

ProMinent Fluid Controls (UK) Ltd WebShop General Terms and Conditions of Sale of Products and Services

These Conditions apply to the purchase of all products and services (excluding PromCare) from ProMinent UK through its website or by phone. By placing an order, the customers agree to be bound them.

1. DEFINITIONS AND INTERPRETATION

1.1. The following definitions apply to these Conditions:

Conditions: means these Terms and Conditions as amended from time to time;

Contract: means the contract between ProMinent UK for the sale and purchase of the Products and Services;

Contract Documents: means the documents comprising the Contract as specified in Clause 2.3;

Customer: means the organisation purchasing the Products and/or Services from ProMinent UK;

Delivery Location: means the address or addresses for delivery of the Products;

Documentation: means any description, instructions, manuals, literature, technical details or other related materials supplied by ProMinent UK to the Customer in connection with the Products and Services;

Products: means the products, related accessories and spare parts and other physical items to be supplied by ProMinent UK to the Customer in accordance with the Contract;

Order: means the Customer's order for the Products and/or Services;

ProMinent UK: means Prominent Fluid Controls (UK) Ltd, a company incorporated in Flagstaff 42, Resolution Road, Ashby De La Zouch, Leicestershire, LE65 1DW;

PromCare: means ProMinent UK's specialist maintenance services which are governed by a separate set of terms which can be found at <https://prominent.com/en-uk/tac>

Price: means the price of the Products and Services as listed in the WebShop and adjusted from time to time;

Services: means the services which included (but are not limited to): technical support, commissioning, maintenance and repair but excludes PromCare;

Specification: means the functional, performance and technical specifications of the Products and Services provided by ProMinent UK to the Customer which includes, but are not limited to the General Terms and Conditions <https://prominent.com/en-uk/tac>;

VAT: means value added tax under the Value Added Tax Act 1994 or other similar sale or fiscal tax applying to the sale of the Products and Services; and

WebShop: means www.shop.prominent.co.uk;

1.2. In these Conditions, unless the context does not so permit:

- a) clause headings are included for convenience only and shall have no effect on the interpretation of these Conditions;
- b) a reference to 'a party' means either ProMinent UK or the Customer and includes that party's personal representatives, successor and permitted assigns;
- c) a reference to a 'company' includes any company, corporation or other body corporate, whenever and however incorporated or established;
- d) a reference to any gender includes each other;
- e) words denoting the singular includes the plural and vice versa;

- f) a reference to 'writing' includes email and the expression "written" shall be construed accordingly.
- g) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- h) a reference to a statute or statutory provision includes all subordinate legislation made from time to time under that statute or statutory provision.

2. BASIS OF CONTRACT

2.1. These Conditions apply to and form part of the Contract between ProMinent UK and the Customer. They supersede any previously issued terms and conditions of sale.

2.2. These Conditions apply to and govern the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate by any means, or which are implied by law, trade, custom, practice or course of dealing.

2.3. If there is any inconsistency between any of the Contract Documents then they shall prevail in the following descending order of priority:

- a) any document not mentioned in Clauses 2.3(b) to 2.3 (d) which the parties intend to be legally binding, including any correspondence between the parties setting out further specifications, minor adjustments or clarifications of the provisions of the other Contract Documents;
- b) the Specification;
- c) the Order; and
- d) these Conditions.

2.4. No variation of any Contract Document shall be binding unless expressly agreed in writing by a duly authorised signatory of each of the Customer and ProMinent UK.

2.5. Each Order by the Customer to ProMinent UK shall be an offer to purchase the Products and/or Services in accordance with the Contract.

2.6. Each Order shall form the subject of a separate Contract.

2.7. The Customer shall procure that each Order is placed in writing through the WebShop and includes the following information:

- a) the full name and trading address of the Customer;
- b) the specific Products and/or Services being ordered and the respective quantities of each;
- c) the Price, as determined pursuant to Clause 3.1;
- d) the Delivery Location; and
- e) the Customer's preferred delivery date. Please note that delivery times are not confirmed until acceptance.

The Customer is entitled to modify any of the information provided above through the WebShop prior to confirming their Order.

2.8. ProMinent UK may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Products or Services shall arise, until the earlier of:

- a) ProMinent UK's written acceptance of the Order by an order confirmation email; or
- b) ProMinent UK delivering the Products or supplying the Services.

2.9. Upon acceptance of the Order in accordance with Clause 2.8, the Contract

shall come into effect and ProMinent UK will provide the Customer with an Order confirmation email.

2.10. Any descriptive matter, advertising or promotional material issued by ProMinent UK is issued for the sole purpose of giving an approximate indication of the nature, physical properties, functionality or performance of the Products or Services. Any such descriptive matter, advertising or material shall not form part of the Contract.

2.11. ProMinent UK may be required from time to time make customary deviations of the Products or Services that occur as a result of legal regulations, represent technical improvements to the Products or Services or replacement of individual parts by equivalent parts.

3. SUPPLY OF SERVICES

3.1. ProMinent UK shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2. ProMinent UK shall use all reasonable endeavours to meet performance dates specified for the Services but such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3. ProMinent UK reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the ProMinent UK shall notify the Customer in any such event.

3.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5. Any services covered by PromCare are governed by the terms located at [include link] and not these Conditions.

3.6. The Customer shall:

- a) co-operate with ProMinent UK in all matters relating to the Services;
- b) provide ProMinent UK, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the ProMinent UK;
- c) provide ProMinent UK with such information and materials as the ProMinent UK may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and
- d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

3.7. If ProMinent UK's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, ProMinent UK shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the ProMinent UK's performance of any of its obligations;
- (b) ProMinent UK shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ProMinent UK's failure or delay to perform any of its obligations as set out in this Clause 3.7; and
- (c) the Customer shall reimburse ProMinent UK on written demand for any

costs or losses sustained or incurred by ProMinent UK arising directly or indirectly from the Customer Default.

4. PRICES AND PAYMENT

- 4.1. The Prices are set out in the WebShop from time to time and unless otherwise expressly stated otherwise, are exclusive of VAT.
- 4.2. In addition to the Price, the WebShop will also display the cost for shipping the Products.
- 4.3. The Customer must pay the Price, together with VAT applicable and the shipping charges pursuant to the terms of payment agreed that have been mutually agreed between ProMinent UK and the Customer n. Payment must be made in full, without deduction or set-off in such manner as ProMinent UK acting reasonably shall require.
- 4.4. Time for payment shall be of the essence of the Contract.
- 4.5. In the circumstances whereby the Customer is based outside of the UK or at ProMinent UK's discretion it determines the Customer at risk of defaulting in payments, ProMinent UK reserves the right to deliver the Products only following receipt in cleared funds from the Customer of the Price, applicable VAT and all shipping costs.
- 4.6. If the Customer fails to make any payment due to ProMinent UK under the Contract in accordance with Clause 4.3, then, without limiting any other right or remedy that ProMinent UK might have the Customer shall be liable to pay interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Interest shall accrue on a daily basis from the due date for payment until actual payment of the overdue amount, whether before or after judgment.

5. DELIVERY

- 5.1. Delivery is made in accordance with Incoterms (Delivered-At-Place) DAP. Delivery of the Products shall be deemed to have taken place when ProMinent UK makes the Products available for unloading at the Delivery Location.
- 5.2. ProMinent UK shall use reasonable endeavours to meet any date requested by the Customer and an estimated date of delivery will be provided on acceptance of the Order but such date shall be an estimate only and time shall not be of the essence.
- 5.3. If the delivery of the Products is delayed by an event outside ProMinent UK's reasonable control, ProMinent UK will notify the Customer accordingly and use reasonable endeavours to minimise the effect of the delay. If ProMinent UK complies with these obligations, it will not be liable for any costs, expenses, loss, damage or liability suffered or incurred by the Customer and the Customer shall have no right or remedy against ProMinent UK resulting from such delay.
- 5.4. The delivery of Products outside of the UK may be subject to national or international regulations and travel restrictions, export control regulations and embargoes. The Customer is required to provide ProMinent UK with all information and necessary documentation required in order to successfully export the Products to the Delivery Location. ProMinent UK will not be liable for any delay to delivery of the Products caused as a result of issues with exporting the Products and any expected dates for delivery will be extended accordingly.

By purchasing goods from ProMinent UK, you agree that the goods will be for your final use or sale within the United Kingdom (Great Britain or

Northern Ireland) and will not be exported to the European Union, unless the purchase originates from the European Union. This declaration is made under the UK Internal Market Scheme (UKIMS) and is subject to the conditions and limitations outlined in the UKIMS regulations.

- 5.5. If the Customer fails for any reason to accept delivery of the Products, ProMinent UK will contact the Customer to re-arrange delivery. If, following compliance by ProMinent UK with these obligations, the Customer fails to accept delivery of the Products before the expiry of 30 days from the date on which the Products were first made available for delivery, ProMinent UK may cancel the Contract with immediate effect by giving notice of cancellation. In the event of such cancellation the Customer shall be liable for any costs, losses or expenses of any kind incurred by ProMinent UK as the result of the Customer's failure to accept delivery, including without limitation the cost of storage of the Products and any financial losses incurred by ProMinent UK in the resale of the Products.
- 5.6. ProMinent UK may deliver the Products in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment. If the Customer elects to have the Products delivered in instalment then ProMinent UK will charge the Customer shipping costs for each instalment delivered or attempt to deliver.

6. RISK AND OWNERSHIP

- 6.1. The risk of loss or damage to the Products transfers from ProMinent UK to the Customer upon unloading of the Products at the Delivery Location.
- 6.2. Ownership of the Products shall pass from ProMinent UK to the Customer upon the receipt by ProMinent UK of payment in full in cleared funds for the Products.
- 6.3. Until ownership of the Products has passed to the Customer, the Customer shall:
 - a) maintain the Products in satisfactory condition;
 - b) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as ProMinent UK's property; and
 - c) not remove, deface or obscure any identifying mark or packaging on or relating to the Products.

7. ACCEPTANCE AND DEFECTS

- 7.1. The Customer shall be deemed to have accepted the Products upon the expiry of seven days from the date of delivery if the Customer has not, within the said period of seven days, notified ProMinent UK of any defect or damage. After acceptance, the Customer shall not be entitled to reject the Products which are not in accordance with the Contract.
- 7.2. Subject to the following provisions of this Clause 6, ProMinent UK shall, at its option, either repair or replace any Product which is damaged upon delivery or which suffers any material defect or otherwise fails in any material respect to conform to the Specification within a period of one year following the date of delivery to the extent that such defect or failure arises as the result of faulty design, materials or workmanship.
- 7.3. The obligations of ProMinent UK under Clause 6.2 are subject to the following conditions:

- a) the Customer must notify ProMinent UK in writing of the damage, defect or failure promptly upon the same being discovered and in any event within seven days;

- b) the Customer must return the defective Products at ProMinent UK's reasonable expense within such time period as ProMinent UK shall specify; and
- c) ProMinent UK shall, at its own expense, deliver repaired or replacement Products to the Customer at the Delivery Location.

- 7.4. As an alternative to its obligations under Clause 6.3 ProMinent UK may, at its exclusive and unqualified discretion, refund the Price to the Customer and recover possession of the Products from the Customer.
- 7.5. Without limiting the foregoing provision of this Clause 6, ProMinent UK shall have no liability for any damage, defect or failure affecting the Product to the extent that:

- a) the defect, damage or failure arises by reason of wear and tear, wilful damage, negligence, abnormal working conditions or could be expected to arise in the normal course of use of the Products;
- b) the defect, damage or failure is caused by failure of the Customer, its employees, officers, workers, agents or representatives to comply with any instructions or recommendations issued from time to time by ProMinent UK in relation to the use, storage, operation, adjustment, maintenance or repair of the Products, whether contained in the Documentation or otherwise;
- c) the Products are used after the Customer has notified ProMinent UK of the defect, damage or failure or ought to reasonably have done so.

8. LIMITATION OF LIABILITY

- 8.1. Nothing in these Conditions shall exclude the liability of ProMinent UK for:
 - a) death or personal injury caused by negligence of ProMinent UK;
 - b) fraud or fraudulent misrepresentation;
 - c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - d) any other matter in respect of which it would be unlawful for ProMinent UK to exclude or limit its liability.
- 8.2. Subject to Clause 7.1:
 - a) ProMinent UK shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue, loss of business or business opportunity or diminution of goodwill, or for any indirect or consequential loss arising under or in connection with any Contract between ProMinent UK and the Customer, regardless of how the same arose or of whether ProMinent UK had been advised of the possibility of such loss or diminution occurring; or
 - b) the total liability of ProMinent UK to the Customer for all other losses arising or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall be limited to the total sums paid by the Customer for the Products under the Contract.

9. FORCE MAJEURE

- 9.1. ProMinent UK shall not in breach of the Contract nor liable for any delay in performing any of its obligations under the Contract to the extent that such delay or

failure result from events, circumstances or causes beyond its reasonable control (in each case a Force Majeure Event). In such circumstances, ProMinent UK shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for a continuous period of four weeks, either party may terminate the Contract with immediate by written notice to the other party.

10. CONTACTING PROMINENT UK

- 10.1. The Customer shall contact ProMinent UK by either of the following methods:
- a) Using the contact us page on the website; or
 - b) By telephone to +44 1530 560 555.

11. MISCELLANEOUS AND GENERAL

- 11.1 ProMinent UK may transfer the rights and obligations under the Contract to another organisation. ProMinent UK will notify the Customer in writing of any such transfer.
- 11.2 The Contract is between ProMinent UK and the Customer. No other person shall have any rights to enforce any of its terms.
- 11.3 Each of the paragraphs of these Conditions operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 11.4 If ProMinent UK does not insist immediately that the Customer perform any of its obligations or functions under the Contract or if it delays in taking steps against the Customer in respect of any breach of contract, this does not constitute a waiver by ProMinent UK of its rights and will not prevent ProMinent UK from enforcing the Contract or taking steps to obtain a right or remedy from the Customer at a later date.
- 11.5 The Contract Documents, together with any other documents referred to in any of them, constitute the entire agreement between ProMinent UK and the Customer, and supersede any previous agreements, arrangements, representations, statements or warranties given or made by either party, with regard to its subject matter. Each party acknowledges that, by entering into the Contract, it has not relied on representation, statements or warranty by or on behalf of the other party which has not incorporated into the Contract by way of express provision.
- 11.6 The Contract is governed by English law and ProMinent UK and the Customer submit to the non-exclusive jurisdiction of the English courts.