

# *Terms of Sales and Delivery*

## *Pro-Flex Sanding Brushes ApS*

01/06/2012 – Version 1,1

### **§1. Offers and orders**

1. Only orders, which have been accepted by a confirmation in writing from the seller's part commit the seller and only to the terms that are stated in the order confirmation. Until the buyer's accept has got to the seller, the seller is entitled to make a deal or an agreement with a third party concerning the offer, with the effect that the offer to the buyer will be annulled. After receiving accept from the buyer the seller must inform the buyer that the offer is annulled.

2. Other agreements between seller and buyer are not committing until they have been confirmed in writing from the seller.

### **§2. Prices**

1. Prices for all sales are the prices that appear from the order confirmation/the offer.

2. All the prices that are stated are delivered ex warehouse (Risskov) unless other terms or information clearly appear from the offer or the order confirmation.

3. The price stated in the order confirmation is regulated, if the production prices of the equipment are changed in the time between the date of confirmation and the date of delivery.

The buyer pays VAT (value-added tax) and other public fees with the percentage rate/the amount, which the seller has to pay. If it appear from the offer/order confirmation that it is about import in a certain currency, the sales price will be regulated with the difference between the rate of exchange stated in the offer/order confirmation or in the absence of it, which was valid at that time, and the rate that the seller has paid by his buying of currency, but only until the second bank day after the seller has received the buyers payment in time.

By amortised payment the difference in the rate is shared proportional between payout of the sum of the financing.

### **§3. Delivery**

1. By sales of machines, systems, sanding materials or spare parts for these, the sale is seen as concluded ex warehouse (Glyngøre) – unless other agreement or information appear from the offer or sales contract.

2. In absence of other agreement the seller decides the transport.

3. By machines or parts, which are installed by the seller, the sold goods are delivered, when the system has been tested and adjusted to the performance that is agreed between the parts. If the test and adjustment can not be carried out because of the buyer's conditions the consignment is seen as delivered, when 8 days have passed after the seller has finished the installation. If the buyer uses the machine, equipment or parts from this before delivery in accordance with this, the delivery is considered as carried out from the time of use.

4. The seller is not responsible for delays or missing delivery, which is caused by delivery problems from the seller's supplier, hurdles in transport, force majeure, currency restrictions, lack of materials or employees, strike, lockout or other interruption in the operation of the firm or other causes outside the seller's control. Additionally the seller is only responsible for delay or missing delivery, if it is caused by the seller acting critical negligently. In cases, where the seller has reserved to be free from responsibility, exceeding time of the delivery does not entitle the buyer to cancel the order. In that case the time of delivery is extended with the number of days that the delivery has been hindered. If the hindrance of the delivery, caused by one or more of the above mentioned circumstances, is expected to continue more than 3 months, the seller is entitled to cancel the sale without it is considered as violation.

5. By sales of goods, which is designed on the basis of the buyer's drafts, descriptions or commissions, the buyer is not entitled to cancel the buy because of delay, which is caused by the sub supplier's delayed shipment to the seller.

6. The seller is in no case responsible to compensate for loss of working profits or other indirect loss.

7. The usual manual from the producer follows in the language of the producer country or in one of the main languages. However, the safety- and health directions according to Danish law must be in Danish.

The seller supplies at latest by the delivery the buyer with an EU-agreement declaration for the machine compared to the EU Machinery Directive.

The seller is not responsible for defects and damages, which is a consequence of repair work, changes or modification of the goods, which not have been carried out by the supplier's technical staff.

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In addition the seller's responsibility is determined by application of original or identical spare parts, also the seller's technical staff, appointed by the seller, must be used by service.

### **§4. Payment**

1. The determined payment is paid by the buyer in cash by the delivery unless an written agreement has been made about credit.

2. In every case, where any kind of credit is paid, the sale is considered as it has been carried out with reservation of ownership the goods, so that the seller remains as the owner until full payment has been carried out.

If the goods are not delivered on credit, the goods must be paid on the seller's request. If the buyer does not pay in time, the seller is entitled to require interest on overdue payment of the due amount with 2% per beginning month from the date of payment and until the payment is completed. The rate of interest can at anytime, and binding for the buyer, be changed by the seller. This will appear from the seller's monthly statement of account to the buyer. For sales contracts special rules applies. The seller can require an insurance declaration and a sales contract made on the seller's conditions and a declaration about arrangement of payment. If the sales contract/leasing contract is not immediately returned and competently signed, all the rest of the purchase price is due right away/the leasing contract is broken.

3. The seller reserves the ownership to the sold goods until the purchase price with extra charges of cost incurred has been paid to the seller or to the one, to whom he has given his rights.

4. The buyer can not make deductions of the purchase price with any requirements, which the buyer may have against the seller from other circumstances, and the buyer can not hold back the acquired for such counterclaims. The buyer does not have any rights to hold the payment back because of claims or counterclaims concerning the delivered goods.

### **§5. Claims and defects**

1. Right after delivery the buyer must do a sufficient examination of it.

2. If the buyer afterwards has a claim, it must be stated in writing to the seller specifying the defects, at latest 8 days after the time, where the buyer has or should have found out the concerned defect.

If it for new equipment, consumer goods or new spare parts within 12 months after the date of delivery,

3. which normally is the date of invoice, by the buyer can be proven that there is a defect in the construction or the material, these will be repaired in the same extent as the seller's suppliers, in accordance with their terms of delivery, have taken on the responsibility in relation to the seller. The suppliers' terms of delivery are for that reason willingly forwarded on request from the buyer.

4. If the buyer documents new materials with defects in the construction, materials or the manufacturing of any delivered parts, the buyer has the right to substitution free of charge, which is either new goods after the seller's own choice and/or repairs or changes of parts with defects. In addition the buyer bears all costs, including shipment costs, wages or other costs regarding dismantling and installation etc.

5. If the buyer does not claim accordingly, violation can not be maintained later on. If the claim transpires to be groundless the seller has the right to compensation for any loss, which is a consequence of the groundless claim. The seller's responsibility will be annulled, if he does not get the opportunity to inspect the defect before any change of the delivered goods is managed. It is a prerequisite for the seller's responsibility that the buyer has not done any changes in construction of the goods, repaired it with unoriginal spare parts or ignored instruction from the seller concerning installation, operation or working of the machine and service. Defects caused by overloading, unusual usage or normal wear are not covered by the seller's responsibility.

6. Parts, which machine manufacturer or component supplier do not cover any kind of guaranty for, are not included in the seller's duty to compensate for such spare parts in the claim period.

7. The equipment is assumed to be used to what is corresponding to 37 hours work per week. If not, the time is reduced proportionally. The seller is not responsible for repairs and replacements, which is caused by normal wear or inaccurate handling of the sold goods.

8. The seller is never responsible for paying compensation for loss of working, working profits or other indirect loss.

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### **§6. Responsibility for cause of damages of the shipment (product liability)**

1. Unless written in law, the seller is only responsible for hurting of persons, if the buyer documents that it is caused by inadvertent act from the seller or from other persons, for whom the seller is responsible.
2. Damages, delays or other conditions, which is a consequence of the buyers lacking skills by using the goods, unfitted materials and wrong methods, are irrelevant for the seller. Seller's repair of conditions caused by above mentioned is charged on the basis of current charges.
3. The seller is not responsible for damages on real property or moveable/personal property.
4. The seller shall under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.
5. To the extent that the seller should be ordered to be under product liability directly for third party, the buyer is responsible to hold the seller indemnified in same extent of how the seller's responsibility is restricted after the previous paragraphs.
6. If the third party put demands to one of the parties about compensation in accordance with present article, this party must inform the other party about this right away.
7. The seller and the buyer are mutual committed to go into court proceedings through a court, which processes compensations that are brought against one of them on the basis of a damage, which is claimed to be caused by the delivery. However the mutual conditions between the buyer and the seller are always settled at the seller's venue.

### **§7. Maximum sum of compensation**

The seller's eventually responsibility for compensation to the buyer in accordance to § 5 and § 6 can never be more than DKK 500.000 in a case of damage. In case of damages is understood all damages, which are caused by the same mistake or failure.

### **§8. Used machines**

1. Exchange. If it is agreed in a sale of equipment that the seller as a part of the payment for the sold goods (equipment) will take used equipment in exchange, the agreement from the seller's side is determined by information from the buyer, which must be given to the seller, about eventual damages, defects and functional capability and existing protection measures. All equipment must be included. The buyer guarantees that no one is liable for the used equipment. It is required that the exchanged machine or equipment is in the same condition by the transference as at the time of agreement. If the seller is going to do dismantling, it is the buyer's duty, both within and outside normal working hours, to give access to the equipment being removed from the building in the way as the seller sees as the most appropriated.
2. Sales. Unless something else has been agreed in writing, used equipment is sold as inspected and the seller is not responsible for eventual defects, except for fraud or defect in title. Eventually extra costs for use are defrayed by the buyer.
3. Return. When machines or equipment ordered by a mistake from the buyer are returned to the seller, the buyer will be charged 10% of the price. (This is not about goods with defects or other mistakes caused by the seller or because of wrong recommendation).

### **§9. Technical drawings and descriptions**

All information, which is stated in catalogues, prospectus, circular letters, advisements, picture materials etc. is only approximately and are not binding. Such information is only binding if it is definitely stated in the seller's order confirmation or other written agreements. Every technical drawing and/or technical description or illustration etc., which is handed over to the buyer for use by the installation of systems and other products, remain seller's property and is without written approval not allowed to be used, copied or presented to third party or in other ways be a part of third party's knowledge and must be brought back to the seller right after use.

### **§10. Installation**

1. If the seller has committed himself to do the installation of sold goods, systems or parts, it is required that all necessary installations have been carried out after valid instructions. Furthermore it is a demand that power is supplied in sufficient and constant quantities. Failures caused by defects and mistakes in installations are eliminated by the buyer's account after current charges. (Examples on this are too big

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content of water in compressed air, insufficient and lack of earth connection to electricity, influence from electrical noise, wrong capacity of exhaust device). The buyer is committed to make all preparations, which is necessary for instant, continuously and unhindered implementation of the installation work from the time of delivery. If the buyer does not fulfil this commitment, the seller has the right to choose remedy measures to compensate for this and the buyer is committed to pay costs connected with this on his account.

2. The buyer is ineligible to take the equipment into use before the formal delivery has been carried out. If the buyer ignores this, the installation- and starting support from the seller ends, and with this the goods are delivered and finally accepted by the buyer.

### **§11. Disputes**

All disagreements concerning present terms of sales and delivery and shipments from the seller are determined by the seller's venue and in accordance to Danish law.

### **§12. Validation**

The above mentioned normal terms of sales and delivery are always valid unless other written agreement exists.