General Terms and Conditions

§ 1 Scope of Application, Form

(1) These General Terms and Conditions (GTC) apply to business relationships between proQtech GmbH, Borngartenstraße 10, D-63303 Dreieich, and our customers. The GTC apply only if the customer is an entrepreneur (§ 14 BGB), a legal entity under public law, or a special fund under public law.

(2) The GTC apply in particular to contracts for the sale and/or delivery of movable property ("Goods"), regardless of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433, 650 of the German Civil Code (BGB)). Unless otherwise agreed, the General Terms and Conditions, in the version valid at the time of the customer's order or, in any case, in the version most recently communicated to the customer in writing, shall serve as a framework agreement for similar future contracts as well, without our having to refer to them again in each individual case.

(3) Our General Terms and Conditions apply exclusively. Any deviating, conflicting, or supplementary general terms and conditions of the customer shall only become part of the contract to the extent that we have expressly agreed to their validity. This requirement for consent applies in all cases, for example, even if the customer refers to its own General Terms and Conditions in the context of the order and we do not expressly object to them.

(4) Individual agreements (e.g., framework agreements or framework supply agreements concluded with us) and information contained in our offers take precedence over these General Terms and Conditions. In case of doubt, trade terms shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time the contract is concluded.

(5) Legally significant declarations and notices by the customer regarding the contract (e.g., setting a deadline, notice of defects, withdrawal, or reduction in price) must be submitted in writing. "In writing" for the purposes of these General Terms and Conditions includes written and text-based forms (e.g., letter, email, fax). Statutory formal requirements and other evidence—particularly in cases of doubt regarding the legitimacy of the person making the declaration—remain unaffected.

(6) References to the applicability of statutory provisions in these General Terms and Conditions are for clarification purposes only. Even without such clarification, the statutory provisions therefore apply to the extent that they are not directly amended or expressly excluded in these General Terms and Conditions.

§ 2 Conclusion of the Contract

(1) Our offers are subject to change and non-binding; we reserve the right to prior sale at all times. Our offer is subject to timely supply from our suppliers, provided that we have

entered into an identical legal transaction with the supplier and are not responsible for the supplier's failure to deliver. Should a delay or unavailability of the goods occur due to non-delivery by our supplier, we will inform the customer of this immediately.

(2) The customer's order of the goods within the validity period of the offer constitutes a binding acceptance of our contractual offer.

§ 3 Scope of the Delivery Obligation, Delivery Period, and Delay in Delivery

(1) Unless otherwise agreed in individual cases, the ordered goods shall be delivered in the standard design and quality suitable for their customary use.

(2) We reserve the right to make partial deliveries, provided they are reasonable for the customer, taking into account the mutual interests of both parties. The same applies to short deliveries within customary commercial tolerances.

(3) The delivery period is agreed upon individually. If we are unable to meet binding delivery deadlines for reasons beyond our control (unavailability of the goods), we will inform the customer of this immediately and, at the same time, notify the customer of the expected new delivery period. If the goods are still unavailable within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will promptly refund any consideration already provided by the customer. The service is deemed unavailable, for example, in the event of late delivery by our supplier when we have entered into a corresponding hedging transaction, in the event of other disruptions in the supply chain—such as those due to force majeure as defined in paragraph (4) below—or if we are not obligated to procure the goods in individual cases.

(4) Events of force majeure (e.g., war or armed conflicts, pandemics/epidemics, natural disasters, lawful labor disputes such as strikes or lockouts), unavoidable shortages of raw materials, accidents, and unforeseen disruptions in transportation, manufacturing, and operations for which ProQTech GmbH is not responsible shall extend the delivery period accordingly. The customer is entitled to rescind the contract only if, in such a case, the customer issues a written demand for delivery after the agreed delivery period has expired and delivery is not made within a reasonable period after we receive the demand.

(5) The occurrence of a delay in delivery on our part is determined in accordance with statutory provisions. In any case, however, a written reminder from the customer is required. If we are in default of delivery, the customer may demand lump-sum compensation for damages resulting from the delay. The lump-sum compensation amounts to 0.5% of the net price (delivery value) for each full calendar week of delay, but in no case shall it exceed a total of 5% of the delivery value of the delayed goods. We reserve the right to prove that the customer has incurred no damage at all or only significantly less damage than the aforementioned lump sum.

(6) The customer's rights pursuant to § 8 of these General Terms and Conditions and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g., due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

§ 4 Delivery, Transfer of Risk, Acceptance, Default in Acceptance

(1) Delivery is made ex our warehouse, which is also the place of performance for delivery and any subsequent performance. At the customer's request and expense, the goods may be shipped to another destination (sale by delivery). Unless otherwise agreed, we are entitled to determine the method of shipment (in particular, the carrier, route, and packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods passes to the customer no later than upon handover. In the case of a sale by delivery, however, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay, passes to the customer upon delivery of the goods to the forwarding agent, the carrier, or any other person or entity designated to carry out the shipment. The handover is deemed to have taken place even if the customer is in default of acceptance.

(3) If the customer is in default of acceptance, fails to provide necessary cooperation, or if our delivery is delayed for other reasons for which the customer is responsible, we are entitled to demand compensation for the resulting damages, including additional expenses (e.g., storage costs). For this purpose, we shall charge a flat-rate compensation for the duration of the delay amounting to 0.5% of the contractually agreed remuneration per calendar month or portion thereof—up to a maximum of 5% of the contractually agreed remuneration in the event of definitive non-acceptance. In any case, the lump-sum amount is limited to the damages that would normally be expected under the ordinary course of events. Our right to prove that higher damages actually occurred in a specific case and our statutory claims (in particular, reimbursement of additional expenses, reasonable compensation, and termination) remain unaffected; however, the lump-sum amount shall be offset against any further monetary claims. The customer is entitled to prove that we incurred no damages at all or only significantly lower damages than the aforementioned lump-sum amount.

§ 5 Prices and Terms of Payment

(1) Unless otherwise agreed in individual cases, the prices stated in our offer are ex-warehouse, plus applicable sales tax.

(2) In the case of a mail-order sale pursuant to § 4(1) of these General Terms and Conditions, the customer shall bear the shipping costs ex warehouse and the costs of any shipping insurance requested by the customer. Any customs duties, fees, taxes, and other public charges shall be borne by the buyer.

(3) The purchase price is due and payable within 14 days of the invoice date and delivery of the goods. However, even within the context of an ongoing business relationship, we are entitled at any time to make a delivery, in whole or in part, only against advance payment. We shall declare such a reservation no later than upon confirmation of the order.

(4) Upon expiration of the above payment period, the customer shall be in default. During the period of default, interest shall accrue on the purchase price at the applicable statutory default interest rate. We reserve the right to claim further damages resulting from the default. With respect to merchants, our claim to commercial due interest (Section 353 of the German Commercial Code (HGB)) remains unaffected.

(5) The customer is only entitled to set off against us undisputed, legally established, or pending counterclaims, or a claim arising from the same contractual relationship that results from our failure to fulfill, in whole or in part, or our defective fulfillment of a contractual obligation, in particular pursuant to Section 7 of these General Terms and Conditions.

(6) If, after the conclusion of the contract, it becomes apparent (e.g., through a petition to open insolvency proceedings) that our claim for payment is at risk due to the customer's inability to pay, we are entitled, in accordance with statutory provisions, to refuse performance and—if necessary, after setting a deadline—to withdraw from the contract (Section 321 of the German Civil Code (BGB)).

§ 6 Retention of Title

(1) We reserve title to the goods sold until full payment of all our present and future claims arising from a contract concluded with the customer and an ongoing business relationship (secured claims). During the period of retention of title, the customer is obligated to treat the delivered goods with due care and to insure them at their own expense against fire, water damage, and theft at replacement value.

(2) The goods subject to retention of title may not be pledged to third parties or transferred as security by the customer prior to full payment of our secured claims. The customer must notify us immediately in writing if an application is filed to open insolvency proceedings or if third parties (e.g., through attachments) seize the goods belonging to us.

(3) In the event of a breach of contract by the customer, in particular failure to pay the contractually agreed consideration, we are entitled, in accordance with statutory provisions, to withdraw from the contract and/or to demand the return of the goods on the basis of the retention of title. A demand for return of the goods does not simultaneously constitute a declaration of withdrawal; rather, we are entitled to demand only the return of the goods and to reserve the right to withdraw from the contract. If the customer fails to pay the contractually agreed-upon consideration, we may assert these

rights only if we have previously set the customer a reasonable deadline for payment without success or if setting such a deadline is not required under applicable law.

(4) The customer is authorized, until revoked in accordance with section (c) below, to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions apply in addition:

(a) The retention of title extends to the products resulting from the processing, mixing, or combination of our goods to their full value, whereby we are deemed the manufacturer. If, upon processing, mixing, or combining with goods belonging to third parties, their right of ownership remains in effect, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed, or combined goods. In all other respects, the same provisions apply to the resulting product as to the goods delivered under retention of title.

(b) The Customer hereby assigns to us, as security, all claims against third parties arising from the resale of the goods or the resulting product, either in full or in the amount of our potential co-ownership share in accordance with § 6(4)(a) above. We accept the assignment. The customer's obligations set forth in § 6(2) of these General Terms and Conditions above also apply with respect to the assigned claims.

(c) The customer remains authorized, alongside us, to collect the claim. We undertake not to collect the claim as long as the customer meets its payment obligations to us, there is no lack of solvency on the customer's part, and we do not assert the retention of title by exercising a right pursuant to § 6(3) of these General Terms and Conditions. If this is the case, however, we may demand that the customer disclose to us the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents, and notify the debtors (third parties) of the assignment. Furthermore, in this case, we are entitled to revoke the customer's authority to further sell or process the goods subject to retention of title.

(d) If the realizable value of the collateral exceeds our claims by more than 10%, we shall, at the customer's request, release collateral of our choice.

§ 7 Buyer's Claims for Defects

(1) Unless otherwise specified below, the statutory provisions apply to the customer's rights in the event of material defects and defects of title (including incorrect or incomplete delivery, as well as improper assembly/installation or defective instructions).

(2) Our liability for defects is based primarily on the agreement regarding the quality and intended use of the goods (including accessories and instructions). For this purpose, all product descriptions and manufacturer specifications that were publicly disclosed by the manufacturer at the time the contract was concluded shall be deemed to constitute

an agreement on quality. To the extent that the quality has not been agreed upon, the determination of whether a defect exists shall be made in accordance with statutory provisions (Section 434(3) of the German Civil Code (BGB)). Public statements made by the manufacturer or on its behalf—particularly in advertising or on the product label—take precedence over statements made by other third parties.

(3) We are generally not liable for defects of which the customer was aware at the time the contract was concluded or of which the customer was unaware due to gross negligence (Section 442 of the German Civil Code (BGB)). Furthermore, the customer's claims for defects are contingent upon the customer having fulfilled their statutory obligations to inspect and give notice (§§ 377, 381 HGB), which require the goods to be inspected immediately upon delivery, to the extent that this is practicable in the ordinary course of business. For goods intended for installation or other further processing, an inspection must in any case be conducted immediately prior to processing. If a defect becomes apparent upon delivery, during the inspection, or at any later time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing no later than 5 business days after delivery, and defects not detectable upon inspection must be reported within the same period after discovery. If the customer fails to conduct a proper inspection and/or report defects, our liability for defects that were not reported, or were not reported in a timely or proper manner, is excluded in accordance with statutory provisions. In the case of goods intended for assembly, fitting, or installation, this also applies if the defect became apparent only after the relevant processing as a result of a breach of one of these obligations; in this case, in particular, the customer has no claim for reimbursement of the corresponding costs ("removal and installation costs").

(4) If an item sold by us is defective, we may initially choose whether to provide subsequent performance by remedying the defect (repair) or by delivering a defect-free item (replacement). If the type of subsequent performance we have chosen is unreasonable for the customer in a specific case, the customer may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(5) We are entitled to make the required subsequent performance contingent upon the customer's payment of the purchase price due. However, the customer is entitled to withhold a portion of the purchase price that is reasonable in relation to the defect.

(6) The customer must provide us with the time and opportunity necessary for the required remedy, in particular by handing over the goods subject to complaint for inspection purposes. In the event of a replacement delivery, the customer must return the defective item to us upon our request in accordance with statutory provisions; however, the customer has no right to return the item. Subsequent performance does not include the removal, dismantling, or deinstallation of the defective item, nor the installation, fitting, or assembly of a defect-free item, if we were not originally obligated

to perform these services; any claims by the customer for reimbursement of corresponding costs (“removal and installation costs”) remain unaffected.

(7) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance—in particular, transportation, travel, labor, and material costs, as well as, if applicable, removal and installation costs—in accordance with statutory provisions and these General Terms and Conditions, provided that a defect actually exists. Otherwise, we may demand reimbursement from the customer for costs incurred as a result of an unjustified request to remedy a defect if the customer knew or, through negligence, failed to know that no defect actually existed.

(8) In urgent cases, or if operational safety is at risk, or to prevent disproportionate damage, the customer has the right to remedy the defect themselves and to demand reimbursement from us for the expenses objectively necessary for this purpose. We must be notified of such self-remediation immediately, if possible in advance. The right to remedy the defect oneself does not apply if we would be entitled to refuse corresponding subsequent performance in accordance with statutory provisions.

(9) If a reasonable deadline set by the customer for subsequent performance has expired without result or is not required under statutory provisions, the customer may, in accordance with statutory provisions, rescind the purchase contract or reduce the purchase price. However, there is no right of rescission in the case of a minor defect.

(10) The customer’s claims for damages or reimbursement of futile expenses, even in the case of defects, exist only in accordance with § 8 of these General Terms and Conditions and are otherwise excluded.

§ 8 Other Liability

(1) Unless otherwise provided in these General Terms and Conditions, including the following provisions, we shall be liable for breaches of contractual and non-contractual obligations in accordance with statutory provisions.

(2) We are liable for damages—regardless of the legal basis—under the principle of fault-based liability in cases of willful misconduct and gross negligence. In cases of simple negligence, we are liable—subject to statutory limitations on liability (e.g., the standard of care required in one’s own affairs; minor breaches of duty)—only

a) for damages resulting from injury to life, body, or health,

b) for damages resulting from a breach of a material contractual obligation (an obligation whose fulfillment is essential for the proper performance of the contract and on whose compliance the contracting party regularly relies and is entitled to rely); in this case, however, our liability is limited to compensation for foreseeable, typically occurring damages.

(3) The limitations of liability arising from § 8(2) of these General Terms and Conditions also apply with respect to third parties as well as in the case of breaches of duty by persons (including for their benefit) for whose fault we are liable under statutory provisions. They do not apply if a defect was fraudulently concealed or if a guarantee regarding the quality of the goods was assumed, nor do they apply to claims by the customer under the Product Liability Act.

(4) In the event of a breach of duty that does not consist of a defect, the customer may rescind the contract or terminate it only if we are responsible for the breach of duty. The customer's right to terminate the contract at will (in particular pursuant to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences apply.

§ 9 Statute of Limitations

(1) Notwithstanding § 438(1)(3) of the German Civil Code (BGB), the general statute of limitations for claims arising from material defects and defects of title for newly manufactured products is one year from delivery.

(2) Other special statutory provisions regarding the statute of limitations remain unaffected (in particular § 438(1)(1) and (2) as well as (3), §§ 444, 445b BGB).

(3) The above limitation periods under sales law also apply to the customer's contractual and non-contractual claims for damages based on a defect in the goods, unless the application of the standard statutory limitation period (Sections 195, 199 of the German Civil Code (BGB)) would result in a shorter limitation period in individual cases. The Customer's claims for damages pursuant to § 8 (2), sentences 1 and 2 (a) of these General Terms and Conditions, as well as under the Product Liability Act, are subject exclusively to the statutory limitation periods.

§ 10 Governing Law and Jurisdiction

(1) These General Terms and Conditions and the contractual relationship between us and our customers are governed by the laws of the Federal Republic of Germany, to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the customer is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law, or a special fund under public law, the exclusive—including international—place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Frankfurt am Main. The same applies if the buyer is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB). However, in all cases, we are also entitled to bring an action at the place of performance of a prior individual agreement or at the customer's general place

of jurisdiction. Prioritized statutory provisions, in particular those regarding exclusive jurisdiction, remain unaffected.

(As of August 2022)