

## Terms and Condition of Trade

### 1. Definition

- 1.1 This document sets out the Terms and Conditions of Trade ("Terms") between:
- 1.1.1 The Provet Group of Companies ("Provet") which includes:
- (a) Provet Queensland Pty Ltd ABN 52 076 437 280
  - (b) Provet VMS Pty Ltd ABN 79 001 236 568
  - (c) Provet NSW Pty Ltd ABN 98 003 946 941
  - (d) Provet IT Pty Ltd ABN 54 094 987 185
  - (e) Provet Riverina Pty Ltd ABN 20 087 560 003
  - (f) Provet Victoria Pty Ltd ABN 84 109 602 404
  - (g) Provet SA Pty Ltd ABN 71 120 608 620
  - (h) Provet WA Pty Ltd ABN 14 009 288 546
  - (i) Any other subsidiary of Provet Pty Ltd ABN 46 076 468 481
- 1.1.2 Any person or corporation ("customer") acquiring goods and services from Provet.

### 2. Acceptance

- 2.1 Any instruction received by Provet from the customer for the supply of goods/ and/or the customer's acceptance of services and/or goods supplied by Provet shall constitute acceptance of the terms and condition contained herein.
- 2.2 Upon acceptance of these terms and conditions by the customer the terms and conditions are irrevocable and can only be rescinded in accordance with the terms and conditions or with the written consent of the Chief Operations Officer of Provet
- 2.3 None of Provet's agents or representatives is authorized to make any representations, statements, conditions or agreements not expressed by the management of Provet in writing nor are Provet bound by any such unauthorized statements.
- 2.4 The customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to them by any servant or agent of Provet and the Customer acknowledges that he/she buys the Goods relying solely upon their own skill and judgment.

### 3. Description of Goods

- 3.1 In their Terms and unless the context otherwise indicates the term "goods" means those goods which the Customer requests Provet to Supply
- 3.2 The Goods, the subject of this contract, shall be those Goods (including any product, stock or other items supplied by Provet) described in Provet's written quotation or, in the absence of written quotation, on Provet's delivery slip or invoice. If the description on these documents differs from the description on any order form provided by the customers, the description on the Provet document shall prevail.
- 3.3 Specifications of Goods given in any brochures, letters, price lists, data sheets, or other documents of Provet or supplied by Provet are given to identify the Goods generally and do not form part of the description of the Goods.

### 4. Orders

- 4.1 Orders may be placed by the Customer by telephone, or in writing by facsimile or letter, or via electronic means.
- 4.2 Provet reserves the right to insist upon written confirmation of any order placed by the customer.
- 4.3 The customer must order the minimum shipping quantity shown on the price list current at the order date or in a multiple of the quantity. Provet has the right to supply a quantity equal to the nearest or lower multiple.
- 4.4 Provet has no obligation to accept an order for Goods placed by the Customer by one of the methods in clause 4.1 above. Supply of the Goods ordered by the Customer by Provet constitutes acceptance of the order.
- 4.5 Provet shall make every reasonable endeavour to satisfy the Customer's order in accordance with the Customer's requirements. The Customer acknowledges and

agrees that Provet does not warrant or represent the availability of further or larger quantities of the Goods.

## **5. Delivery and Freight**

- 5.1 Provet will use all reasonable efforts to deliver Goods and accept orders, to the address specified on the delivery slip, on or before any estimates date, but Provet does not represent or warrant that it will do so.
- 5.2 Provet shall under no circumstances be held liable whether for direct, indirect or consequential loss or damage arising by reason of any delay in delivery of the Goods or any failure to deliver the Foods ordered by the Customer for whatever reason
- 5.3 Provet will arrange transportation of the Goods to the customer at its own cost, unless the Customer is advised prior to delivery that the Customer is required to pay for the delivery. Any additional freight costs arising due to the unavailability of the Customer to accept delivery shall be borne by the customer.
- 5.4 Provet may however in its absolute discretion, allow the Customer to arrange transport of the Goods. If the Customer arranges its own transport of the Goods, Provet may invoice the Customer for any differential in freight cost, between the actual freight cost, and that which Provet would have incurred.
- 5.5 On delivery of the Goods, the customer shall check the quantity, quality and description of the Goods delivered against the description on the delivery slip (s), and shall give written notice to Provet of any alleged deficiency or irregularity in quantity, quality or description within 48 hours from the time of delivery. Should such notice not be given within that time, the Goods actually delivered shall be deemed to be in accordance with the delivery slip and free from any defect or damage and the customer shall not thereafter make any such claim or take any action in relation to any alleged deficiency or irregularity.
- 5.6 Delivery of the Goods to a carrier either named by the Customer or, failing such naming to a carrier at the discretion of Provet for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
- 5.7 Provet may deliver the Goods by separate installments (in accordance with the agreed delivery schedule). Each separate installment shall be invoices and paid for in accordance with the provision in this contact of sale.
- 5.8 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purpose of this agreement.
- 5.9 The failure of Provet to deliver shall not entitle either part to treat this contract as repudiated

## **6. Pricing**

- 6.1 Provet will invoice the Customer for the Goods at the price shown on the price list which is current at the date of the invoice.
- 6.2 Any special prices will apply to specific Goods only for as long as the goods last or the duration of the newsletter in which they are advertised.
- 6.3 Provet shall not be bound by any typographical errors that may occur with price advertised in the current price list, newsletter, invoice, statements or any other document published by Provet.
- 6.4 The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by Provet.

## **7. Payment**

- 7.1 The customer may pay invoices by cash on delivery, credit card, cheque or direct entry into the Provet bank account. The due date for payment will be shown on all invoices and statements and will differ depending on the payment method used.
- 7.2 At Provet's sole discretion, payment by credit card for approved customer's shall be due on 6<sup>th</sup> each month following posting of a statement to the Customer's address or address for notices

- 7.3 At Provet's sole discretion, payment by cheque and direct debit for approved customers shall be done on 24<sup>th</sup> each month following the posting of a statement to the Customers addressor address for notice.
- 7.4 Any customer operating a cash only account (VCA) as a private person or individual is required to pay for the goods at the time of ordering. Operating a VCA account does not entitle the customer to convert automatically to a normal trading account – normal conditions of the trading account, such as trade references, are required to be met before opening a normal trading account regardless of size or turnover of a VCA account. Where turnover is expected to be less than \$1,000 per month no trading account will be made available and the Customer will be required to purchase goods using a VCA account.
- 7.5 Non-receipt of an invoice does not constitute a reason for late payment. It is the Customer's responsibility to ensure that goods ordered are paid for within the required time.
- 7.6 Should the Customer fail to pay in full the amount owing to Provet within the period provided for in clause 7.1, Provet may without prejudice to its other rights either:
- 7.12.1 Require payment in advance for any further deliveries, whether of existing orders or any orders placed by the Customer in the future; or
- 7.12.2 Terminate any contract forthwith by written notice to the Customer
- 7.7 Provet may at its absolute discretion enter into a payment arrangement with the customer for any overdue amounts. The arrangement must be in writing, signed by the customer and an authorized Provet employee and must not exceed a period of six months. Provet reserves the right to vary this limit at its absolute discretion.
- 7.8 Any payment to Provet by the Customer which is not specifically allocated by the Customer will be credited first against interest charged and then against amounts owing to Goods supplied with oldest balances being discharged first.
- 7.9 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 1.5% per calendar month and shall accrue at such a rate after as well as before any judgment
- 7.10 If the Customer defaults in payment of any invoice when due, the customer shall indemnify Provet from and against all Provet's costs and disbursements including on a solicitor and own client basis and in addition all external collection agency costs.
- 7.11 Without prejudice to any other remedies Provet may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Provet may suspend or terminate the supply of Goods to the customer and any of its other obligations under the terms and conditions. Provet will not be liable to the Customer for any loss or damage the customer suffers because Provet exercised its rights under this clause.
- 7.12 In the event that:
- 7.12.1 Any money payable to Provet becomes overdue, or in Provet's opinion the customer will be unable to meet its payment as they fall due; or
- 7.12.2 The Customer becomes insolvent, convenes a meeting with its creditor or proposes to enter into an arrangement with creditors, or makes an assignment for the benefit of its creditor; or
- 7.12.3 A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer then:
- (a) Provet shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
- (b) All amounts owing to Provet shall, whether or not due for payment, immediately become payable.

## 8. Risk and Title

- 8.1 Ownership of the Goods shall remain with Provet and Provet reserves the right to dispose of the Goods until such time as payment in full is made for all amounts owing by the Customer to Provet so that the Customer's total indebtedness to Provet under these terms is discharged
- 8.2 If the Customer defaults under these terms Provet may without prejudice to any of its other rights and remedies require the return at the expense of the Customer of all goods not paid for and, in default of compliance, Provet is hereby irrevocably authorized by the Customer to enter its premises of premises controlled by the Customer and use reasonable force to take possession of the Goods without liability for the torts of trespass, negligence or payment of any compensation to the Customer whatsoever.
- 8.3 The Customer acknowledges that until its total indebtedness to Provet under these terms and conditions of sale is discharged, it holds the Goods as bailee of Provet and that a fiduciary relationship exists between the Customer and Provet
- 8.4 The customer may pay Provet the proceeds of sale of any Goods for which Provet has not yet received payment, and the Customer must pay those proceeds of sale into a separate bank account and hold them on trust for Provet until they are paid to Provet.
- 8.5 The risk in the Goods purchased will, unless otherwise agreed by Provet in writing, pass to the Customer upon delivery to the Customer or his agent or to a carrier commissioned by the Customer.
- 8.6 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, Provet is entitled, without prejudice to any of its other right or remedies under these terms and conditions of trade (including the right to receive payment of the balance of the Price of the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by Provet is sufficient evidence of Provet's rights to receive the insurance proceeds without the need for any person dealing with Provet to make further enquires.
- 8.7 It is further agreed that:
- 8.7.1 The Customer shall not deal with the money of Provet in any way which may be adverse to Provet.
- 8.7.2 Receipt by Provet of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognized and until then Provet's ownership of rights in respect of the Goods shall continue.
- 8.7.3 The customer shall not change the goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Provet.
- 8.7.4 Provet can issue proceedings to recover the Price of the goods sold notwithstanding the ownership of the Goods may not have passed the Customer.

## **9. Credits and Returns of Goods**

- 9.1 All Goods are sold on the basis of "no return for credit" unless:
- 9.1.1 Subject to clause 8.5, the goods are received in a damaged state;
- 9.1.2 The goods are supplied in the incorrect quantity;
- 9.1.3 Incorrect Goods are received by the Customer; or
- 9.1.4 The Goods are faulty
- 9.2 Other specific circumstances for the return of Goods for credit may be approved by Provet in its absolute discretion.
- 9.3 Claims for credit must be made within seven (7) days of receipt of the Goods and a copy of the invoice from which the Goods were supplied must be presented, failing which any such claims are deemed to be waived.
- 9.4 Goods that have passed their expiry date will only be accepted for credit where the manufacturer of that particular product gives credit for expired stock.

- 9.5 Any return of Goods by the customer must be made to Provet using the procedures determined by Provet. The customer will be advised of such procedures by Provet when Provet agrees to the return of the Goods for credit.
- 9.6 All Goods that carry a warranty or guarantee of the manufacturer shall be credited or exchanged only when so agreed by the manufacturer
- 9.7 Provet will not be liable for Goods which have not been stored or used in a proper manner.
- 9.8 The Goods must be returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

## **10. Warranty**

- 10.1 Subject to the conditions of warranty set out in Clause 10.2 Provet warrants that if any defect in any workmanship manufactured by Provet becomes apparent and it is reported to Provet within six (6) months of the date of delivery (time being of the essence), then Provet will (at Provet's sole discretion) repair the defect or replace the workmanship.
- 10.2 The conditions applicable to the warranty given by Clause 10.1 are:
- 10.2.1 The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (a) Failure on the part of the Customer to properly maintain any Goods; or
  - (b) Failure on the part of the Customer to follow an instructions or guidelines provided by Provet; or
  - (c) Any use of any Goods otherwise than for any application specified on a quote or order form; or
  - (d) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonable prudent operator or user; or
  - (e) Fair wear and tear, any accident or act of God.
- 10.2.2 The warranty shall cease and Provet shall thereafter in no circumstance be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Provet's consent.
- 10.2.3 In respect of all claims Provet shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim
- 10.3 For Goods not manufactured by Provet the warranty shall be the current warranty provided by the manufacturer of the Goods. Provet shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 10.4 In the case of second hand Goods the Customer acknowledges that he/she has had full opportunity to inspect the same and that he/she accepts the same with all faults and that no warranty is given by Provet as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Provet shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

## **11. Export Policy**

- 11.1 All Goods sold or supplied under these terms are packed and labeled in accordance with Australian regulatory requirements.
- 11.2 All export orders must be paid for prior to the Goods being shipped.
- 11.3 In the event that the Goods are exported, delivery of the Goods may be subject to either FOB Contract or CIF Contract.
- 11.4 In the event of a FOB Contact the following shall apply:
- 11.4.1 The Goods shall be delivered to the Customer by delivery on board the agreed upon mode of transport on the delivery date. Provet shall promptly notify the Customer that the Goods have been delivered abroad. Title to and risk in the Goods shall pass

- to the Customer upon such delivery being affected. Provet shall promptly provide the Customer with a clean shipped bill of loading in respect of the Goods.
- 11.4.2 The Customer shall reserve the necessary space on board the agreed upon mode of transport and give Provet due notice of the loading berth and any revised delivery dates. The Customer shall bear any additional costs caused due to the failure of the agreed upon mode of transport to be available to load the Goods on the delivery date.
- 11.5 In the event of a CIF Contact the following shall apply:
- 11.5.1 The Goods shall be delivered to the customer by delivery on board the agreed upon mode of transport on or before the delivery date. Provet shall procure a contract of carriage and insure the Goods from dispatch until delivery on terms current in the trade for the benefit of the Customer. The Goods shall be at the risk of the Customer as they are loaded on board. Provet shall promptly tender to the Customer a clean shipped bill loading, the insurance policy and an invoice in respect of the Goods.
- 11.5.2 The Customer shall accept the documents tendered by Provet if they correspond to this contract and take delivery of the Goods at the port of destination and bear all other costs and charges arising out of shipment of the Goods to the port of destination.

## **12. Currency**

- 12.1 All quotations, invoices, statements or other documents issued by Provet to the Customer are in Australian currency unless otherwise expressly stated.
- 12.2 All payments by the Customer to Provet must be made in Australian currency unless otherwise specifically agreed.

## **13. Intellectual Property**

- 13.1 Where Provet has designed or drawn Goods for the Customer, then the copyright in those designs and drawings shall remain vested in Provet, and shall only be used by the Customer at Provet's discretion
- 13.2 Conversely, in such a situation, where the Customer has supplied drawings, Provet in its sales conditions may look for an indemnity (the specifications and design of the Goods, including the copyright, design right or other intellectual property in them, shall as between the parties be the property of Provet). Where any design or specifications have been supplied by the Customer for manufacturer by or to the order of Provet then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

## **14. Governing Laws**

- 14.1 These Terms shall be construed and the rights and obligations of the Customer and Provet determine according to the law in force in the State of the Provet office at which the order was placed and the Customer and Provet submit to the non-exclusive jurisdiction of the Courts of the State
- 14.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## **15. Construction**

- 15.1 Any clause headings contained herein are for convenience only and shall not affect the construction of these Terms.
- 15.2 If any of the provisions of these Terms are for any reason held by a court of competent jurisdiction to be unlawful or invalid under any application statute or rule of law, then that provision or part of a provision shall be deemed to be

severable and omitted from these Terms and the validity and enforceability of the remainder of these Terms shall be in no way affected.

**16. Incorporation in other dealings**

16.1 Subject to any express contrary agreement in writing signed by Provet, these Terms shall, so far as is applicable and making all changes necessary having regard to the context be incorporated in any contract arising from future orders placed by the Customer with Provet.

**17. Amendment and Entire Agreement**

17.1 No variation, modification or alteration of any of these Terms shall be of any effect unless agreed to in writing and signed by Provet.

17.2 Subject to any such written variation, modification or alteration, these are the whole of the Terms applicable to all contrary which may appear on any documents issued by the Customer.

17.3 Subject to the provisions of the Trade Practices Act, Provet and the Customer expressly agree that all conditions and warranties implied or otherwise incorporated in contracts by statute, common law, equity, custom or usage or otherwise shall not apply and, to the maximum extent permitted by law, are excluded.

**18. Claims, Limit of Liability**

18.1 Paragraph 17.3 does not apply where the Customer is a consumer within the meaning of the Trade Practices Act 1974. Without derogating from any other term or condition in the agreement.

18.1.1 The Customer shall inspect the Goods immediately upon their delivery in accordance with clause 5.5. The Goods are deemed to be accepted by the Customer unless the Customer gives notice to Provet of any alleged defects in the goods, unfitness for the particular purpose for which they were supplied (if any), unmerchantable quality, or failure to meet specifications within 48 hours of delivery of goods.

18.1.2 In default of such notice, the goods shall be deemed to be suitable for the purpose for which they were supplied, of merchantable quality, in accordance with specifications, and otherwise free of any defect and Provet shall not recognize any claim in any of these regards

18.2 The liability of Provet, if any, for faulty workmanship, unsuitability, unmerchantable quality, failure to meet specifications, loss or damage in transit or whatever shall (except in the case where the Goods are of a kind that might ordinarily be acquired for personal, domestic or household use or consumption) be limited to:

18.2.1 Replacement of the Goods or supply of equivalent Goods;

18.2.2 Repair of the Goods;

18.2.3 Payment to the Customer of the cost of replacing the Goods or of acquiring equivalent Goods.

18.2.4 Payment of the Customer of the cost of having the Goods repaired (if applicable)

Whichever obligation Provet shall in its absolute discretion choose.

18.3 Without derogating from the generality of the foregoing, Provet shall not be liable for any consequential loss. The customer shall notify Provet immediately upon the Customer, its employees or agents becoming aware of any alleged fault or defect in the Goods, unsuitability or unfitness for the proposed use of the Goods, failure to comply with or to meet specifications, loss or damage in transit, or any other alleged cause of action in relation to the Goods arising out of the delivery or failure to deliver the Goods, and shall bring any action and/or commence any proceedings in relation thereto within six (6) months of the date of delivery of the Goods or the date that the Goods ought to have been delivered and not thereafter.

**19. Security and Charge**

- 19.1 Notwithstanding anything to the contrary contained herein or other rights which Provet may have howsoever;
- 19.1.1 Where the Customer and/or the Guarantor (if any) is the owner of the land, reality or other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Provet or Provet's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Provet (or Provet's nominee) shall be entitled to lodge, where appropriate, a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- 19.1.2 Should Provet elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Provet from and against all Provet's costs and disbursements, including legal costs on a solicitor and own client basis.

**20. Cancellation**

- 20.1 Provet may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. Provet shall not be liable for any loss or damage whatsoever arising from such cancellations.

**21. Privacy Act**

- 21.1 The Customer and/or the Guarantor/s agree for Provet to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by Provet.
- 21.2 The Customer and/or the Guarantor/s agree that Provet may exchange information about Customer and Guarantor/s with those credit providers named in the application for Credit Account or named in a consumer credit report issued by a reporting agency for the following purposes:
- 21.2.1 To assess an application by Customer
- 21.2.2 To notify other credit providers of a default by the Customer;
- 21.2.3 To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
- 21.2.4 To assess the credit worthiness of customer and or Guarantor/s
- 21.3 The Customer consents to Provet being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1) Privacy Act 1988).
- 21.4 The Customer agrees that Personal Data provided may be used and retained by Provet for the following purposes and for other purposes as shall be agreed between the Customer and Provet or required by law from time to time:
- 21.4.1 Provision of Service & Goods;
- 21.4.2 Marketing of Services and/or Goods by Provet, its agents or distributors in relation to the Services and Goods;
- 21.4.3 Analyzing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Service/ Goods;
- 21.4.4 Enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services and Goods
- 21.5 Provet may give information about the Customer to a credit reporting agency for the following purposes:
- 21.5.1 To obtain a consumer credit report about the Customer; and/or
- 21.5.2 Allow the credit reporting agency to create or maintain a credit information file containing information about the Customer

**22. Customers Disclaimer**

- 22.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of Provet and the Customer acknowledges that he/she buys the goods relying solely upon his/her own skill and judgment and that Provet shall not be bound by nor responsible for any terms, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.

**23. General**

- 23.1 All Services/Goods supplied by Provet are subject to the laws of the relevant state and Provet takes no responsibility for changes in the law which affect the services/Goods supplied
- 23.2 Provet shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of the breach by Provet of these terms and conditions
- 23.3 In the event of any breach of this contract by the Service Provider the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the service Provider exceed the Price of the Services.
- 23.4 The Customer shall not set off against the Price amounts due from Provet
- 23.5 Provet may license or sub-contract all or any part of these rights and obligations without the Customers consent
- 23.6 Neither party shall be liable for any default due to any act of God, war, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.