

## GENERAL TERMS AND CONDITIONS OF SALE

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### § 1 APPLICATION, FULFILLMENT

- [1] PROLICHT GmbH ("PROLICHT"), based in Götzens, Tyrol, Austria, produces and sells high-quality lighting fixtures and individual lighting systems ("GOODS") all over the world.
- [2] Any sale to its customers ("CUSTOMER/S") is exclusively subject to the following General Terms and Conditions of Sale ("GTC"). These GTC are enclosed to each offer sent to the CUSTOMER and are available for download in different languages on the homepage of PROLICHT.
- [3] All agreements made between PROLICHT and the CUSTOMER, as well as additions to these agreements, must be in writing.
- [4] PROLICHT sales representatives and agents are not authorized to make any agreements or commitments on behalf of PROLICHT that deviate from these GTC. For this purpose, individual written agreements by persons authorized to represent PROLICHT (managing director or authorized signatory) are required.
- [5] If the CUSTOMER refers to its GTC at the time of the order and PROLICHT nevertheless makes the sale, this does not constitute an acceptance of the CUSTOMER's GTC. Rather, by placing the order and accepting the order confirmation ("OC") of PROLICHT without objection (see § 2), the CUSTOMER agrees that the sales contract is exclusively based on PROLICHT's GTC.
- [6] The CUSTOMER acknowledges that PROLICHT may transfer the contract and/or individual rights and obligations arising from the contracts concluded to companies affiliated with it and have its obligations performed by such companies. No individual consent of the CUSTOMER is required for this purpose.

### § 2 OFFERS, CONCLUSION OF CONTRACT

- [1] PROLICHT responds to requests from CUSTOMERS by sending offers that are basically non-binding.
- [2] Offers are only binding in exceptional cases if they are expressly indicated by PROLICHT as binding.
- [3] The order is immediately binding for the CUSTOMER, his withdrawal from the contract (cancellation) is excluded.
- [4] PROLICHT reserves the right to accept the order. Acceptance is made by sending a written OC. The extent of the supply contract is exclusively determined by this OC.
- [5] The CUSTOMER is obliged to check whether the OC corresponds to what has been ordered. If the content of the OC deviates from the order, it shall be deemed that the CUSTOMER agrees to the changed content if he does not immediately protest the OC in writing. If no timely protest or correction is made by the CUSTOMER, any deviations in the OC shall be deemed to have been accepted.
- [6] Special requirements of the CUSTOMER, such as delivery periods, deadlines, discounts, different delivery addresses, special requests, or special designs, etc., shall only become part of the contract if they are expressly confirmed as binding by PROLICHT in the OC.
- [7] Samples are non-binding and generally subject to a charge unless otherwise agreed.
- [8] Designs may be modified by PROLICHT even after conclusion of the contract, provided that this is compatible with the customer's specifications, or the deviation is only minor.

### § 3 OTHER SERVICES: PLANNING SERVICES, EMERGENCY LIGHTING FUNCTION

- [1] PROLICHT may offer planning services in advance in connection with the delivery of its GOODS. This is to be understood as a non-binding (liability-free) installation suggestion for the positioning of the luminaires at the CUSTOMER's premises. This service is provided exclusively based on the (unchecked) files and dimensions provided by the CUSTOMER.
- [2] The planning draft is not suitable as a basis for installation. As a simple suggestion for the installation on site, it must be checked by the respective professional. PROLICHT does not assume any liability for the correctness, completeness, and feasibility of the execution recommendation.
- [3] Lighting fixtures can be offered with an emergency lighting function. However, the GOODS are basically not emergency luminaires in the sense of EN 60598-2-22. If emergency luminaires in the sense of EN 60598-2-22 are requested, additional tests subject to a charge must be carried out, which will be invoiced to the CUSTOMER.

### § 4 CANCELLATION, WITHDRAWAL, FORCE MAJEURE, PRICE ADJUSTMENTS

- [1] All GOODS are always manufactured individually to order. For this reason, a return, an exchange, or a change after the order (also with regard to delivery date and place of delivery) is basically not possible.
- [2] PROLICHT shall not be liable for any impossibility or delay in delivery due to causes beyond its reasonable control ("Force Majeure"): e.g. accidents, war, acts of terrorism, epidemic, pandemic, civil disturbances, failure of communications facilities, natural disasters, governmental acts or omissions, changes in laws or other legislation, strikes, in the event of unforeseeable operational, traffic or shipping disruptions, fire damage, floods, unforeseeable shortages of energy and raw materials, import and export restrictions, governmental orders, and similar unforeseeable events that subsequently make it difficult or impossible for PROLICHT or PROLICHT's suppliers to perform. In this case, PROLICHT is released from its obligation to perform without any cost consequences.
- [3] If events occur after the conclusion of the contract (e.g., increase in raw material prices, transport costs, etc.), which no longer allow the fulfillment of the contract at the agreed conditions in a cost-covering manner, PROLICHT is free to withdraw from the contract without any cost consequences.
- [4] If, in the event of supply shortages, alternative suppliers or raw materials would have to be used, the CUSTOMER may only request this if the corresponding costs are also borne by the CUSTOMER.

### § 5 TERMS, DELIVERY, TRANSPORT, DELAY

- [1] The assurance of specific delivery dates or deadlines as well as specific production times stated on the homepage, catalogs, etc. is non-binding and dependent on workload.
- [2] Delivery shall be made EXW in accordance with the Incoterms® (International Commercial Terms) and as of the date of delivery ex works specified in the OC, unless expressly stated otherwise in the OC.
- [3] Delivery dates or terms stated in the order or the OC are generally non-binding, unless otherwise stated in the OC.
- [4] A delivery date confirmed in the OC is always the date of dispatch availability from the factory.
- [5] PROLICHT is entitled to make and charge partial or advance deliveries.
- [6] In any case, an agreed delivery period or date cannot begin to run before receipt of a corresponding confirmation of coverage from the credit insurance company (see § 6 [3]), or receipt of the amount to be paid in advance.
- [7] PROLICHT is not responsible for delays caused by authorities when exporting to countries outside of the EU.
- [8] Any packaging supplied and the obligation to dispose of it properly shall pass to the CUSTOMER upon delivery.
- [9] Unless otherwise agreed in writing in the OC, all transport, insurance, customs clearance costs, etc. shall be borne by the CUSTOMER. The prices do not include unloading and transport of the GOODS.
- [10] If the CUSTOMER fails to collect the GOODS at the agreed time, the CUSTOMER shall be in delay in acceptance. After the expiration of a reasonable grace period, PROLICHT is entitled - without prejudice to further claims - to withdraw from the contract and/or to claim damages or to store the GOODS at its own discretion at the risk and expense of the CUSTOMER. PROLICHT is entitled to demand compensation for the damage actually incurred. In the event of a delay in acceptance, the risk of accidental loss or accidental damage to the GOODS shall pass to the CUSTOMER.
- [11] Insofar as performance deadlines are agreed as binding, the following shall apply: If the CUSTOMER is in default with the fulfillment of its contractual obligation, all performance deadlines are extended by the duration of the default. Performance deadlines are extended appropriately in the event of circumstances for which PROLICHT is not responsible and in the event of force majeure (see § 4 [2]). PROLICHT will inform the CUSTOMER immediately of the beginning and end of such obstacles. If the obstacle to delivery lasts longer than three months, both contractual parties are entitled to withdraw from the contract.
- [12] PROLICHT will only compensate for damages caused by delay in accordance with the provisions of § 8. In addition, the following applies: If PROLICHT is responsible for the non-observance of a delivery date bindingly agreed upon by PROLICHT in the OC and if the CUSTOMER can prove that it has incurred damages as a result thereof (which is within the meaning of § 8 compensable), the CUSTOMER may demand a maximum of compensation in the amount of 0.5% per week of the continuing delay in delivery, but in total not more than 5% of the net price of the delivery affected by the delay.

### § 6 PRICES AND TERMS OF PAYMENT

- [1] Unless otherwise agreed in writing, prices are ex works (EXW) place of manufacture according to Incoterms® excluding VAT and transport costs as well as excluding any import costs and customs duties.
- [2] The statutory sales tax is due in the respective statutory amount and is shown separately on the invoice. In the case of delivery outside the European Union, PROLICHT is entitled to subsequently charge the statutory VAT if the CUSTOMER does not send proof of export to PROLICHT within one month after the respective shipment.
- [3] PROLICHT delivers on invoice insofar as the CUSTOMER can be insured against non-payment with PROLICHT's credit insurance. In case of successful insurance, invoices are to be paid (until the credit limit is reached) within 30 days from the invoice date. If the credit insurance refuses coverage, the delivery will be made only against prepayment. In this case, receipt of the purchase price is a condition for delivery or the start of production.
- [4] Invoices are to be checked by the CUSTOMER without delay and any errors are to be reported. After the due date, a correction is excluded, and the invoice amount is considered accepted.
- [5] Fixed interest rates of 12% p.a. are agreed for late payments.
- [6] If the CUSTOMER is in default of payment, PROLICHT is entitled to demand immediate payment of all claims against the CUSTOMER and/or to demand deposit of security even prior to delivery, to withhold outstanding deliveries from all contracts with the CUSTOMER in whole or in part, or to withdraw from existing contracts in whole or in part.
- [7] The CUSTOMER shall only be entitled to rights of set-off, retention and refusal of performance if its counterclaims have been confirmed by a decision of a court, are undisputed or have been recognized.

## § 7 TRANSPORT DAMAGE, NOTICE OF DEFECTS, WARRANTY

- [1] The statutory warranty period for defects at the time of handover of the GOODS is 24 months after delivery (ex works).
- [2] Any transport damage and/or loss must be immediately identified by the CUSTOMER upon delivery in the presence of the carrier, documented (e.g., photos) and reported to PROLICHT in writing. Otherwise, the CUSTOMER shall be liable for any damage in this regard. These obligations also apply to the CUSTOMER if the delivery is made to a third party at the request of the CUSTOMER and are consequently to be transferred to this third party.
- [3] The CUSTOMER (or an authorized third party) must inspect the delivered GOODS after delivery for (any) defects (with regard to transport damage, see § 7 [2]). PROLICHT must be notified of apparent defects, wrong deliveries or defects that could have been detected in the course of a proper and careful inspection immediately, but no later than 10 working days after delivery/collection of the GOODS, by e-mail to the complaints department iRun at [irun@prolicht.at](mailto:irun@prolicht.at) ("NOTICE OF DEFECTS"). PROLICHT must be informed of hidden defects immediately upon discovery, but no later than within 10 working days from the date of discovery. After the NOTICE OF DEFECTS has been given, the CUSTOMER shall wait for further instructions from the complaints department iRun. If the CUSTOMER fails to give NOTICE OF DEFECTS in due time, the GOODS shall be deemed to have been approved and accepted free of defects.
- [4] The burden of proof for all warranty claims requirements, including the existence of the defect at the time of handover, the time of the identification of the defect, and the timely notification of the defect, shall be with the CUSTOMER.
- [5] Illustrations and visualizations on the homepage, in the product configurator, in catalogs, data sheets or other sales documents are intended for better illustration and are non-binding. They do not represent a true-to-detail representation of the GOODS. Any deviation of the GOODS from these visualizations shall not constitute a defect. Liability for printing errors or faults is excluded. Changes and design improvements, in particular in the sense of technical progress, are reserved.
- [6] If the GOODS are manufactured by PROLICHT based on design data, drawings, models, or other specifications provided by the CUSTOMER, the warranty and liability shall be limited to the production in accordance with these specifications provided by the CUSTOMER. The information provided by the CUSTOMER will not be subject to verification by PROLICHT.
- [7] Compensation for defects or damages under warranty, liability and guarantee is subject to the following exclusions or limitations (see also limitations of liability in § 8):
  - a. the GOODS have been professionally installed (in accordance with PROLICHT installation instructions) and put into operation by a licensed electrical engineering company.
  - b. Recessed luminaires must not be mounted in perforated plasterboard or perforated panels.
  - c. The GOODS are designed for use at a room temperature of 10°C to 30°C. Additional environmental influences that cause deviating temperatures, such as special installation and assembly situations or environmental conditions that were unknown to PROLICHT (e.g. confined space, proximity to heaters, direct sunlight, etc.), but also certain chemical, electrochemical or electrical influences or increased humidity, overvoltage, dust, power or mains fluctuations, oxidized surfaces, etc. may impair the functionality of the luminaires and do not constitute a defect within the meaning of the warranty. It is the responsibility of the CUSTOMER to inform PROLICHT about the place of use and the influences there.
  - d. Not covered by the warranty are modifications or repairs made to the GOODS without the consent of PROLICHT and faults or malfunctions caused by improper use, operation in conjunction with inadequate control components and incorrect operation.
  - e. The warranty is excluded, if the GOODS are not used properly by the CUSTOMER or are connected to or installed in inappropriate parts (e.g., parts that do not come from PROLICHT or do not comply with the operating instructions).
  - f. Minor changes or deviations from the nominal condition (minor defect) or minor deviations from illustrations or information in catalogs or other sales documents that are insignificant for the value or use of the GOODS as well as surface damage on less than 5% of the total surface of the luminaire do not constitute a warranty claim.
- [8] Natural or usual wear and tear as well as wear parts (e.g., batteries) are not covered by the warranty. The following failures or changes are part of normal wear and tear and in any case do not constitute grounds for warranty claims:
  - a. Lifetime specification L70B10 for LED modules:
    - Failures within the scope of the so-called nominal failure rate: for electronic operating devices or components such as LED modules, the average nominal failure rate is 0.2%/1000 operating hours.
    - Usual changes in LED modules: Luminous flux decline up to a value of 0.6%/1000 operating hours.
  - b. Luminous flux, light color and power are subject to a tolerance of +/- 10% for a new LED module.
  - c. Aging of plastic parts: Due to the natural aging process, polycarbonate and PMMA, for example, may discolor and become brittle.
- [9] Upon receipt of a timely NOTICE OF DEFECT, PROLICHT may request that the GOODS in question shall be sent to PROLICHT for inspection, to the extent that this can be done without unreasonable effort. PROLICHT will bear the costs of transportation, provided that the subsequent inspection reveals a defect under warranty at the time of handover. In the event of an unjustified NOTICE OF DEFECT, the CUSTOMER shall bear the costs for the expenses incurred by PROLICHT as a result of the inspection (transport, costs of the inspection, etc.).
- [10] If the CUSTOMER can prove a defect, PROLICHT may choose to repair or replace the defective item free of charge or to reduce the purchase price by a reasonable amount. Missing quantities will be delivered subsequently.
- [11] In the case of subsequent deliveries of LED modules, deviations in the light characteristics compared to the original products may occur due to technical progress as well as changes in the luminous flux and light color of products caused by use.
- [12] Invoices for repairs made will only be accepted if PROLICHT has been informed of these costs in writing in advance and if PROLICHT has confirmed in writing that it will bear these costs.
- [13] An extension of the warranty obligation shall not occur due to a repair of defects. This does not apply to the replacement of the GOODS.
- [14] The CUSTOMER's right to file claims arising from defects (in court) expires three months after PROLICHT's written rejection of the complaints.

## § 8 LIABILITY

- [1] PROLICHT is liable for damages only within the limits of the legal provisions; any further contractual liability (in particular the obligation to pay contractual penalties) is excluded.
- [2] Furthermore, PROLICHT's liability shall be limited notwithstanding the applicability of the Product Liability Act as follows:
  - a. Liability is limited to intent or gross negligence. Liability for slight negligence is excluded, as is compensation for consequential and (pure) financial loss, savings and profits not achieved, loss of interest and damage arising from third-party claims against the CUSTOMER. This shall also apply to consequential damages under warranty, i.e., also all expenses incurred in connection with the remedy of defects (such as for installation and removal, transport, disposal, travel and travel time, lifting equipment) and lost profits. In this respect, the CUSTOMER undertakes to indemnify PROLICHT from any claims of its customers resulting from consequential damage caused by a defect, unless PROLICHT has intentionally or grossly negligently failed to fulfill its obligations.
  - b. The liability is in any case limited to the compensation of the contract-typical, foreseeable damage. Compensation claims of the CUSTOMER against PROLICHT, which are based on contractual penalty claims of the CUSTOMER's customers, are in no case foreseeable and typical for the contract for PROLICHT in the aforementioned sense.
  - c. Furthermore, PROLICHT's liability per claim is limited to the amount of the respective net order value (individual order containing the defective GOODS).
  - d. Insofar as the damage is covered by an insurance concluded by the CUSTOMER for the relevant damage, PROLICHT shall only be liable for any associated disadvantages of the CUSTOMER, e.g., higher insurance fees. The CUSTOMER must prove the existence or non-existence of the insurance coverage to PROLICHT upon request.
- [3] In the event of non-compliance with any (regulatory or PROLICHT specified) conditions for installation, operation, and use (as e.g., in operating instructions and safety instructions), any compensation is excluded.
- [4] In all other respects, the limitations set forth in points § 7 [5], § 7 [6], § 7 [7] and § 7 [8] of these GTC shall apply. In these cases, PROLICHT shall not be liable.
- [5] The limitations of liability herein shall be passed on in full to all customers of the CUSTOMER, with the obligation to further pass them on.
- [6] If claims are made against PROLICHT by third parties based on a liability without responsibility, in particular based on product liability, the CUSTOMER shall be liable to the same extent as the CUSTOMER would be directly liable. PROLICHT's liability for measures taken by the CUSTOMER to prevent damage, e.g., recall actions, is excluded - as far as legally possible.
- [7] The CUSTOMER's right to file claims for damages (in court) against PROLICHT expires three months after written rejection by PROLICHT.

## § 9 RESERVATION OF TITLE, RESERVATION OF COPYRIGHT, CONFIDENTIALITY

- [1] The delivered GOODS remain the property of PROLICHT until the invoice amount and any default interest have been paid in full. In the event of resale, the CUSTOMER shall deliver the GOODS to its customers only under retention of title effectively agreed upon until full payment has been made (passed-on retention of title).
- [2] The CUSTOMER guarantees that in case that PROLICHT produces on the basis of designs and specifications or with goods/materials of the CUSTOMER, the CUSTOMER is the unrestricted legal owner with regard to the necessary copyrights and industrial property rights. If, nevertheless, copyrights or industrial property rights are raised against PROLICHT by a third party, the CUSTOMER must indemnify PROLICHT from all costs and claims in this regard. PROLICHT must immediately notify the CUSTOMER of such third-party claims and, in the event of legal action, notify the CUSTOMER of the dispute. If the CUSTOMER does not join the proceedings as a party to the dispute of PROLICHT, PROLICHT is entitled to acknowledge the claim of the plaintiff and will be indemnified and held harmless by the CUSTOMER without regard to the legitimacy of the acknowledged claim.
- [3] Design documents such as plans, drawings and other technical documents as well as samples, catalogs, brochures, illustrations, etc. remain the intellectual property of PROLICHT and internal documents may not be made available or otherwise accessible to third parties without prior written consent and must be returned upon request.
- [4] The CUSTOMER is obliged to always treat all (non-public) technical, business, and personal processes and circumstances of PROLICHT as business or trade secrets.

## § 10 CHOICE OF LAW, PLACE OF JURISDICTION, GENERAL

- [1] The contractual relationship is subject to Austrian law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- [2] The place of performance for all obligations arising from the contractual relationship is agreed to be the registered office of PROLICHT in Innsbruck/Tirol/Austria.
- [3] All legal disputes arising from the contractual relationship governed by these GTC, including those regarding the existence or non-existence of the contractual relationship, shall be subject to the exclusive jurisdiction of the competent court at the registered office of PROLICHT.
- [4] In case any provision of the contract, including these GTC, is or becomes invalid in whole or in part, this shall not affect the validity of the remaining provisions. The provision that is wholly or partially invalid shall be replaced by a provision that comes as close as possible to the wholly or partially invalid provision in terms of content and purpose.
- [5] Only the German version (to be found at <https://www.prolicht.at/de/footer/metanavigation/agbs/>) of the GTC is binding. Other translated versions, in particular this English version, are for convenience only. In case of discrepancies between the German version and other translated versions, the German version prevails and will be the basis of a judge's evaluation.