

Standard Conditions Profound

These Standard Conditions are applicable to delivery, services and consultancy by PROFOUND. The name PROFOUND shall mean: PROFOUND BV a private limited company existing under the laws of The Netherlands and having its registered office in Waddinxveen. These Standard Conditions have been laid down by PROFOUND and have been filed at the Chamber of Commerce of Rotterdam, The Netherlands.

1. Scope of instructions, offer

- 1.1 The scope of the instructions is determined by the description of the work or the delivery of equipment comprised in the offer, inclusive of all variations which are agreed upon afterwards.
- 1.2 The agreement regarding the execution of work or the delivery of equipment is reached by the Principal accepting an offer of PROFOUND.
- 1.3 Unless stated otherwise in the offer, PROFOUND's offer is open for acceptance within one month from the date of offer. The offer is free of obligations until acceptance.
- 1.4 Variations, additions and/or extensions of the instructions or deviations from the Standard Conditions are binding only after they have been agreed upon in writing by both parties.
- 1.5 PROFOUND's offer and the knowledge and ideas contained therein will be used by the Principal only for evaluation of his interests in awarding the instructions. This article is also applicable to proposals for variations, additions and/or extension of the instructions.

2. Execution of the instruction, results

- 2.1 The instructions shall be carried out within the (estimated) term mentioned in the offer, unless this should prove impossible. If it appears in due course that the term may be exceeded, PROFOUND shall consult the Principal as soon as possible. PROFOUND shall not be liable for any delay caused by circumstances out of PROFOUND's control.
- 2.2 By accepting the instructions PROFOUND shall undertake no obligation other than to use its reasonable efforts to achieve a usable result for the Principal when carrying out the instructions.
- 2.3 If the offer (also) comprises the delivery of equipment, only the guarantee described in the offer shall be provided by PROFOUND on the measuring equipment, sensors and cables excluded. The guarantee period for PROFOUND Equipment is one year.
- 2.4 During works in connection with the instructions on the premises of the Principal, the Principal shall, if requested by PROFOUND at reasonable notice, place at PROFOUND's disposal auxiliary staff, equipment and other reasonable facilities, free of charge.

3. Delivery, acceptance and complaints

- 3.1 Delivery of equipment shall take place ex works, PROFOUND's offices, or as stipulated in the offer. Regardless from where the delivery takes place the goods are for the risk of the Principal as soon as they are ready for transport. Transportation costs shall be paid by the Principal.
- 3.2 Not later than 10 days before the date of delivery PROFOUND will give written notice to the Principal that the equipment is ready for transport. PROFOUND shall run tests consisting of standard hardware diagnostics and processing of mutually agreed data.
- 3.3 The Principal should file complaints concerning the work and equipment in writing within 8 days of the discovery, but not later than 14 days after completion of the work or arrival of the equipment at the delivery address. If the complaint is valid PROFOUND will execute the work again as agreed or repair the equipment, unless this has become impossible or useless for the Principal. In those cases PROFOUND will only be liable as stipulated in article 8.
- 3.4 The Principal may cancel the order for delivery of equipment at any time prior to the date of delivery by giving PROFOUND a written notice and by paying a cancellation penalty equal to a percentage of the purchase price of the equipment that is being cancelled as set out hereunder:

Cancellation date prior to delivery date	Cancellation penalty
More than 90 days	None
61-90 days	5%
31-60 days	20%
Less than 31 days	30%

- 3.5 Most PROFOUND software packages run in combination with a software protection key. Use of the PROFOUND data acquisition software is restricted to the PROFOUND Equipment for which it has been ordered. REPORT programs for reprocessing can be used by the purchaser at multiple general PC stations at the same address. Additional hardware keys can be ordered separately.
- 3.6 In case of damage of the software protection key, the key will be replaced by a new key at cost price of the key, upon return of the damaged key. In case of proven loss of the software protection key, the key will be replaced at cost price of the key. In all other cases, the full price of software package will be charged.

4. Price and payment

- 4.1 If a "fixed price" is mentioned in the offer, then such price shall be considered as the agreed price. If no "fixed price" is mentioned in the offer, then it is established between the Principal and PROFOUND that the sum payable shall be determined by way of calculation afterwards based on the rates as agreed upon. PROFOUND is entitled, whenever there is a period of twelve months or longer between the date of the offer and the date on which the work is or shall be completed or the equipment is delivered, to index that part of the amount of the instructions which has not been invoiced, according to the yearly adjustment of PROFOUND's rates.
- 4.2 Unless stated otherwise, all amounts mentioned by PROFOUND in the offer are exclusive of value added tax. Shipping custom charges and local taxes shall be paid by the Principal.
- 4.3 PROFOUND reserves the right to submit interim invoices. PROFOUND is at all times entitled to demand advance payments.
- 4.4 The Principal shall pay invoices in advance, by Letter of Credit or within thirty days from the invoice date, whichever is agreed upon, in the currency stated in the offer, without any right to a reduction or reimbursement, as well as statutory interest and collection charges if the Principal exceeds the agreed term of payment.

- 4.5 If the Principal does not fulfil its obligations to pay and does not redress this within 14 days after notice, PROFOUND is entitled to terminate the order without legal procedures. In that case the Principal is liable for all damages and cost, including loss of interest, sustained by PROFOUND, caused by non-fulfilment of Principal's obligations.
- 4.6 In case of liquidation, bankruptcy, seizure or moratorium of the Principal, all debts of the Principal will immediately mature.
- 4.7 All goods made available to the Principal by PROFOUND as part of the work shall remain the property of PROFOUND, until the amount(s) owed by the Principal to PROFOUND has (have) been paid in full.
- 4.8 The Principal is not allowed to compensate invoices due with it's invoices to PROFOUND.

5. **Secrecy**

- 5.1 PROFOUND undertakes to keep secret the results of the instructions. Proprietary data from the Principal to which PROFOUND has access when carrying out the instructions and which have explicitly been designated as confidential by the Principal shall be kept secret by PROFOUND. The secrecy-obligation of PROFOUND shall not apply to data:
 - which are already in the possession of PROFOUND at the time the proprietary data become available to PROFOUND;
 - which are public knowledge or (otherwise than by culpable negligence or breach of PROFOUND) become public knowledge;
 - which are obtained by PROFOUND from another person in good faith; or are independently acquired by PROFOUND as a result of research carried out by PROFOUND, without using in any way the secret data.
- 5.2 If any misunderstanding arises as a result of the Principal publishing the results of the instructions, PROFOUND shall be exempted from the undertaking as to secrecy to the extent required by PROFOUND to clarify the results to third parties.
- 5.3 The enlisting of third parties outside PROFOUND to carry out the instructions shall be subject to the consent of the Principal, if and in so far as such enlistment would create a foreseeable risk with respect to the secrecy.

6. **Rights concerning results and equipment**

- 6.1 Within the scope of the instructions the Principal shall have full and royalty-free rights to use the results reached by carrying out the instructions as they are supplied by PROFOUND to the Principal. The rights of the Principal are exclusive for a period of two years subject to the provisions of the article 6.2.
- 6.2 PROFOUND shall be entitled to use for its own purposes and/or for the purposes of third parties and/or to allow third parties to use:
 - a) the knowledge and experience available to PROFOUND at the time of acceptance of the instructions;
 - b) the new specific knowledge and data which have been obtained by carrying out the instructions and which are outside the scope of the instructions as referred to in article 1.1;
 - c) calculation methods, programming and experimental methods of working arising from carrying out the instructions, as far as these are not the aim of the instructions.
- 6.3 Reports and drawings, which are the result of the instructions, belong to respectively are the property of the Principal, subject to PROFOUND's copyright.
- 6.4 PROFOUND reserves all industrial and intellectual property rights, including all drawing, model and copyrights, to the delivered equipment.

7. **Publicity**

Without PROFOUND's prior written consent, the Principal shall not be allowed to use part or all of a PROFOUND report for instituting claims, conducting legal proceedings, advertising, negative publicity, nor for recruitment in a more general sense.

8. **Liability**

- 8.1 PROFOUND shall be liable only for damages which are the direct result of a culpable shortcoming (breach of contract) on the part of PROFOUND in the execution of its obligations. Should PROFOUND, on the ground of the contractual liability referred to in the first sentence of this paragraph and/or on any other ground, be liable, it shall be liable only for direct damages incurred by the Principal, and only up to the amount of the price owed by the Principal, by virtue of article 4.1.
- 8.2 PROFOUND and/or persons employed and/or enlisted by PROFOUND to carry out the instructions shall not be liable for damages which the Principal suffers when applying or using equipment or the results of PROFOUND's works, unless there is misconduct or gross negligence on the part of PROFOUND and/or on the part of persons used and/or enlisted by PROFOUND to carry out the instructions.
- 8.3 The Principal shall indemnify PROFOUND and/or persons employed and/or enlisted by PROFOUND to carry out the instructions against any claims from third parties arising from damages suffered by those third parties as a result of application or use of equipment or the results of PROFOUND's work by the Principal or any other person to whom the Principal has made that result or equipment available, unless there is misconduct or gross negligence on the part of PROFOUND and/or on the part of persons employed and/or enlisted by PROFOUND to carry out the instructions.
- 8.4 PROFOUND shall not accept liability for damages arising from defects in equipment supplied to PROFOUND, including software, which have been delivered by PROFOUND to the Principal, unless and in so far as PROFOUND is able to recover the damage from its supplier.

9. Miscellaneous

- 9.1 If either the Principal or PROFOUND should not fulfil any essential obligation arising from the agreement, the other party shall so notify the defaulting party in writing and allow the defaulting party a reasonable further period to fulfil its obligations as yet. In the event that the defaulting party should still not fulfil its obligations within the further period allowed, its rights arising from this agreement shall lapse and the other party shall be released from any of its obligations.
- 9.2 Any claims of the Principal against PROFOUND arising out of or related to the execution of the instructions by PROFOUND and/or persons employed and/or enlisted by PROFOUND to carry out the instructions shall be null and void in the event such claims have not been put to PROFOUND in writing within six months from the date of the final invoice, unless the Principal provides proof that he was unable to notify PROFOUND within the aforementioned period.
- 9.3 In the event that PROFOUND has anything in its possession related to the work to be conducted for the Principal, then PROFOUND is entitled to retain these until such time as all outstanding accounts have been settled by the Principal that pertain to this work, unless the Principal has sufficient security to guarantee payment of these accounts.

10. Disputes

- 10.1 All disputes arising from or in connection with the present agreement, or from any further agreements resulting there from, shall be brought exclusively before the competent Court in The Hague, the Netherlands.
- 10.2 The agreement as referred to in article 1.2 and these Standard Conditions shall be governed by Netherlands law.