

# INPRO/SEAL, LLC TERMS AND CONDITIONS

## 1 INTERPRETATION

1.1 In this Agreement:-

“Agreement” means these Conditions and the Order Acknowledgement;

“Anti-Bribery Legislation” means any applicable Laws in force from time to time regarding bribery, fraudulent acts, corrupt practices and/or money laundering;

“Conditions” means these standard terms and conditions of purchase;

“Import/Export Legislation” means any applicable Laws in force from time to time regarding import/export regulations, tax and/or customs and duties;

“Laws” means (i) legislation, regulations, codes of practice, guidance and other requirements of any relevant government, governmental or regulatory agency, or other relevant body; (ii) common law and (iii) any binding court order, judgment or decree;

“Order Acknowledgement” means an order acknowledgement on the Seller’s headed paper, setting out details of the Purchaser’s order for Products;

“Price” means the price payable by the Purchaser for the Products in accordance with Clause 5 below;

“Products” means the products ordered by the Purchaser, as specified on the Order Acknowledgement;

“Purchaser” means the person, firm or company identified as such in the Order Acknowledgement;

“Seller” means Inpro/Seal, LLC, a company registered in England and Wales with company number 4203526, whose registered office is at Unit K, Downlands Business Park, Lyons Way, Worthing, West Sussex. BN14 9LA. UK trading entity Waukesha Bearings Limited.

1.2 Where the context so admits or requires words denoting the singular include the plural and vice versa and words denoting any gender include all genders.

1.3 References to “Clauses” are to the clauses of this Agreement. Clause headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.

1.4 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 2 THE AGREEMENT

2.1 By placing an order for Products, the Purchaser shall be deemed to have accepted these Conditions, which shall govern the supply of the Products to the exclusion of any other terms and conditions (including without limitation any terms and conditions of the Purchaser). The Seller shall be entitled to assume that any person submitting an order for Products on behalf of the Purchaser is authorised to do so and to bind the Purchaser to this Agreement.

2.2 Any valid amendment or variation to this Agreement must be in writing and signed on behalf of each of the parties by a duly authorised officer.

## 3 PLACING OF ORDERS

An order for Products constitutes an offer by the Purchaser to purchase the Products on these Conditions. No binding contract shall be formed until the Seller has indicated its acceptance of the Purchaser’s order by issuing an Order Acknowledgement to the Purchaser, setting out details of the Purchaser’s order. The Seller reserves the right in its absolute discretion to refuse to accept any order. Once accepted by the Seller and recorded in an Order Acknowledgement, no order or part thereof may be varied or cancelled without the Seller’s prior written consent.

## 4 DELIVERY, RISK AND TITLE

4.1 Unless otherwise agreed in writing between the parties, the Products shall be delivered ex works at the Seller’s premises specified on the Order Acknowledgement or, if no premises are so specified, at the premises notified by the Seller to the Purchaser for such purpose (the term “ex works” shall be interpreted in accordance with Incoterms 2010 issued by the International Chamber of Commerce). The Seller shall notify the Purchaser in writing when delivery has taken place.

4.2 The Seller shall use its reasonable endeavours to deliver the Products by the date(s) specified on the Order Acknowledgement (or any other delivery date(s) agreed in writing with the Purchaser) but time shall not be of the essence with respect to delivery dates.

4.3 Unless otherwise stated in the Order Acknowledgement, the Seller may deliver the Products by instalments. Each instalment shall constitute a separate contract and any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

4.4 The packaging and preservation methods employed by the Seller in relation to the Products are suitable only for the inside storage of the Products for up to six months. If (i) the Purchaser fails to arrange for collection of the Products within 15 days after the Seller has notified the Purchaser that the Products are available for collection in accordance with Clause 4.1, the Seller may store the Products at the Purchaser’s risk pending collection or delivery (as applicable). The Purchaser shall reimburse the Seller for all handling, transportation and storage costs incurred by the Seller in relation to such storage, in accordance with the Seller’s invoices therefor.

4.5 Risk in the Products shall pass to the Purchaser upon delivery in accordance with Clause 4.1. Title to the Products shall not pass to the Purchaser and the Purchaser shall keep such Products as bailee for the Seller until the Seller has received full payment of the Price payable therefor and any other sums payable by the Purchaser to the Seller. In the event that the Purchaser breaches any of the provisions of this Agreement and/or is overdue in paying any sum payable to the Seller hereunder, the Seller shall be entitled (i) to enter the Purchaser’s premises, or procure the right to enter the premises on which the Products are being stored and/or used, for the purpose of removing and repossessing any Products still owned by the Seller (and the Purchaser hereby grants the Seller an irrevocable licence to enter such premises for such purpose) or (ii) to require the Purchaser to return forthwith to the Seller, at the Purchaser’s expense, all such Products.

4.6 Immediately upon receipt of any Products, the Purchaser shall inspect the Products and satisfy itself that the quantity and description of the Products are in accordance with the Agreement. If the Purchaser fails to notify the Seller in writing, within 10 days after receiving the Products, of any shortage(s) or other defect(s) in such Products, or if the Purchaser installs and/or commences use of such Products, the Purchaser shall be deemed to have confirmed that the Products are in accordance with the Agreement.

4.7 Within 30 days of receipt of any Products the Seller must return to the Seller, carriage paid, all stillages, drums, crates and other reusable packing materials owned by the Seller and used to package the Products for transportation. Reusable packing materials not returned in accordance with this Clause 4.7 shall be charged to the Purchaser.

## 5 PAYMENT

5.1 The Price for the Products shall be specified on the Order Acknowledgement and the Purchaser shall pay the Price in accordance with the Seller’s invoices from time to time. Where the Products will be delivered in instalments, all such instalments shall be separately invoiced and paid for, without regard to subsequent instalments. If, due to any act or omission of the Purchaser, delivery of any Products is delayed beyond the scheduled date, the Seller shall be entitled to invoice the Purchaser in full for such Products on the scheduled delivery date.

5.2 All invoices shall be payable within 30 days of the invoice date. The Seller may at any time at its discretion vary the terms of payment specified in this Clause 5, by demanding full or partial payment prior to delivery of the Products, requiring the Purchaser to open a suitable letter of credit, or otherwise.

5.3 All sums referred to in this Agreement shall be invoiced and payable in the currency specified in the Order Acknowledgement, in full, without deduction, withholding or set-off. The Price is exclusive of VAT, import and export taxes and duties, and any other tax or duty payable in relation to the supply of the Products, which shall (if and to the extent applicable) be payable by the Purchaser in addition to the Price. In the event that the Seller is required to pay any such tax or duty, the Purchaser shall reimburse the Seller therefor or shall provide the Seller at the time the Purchaser places its order with an exemption certificate or other document acceptable to the authority imposing the relevant tax or duty.

5.4 If the Purchaser is overdue with any payment hereunder, then without prejudice to the Seller’s other rights or remedies: (i) the Purchaser shall be liable to pay interest on the overdue amount at an annual rate of 4% above the prevailing base rate of Natwest Bank plc, which interest shall accrue on a daily basis from the date payment becomes due until the Seller has received payment of the overdue amount together with all interest that has accrued; (ii) the Purchaser shall reimburse the Seller for any costs incurred by the Seller in taking steps to recover the overdue payment; and (iii) the Seller shall have the right, at its option, to suspend delivery of any Products until full payment is received and/or cancel this Agreement and all further deliveries of Products.

## 6 DEFECTS WARRANTY

6.1 The Seller warrants that the Products shall be materially free from defects in materials and workmanship for a period of (i) 12 months after the earlier of installation or commencement of use of the relevant Products or (ii) 18 months after delivery of the relevant Products, whichever expires sooner (the “Warranty Period”).

6.2 If during the Warranty Period applicable to any Product, that Product shall be proved to the Seller’s satisfaction to be defective, the Seller shall repair or replace (at the Seller’s option) the defective Product. The Seller’s obligations in relation to the warranty set out in Clause 6.1 shall be limited to such repair or replacement and shall be conditional upon the Purchaser notifying the Seller in writing of any alleged defect within 10 days after its discovery.

6.3 The warranty set out in Clause 6.1 shall not apply to: (i) Products not manufactured by the Seller, in relation to which the Seller shall use its reasonable endeavours to transfer to the Purchaser the benefit of any warranty or guarantee given to the Seller by the supplier of such Products; (ii) Products that have been operated for more than 2000 hours; (iii) Products that have been maintained, repaired or modified by persons other than the Seller or persons authorised by the Seller; (iv) Products that have been improperly or inadequately installed and/or defects caused by improper site preparation by the Purchaser; (v) Products that have been improperly used, stored or operated and/or used with equipment not supplied and/or authorised by the Seller; or (vi) defects caused by abuse, negligence or accident, or loss of or damage to the Products whilst in transit.

## 7 LIMITATION OF LIABILITY

7.1 Subject to Clauses 6.2, 7.2, 7.3 and 9.4, the Seller’s maximum aggregate liability under or in connection with this Agreement shall not exceed the Price payable by the Purchaser hereunder.

7.2 Nothing in this Agreement shall exclude or in any way limit the Seller's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent that the same may not be excluded or limited as a matter of law.

7.3 Subject to Clause 7.2, the Seller shall not be liable for any of the following types of loss or damage arising under or in relation to this Agreement (whether arising by tort (including negligence), breach of contract or otherwise and whether or not such loss or damage is foreseeable, foreseen or known): (i) any loss of profits, business, contracts, anticipated savings, goodwill or revenue, any wasted expenditure, or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or (ii) any special, indirect or consequential loss or damage of any kind howsoever arising.

7.4 This Agreement sets forth the full extent of the Seller's obligations and liabilities in respect of the supply of the Products hereunder and all conditions, warranties, representations, obligations, undertakings or other terms implied by statute, common law, custom, trade usage, course of dealing or otherwise (including but not limited to implied undertakings of satisfactory quality, conformity with description and reasonable fitness for purpose), are hereby excluded by the Seller to the maximum extent permitted by law.

## **8 CHANGES TO SPECIFICATIONS**

The Seller may at any time make any changes to the design and/or construction of the Products that are, in the opinion of the Seller, an improvement to such design and/or construction.

## **9 INTELLECTUAL PROPERTY RIGHTS**

9.1 All intellectual property rights in, or relating to, the Products when this Agreement is formed pursuant to Clause 3 are owned by or licensed to the Seller and nothing in the Agreement shall have the effect of transferring the ownership of such intellectual property rights to the Purchaser.

9.2 In the event of any third party demand, claim or action alleging that the proper use of the Products by the Purchaser in accordance with any instructions and directions issued with or in relation to such Products by the Seller infringes any patent or other intellectual property right belonging to a third party, the Purchaser shall: (i) promptly notify the Seller in writing of such claim; (ii) not make any admission in relation to or attempt to settle or compromise the claim; (iii) give the Seller express authority to conduct all negotiations and litigation, and to settle all litigation, arising from such claim; and (iv) provide the Seller with all available information, documents and assistance as the Seller may reasonably require.

9.3 Without limitation to the foregoing, if the proper use of the Products by the Purchaser is held to infringe any patent or other intellectual property right belonging to a third party, the Seller shall, at its option: (i) procure for the Purchaser the right to continue to use the Product(s) in question, free of any liability for such infringement; (ii) modify the Product(s) in question so that it/they become(s) non-infringing; (iii) substitute the Product(s) in question with functionally equivalent non-infringing Product(s); or (iv) refund the Price paid by the Purchaser for the infringing Products. This Clause 9.3 states the entire liability of the Seller for any infringement of third party intellectual property rights.

9.4 The Purchaser shall indemnify the Seller from and against all losses, damages, costs, liabilities and expenses (including legal expenses) arising out of or in connection with any third party demand, claim or action alleging that any Product manufactured by the Seller in accordance with designs and/or specifications provided to the Seller by the Purchaser infringes any patent or other intellectual property right belonging to a third party.

## **10 FORCE MAJEURE**

The Seller shall not be liable for any delay in performing or failure to perform its obligations hereunder to the extent that such delay or failure results from any cause or circumstance beyond its control, including without limitation any inability of the Seller to secure labour, materials or supplies, scarcity of fuel, power or components, breakdown of machinery, fire, storm, flood, acts of God, war, civil disturbance, strikes, lockouts or industrial action.

## **11 CONFIDENTIALITY**

A party (the "Receiving Party") shall keep in strict confidence all information which is of a confidential nature (including any technical or commercial know-how, specifications, inventions, processes or initiatives) and has been disclosed to the Receiving Party by the other party (the "Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The Receiving Party shall only use or make copies of confidential information (including any reproductions, extracts or analyses of that confidential information) in connection with and to the extent necessary for the purposes of the Agreement. This Clause 11 shall survive termination of the Agreement.

## **12 TERMINATION**

12.1 Without limiting its other rights or remedies, each party may terminate the Agreement with immediate effect by giving written notice to the other party if: (a) the other party commits a material breach of any of its obligations under this Agreement and (if such breach is remediable) fails to remedy that breach within 90 days after receipt of notice in writing of the breach; or (b) the other party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or suffers any act of bankruptcy; or any resolution or petition to wind up the other party is passed; or a creditor or encumbrancer takes possession, or a receiver is appointed over any of the property or assets of the other party; or it ceases or threatens to cease to carry on business; or any circumstance arises or event occurs in relation to the other party or any of its material assets in any country or territory in which it carries on business or to the jurisdiction of whose courts it or any of its assets is subject which corresponds with or has an effect equivalent or similar to any of those stated in this sub-Clause 12.1(b).

12.2 Without limiting its other rights or remedies, the Seller may terminate the Agreement with immediate effect by giving written notice to the Purchaser if the Purchaser fails to pay any amount due under this Agreement within 30 days after the due date for payment.

12.3 Upon termination of this Agreement for whatever reason: (i) each party shall return to the other party all information which is deemed confidential pursuant to Clause 11, or any materials embodying such information, received in the performance of the Agreement relating to the other party; (ii) the Purchaser shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Purchaser immediately on receipt; and (iii) any clause which expressly or by implication has effect after termination shall continue in full force and effect.

## **13 DISPUTE RESOLUTION**

13.1 If any dispute arises out of or in connection with the Agreement: (a) the Purchaser or the Seller may give notice to the other in writing of the existence of such a dispute and nominated representatives of both parties shall meet within fourteen (14) days of such notice to attempt to resolve the dispute; (b) if the parties are unable to resolve any dispute within thirty (30) days of the initial meeting pursuant to sub-Clause 13.1(a), such dispute shall be referred to and finally resolved by arbitration in London, England in accordance with the rules of the London Court of International Arbitration, which rules are deemed incorporated by reference into this Clause 13.1, and with one arbitrator. The language to be used in the arbitration shall be English.

13.2 Nothing in this Clause 13 shall prejudice the right of either party to: (i) apply to any court with jurisdiction for interim relief to prevent the violation by the other of any proprietary interest, or any breach of the other party's obligations under the Agreement which could cause irreparable harm to the applicant; or (ii) bring proceedings in any court with jurisdiction intended to result in the enforcement of a settlement agreement or of a binding determination of a dispute between the parties in accordance with the foregoing provisions of this Clause 13 or otherwise.

## **14 NOTICES**

All notices and other communications required or permitted to be served or given hereunder shall be in writing and delivered by hand or sent by pre-paid registered post, courier or facsimile transmission to the intended recipient's address as specified in this Agreement or such other address as either party may notify to the other from time to time. Any notice shall be treated as having been served: if delivered by hand, on delivery; if sent by registered post, two working days after posting; if sent by courier, one working day after despatch.

## **15 GENERAL**

15.1 In performing its obligations and exercising its rights under this Agreement, the Purchaser shall, at all times, act ethically and in compliance with all applicable Laws of the United States, the United Kingdom and any jurisdiction in which the Purchaser is established or conducts operations relating to this Agreement, including (without limitation) the Anti-Bribery Legislation and the Import/Export Legislation.

15.2 The Purchaser shall ensure that the Products, and any other products, software or technology acquired from the Seller under this Agreement, will not be exported, sold, diverted, transferred or otherwise disposed of in violation of the Import/Export Legislation, either in their original form or after being incorporated into other items.

15.3 The Purchaser may not assign, sub-license or sub-contract this Agreement or any of its rights or obligations hereunder without the prior written consent of the Seller.

15.4 The failure of the Seller to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect the Seller's right later to enforce or to exercise it.

15.5 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

15.6 The Agreement constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Agreement (Pre-Contractual Statements). The Purchaser hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

15.7 The construction, validity and performance of this Agreement shall be governed by the laws of England and Wales.