

Standard Terms and Conditions of Trading



Procad Ltd, Portal House,
Raheen Business Park,
Raheen, Limerick, Ireland

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1. Definitions

“Customer” means the party identified as the Customer in this Agreement to whom Procad may agree to supply Products in accordance with these terms and conditions.

“Procad” means Procad Ltd of Portal House, Raheen Business Park, Raheen, Limerick, Ireland or any subsidiary or associated company.

“Products” means goods or services to be provided by Procad to the Customer in accordance with these terms and conditions..

“Third Party Software” means all software owned by or licensed to the Customer from a third party owner (whether or not supplied by Procad) and which comprises part of the Products.

2. Order Acceptance

All orders placed with Procad by the Customer for Products shall constitute an offer to Procad, under these terms and conditions, subject to availability of the products and to acceptance of the order by Procad’s authorised representative.

Orders must be provided in text format, and may be e-mailed, faxed or posted. E-mail is the preferred method.

Orders must contain the following information:

- Purchaser’s address and VAT Number
- Purchaser’s primary contact details (including email details)
- Delivery address and contact (if different from above).
- Date.
- Order number.
- Full description of product or service.
- Purchase Price.
- Any additional required information (such as serial number details for software upgrades)
- Special delivery details (requested delivery date and method).

Orders will not be accepted unless the payment method has been established.

In the case of VAT exempted companies, the onus is on those companies to provide an up to date VAT exemption certificate with the order. Failure to do so will result in a VAT inclusive invoice being issued.

Orders are accepted on the understanding that the terms and conditions set out in this document take precedence over any and all conditions which may be attached to customer's purchase orders.

Orders are not placed on the system unless complete information is provided. This means that product is not reserved from stock or ordered from the supplier, and that personnel and facilities are not assigned. In the case of software products, it is vital that all relevant product information is included, in particular whether stand-alone or networked. In the case of upgrades, this includes all serial numbers and associated information

All orders are accepted and Products supplied subject to these express terms and conditions only. No amendment to these terms and conditions will be valid unless confirmed in writing on or after the date hereof by Procad’s authorised representative. It is agreed that these terms and conditions prevail over the Customer’s terms and conditions of purchase unless these latter terms and conditions are amended by Procad in writing and signed by Procad.

3. Independent Contractor

The relationship between the Supplier and Customer is that of Independent Contractor. Neither party is the agent of each other, and neither party has any authority to make any contract or make any

obligation expressly or impliedly in the name of the other party, without that party's prior written consent for express purposes connected with the performance of this Agreement

4. Despatch

Any time quoted for despatch is to be treated as an estimate only, but despatch may be postponed because of conditions beyond Procad's reasonable control, and in no event shall Procad be liable for any damages or penalty for delay in despatch or delivery.

Where full information is provided and it is possible to ship the products on the same day, no order acknowledgement is provided. Where an email address is provided, a dispatch notice is provided by email.

Where there is a query on the order, or the products will not ship within 8 working hours of receipt of the order, an order acknowledgement will be issued to the purchaser's primary contact, preferably by email, or by phone if an email address is not available, outlining any issues with the order and giving an estimated delivery date.

Risk shall pass to the Customer at the time the Products are despatched by Procad. Procad accepts no liability for loss or damage caused by the carrier.

If Products have not been received, the Customer must notify Procad within 7 days of the date of the invoice. If proof of delivery is required, this must be requested within 14 days of the date of the invoice.

5. Cancellation and Rescheduling

Any request by the Customer for cancellation of any order or for the rescheduling of any deliveries will only be considered by Procad if made at least 12 hours before despatch of the Products, and shall be subject to acceptance by Procad at Procad's sole discretion, and subject to a reasonable administration charge thereof by Procad. The Customer hereby agrees to indemnify Procad against all loss, costs (including the cost of labour and materials used and overheads incurred), damages, charges and expenses arising out of the order and its cancellation or rescheduling.

6. Pricing

Catalogues, price lists and other advertising literature or material as used by Procad are intended only as an indication as to the price and range of Products offered and no prices, descriptions or other particulars contained therein shall be binding on Procad.

All prices are given by Procad at the time of the order on an ex-works basis and the Customer is liable to pay for transport, packing and insurance.

All quoted or listed prices are based on the cost to Procad of supplying the Products to the Customer. If before delivery of the Products there occurs any increase in any way of such costs in respect of Products which have not yet been delivered, the price payable may be subject to amendment without notice at Procad's discretion.

All prices are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by the Customer and will be supplied in accordance with Irish legislation in force at the tax point date.

7. Payment Terms

Procad accepts payment directly into its account, cash, electronic payment, bank draft and company cheque. Products will not be shipped until the funds reach the account, or the bank draft or cheque is received in Procad offices. Procad does not accept credit card payments.

Invoices will be raised and dated by Procad on the date of despatch of the Products.

Credit Terms may be granted once a completed Procad credit application form has been received and processed satisfactorily *and* once 3 cash transactions have been completed within a 6 month period. Credit Account facilities are given at Procad's discretion and may be withdrawn without notice.

Credit terms are based on payment being received strictly within 30 days following the invoice date.

The preferred payment method is by direct means into Procad's account. If paying electronically or by direct means, payment must be in Procad's account on its due date.

All payments must be allocated against specific invoices. Payment will be shown as outstanding until a remittance with allocations is received.

Any queries with regard to invoices must be brought to the attention of the Accounts Receivable Executive upon receipt of the invoice, not when payment is required.

Payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at the rate of 4% per annum above the base rate for the time being of Bank of Ireland plc. Such interest shall accrue on a daily basis and be payable on demand after as well as before judgment.

Credit limits are imposed on all credit accounts. The limit is regarded as the total exposure to Procad – i.e. all invoices outstanding, not just invoices due for payment.

Exceeding the credit limit will result in credit hold, unless there are specific extenuating circumstances, which have been discussed and agreed by a Procad director.

When all prices, taxes and charges due in respect of the Products and any Products supplied previously to the Customer have been paid in full, title to Products shall pass to the Customer. Notwithstanding despatch and the passing of risk in the Products to the Customer or any other provision of these conditions, the property of the Products shall not pass to the Customer until Procad has received cash or cleared funds payment of the price of the Products and all of the Products agreed to be sold by Procad to the Customer for which payment is then due.

Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products as Procad's fiduciary agent and bailee, and shall keep the Products properly stored, protected and insured and identified as Procad's property. Until that time the Customer shall be entitled to use the products in the ordinary course of its business, but shall account to Procad for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or properties of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured. Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and not been resold), Procad shall be entitled at any time to require the Products be delivered to Procad and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products. The Customer's power of sale or right to use such Products shall immediately cease if an Administrative receiver is appointed over all or any part of its assets or if it is adjudicated bankrupt or enters liquidation whether compulsory or voluntary, or if the Customer makes an arrangement with its creditors, or generally becomes unable to pay its debts within the meaning of the Insolvency Act. On termination of the Company's power of sale or right to use the Products the Customer will immediately hold the Products to the order of Procad. The Customer shall not be entitled to pledge or in anyway charge by way of security for any indebtedness any of the Products which remain the property of Procad, but if the Customer does so, all monies owing by the Customer to Procad shall (without prejudice to any other right or remedy of the seller) forthwith become due and payable.

Procad reserves the right to cease supplies of Products to the Customer at anytime. On such cessation of supplies, Procad reserves the right to withdraw any credit facility such that the whole of the Customer's account becomes due for payment forthwith.

8. Specification of Products

Procad will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specifications or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation. Procad will use its reasonable endeavors to advise the Customer of any such impending variation as soon as it receives any such notice thereof from the manufacturer.

Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified. Procad reserves the right to increase its quoted or listed price, or to charge accordingly in respect of any orders accepted for Products of non-standard specifications and in no circumstances will it consider cancellation of such orders or the return of such orders.

9. Proprietary Rights in Software Products

The Customer hereby acknowledges that any proprietary rights in any Third Party Software supplied hereunder including, but not limited to any title or ownership rights, patent rights, copyrights and trade secret rights, shall at all times and for all purposes vest and remain vested in the Third Party Software owner. The Customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of licence attaching to Third Party Software supplied and delivered by Procad (including if so required the execution and return of a Third Party Software licence). The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software licence or having the same revoked by the proprietary owner. The Customer further

agrees to indemnify Procad in respect of any costs, charges or expenses incurred by Procad at the suit of a Third Party Software owner as a result of any breach by the Customer of such conditions.

NO TITLE OR OWNERSHIP OF SOFTWARE PRODUCTS OR ANY THIRD PARTY SOFTWARE LICENSED TO THE CUSTOMER UNDER THIS AGREEMENT IS TRANSFERRED TO THE CUSTOMER UNDER ANY CIRCUMSTANCES.

10. Returns

Procad reserves the right not to accept return of goods where they have been ordered, dispatched and invoiced in accordance with these terms and conditions.

Credit notes raised for such returns, may not be redeemed for cash, but are regarded as a credit on the credit account or can be used for a stock purchase.

Procad reserves the right to levy an administration charge in respect of the rotation of Products and returns.

Returns must be made subject to the following:

- prior authority having been obtained from Procad which will be given at Procad's sole discretion;
- within 30 days of the date of the invoice;
- the Products must be properly packed and include all original software, accessories and components as supplied.
- the Products must not have been registered, authorised or activated in any way.
- the Products must be in a saleable condition;
- the Products must be accompanied by a delivery docket.
- the Product is still covered by warranty

Procad reserves the right to reject any Products which do not comply with the conditions set out above.

If Procad nevertheless agrees to accept any Products returned which are not in saleable condition, Procad reserves the right to charge the cost to the Customer of bringing the Products into a saleable condition.

11. Warranty

Procad warrants that it has good title to or licence to supply all Products to the Customer.

If any part of the hardware Products should prove defective in materials or workmanship under normal operation or service, such Products will be repaired or replaced only in accordance with any warranty cover or terms as provided by the manufacturer of the Products PROVIDED THAT no unauthorised modifications to the Product or to the system of which the Product forms part have taken place. Procad is not responsible for the cost of labour or other expenses incurred in repairing or replacing defective or non-conforming parts.

All software Products supplied hereunder are supplied 'as is' and the sole obligation of Procad in connection with the supply of software Products is to use all reasonable endeavors to obtain and supply a corrected version from the manufacturer concerned in the event that such software Product should fail to conform to product description PROVIDED ALWAYS THAT the Customer notifies Procad of any such non-conformity within 90 days of the date of delivery of the applicable software Product. If the Products are rejected by the Customer as not being in accordance with the Customer's order pursuant to clause, Procad will only accept the return of such Products provided that it receives written notification thereof giving detailed reasons for rejection. Procad will not consider any claim for compensation, indemnity or refund under liability, if any, has been established or agreed with the manufacturer and where applicable the insurance company. Under no circumstances shall the invoiced Products be deducted or set off by the Customer until Procad has passed a corresponding credit note. EXCEPT AS SPECIFICALLY SET OUT IN THIS CLAUSE 11, Procad DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESCRIPTION, DESIGN, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM ANY PREVIOUS COURSE OF DEALING, USAGE OR TRADE PRACTICE.

12. Indemnities and Limitations of Liability

Procad disclaims and excludes all liability to the Customer in connection with these terms and conditions including the Customer's use of the Products and in no event shall Procad be liable to the Customer for special, indirect or consequential damage including but not limited to loss of profits arising from loss of data or in connection with the use of the Products. All terms of any nature, express or implied, statutory or otherwise, as to correspondence with any particular description or sample, fitness for purpose or merchantability, are hereby excluded.

The Customer shall indemnify and defend Procad and its employees in respect of any claims by third parties which are occasioned by or arise from any Procad performance or non-performance pursuant to the instructions of the Customer or its authorised representative.

13. Termination for Cause

This agreement may be terminated forthwith by notice in writing:

By Procad if the Customer fails to pay any sums due hereunder by the due date notwithstanding the provisions for late payment.

If either party fails to perform any of its obligations under this Agreement and such failure continues for a period of 14 days after written notice thereof, by the other party.

If either party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or a reconstruction, or makes an arrangement with creditors or petitions for an administration order or base Receiver or Manager appointed over all or any part of its assets or generally becomes unable to pay its debts, then without prejudice to any other rights or remedies available to it, the other party shall have the right to terminate the Agreement forthwith.

Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law, and shall not affect any accrued rights or liabilities of either party.

14. Export and Re-import Limitation

Having regard to the current statutory or other European regulations in force from time to time and, in the case of Products manufactured in the United States of America, to the current export rules and regulations of the United States Department of Commerce in force from time to time and regardless of any disclosure made by the Customer to Procad of an ultimate destination for any Products, the customer will not export or re-export any Products without first obtaining all such written consents or authorisations as may be required by any applicable government regulations.

15. Contract

The headings in this Agreement are for ease of reference only and shall not effect its interpretation or construction.

No forbearance, delay, indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any later breach.

The Customer agrees not to assign any of its rights herein without the prior written consent of Procad.

In the event of any of these terms and conditions or any part of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced. Neither party shall be liable to the other for any delay in failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from force majeure, act of God, fire, explosion, accident, industrial dispute or any cause beyond its reasonable control