



## **ADM060 Terms and Conditions**

### **PART A: GENERAL TERMS 1. APPLICATION OF TERMS**

**1.1** These Terms apply to all Products and Services supplied by Pacific Rim Oenology Services (2017) LTD (hereafter referred to as PROS) to the Customer. Any request received by PROS from the Customer for the supply of Products and/or Services will constitute an offer by the Customer to acquire the Products and/or Services on these Terms only.

**1.2** All Products and/or Services supplied by PROS to the Customer will be supplied on these Terms only. Unless expressly agreed by PROS in writing, these Terms take precedence over any other terms or conditions.

**1.3** The provisions of (a) Part A of these Terms apply to all Services; (b) Part B of these Terms apply to Products only; in each case, supplied to the Customer by PROS.

### **2. DEFINITIONS**

Amount Owing means any amount owing by the Customer to PROS from time to time, under these Terms or any other agreement, including any interest payable by the Customer, any liability of the Customer and any enforcement costs incurred by PROS in seeking payment of any Amounts Owing;

PROS means Pacific Rim Oenology Services (2017) LTD

Customer or you means the person that requested PROS to provide Services;

Customer Data means all information that the Customer provides to PROS connection with or for the purposes of a Service;

Data means any data or information provided to the Customer by PROS pursuant to. or comprised in, Digital Services (whether such data is supplied to or accessed by the Customer);

Digital Services means any services provided to the Customer by or on behalf of PROS that involve Data and/or information technology, including any platform or software;

End User means any person who is authorised by the Customer to use Digital Services for and on behalf of the Customer;

Estimated Price means an estimated Price for Services notified to the Customer by PROS in writing;

Event of Default means an event where: (a) any Amount Owing is overdue; (b) the Customer breaches these Terms or any other agreement with PROS; or (c) the Customer suffers an Insolvency Event;

General Terms means the terms and conditions set out in this Part A of these Terms;

Goods means any goods supplied by PROS to the Customer, including any advice or recommendations in relation to Goods;

Intellectual Property means all present and future rights anywhere in the world resulting from intellectual activity in the industrial, scientific, literary or artistic fields, whether or not registered or capable of registration, including rights of or in connection with testing, inspection and certification methods, processing systems, procedures, know how, business information, laboratory results, working instructions, controlled documents, supporting documentation, confidential information, databases, domain names and any documentation generated by PROS in connection with the Services;

Insolvency Event means in respect of either party (other than for the purpose of solvent reconstruction or amalgamation): (i) a receiver, receiver and manager, liquidator, statutory manager, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or similar official is appointed in respect of that party or any of its property, or any security over any substantial part of its assets is enforced; (ii) the party ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that party's creditors or threatens to do so, or stops payments to its creditors generally; (iii) the party is, becomes, or is deemed to be insolvent or bankrupt; (iv) a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of its assets and is not stayed within 14 days; (v) any other event occurs or information becomes known to PROS, which in PROS opinion, might materially affect the Customer's creditworthiness, the value of the Goods the subject of a Security Interest, or the Customer's ability or willingness to comply with its obligations under these Terms or any other agreement with PROS; (vi) anything having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction; or (vii) in the event that the party is an individual, anything having a similar effect to any of the events specified above happens in respect of that individual;



## **ADM060 Terms and Conditions**

Laboratory Testing Services means any laboratory testing services provided by PROS to the Customer;

Liabilities includes all claims, actions, demands, proceedings, damages, fines, liabilities, compensation, losses, costs, charges, expenses and penalties, including: (a) property damage; (b) internal time costs; (c) legal costs and expenses charged at the usual commercial rates of the relevant legal services provider; and (d) debt collection costs for recovery of any Amount Owing; Order has the meaning given to it in clause 3.2;

Personal Information has the meaning given to it in the Privacy Act 1993;

Price means the price and any other applicable charges for Services: (a) quoted by PROS to the Customer in writing; or (b) to the extent that no written quote is provided, calculated at PROS then current standard charges for the relevant Services, available from PROS on request;

Related Company has the meaning given to that term in section 2(3) of the Companies Act 1993 (read as if the expression "company" in that section included any body corporate wherever incorporated or established);

Representative means any officer, employee, consultant, agent, contractor or subcontractor of a party;

Services means any services (as well as, if applicable, Goods) provided by PROS to the Customer, including Laboratory Testing Services, inspection and certification services, Digital Services and/or related services;

Terms means these Standard Terms of Business as amended by PROS from time to time in accordance with these Terms.

### **3. SERVICES**

**3.1** The Customer may submit a request to PROS to provide Services from time to time, in accordance with PROS order processes advised to the Customer from time to time.

**3.2** PROS may accept a request for Services, in whole or in part, by delivering or granting access to the Services (in whole or in part), issuing an invoice in respect of the applicable Services, or otherwise confirming in writing that PROS will provide the Services. PROS may decline a request for Services, in whole or in part, at PROS discretion. A contract is made only on acceptance of a request for Services by PROS (Order).

**3.3** The Client acknowledges that Services that involve testing are limited to providing the results of the specific tests that the Client has requested and that PROS has agreed to provide. It is solely the Client's responsibility to determine which tests are required for the Client's particular purpose and to interpret the results of those tests.

### **4. PRICE**

**4.1** The Customer will pay PROS the Price for all Services supplied by PROS any applicable taxes and duties, including tax payable under the Goods and Services Tax Act 1985; (c) exclusive of reasonable out-of-pocket expenses and disbursements incurred by PROS in connection with the provision of the Services; and (d) exclusive of any freight and delivery costs to and from PROS premises.

**4.2** Any applicable reasonable out-of-pocket expenses and disbursements, taxes and/or freight and delivery costs are payable by the Customer in addition to the Price. The Customer will pay all Amounts Owing to PROS in full, without counterclaim, set off, withholding, deduction or claim of any other nature.

**4.3** Any quotation provided by PROS is only valid for 30 days from the date of the quotation. PROS may withdraw any quotation before it is accepted by the Customer.

**4.4** If PROS provides an Estimated Price for Services, PROS will use its reasonable endeavours to provide the relevant Services at the Estimated Price using resources reasonably available to PROS. However, any Estimated Price is indicative only. Without limiting the foregoing, an Estimated Price may be adjusted if the Services are more complex or time consuming than anticipated by PROS, a Force Majeure occurs which directly or indirectly affects the Estimated Price or there is a change in the scope, or timing of the provision of, the Services.



## **ADM060 Terms and Conditions**

### **5. PAYMENT**

**5.1** As soon as practicable after the end of each month, PROS will submit an invoice to the Customer which sets out the Amount Owing for the provision of the Services in any previous month, including, at PROS option, for Services that are not complete and are provided over a period of more than one month.

**5.2** The Customer will pay all Amounts Owing by the 20th of the month following the date of PROS invoice (unless expressly agreed otherwise in writing in respect of a particular Service).

**5.3** If the Customer disputes all or any part of an invoice, the Customer must: (a) pay, by the due date, the undisputed portion of the disputed invoice; and (b) notify PROS of the dispute, including the grounds of dispute, with full supporting details.

**5.4** Failure to notify PROS within 20 Business Days of the date of an invoice will constitute acceptance of that invoice and the Customer will have no further right to dispute such invoice.

**5.5** If payment in full of all Amounts Owing is not made to PROS by the relevant due date the Customer will pay to PROS on demand default interest on any Amount Owing, at a rate of 5% per annum above PROS 's bankers overdraft rate, calculated on a daily basis from the date payment is due until the date payment is received by PROS.

**5.6** PROS may apply any payments received from or on behalf of the Customer in reduction of the Amount Owing in such order and manner as PROS thinks fit, despite any direction to the contrary and whether before or after the occurrence of an Event of Default.

### **6. CUSTOMER RESPONSIBILITIES**

**6.1** The Customer will provide and arrange for the provision of all relevant information and assistance reasonably required by PROS to enable PROS to provide the Services. The Customer warrants that all information that it provides to PROS is complete, accurate and not misleading and acknowledges that, in the absence of manifest error, PROS will be entitled to rely on the accuracy and sufficiency of such information.

**6.2** The Customer is responsible for: (a) arranging any transportation to PROS premises, required for test samples and any other items required for the Services; (b) advising PROS of any specific testing, inspection or certification methods that the Customer requires PROS to follow when providing the Services (and any such specific methods are subject to PROS written confirmation and approval); (c) complying with any reasonable requirements for test samples notified to the Customer by PROS from time to time; and (d) interpreting all test results as reported by PROS and, if applicable, determining whether to release, retest or reject the materials that the test results relate to.

### **7. PROS RESPONSIBILITIES**

**7.1** PROS will: (a) use its reasonable skill, care and effort in providing the Services, using resources reasonably available to PROS; and (b) use reasonable industry standard methodology for Services, where applicable.

**7.2** PROS will use reasonable endeavours to provide Services in accordance with any agreed timeframes, however, any such timeframes are indicative only.

**7.3** PROS will retain routine non-perishable samples provided to PROS in connection with Laboratory Testing Services for a minimum period of 10 days after the release of PROS final report in respect of the relevant samples. All other samples will be disposed of by PROS after the release of final report.

### **8. REPRESENTATIONS**

**8.1** The Customer may not use the PROS or make any public reference to PROS or PROS provision of the Services, including on packaging or in any advertising or promotional material, without the prior written approval of, which approval may be given or withheld in absolute discretion.

**8.2** If approves an AQ Reference, the AQ Reference used by the Customer must be strictly limited to the AQ Reference expressly agreed by and any conditions attached to consent.

### **9. INTELLECTUAL PROPERTY AND USE OF INFORMATION**

**9.1** acknowledges that, notwithstanding any other provision of these Terms, the Customer (or its licensors) owns all Intellectual Property rights in any information or data provided by the Customer to and nothing in these Terms is intended to transfer any such Intellectual Property rights to.



## **ADM060 Terms and Conditions**

**9.2** The Customer grants and any Related Company or Representative of a non-exclusive, royalty free licence, during the Term, to use any of the Customer's Intellectual Property obtained by, or disclosed to, (a) for the provision of the Services; (b) for the purpose of improving the Services; and (c) for analytical purposes, provided that information relating to the Customer will only be disclosed to a third party for analytical purposes in an anonymised and/or aggregated form. You warrant that you have the right to grant the licence set out in this clause 9.2 and indemnify PROS for any costs, expenses or liabilities suffered or incurred by PROS as a result of a breach of this warranty.

**9.3** All Intellectual Property rights and all information and data generated or developed by or on behalf of PROS in connection with the Services, will automatically vest in PROS and, except as expressly set out in these Terms, the Customer will not obtain any rights or interests in such Intellectual Property rights.

**9.4** The Customer authorises PROS to collect, use, disclose and retain information, including personal information (as defined in the Privacy Act 1993) about the Customer, its Representatives and End Users for the purpose of (as applicable), providing the Services, assessing the Customer's creditworthiness and enforcing any payment obligations under these Terms. This may include PROS sharing such Personal Information with credit reporting and debt recovery agencies and with third party services providers. Credit reporting and debt collection agencies may retain such Personal Information, including default information, and use it to provide their services (which may include the disclosure of Personal Information to other customers). Individuals have the right to access and request correction of their Personal Information by contacting PROS using the details set out on our website: <https://www.pros.co.nz>

**9.5** We may transfer information, including Personal Information, outside New Zealand, including for storage purposes or where our service providers are located overseas.

**9.6** If you provide PROS with any Personal Information about a third party, you confirm that you have the authorisation of the relevant individual to disclose their Personal Information to PROS, and to authorise PROS to use such information, in accordance with this section 9 and have notified any such individual of their rights to access and request correction of their Personal Information. PROS may retain a copy of all requests for Services, results and supporting documents for auditing and accreditation purposes.

### **10. EVENT OF DEFAULT AND TERMINATION**

**10.1** If an Event of Default occurs, any Amount Owing will become immediately due and payable and PROS may: (a) suspend or cancel further provision of Services to the Customer; (b) without any prior notice or demand, set-off any of its own outstanding liabilities to the Customer to reduce any payment due or to become due by the Customer to PROS; and (c) withdraw any certification or accreditation issued to the Customer by PROS under these Terms or any other agreement.

**10.2** Either party may terminate these Terms at any time if there are no outstanding Services to be provided under Orders by PROS.

**10.3** Either party may suspend or terminate this Agreement by written notice to the other party if an event or circumstance occurs which is beyond its control and prevents it from performing its obligations (other than payment obligations) under this Agreement and the event or circumstance cannot be rectified within 15 Business Days of the occurrence.

### **11. LIABILITY**

**11.1** To the extent permitted by law, the maximum aggregate liability of PROS for an claim arising under or in connection with these Terms and/or the Customer's use of (or inability to use) any Services, whether in tort (including negligence), contract, statute or otherwise, is limited, at the option of PROS, to: (a) resupplying the Services that gave rise to the claim; or (b) crediting or repaying the Customer the lesser of \$5,000 and the Price paid by the Customer for the Services that gave rise to the claim in the 12 months preceding the date of the Customer's notice of the claim to PROS.

**11.2** PROS will not be liable under or in connection with these Terms or the provision of the Services, whether in tort (including negligence), contract, statute or otherwise, for any loss of profits, loss of samples, loss of Data, or consequential, indirect or special loss or damage of any kind.

**11.3** The Customer indemnifies PROS and its Representatives upon demand, for all Liabilities incurred by PROS and/or its Representatives in connection with the provision of the Services as a result, whether directly or indirectly, of: (a) an act or omission of the Customer which gives rise to an Event of Default, including a breach of clause 8; (b) a claim or investigation by a regulatory body or other third party, or any statutory obligation, court order or compulsory process, that relates to the Customer; and/or (c) damage to or loss of PROS property while in the possession or control of the Customer.

**11.4** All warranties, representations, statements, terms or conditions, whether implied by statute or made by any representative or agent of PROS or otherwise, and whether express or implied, are excluded to the maximum extent permitted by law.

**11.5** PROS will not be liable to the Customer for any failure or delay in the performance of Services, where such failure or delay is caused by events or circumstances beyond the control of PROS.



## **ADM060 Terms and Conditions**

**11.6** In the event of a dispute, the Customer must pay for the Services and then settle any claim with PROS.

**11.7** The Customer may not make a claim against PROS under or in connection with the Services unless the Customer notifies PROS of the claim as soon as reasonably practicable, and in any event not more than 12 months after the Customer becomes aware of the matter, information, event or circumstance giving rise to, or the subject of, the claim.

### **12. FAIR TRADING ACT AND CONSUMER GUARANTEES ACT**

**12.1** The parties agree that, for the purposes of section 5D of the Fair Trading Act 1986 (FTA): (a) to the extent permitted by law, in respect of all matters under or in connection with these Terms, the parties are contracting out of sections 9, 12A and 13 of the FTA; (b) the parties have each had an opportunity to receive advice from a lawyer prior to contracting on these Terms; and (c) it is fair and reasonable for the parties to be bound by this clause.

**12.2** The Customer acknowledges that the Services are not "consumer" services for the purposes of the Consumer Guarantees Act 1993 (CGA) and accordingly, the CGA does not apply to the Services.

### **13. NOTICES**

**13.1** Notices or other communications given by one party to the other in connection with these Terms must be in writing and sent by personal delivery, post or electronic mail to the address of the relevant party as notified to the other party from time to time.

**13.2** Any notice or other communication is deemed to be received and sufficiently served if: (a) personally delivered, on receipt; (b) posted by pre-paid official postal service, on the second working day after posting; and (c) if sent by electronic mail, on successful transmission or, if dispatched after 5.00 pm (in New Zealand), on the next Business Day after dispatch.

### **14. GENERAL**

**14.1** Subject to clause 9, each party agrees to keep the terms of these Terms and any information acquired by them pursuant to these Terms confidential, except: (a) as is agreed in writing between the Customer and PROS and, in such case, strictly limited to the terms agreed and any conditions attached to such agreement; (b) to its directors, officers, employees, agents, contractors or representatives, insurers and professional advisers to the extent necessary to obtain the benefit of, or to properly perform its obligations, under these Terms; (c) as required by an applicable law, after first consulting with the other party to the extent practicable about the form and content of the disclosure; (d) where disclosure is by PROS to a Related Company; or (e) where information is already in the public domain, other than as a result of a breach of this clause 14.1.

**14.2** PROS may amend these Terms at any time by publishing an updated version of the Terms on PROS's website at [www.pros.co.nz](http://www.pros.co.nz) (or, in respect of Digital Services, any other website that is applicable to the relevant Digital Services) and/or providing an updated version to the Customer, including on PROS invoices. Any request for Services from the Customer after such notice will be deemed to be acceptance by the Customer of the updated Terms.

**14.3** The acts and omissions of the Customer's Representatives and End Users will be deemed to be the acts and omissions of the Customer.

**14.4** Any variation of these Terms must be in writing and signed by PROS.

**14.5** These Terms, and any variation to these Terms expressly agreed in writing by PROS constitute the entire agreement of the parties concerning the subject matter of these Terms, and supersede and cancel any previous representations, agreements, understandings or arrangements (whether written or oral) between the parties.

**14.6** The relationship of PROS (including its Representatives and permitted assigns) to the Customer is that of an independent supplier to its customer. Except as expressly provided in these Terms, nothing in these Terms is intended to constitute a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the parties. No party has authority to bind or incur debts on behalf of the other party.

**14.7** A waiver by PROS of any breach of these Terms or any right, power or remedy under, or in connection with, these Terms (including a right of termination) is not effective unless that waiver is in writing and is signed by PROS

**14.8** If any provision of these Terms is illegal, invalid or unenforceable then: (a) where that provision can be modified to give it a valid and enforceable operation of a partial nature, it must be modified to the minimum extent necessary to achieve that result; and (b) in any other case the provision must be severed from these Terms, in which event the remaining provisions of these Terms operate as if the severed provision had not been included.



## **ADM060 Terms and Conditions**

**14.9** Termination of these Terms or any Order will not affect any provisions of these Terms which are expressed to, or by implication are intended to, survive termination of these Terms or an Order.

**14.10** For the purposes of Part 2, Subpart 1 (Contractual Privity) of the Contract and Commercial Law Act 2017: (a) PROS can enforce its rights under these Terms even if PROS has not signed these Terms; and (b) references in these Terms to PROS Representatives and Related Companies are intended to confer a benefit on such Representatives and Related Companies and be enforceable by them.

**14.11** In these Terms: (a) headings are for convenience only and do not affect interpretation; (b) a reference to a statute is a reference to a New Zealand statute and includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated; (c) a word importing the singular includes the plural and vice versa; (d) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust or government agency, in each case, whether or not having a separate legal personality; (e) a reference to a party is a reference to a party to these Terms; (f) a reference to a party to these Terms or another document includes that party's successors and permitted assigns and substitutes; (g) references to "including" shall be construed as "including, without limitation"; and (h) these Terms must not be construed adversely to a party just because that party prepared them or caused them to be prepared.

**14.12** In these Terms, any reference to "writing" or "notice" includes email (and any other permanent record by electronic means) and where execution of these Terms or any document referred to in these Terms is required, the parties authorise execution by electronic means in accordance with Part 4 (Electronic Transactions) of the Contract and Commercial Law Act 2017.

**14.13** These Terms are governed by and construed in accordance with New Zealand law and the parties hereby submit to the exclusive jurisdiction of the courts of New Zealand.

### **B: TERMS APPLICABLE TO GOODS ONLY**

#### **15. APPLICATION**

**15.1** If Goods are supplied to the Customer: (a) clauses 15 – 21 (inclusive) apply in addition to the General Terms; and (b) all references to Services in the General Terms will be deemed to include Goods and Services.

**16. DEFINITIONS** Delivery Address means PROS premises, or if applicable, the delivery address agreed by PROS in writing for the delivery of Goods;

PPSA means the Personal Property Securities Act 1999;

Security Agreement and Security Interest have the meaning given to them in the PPSA.

#### **17. DELIVERY**

**17.1** Delivery of the Goods will be completed by delivery in full or in installments to the Delivery Address.

**17.2** If the Customer fails or refuses to accept delivery when notified by PROS that the Goods are ready for delivery, then the Goods will be deemed to have been delivered at the time of such notification at PROS premises.

#### **18. RISK AND INSURANCE**

**18.1** Risk of any loss, damage or deterioration of the Goods will be borne by the Customer from the earlier of the delivery of the Goods (or deemed delivery of the Goods pursuant to clause 17.2 of this Part B) and the time the Goods are uplifted for delivery to the Customer (whether by the Customer's agent or contractor or by PROS or its agents or contractor). PROS will have no liability for damage to Goods in transit to the Customer.

**18.2** The Customer will insure the Goods for their full replacement value for the benefit of PROS at all times after risk in the Goods has passed to the Customer until ownership of the Goods has passed to the Customer.

#### **19. RESERVATION OF TITLE**

**19.1** Until PROS has received payment in full of the Amount Owing: (a) all Goods supplied by PROS will remain the property of PROS and title in them will not pass to the Customer; (b) all Goods supplied by PROS and not sold by the Customer to a third party will be in the possession of the Customer as a fiduciary bailee for PROS. The Customer will keep the Goods separate from other Goods and store them so they remain readily identifiable as PROS property. The Goods must be kept in good condition; and (c) unless PROS directs otherwise, the Customer may use and resell Goods in the ordinary course of your business, provided that the proceeds of such sales shall be received and held by the Customer on trust for PROS to the extent of all Amounts Owing. This authority is deemed to be revoked immediately if any



## **ADM060 Terms and Conditions**

Event of Default occurs; and (d) the Customer must immediately return all Goods if requested to do so by PROS following an Event of Default.

**19.2** PROS may bring an action for Amount Owing even where ownership of Goods may not have passed to the Customer.

### **20. SECURITY INTEREST**

**20.1** These terms and conditions constitute a Security Agreement creating a Security Interest in the Goods and the proceeds of such Goods, to secure the payment by the Customer to PROS of the Amount Owing.

**20.2** The Customer undertakes to: (a) promptly do all things, sign any further document and/or provide any information which PROS may reasonably require to ensure PROS is paid all sums due to PROS and otherwise to protect the interests of PROS under these Terms (including by registration of a financing statement and ensuring that PROS has a first ranking perfected Security Interest in the Goods and the proceeds of the Goods); and (b) give PROS (addressed to the financial controller or equivalent) not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including changes to the Customer's address, facsimile, email trading name or business practice).

**20.3** The Customer waives its right to receive a verification statement under section 148 of the PPSA in respect of any financing statement relating to a Security Interest.

**20.4** To the extent permitted by law, the Customer and PROS contract out of: (a) section 114(1)(a), 133 and 134 of the PPSA; and (b) the Customer's rights referred to in sections 107(2)(a),(c)- (i) (inclusive) of the PPSA.

**20.5** Each Security Interest is a continuing security, notwithstanding any intermediate payments, settlement of accounts or anything else.

**20.6** Nothing in these Terms is to be construed as an agreement that a Security Interest under these Terms attaches at a later time than the time specified in section 40(1) of the PPSA.

**20.7** The Customer must provide PROS with information and any associated documentation reasonably requested by the Supplier from time to time relating to the Customer's financial status. If at any time PROS considers that the financial status of the Customer is unsatisfactory, PROS may require the Customer to grant additional Security Interests as security for the Amount Owing and PROS may suspend or cancel further deliveries of Goods to the Customer until the Customer has provided such Security Interest.

### **21. EVENT OF DEFAULT**

**21.1** If an Event of Default occurs or if any Goods are at risk, PROS may: (a) take possession of any Goods; and/or (b) sell or otherwise dispose of any Goods, in each case in such manner and generally on such terms and conditions as it thinks fit and, in each case, otherwise do anything the Customer could do in relation to these Goods.

**21.2** If an Event of Default occurs: (a) PROS and its Representatives may, without prior written notice, enter any land or premises where Goods in the Purchaser's possession or control are kept in order to take possession of and/or remove them, without being responsible for any damage caused in doing so; and (b) the Customer must procure all other rights, including consents, necessary to enable PROS to exercise its rights under this clause.

**21.3** PROS may resell any Goods and apply the proceeds of sale in reduction of the Amount Owing.

**21.4** The Customer indemnifies PROS and its Representatives upon demand, for all Liabilities incurred by PROS and/or its Representatives as a result, whether directly or indirectly, of the occurrence of an Event of Default, including upon actual or attempted enforcement of any Security Interest granted by the Customer, and any action taken by PROS under clause 20.7 of this Part B.

### **22. LIABILITY**

**22.1** Without limiting clause 11 of the General Terms, PROS total liability under or in connection with the supply of Goods, whether in tort (including negligence), contract or otherwise, is limited to, at the option of PROS to: (a) replacement of any defective Goods; or (b) credit or repayment of the Price paid for the defective Goods by the Customer.

**22.2** Any liability PROS may have is conditional upon the Customer making a written claim to PROS within 24 hours of delivery of the applicable Goods and returning to PROS, or making available to an independent auditor, nominated by PROS, a sufficient quantity of the Goods to enable a proper examination and sampling.