

# SALES TERMS AND CONDITIONS

## GENERAL

The Sales Terms and Conditions as stated in this document constitute a part of the agreement and contract between **Xi'an PROZA Electrical Technology Co., Ltd.** located in QiHangJiaYuan Plaza, Block A, 12# Building, Room 704, FengDong New Town, Xi'an 710086, R. P. CHINA (herein further referred to as PROZA) and **BUYER** who places his purchasing order with PROZA and buys PROZA's products (herein further referred to as BUYER), and are subject to any mutually agreed written amendments.

All purchasing orders are accepted by PROZA according to these Sales Terms and Conditions which supersede any other terms or conditions appearing in any previous publication or elsewhere and, unless otherwise specifically agreed in writing by PROZA, these Sales Terms and Conditions override and exclude any other terms or conditions stipulated or incorporated or referred to by BUYER, whether written on BUYER's purchasing order or any email message during negotiations between PROZA and BUYER.

## QUOTATIONS

Price quotations are ExWorks Xi'an/China (Incoterms 2000). Under this price term the goods ordered are shipped (dispatched) from Xi'an and transportation costs/charges from PROZA to the delivery address (shipping destination) are not included, and tax/duty is unpaid, unless otherwise requested by BUYER and agreed to in writing by PROZA.

All written quotations are valid to the end of the calendar year in which the quotations are issued, unless otherwise requested by BUYER and agreed to in writing by PROZA.

The prices shown on published price lists or on other published literature issued by PROZA may be changed without prior notice and are therefore subject to confirmation by a specific quotation or/and order-confirmation of PROZA.

Prices are exclusive of value added tax (VAT) and all foreign-, federal-, state-, municipal- or other government-excise, sales, use, occupational, duty or like taxes now in force, or enacted in the future; and are therefore subject to an increase equal in amount to any tax which PROZA may be required to collect or pay upon the sale or delivery of the product items purchased by BUYER.

PROZA makes no charge for its standard packing. If a special packing is required by BUYER, extra costs on packing may be charged by PROZA, the price of which is quoted upon request. No credit or deduction in price will be given if no packing is required.

## ORDERS

The purchasing order may be placed by fax, or by email with the order prepared in ".pdf" file format and attached in attachment, or via post, and need to be dated and signed by BUYER. When BUYER places his purchasing order with PROZA, it means that BUYER has accepted all the terms and conditions as stated in this document.

All the received purchasing orders at PROZA are subject to acceptance by an order-confirmation of PROZA, i.e., PROZA will send the order confirmation to BUYER via email after the purchasing order is processed completely and successfully. Typographical and clerical errors on the quotation and on the order-confirmation are subject to correction.

If the total amount of a purchasing order, or the total amount of one shipment is less than US\$100, an extra charge of US\$68 will be automatically added on PROZA's commercial invoice as a service charge per invoicing.

### **CHANGES TO ORDER**

BUYER may, with the written consent of PROZA, make changes to his purchasing order. In the event of any such change, BUYER shall pay to PROZA the reasonable costs and other expenses. These would include engineering expenses, costs of semi-finished parts or products, and costs of all commitments to its suppliers and sub-contractors: a) incurred by PROZA prior to receipt of notice of change for all the work rendered unnecessary by the change and/or b) incurred by PROZA thereafter for all the work required to effect the change. The amount will be determined by PROZA by considering specific costs and other expenses as well as PROZA's usual rate of profit for similar work. In the event of any such change, PROZA shall be entitled to revise its price and delivery schedule accordingly.

### **DELIVERY**

Delivery terms are ExWorks Xi'an/China (Incoterms 2000). The delivery terms are quoted during quotation and are confirmed on the order-confirmation. If the delivery address is not specifically mentioned on the purchasing order, BUYER's address is considered as the default address for delivery. PROZA will do its best to ship (dispatch) the ordered goods on time. When the goods are shipped (dispatched), PROZA will inform by fax BUYER of the shipment details with a document of <<Delivery Notes>>.

Unless otherwise stated in writing, the delivery shall be deemed to take place and the risk shall be transferred automatically to BUYER after the ordered goods are dispatched from PROZA and the <<Shipment Notes>> is transferred by fax to the customer.

Delivery date (or lead-time) quoted by PROZA is approximate and is therefore based on prompt receipt of all necessary information regarding the purchasing order. PROZA will use its utmost effort to meet the scheduled delivery date (lead-time), but cannot be held responsible for its failure to do so for causes beyond PROZA's reasonable control. PROZA reserves the rights to execute partial deliveries with corresponding invoicing.

Exceeding of the approximate delivery date should not lead to the dissolution of the purchase, refusal of reception of the goods or claim for compensation. Exceeding of the approximate delivery date can therefore not lead to the cancellation of the purchasing order.

### **ACCEPTANCE OF DELIVERED GOODS**

It is the responsibility of BUYER to check the products delivered immediately for acceptance when they are made available to BUYER, and any claims to the quantity and/or quality of the products delivered must be received at PROZA within eight (8) days of

the products being placed at the delivery address (or BUYER's address) on the date or within the period indicated on the purchasing order of BUYER. Any claim made by BUYER after these eight (8) days shall be considered late and shall have no effect. In the event that the products delivered have the defects which are attributable to PROZA upon PROZA's verification, the warranty conditions are applicable.

Unless otherwise agreed to in writing by PROZA, the criterion for acceptance of the products delivered, including accessories, shall be the successful operation of the products and accessories according to the published specifications, which are proved by the testing report provided with the products delivered.

All tests for verification shall be run by PROZA personnel at PROZA's locations using PROZA's standard testing procedures, unless otherwise allowed for and agreed to by PROZA in writing.

The delivered goods remain the property of PROZA until the amount of the corresponding commercial invoice is fully paid and received at PROZA's bank. PROZA reserves the rights to require the restitution of the delivered goods to the expenses of BUYER.

#### **TERMS OF PAYMENT**

The payment for PROZA's commercial invoice regarding the delivered goods is made by BUYER via bank transfer. For BUYER who is located in China or outside of China, a prepayment (payment is made in advance before the delivery) is required, unless otherwise specifically agreed to in writing by PROZA.

Certain purchasing orders may, because of their nature or the delivery involved, require progress payments. Pro rata payments shall become due as shipments are made.

If PROZA at any time deems that, by reason of the financial condition of BUYER or otherwise, the continuation of production or shipment on the terms specified herein is not justified, PROZA may require full or partial payment in advance.

Amounts of the commercial invoice past due are subject to a service charge of 1.5% per month.

#### **EXCUSABLE CESSATION OF PERFORMANCE FOR NON-PAYMENT**

Whenever BUYER fails to meet the payment requirements set forth in the contract of which these Sales Terms and Conditions form a part, PROZA may cease performance and delivery and accelerate payment of any and all unpaid charges. Such cessation of performance shall not be construed to be a breach on any contract or agreement and PROZA will resume production as soon as reasonably possible upon receipt of payment of all balances due.

If BUYER makes an assignment for the benefit of creditors, if a voluntary or involuntary petition or other action in bankruptcy, or for reorganization, or under any other insolvency law filed by or against BUYER, if BUYER shall admit its inability to pay its or if BUYER fails to make payments to PROZA in accordance with the terms hereof, PROZA may, at its option, cancel all undelivered goods of any purchasing order by written notice to BUYER at no expense to PROZA.

## **CANCELLATION AND DELAYS**

In the event of cancellation of a confirmed purchasing order (PO), BUYER shall be liable for the payment of reasonable cancellation charges, which shall not exceed the total value of the ordered items which are canceled.

If the manufacturing of the ordered items is delayed upon BUYER's request, partial payment must be paid by BUYER based on the percentage of completion of the manufacturing processes and according to the confirmed/contracted price of the PO or contract.

In the event of any shipping delay requested by BUYER or any delay caused by lack of shipping instructions, PROZA will store all the items ordered at BUYER's risk and expense, and will invoice BUYER for the full contract price of the PO on or after the date on which the shipment is ready for delivery. No delivery delay requested by BUYER on a call-off order placed under the contract or PO shall be effective unless BUYER agrees to payment of any costs due to the delay which impose on PROZA.

## **RETURN OF GOODS**

No delivered goods shall be returned to PROZA as reject or for repair without prior written authorization of PROZA.

With the written consent of PROZA, BUYER may return the goods to PROZA. A minimum twenty percent (20%) of the value of the returned goods will be charged as BUYER's expense for restocking service incurred at PROZA, unless otherwise specifically agreed to in writing by PROZA.

The returned goods are only accepted by PROZA if they are returned in their original state (without any modification or disassembled) and are packaged with their original packing and with the original documents which were provided with the product when delivered.

BUYER is responsible for the shipping costs of the returned goods. For instance, the transportation cost and duty paid for the return of the returned goods for warranty repair are at BUYER's risk and expense.

## **LIMITED WARRANTY (Liability for Repairs or Replacement Only)**

The delivered goods are warranted to be free of defects in material and workmanship (referring as production defect) for one year from the delivery date. PROZA's obligation of warranty is limited to repairing or, at its option, replacing the products or components which, on verification at PROZA, are proved to be of production defect. The implementation of warranty is made in a period of six (6) months once the verification is observed at PROZA.

PROZA extends the warranty only upon proper use of the product in the application for which it is intended, and this warranty does not cover the products which are misused or not correctly used (for instance, subjected to unusual physical or electrical or thermal stress

or shock) according to the User Manual or Installation Instructions provided by PROZA, or which have been modified or disassembled without PROZA's written consent, or which are returned to PROZA without their original package or each of which is not properly packaged in the same way as they were delivered, or on which the original identification marks have been removed or altered without PROZA's written approval.

PROZA shall not be liable for installation charges, for expenses of BUYER for repairs or replacements, or for any direct and indirect or consequential damages of any kind.

The document of User Manual or Installation Instructions for PROZA products are available on request. Before getting the product installed in the application, BUYER is supposed having the document available in his hands. If this is not the case BUYER can download the document on PROZA website or request it from PROZA Sales Representatives. Installation without following the instructions may result in damage of the product. In such the case the risk and cost of the damage are at BUYER's responsibility and PROZA is totally not responsible for any possible damage of the product.

Whenever the design of the product or the system in which it is to be incorporated originates from BUYER, PROZA's warranty is limited specifically to the product free of production defects and PROZA assumes no any responsibility for any kind of implied warranties regarding its purpose or use of the product.

#### **DOCUMENTATION AND TRAINING**

PROZA will provide, if requested by BUYER, subject to terms and conditions to be agreed, technical assistance and written documents including operator instructions with regard to the use of the products and advice or suggestions as to the tendering. PROZA is not contractually bound to provide any technical assistance. Training in use and operation of PROZA's products may be made available at BUYER's expense. Should any technical assistance or advice be given by PROZA, PROZA shall only be liable for its own willful misconduct. Save for said recourse for willful misconduct, BUYER hereby expressly waives the right to claim against PROZA for any damage caused to the products, or damage to the property of, or injury to person caused to BUYER himself, his personnel or any third party as a result of technical assistance provided by PROZA.

#### **PROPRIETARY RIGHTS**

PROZA retains for itself all proprietary rights in and to all designs, engineering details and other data pertaining to any product specified in the contract of which these Sales Terms and Conditions form a part, and to all discoveries, inventions, patent rights, etc., arising out of the work done in connection with the contract or with any and all products developed as a result thereof, including the sole right to manufacture any and all products.

PROZA shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures and other tools made for or obtained in connection with this contract, unless otherwise specifically agreed to in writing by PROZA.

PROZA reserves the right to make substitutions and modifications in the specifications of products designed by PROZA providing that such substitutions or modifications will not materially affect performance in the intended application.

### **PATENT AND TRADEMARK INDEMNITY**

PROZA will defend any suit against BUYER for the infringement of patents and trademarks by products purchased from PROZA under the contract of which these Sales Terms and Conditions form a part, and in any such suit will satisfy any final compensation for infringement, except PROZA assumes no obligation to defend liability for damages (consequential or otherwise) for:

- a) any patent infringements resulting from designs supplied by BUYER, or
- b) any trademark infringements involving any marking or branding applied at the request of BUYER, or
- c) any patent claims covering any other products or any contemplated equipment or any assembly, combination, method or process that may use in manufacture, testing, or operation of any products purchased from PROZA (notwithstanding that such products purchased from PROZA may have been designed only for use in, or may be only useful in such other patented products or patented equipment, assembly, circuit, combination, method or process, or in the manufacture, testing, or operation thereof, and that such products purchased from PROZA may have been purchased and sold for such use).

The indemnity is upon the condition that BUYER gives PROZA prompt notice in writing of any such suit or threat of suit of infringement and full opportunity to conduct the defense thereof. No costs or expenses shall be incurred on behalf of PROZA without its written consent. At any time PROZA may replace or modify any products sold under the contract, to avoid patent and trademark infringement, provided such replacement or modification does not materially affect performance. PROZA's liability under this indemnity shall not exceed the purchase price of the infringing products.

### **REGULATORY LAWS AND STANDARDS**

PROZA makes no promise or representation that its products will conform to any state or local laws, ordinances, regulations, codes or standards, except as specified and agreed upon for compliance in writing as part of the contract between PROZA and BUYER. PROZA's prices do not include the cost of any related inspections or permits.

All quotations are made and all purchasing orders are accepted by PROZA in compliance with Chinese law. The rights and duties of all parties and the construction and effect of all provisions thereof shall be governed by and construed according to Chinese law. BUYER agrees that any dispute arising in connection with the validity, performance or interpretation of the contract shall be subject to the exclusive jurisdiction of the Courts of China, irrespective of the domiciliation of any negotiable instruments and the terms of payment agreed to. In case of dispute BUYER submits to the jurisdiction of the Court of Justice in China.

Should any term or provision contained in these Sales Terms and Conditions contravene or be invalid under applicable law, the contract of which these Sales Terms and Conditions form a part shall not fail by reason thereof, but shall remain valid.