Series for re-supply as, or incorporate or attach any goods or services acquired from Pro-Series into, goods or services ordinarily acquired for personal household or domestic use or consumption ("Consumer Products") you warrant that:
 - (a) if you supply the Consumer Products directly to an end user/consumer you will do so using terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act 1993; and
 - (b) if your customer acquires the goods for re-supply, your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993,

but in each case only where the end user/consumer acquires the Consumer Products for business purposes.

- 7.2. You agree to indemnify Pro-Series against any failure by you, your customers or any person in your distribution chain to properly contract out of liability to business end users/consumers under the Consumer Guarantees Act 1993.

8. Limitation of liability

- 8.1. Where the goods or services that you acquire from Pro-Series are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from these terms of trade. Where goods are supplied outside New Zealand, the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply.

- 8.2. If any products are faulty, they must be returned to Pro-Series, which will replace them or refund their cost (at Pro-Series' discretion).
- 8.3. Pro-Series's maximum liability to you (if any) shall be limited to the value of any faulty Products or services supplied, and none of Pro-Series and its employees, contractors and agents, and any manufacturers of the Products will be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, costs (including costs of uninstalling and reinstalling or returning Products to Pro-Series or to any manufacturer), consequential loss, loss of profits, damage caused by or arising from delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials, components, manufacture, compilation, or assembly of the Products.
- 8.4. Pro-Series will not be liable to you in any way for business losses of any kind or for loss or damage in relation to the Products caused by unreasonable use, damage or misuse (including problems caused by misuse or damage after the goods have left Pro-Series' care), negligent installation (including failure to follow installation instructions) or operation, business use, inadequate, unauthorised repairs, modifications or the addition of accessories not supplied by Pro-Series.
- 8.5. We will not be liable to you for any losses caused by events beyond our reasonable control. We will not be required to settle a strike or lockout or other industrial disturbance against our wishes in order to benefit from this clause.
- 8.6. Where you purchase any Products from us for use or resupply, you indemnify us against all claims from third parties arising in any way from your storage or use (including, without limitation, transportation) of the goods.
- 8.7. You indemnify Pro-Series against all costs (including legal costs on a solicitor and own client basis) expenses, losses, damages or claims arising in any way as a result of your failure to comply with any part of these terms of trade.

9. **Health and safety**

- 9.1. Where we carry out visit you or carry out service work on premises under your control, you must provide us with your health and safety requirements, and we will take all practicable steps to carry out safety procedures.

10. **Intellectual property and confidentiality**

- 10.1. All intellectual property including trade marks shall remain the property of Pro-Series or any Supplier entitled to it, and neither Pro-Series nor its Suppliers transfer any right, title or interest in the intellectual property to you.
- 10.2. You must not use any trade marks which are the property of Pro-Series or its Suppliers, or any similar words or marks, or any combination of words which includes any of those trade marks or any similar words or marks, except to the extent authorised by Pro-Series in writing.

- 10.3. You agree to resupply the Products only under the trademarks under which they are supplied by Pro-Series, and under no circumstances shall you apply any of the trade marks to any product which is not a genuine branded product supplied to you by Pro-Series.
- 10.4. You must not cause or permit anything which may interfere with, damage or endanger the trade marks or other intellectual property rights of Pro-Series or its Suppliers, or assist or allow others to do so.
- 10.5. You must advise Pro-Series immediately if you become aware of any unauthorised use or attempted use by any person of the trade marks or other intellectual property rights of Pro-Series or its Suppliers.
- 10.6. If your account with Pro-Series is terminated, you must immediately discontinue use of any of the trade marks which are the property of Pro-Series or its Suppliers in any sign, or advertising and thereafter you shall not use those trade marks directly or indirectly in connection with your business.
- 10.7. You agree to ensure that all Confidential Information given by Pro-Series to you is made available to your employees only on the basis that those employees at all times maintain strict confidentiality.
- 10.8. This clause 10 shall survive the termination of the Agreement.

11. **General**

- 11.1. Pro-Series reserves the right to change these terms of trade from time to time. The current terms of trade will be available on the Pro-Series website.
- 11.2. The Customer may not assign or purport to assign any contract with Pro-Series without the written consent of Pro-Series, which consent may be given at Pro-Series' entire discretion.
- 11.3. If Pro-Series fails to enforce any terms or to exercise its rights under these terms of trade at any time, Pro-Series has not waived those rights.
- 11.4. If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.
- 11.5. This agreement is governed by the laws of New Zealand and any dispute under it shall be subject to the exclusive jurisdiction of the Courts of New Zealand.