

## **TERMS AND CONDITIONS ONLINE SHOP**

of Prochaska Handels GmbH (company register no. 307146k)

ONLINE SHOP WWW.PROCHASKA.EU  
Applicable as of May 2018

### **1 General information**

1.1 These Terms and Conditions (hereinafter T&Cs) of Prochaska Handels GmbH (hereinafter also "Prochaska") shall apply to orders for goods placed by Buyer in the Prochaska online shop on the website [www.prochaska.eu](http://www.prochaska.eu). Application of Buyer's terms and conditions shall be explicitly excluded.

1.2 The assignment, by Buyer, of rights and obligations under any contract entered into based on these online T&Cs shall require Prochaska's prior written consent.

### **2 Formation of contract**

2.1 Buyer's order constitutes an offer to Prochaska to enter into a contract. Prochaska shall confirm receipt of Buyer's order without delay. Such confirmation shall not constitute acceptance of the contract by Prochaska, but merely a confirmation of receipt for Buyer's information. The contract shall not be formed until Prochaska accepts the order or actually carries out delivery. Prochaska shall explicitly not be under any obligation to accept offers to contract or purchase orders it receives. Where Prochaska rejects an offer to contract (purchase order) it receives, Prochaska shall notify Buyer thereof in writing (for instance by e-mail), without giving reasons.

2.2 Prochaska shall furnish to Buyer, within a reasonable period of time after the formation of contract, but not later than upon delivery of the goods, a confirmation of the contract entered into, including any and all pre-contractual information under section 4 Austrian Distance Selling Act (*Fernabsatz- und Auswärtsgeschäftegesetz*) on a durable medium (paper, e-mail).

2.3. The contract shall be concluded in German.

### **3 Scope of delivery and product information**

3.1 The products offered in the online shop include lawnmowers, snow blowers, cordless tools, and sprinkler systems as well as accessories and spare parts. The current total range of goods available for purchase in the online shop, the key features of these goods, as well as the total price including all shipment and incidental costs can be found in the online shop on the website [www.prochaska.eu](http://www.prochaska.eu).

3.2 Information contained in catalogues, brochures, circulars, advertisements, illustrations, offers and price lists, etc. pertaining to elements such as weight, measurements, price, output, and the like shall not form part of the contract unless specifically referred to in the sales contract.

3.3 All images are symbolic in nature, and all product information may contain typographical errors. The product actually delivered may vary slightly from the information provided in terms of form, colour or size, such fact not resulting in the product failing to meet the contractually agreed requirements.

### **4 Payments**

4.1 All prices quoted are in Euro and inclusive of all taxes and charges applicable under law (printing errors excepted) and packaging, but exclusive of shipping costs, which shall be shown separately prior to the sales contract being concluded.

4.2 Shipping costs amount to EUR 5.90 for shipments with an order value of under EUR 100 (incl. 20% VAT).

Shipping is free of charge for shipments with an order value of EUR 100 (incl. 20% VAT) or more.

In terms of VAT, shipping costs are subject to the same treatment as the main deliverable, i.e., they comprise all the same taxes and charges which the payment for the respective deliverable is subject to.

4.3 Prices apply until further notice, printing errors excepted.

4.4 Buyer consents to having invoices delivered electronically.

### **5 Packaging**

Packaging shall be at Prochaska's expense and in accordance with standard commercial practice so as to avoid the goods being damaged en route towards the designated place of destination under normal conditions of transport. Returns of packaging shall not be accepted.

## **6. Delivery and shipment**

- 6.1 The goods shall be delivered to Buyer following receipt of payment by Prochaska.
- 6.2 Where obligations have been agreed to be fulfilled at obligee's place of business (*Holschuld*), the place of performance shall be the registered address of Prochaska; where distance selling has been agreed upon, the shipping point and place of payment shall be Vienna.
- 6.3 Goods are shipped only within Austria.
- 6.4 Where items are suitable for parcel delivery, shipping shall be carried out by parcel service. In all other cases, items shall be shipped by forwarder.
- 6.5 Unless otherwise specified, items shall be shipped within 2 to 7 workdays of acceptance of the purchase order by Prochaska.
- 6.6 Prochaska reserves the right to make partial shipments.
- 6.7 Where any of the reasons given below apply, Buyer shall, upon Prochaska having notified Buyer thereof without delay, grant a reasonable extension of the delivery term, at any rate of not less than three weeks, or a reasonable grace period, at any rate of not less than four weeks.
- 6.8 Reasons for such exemptions shall include any and all circumstances occurring after the formation of contract which are beyond Prochaska's control, as well as any kind of force majeure; disruptions in operations or transport; loss or damage due to fire; flooding; lack of labour, power, raw and auxiliary materials; strikes, lockouts; disruptions in shipping; government orders, or other obstacles that prevent, delay, reduce, or make unacceptable, production, shipping, acceptance, or consumption, all of which shall relieve Prochaska from the obligation to deliver for as long as, and to the extent in which, such disruption occurs. If, due to any of the aforementioned disruptions, the contract is not fulfilled within eight weeks of formation of contract or any agreed upon delivery date, both parties shall have the right to rescind the contract. Should any of Prochaska's suppliers cease their supplies in whole or in part, Prochaska shall be under no obligation to source items from other suppliers. In such an event, Prochaska shall have the right to allocate available stocks with due consideration of its own requirements.
- 6.9 Where Buyer rescinds the contract because the period of grace having been granted has lapsed without the desired result, Buyer must return to Prochaska any items already delivered to it.
- 6.10 Without exception, returns of machinery, accessories and spare parts shall be subject to prior written approval by Prochaska's management. Prochaska may refuse to accept returned items ex-post facto if signs of damage, dirt, usage, or other degradation are detected on such items after their having been shipped to Prochaska. Only items in undamaged original packaging shall be eligible for being returned. Provided the item was shipped without original packaging by Prochaska, it must at any rate be returned in mint condition.
- 6.11 Where, in the case of items returned because of a wrong purchase order placed by customer and in the case of returns approved by Prochaska which were due to reasons not attributable to Prochaska, the respective items are returned in the original packaging along with the delivery note number and purchase order number, credit notes shall be issued subject to deduction of a processing fee of 15% (or as set out in the current price list). If such items are returned without Prochaska's delivery note number and purchase order number and without original packaging, a higher deduction of 20% (or as set out in the current price list) shall be made from the credit note.

## **7 Terms of payment**

- 7.1 Payment can be made by credit card, PayPal, instant transfer or in cash (if items are collected from Prochaska in Vienna). In any case, Buyer shall have to ensure sufficient coverage for the means of payment selected.
- 7.2 Buyer consents to having invoices delivered electronically.
- 7.3 Where the payment method is credit card, PayPal or instant bank transfer, payment shall be due immediately upon submission of the purchase order in the online shop. Where the items bought are collected from Prochaska's premises, payment shall be due immediately upon collection.
- 7.4 Where Buyer defaults on payment, Prochaska shall have the right to charge default interest in the maximum statutory amount above the base interest rate p.a., without prejudice to asserting claims for further loss or damage incurred on such grounds, including, without limitation, bank charges. Prochaska shall have the right to charge to Buyer any and all expenses for reminders and collection needed to recover or collect outstanding receivables, including, without limitation, legal fees.
- 7.5 For Buyers who are consumers within the meaning of section 1 of the Austrian Consumer Protection Act (*Konsumentenschutzgesetz*), performance shall be deemed timely if Buyer places the transfer order on the due date.
- 7.6 Buyers shall not have the right to set off receivables on their part against receivables on the part of Prochaska. Such no set-off clause shall not apply to consumers within the meaning of section 1 of the Consumer Protection Act.

7.7 Transfer and bank fees as may arise, as well as any roaming charges, shall be borne by Buyer.

## **8 Buyer's obligations**

8.1 Buyer must inspect the delivered items without delay for any obvious transport damage and notify the shipper thereof upon acceptance of the items.

8.2 Where Buyer is in default of acceptance of the shipped order (delivery) or refuses to accept delivery, Buyer must compensate Prochaska accordingly. Prochaska shall have the right, at its discretion, to insist on the delivery being accepted, or to rescind the contract while claiming appropriate compensation for the expenses incurred in the process (loss in value, cost of transport, handling, etc. ).

8.3 Upon disclosing contact details and other data in connection with the purchase order, Buyer confirms that such data are correct, complete, and timely. Buyer must notify Prochaska of any errors in the payment information and correct such errors without delay.

## **9 Right of withdrawal for B2C transactions**

9.1 Buyers who are consumers within the meaning of section 1 Austrian Consumer Protection Act have the right to withdraw from this contract within fourteen days without giving any reason.

9.2 The withdrawal period is fourteen days from the day on which Buyer, or a third party indicated by Buyer and other than the carrier, has acquired physical possession of the goods. In the case of a contract relating to delivery of a good consisting of multiple lots or pieces, the fourteen-day withdrawal period shall start from the day on which Buyer, or a third party indicated by Buyer and other than the carrier, has acquired physical possession of the last lot or piece.

9.3 To exercise the right of withdrawal, Buyer must inform Prochaska (Prochaska Handels GmbH, Pilzgasse 31, A-1210 Vienna, Austria) of their decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, fax, or e-mail). Buyer may use the attached model withdrawal form (Annex A), but it is not obligatory to do so. In any event, Buyer must, in addition to the information requested in the model withdrawal form (see 9.5), provide their bank details (name of account holder, IBAN, BIC) for the retransfer of the payments received by Prochaska.

Buyer shall have exercised the right of withdrawal within the withdrawal period if the communication concerning the exercise of the right of withdrawal is sent by Buyer before that period has expired.

9.4 Exemptions from this right of withdrawal apply to goods made to Buyer's specifications or clearly personalised (section 18 (1) (3) Austrian Distance Selling Act).

### **9.5 Effects of withdrawal**

If Buyer withdraws from this contract, Prochaska shall reimburse to Buyer all payments received from Buyer, including the costs of delivery (with the exception of the supplementary costs resulting from Buyer's choice of a type of delivery other than the least expensive type of standard delivery offered by Prochaska), without undue delay and in any event not later than 14 days from the day on which Prochaska is informed about Buyer's decision to withdraw from this contract. It shall be deemed explicitly agreed with Buyer that Prochaska will carry out such reimbursement via bank transfer, which is why Buyer must indicate their bank details on the withdrawal form (see 9.3). Under no circumstances shall Buyer be charged any fees in connection with such reimbursement. Prochaska may withhold the reimbursement until it has received the goods back, or until Buyer has supplied evidence of having sent back the goods, whichever is the earliest.

Buyer shall send back the goods or hand them over to Prochaska Handels GmbH, Pilzgasse 31, A-1210 Vienna, Austria, without undue delay and in any event not later than 14 days from the day on which Buyer communicates the withdrawal from this contract to Prochaska. The deadline is met if Buyer sends back the goods before the period of 14 days has expired.

Buyer will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately EUR 150.

Buyer is only liable for any diminished value of the goods resulting from handling other than what is necessary to establish the nature, characteristics and functioning of the goods.

## **10 Passing of risk**

10.1 Where Buyer is a consumer within the meaning of section 1 of the Austrian Consumer Protection Act, the risk shall not pass from Prochaska to Buyer until the items ordered are handed over to Buyer, unless Buyer entered into the transport contract by themselves without using one of the options proposed by Prochaska. In such a case, the risk shall pass to the first carrier as soon as the goods are handed over to such carrier.

10.2 Where obligations have been agreed to be fulfilled at obligee's place of business (collection at Prochaska's) in a B2B transaction, the risk shall pass to Buyer at the agreed time of handover. However, if distance selling has been agreed, the risk shall pass from Prochaska to Buyer at the time

the first carrier accepts delivery of the means of transport on which the items are loaded. In all other cases, the risk shall pass to Buyer upon collection of the goods.

## **11 Retention of title**

11.1 Until Buyer has paid in full the debt arising from the sales contract, sole title to the items delivered to Buyer shall remain with Prochaska.

11.2 Buyer shall comply with all form requirements necessary to safeguard such retention of title. Where such items are seized or otherwise claimed by a third party, Buyer shall see to it that Prochaska's title to the items is asserted and shall notify Prochaska thereof without delay.

11.3 Where Buyer is in default of payment, Buyer must surrender items subject to retention of title without delay upon Prochaska's first request. A request by Prochaska to surrender items subject to retention of title must not be construed to be a rescission of contract. Rescission of contract shall require an explicit written statement to that effect on the part of Prochaska.

11.4 If Prochaska rescinds the contract, it can claim both appropriate compensation for the time the items were made available to Buyer for use, as well as damages for any loss or damage incurred because of the Buyer being in default.

11.5 Buyer shall refrain from making legal arrangements (including without limitation, pledging or transfer by way of security, etc.) for items subject to retention of title other than those for which Buyer is explicitly authorised. Where Buyer processes the items in conformity with the contract (mixing, combining), Prochaska shall become co-owner of the products created therefrom at a ratio reflecting the invoice value of the items subject to retention of title as compared to the invoice value of the items owned by third parties or Buyer.

11.6 With respect to items delivered by Prochaska subject to retention of title but not yet paid for, or products created therefrom owned or co-owned by Prochaska, which are, subject to Prochaska's explicit written consent, sold within the scope of Buyer's regular business operations and delivered to their respective buyers, the purchase price receivables arising from such resale shall be assigned to Prochaska to cover Prochaska's as yet outstanding purchase price receivable, in other words in lieu of payment. The retention of title shall not lapse until the purchase price payment has been received by Prochaska. Buyer must notify their customers of the continued retention of title by Prochaska so as to prevent such customers from acquiring these items in good faith. Buyer must notify the customers without delay of the respective receivables having been assigned.

## **12 Warranty**

12.1 Buyer acknowledges the information provided, in particular in product descriptions and operating instructions, about features and usage, non-compliance with which shall relieve Prochaska from any obligations under warranty.

12.2 Used machinery: Buyer has been sufficiently informed that individual parts of the machinery have been subject to wear and tear and must therefore be replaced still within the statutory warranty period.

12.3 Goods rejected because of defects may be returned only with Prochaska's explicit consent.

12.4 Prochaska shall bear the costs of any elimination of defects carried out by Buyer themselves only given Prochaska's prior written consent.

12.5 In B2C transactions, the statutory provisions on warranty shall apply without limitation. Where Buyers are entrepreneurs or businesses within the meaning of section 1 of the Austrian Consumer Protection Act, the following applies:

12.6 Where a defect is found, Prochaska must, at its discretion, either improve (repair or supplement what is lacking) or replace the item or appropriately reduce the consideration or rescind the contract. In the event that Prochaska fails to exercise its discretion within a period of four weeks (for instance by making a statement to that effect or by actually carrying out one of the above-mentioned options), Buyer shall then have the right to choose an option under section 932 of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*).

12.7 In B2B transactions, the warranty period is six months for movables and 12 months for immovables. The period starts upon the day the items are delivered into the sphere of Buyer.

12.8 The parties mutually agree on excluding any right to warranty for used machinery.

12.9 To assert claims under warranty, Buyer shall, without delay, but in any case not later than within 14 days of delivery of the items in question into Buyer's sphere, notify the item or work as being defective, specifying such defect(s) in detail and submitting documents, samples, packing slips and indicating the invoice number and the markings on the packaging. If Buyer fails to notify a defect, the items shall be deemed delivered in good order and condition.

Where defects are hidden, a written notification must be submitted without delay after the defect has been found, but in any case not later than within five months of delivery into Buyer's sphere. The burden of proof of such defect being a hidden defect shall be on Buyer.

### **13 Product liability and damages**

13.1 Prochaska shall be liable for personal injury and property damage subject to the provisions of the Austrian Product Liability Act (*Produkthaftungsgesetz*, Federal Law Gazette 99/1988) as amended and in accordance with the general statutory rules under the law of torts subject to the following provisions:

13.2 Buyer must read, without undue delay, and also apply, operating instructions and the like, failing which any and all claims for damages shall become forfeited. Where this obligation is not complied with and loss or damage ensues because of it, Prochaska shall be free from liability.

13.3 All other statutory requirements being applicable, Prochaska shall be liable for loss or damage only if Prochaska is found to have acted with gross negligence or with wilful intent.

Where Buyers are entrepreneurs or businesses within the meaning of section 1 of the Austrian Consumer Protection Act, the following applies in addition:

13.4 Where Buyer intends to assert claims for damages, such claims must be notified to Prochaska, specifying in detail the facts underpinning the claim, within three weeks from the time these facts become known, or without delay if the courts are seized for such purposes. If Buyer fails to do so, any claim for damages shall become forfeited. The period of time for asserting a claim for damages shall be six months from the timely notification of Prochaska.

13.5 Claims for compensation shall be limited to the amount of the invoice in question.

13.6 Contractual liability for property loss or damage caused by a defective product shall be excluded unless gross negligence or wilful intent is found to apply. Buyer must impose such exclusion of liability on Buyer's customers as well as obligate the same to impose the exclusion of liability further, in their turn, up to the end consumer.

### **14 Manufacturer's warranty**

14.1 Specific distributors will provide a manufacturer's warranty on their products (with the exception of wear parts and singular exceptions for commercial use). Prochaska shall not provide any further warranty. The exact warranty period for a given model and the exact terms and conditions of warranty can be found on the website [www.prochaska.eu](http://www.prochaska.eu), generally with the product and warranty details, such information being non-binding and printing errors excepted. Where no warranty period is given on the website, Buyer can contact Prochaska's customer services to obtain information about manufacturer warranty periods (Tel: +43 1 278 51 00 150).

14.2 The manufacturer's warranty shall not limit Prochaska's statutory warranty obligations towards consumers.

### **15 Customer services**

Prochaska has a customer services department. If Buyers have questions on products and services, they can directly contact customer services using the telephone hotline [+43 1 278 51 00 0](tel:+43127851000) or the contact form on the website [www.prochaska.eu](http://www.prochaska.eu).

### **16 Out-of-court complaint and redress mechanism**

The European Commission operates a platform for online dispute resolution (ODR), which Buyers can access under <http://ec.europa.eu/consumers/odr>. Prochaska is neither obligated, nor willing, to participate in alternative dispute settlement proceedings before a consumer arbitration board.

### **17 Application consulting**

Application, usage, and processing of items purchased falls exclusively within Buyer's sphere of responsibility. Any application consulting provided by Prochaska verbally, in writing and through trials shall be deemed merely a non-binding indication, also with respect to any third-party intellectual property rights, and shall not relieve Buyer of the duty to carry out their own reviews as to the products' suitability for the intended use and purposes. Application, usage, and processing of such products is outside Prochaska's sphere of control and therefore falls exclusively within Buyer's sphere of responsibility.

### **18 Blueprints, plans, and documents**

Blueprints, plans, sketches, and other technical documents shall always remain the intellectual property of Prochaska, just as trademarks, designs, catalogues, brochures, illustrations, and the like. Hence, they must not be exploited, copied, distributed, published, or displayed without Prochaska's prior explicit and written consent.

### **19 Data privacy**

We would like to refer to the data privacy statement available on the website [www.prochaska.eu](http://www.prochaska.eu).

## **20 Venue and applicable law**

20.1 Where proceedings are brought against consumers who have their domicile or habitual residence in Austria or are employed in Austria, the court at the place of domicile, of habitual residence or of employment shall have jurisdiction.

20.2 In all other cases, the venue for all disputes arising, directly or indirectly, from this contract shall be the court in Vienna having subject-matter jurisdiction.

20.3 However, Prochaska may elect to bring proceedings before a different court that has jurisdiction for Buyer.

20.4 All claims between Prochaska and Buyer, whether already existing or arising in the future and regardless of being contractual or non-contractual in nature, shall be governed by Austrian substantive law, expressly excluding application of the UN Convention on Contracts for the International Sale of Goods.

## **21 Miscellaneous**

Should individual clauses of these Terms and Conditions be invalid in whole or in part, this shall not affect the effectiveness of the other clauses or parts of these Terms and Conditions. Any ineffective provision shall be deemed replaced by such a provision as is effective and comes closest to the economic purpose of the ineffective provision.