

# PROACTIVE COMPONENTS, INC.

## TERMS AND CONDITIONS

These "Terms and Conditions" govern the sale of product/services by Proactive Components, Inc. (PCI) as well as third party vendors and/or service providers for PCI.

1. **ORDERS:** All orders placed by Buyer are subject to acceptance by Seller in accordance with these Terms and Conditions. Orders may not be canceled or rescheduled without Seller's written consent. All orders must include delivery dates, quantities and complete description of the goods requested for purchase. Seller may in its sole discretion allocate products to its customers. Seller may designate certain products as "non-cancelable" and/or "non-returnable" and the sale of such products can be subject to special terms and conditions stated on the invoice or such notice to Buyer.

2. **PRICES:** Unit pricing for all products and services ordered by Buyer are specified on each invoice. Price quotations, unless otherwise stated, shall automatically expire five (5) calendar days from the date issued and may be canceled or amended within that period upon notice to Buyer. Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including federal, state and local sales, excise and value added taxes, and similar taxes. Buyer agrees to pay these taxes unless Buyer has provided Seller with an exemption resale certificate in the appropriate form for the jurisdiction of Buyer's place of business and any jurisdiction to which the purchased goods are to be directly shipped hereunder, or unless the sale is otherwise exempt from these taxes. Buyer agrees to indemnify and hold harmless Seller for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on Seller's invoice.

3. **PAYMENT TERMS:** Standard terms of payment are net thirty (30) days from the date of invoice unless otherwise specified in writing by Seller. Seller may invoice each shipment separately and each shipment can be considered a separate and individual contract. Buyer agrees to pay such invoice pursuant to its terms without the benefit of setoff or deduction.

4. **INTEREST/LATE FEES:** Interest at the rate of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law, whichever is less, shall be imposed on all outstanding balances.

5. **MODIFICATION OF PAYMENT/CREDIT TERMS:** Seller reserves the right to establish and/or change credit and payment terms extended to Buyer when, in Seller's sole opinion, Buyer's financial condition or previous payment record warrants that action. Further, on delinquent accounts, Seller shall not be obligated to continue performance under any agreement with Buyer.

6. **REJECTION OF ADDITIONAL OR INCONSISTENT TERMS:** Any additional or inconsistent terms contained in a purchase order or other document are specifically rejected. These Terms and Conditions take precedence over Buyer's additional or different terms and conditions to which notice of objection is hereby given. Neither Seller's commencement of performance nor delivery shall be deemed or constituted as acceptance of Buyer's additional or different terms and conditions. Buyer's acceptance of the products and/or services shall be deemed to constitute acceptance of the Terms and Conditions contained herein.

7. **SUPPLIERS REQUIREMENTS:** Suppliers are required to notify Proactive Components of nonconforming product if and when it is determined that the nonconforming product has been shipped, as well as obtain Proactive Components' approval for nonconforming product disposition. Suppliers are required to notify Proactive Components of changes in product and/or process definition, changes of suppliers, change of manufacturing facility location and, where required, obtain organizational approval. Suppliers are required to flow down to the supply chain the applicable requirements including customer requirements. Proactive Components, our customers and regulatory authorities reserves the right of access to the applicable areas of all facilities, at any level of the supply chain, involved in the order and to all applicable records, and when specified in the purchase order requirements for a certificate of conformity, test reports and/or airworthiness certificate and any record retention requirements.

8. **DELIVERY:** Delivery will be deemed complete and risk of loss or damage to any product will pass to Buyer upon delivery to the carrier. Buyer acknowledges that delivery dates provided by Seller are estimates only and Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of Seller nor shall the carrier be deemed an agent of Seller. In the event of the delay caused by such event, the date of the delivery shall be extended for a period equal to the time lost as a consequence of the delay in delivery without subjecting Seller to any liability or penalty.

9. **ACCEPTANCE/RETURNS:** Shipments will be deemed to have been accepted by Buyer upon receipt of the said shipments at Buyer's facility. Buyer shall perform whatsoever inspection or tests Buyer deems necessary as promptly as possible but in no event later than three (3) days after delivery, at which time Buyer must either accept or reject the products by providing written notice to Seller. Any discrepancy in shipment quantity

must be reported in writing within three (3) working days of receipt of the products. In the event of an over-shipment, Buyer shall have the option to return the products to Seller at Seller's expense or alternatively, Buyer may elect to retain the products (subject to adjustment of the invoice price to account for additional items). Regardless of the reason for the return, any product returns shall be subject to Seller's prior written return merchandise authorization as well as a thirty (30%) percent restocking charge. Returned products must be in the original condition and packaging. Unless otherwise agreed by Seller in writing, return transportation costs must be prepaid by Buyer.

10. **DISCLAIMER OF WARRANTIES:** The only warranty on any goods sold to Buyer is the express written warranty, if any, granted by the manufacturer. Seller makes no representation or warranty, express or implied, including any implied warranties of merchantability or fitness for particular use with respect to the products, goods and/or services provided.

11. **LIMITATION OF LIABILITY:** Seller's maximum liability to Buyer shall be limited to amount that Buyer paid to Seller for the merchandise received. **IN NO EVENT WILL SELLER OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM ANTICIPATED OR LOST PROFIT, LOST DATA, BUSINESS INTERRUPTION, LOSS OF BUYERS, LOSS OF MARKET SHARE, LOSS OF GOODWILL OR MANUFACTURING EXPENSES AND ANY OTHER LOSS(ES) THAT MIGHT ARISE AS A DIRECT OR INDIRECT RESULT OF THE SALE OR USE OF THE PRODUCTS OR AS A RESULT OF SELLER'S NON-PERFORMANCE OR INADEQUATE PERFORMANCE OF ITS OBLIGATIONS, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

12. **ASSIGNMENTS:** Purchaser's rights under these Terms and Conditions may not be assigned without Seller's prior written consent. However, the foregoing does not limit Buyer's right, upon making payment in full, from transferring title to the merchandise subject to written notice to and transfer of title on the records of Seller.

13. **BINDING ON SUCCESSORS:** These Terms and Conditions shall be binding on the heirs, executors, administrators, successors and assigns of the Buyer. Buyer further agrees that Seller may assign its rights under this agreement and that this agreement shall be binding upon and inure to the benefit of the successors and assigns of Seller.

14. **ENTIRE AGREEMENT:** These Terms and Conditions consist of all terms which have been agreed upon between the parties with exception of any (i) credit application provided by Buyer, (ii) personal guarantee(s) submitted by Buyer, and/or (iii) such additional terms as provided on Seller's invoices. These Terms and Conditions replace all other discussions and agreements, whether oral or written, as relating to those goods and services. No subsequent discussion or agreement can change the terms of this contract unless it is written and signed by both parties.

15. **CHOICE OF LAW/JURISDICTION:** If any provision of these Terms and Conditions is held by a court of competent jurisdiction to be contrary to law, the remaining provisions will remain in full force and effect. These Terms and Conditions will be governed by and construed in accordance with the laws of the State of Florida, and the parties consent to personal jurisdictions and venue in the state courts located in Pinellas County, Florida.

16. **ATTORNEYS FEES:** In any action at law or in equity to enforce any of the provisions or rights under these Terms and Conditions and/or for collection of amounts due, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses, and reasonable attorney's fees incurred therein by the prevailing party (including, without limitation, such costs, expenses and fees on any appeals), and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses, including those of expert witnesses and attorney's fees, shall be included as part of the judgment.

17. **FORCE MAJEURE:** If by reason of act of God or force majeure such as fire, war, earthquake, strike, lock-out, labor controversy, civil unrest, acts of any government or its agencies or officers, or any order, regulation or ruling thereof, Seller is prevented from making delivery, Seller shall have the right to extend the delivery time for a reasonable period.

18. **Partial Invalidity:** If any provision these Terms and Conditions is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.