

Terms & Conditions of Sale and Service

In these Terms and Conditions of Sale (download available at <https://www.prokasrousa.com/downloads/>), ProKASRO Services USA, Inc., is referred to as “**PSU**” and the customer or person or entity purchasing PSU’s products (the “**Goods**”) from PSU is referred to as the “**Buyer**”.

These Terms and Conditions of Sale, and PSU’s order confirmation constitute the complete and exclusive agreement and understanding governing the sale of Goods by PSU to Buyer (the “**Agreement**”), provided PSU’s Rental Agreement or Repair and Service Agreement (both available for download at <https://www.prokasrousa.com/downloads/>) do not provide otherwise, and supersede all prior agreements, understandings or representations, whether written or oral, among the parties with respect to such matters. Provided, however, that if any term, provision or condition of PSU’s order confirmation should conflict or be inconsistent with any term of these Terms and Conditions, then the terms of PSU’s order confirmation shall prevail and control over such conflicting and/or inconsistent terms.

BY ACCEPTING PSU’S ORDER CONFIRMATION AND/OR INSTRUCTING PSU TO SHIP GOODS (EITHER BY PHONE, FACSIMILE OR E-MAIL COMMUNICATION), BUYER WILL MANIFEST ITS ACKNOWLEDGMENT, ACCEPTANCE AND AGREEMENT TO THESE TERMS AND CONDITIONS.

PSU reserves the right to refuse any order, in its sole discretion. No order is accepted by PSU until: (i) PSU provides Buyer with a written order confirmation, and (ii) Buyer duly signs the order confirmation in acknowledgement, acceptance and agreement, and returns the signed order confirmation to PSU or (iii) no later than payment in full or as agreed upon has been received by PSU.

1. **PRICES:** All prices for Goods, including, but not limited to, those specified in PSU’s price list or schedule, website or written quotation, are subject to change without notice. Such prices shall be automatically adjusted to reflect PSU’s prices for Goods as in effect at the time of the requested shipment date, and each shipment will be invoiced at such adjusted prices. Unless otherwise expressly agreed by PSU in writing, all prices are EX WORKS at PSU in Centennial, Colorado (which shall have the same meaning as in the Incoterms 2010 published by the International Chamber of Commerce in Paris), exclusive of any applicable taxes, duties, sales taxes, transportation and insurance costs or charges (collectively “**Charges**”), which Charges are to be borne exclusively by Buyer. Prices quoted include packing, but do not include any other exclusions noted in PSU’s order confirmation.

2. **TERMS OF PAYMENT:** Unless otherwise expressly agreed by PSU in writing in PSU’s order confirmation, the purchase price for all orders shall be paid in advance and in full.

All payments must be made in U.S. currency. Goods supplied to Buyer by way of sale shall remain the property of PSU until PSU shall have received full payment of all its claims against Buyer. Notwithstanding the foregoing, risk of loss shall pass to Buyer upon delivery as set forth in Section 3 below.

3. **SHIPMENT AND DELIVERY:** Unless otherwise expressly agreed in writing by PSU, shipments are made EX WORKS at PSU in Centennial, Colorado (which shall have the same meaning as in the Incoterms 2010 published by the International Chamber of Commerce in Paris).

Risk of loss or damage and responsibility shall pass from PSU to Buyer upon delivery of the Goods to carrier. The carrier shall thereafter be deemed to be the agent of Buyer and the terms of payment for the

Goods shall not be affected by damage to or destruction of the Goods sold. Upon receipt of payment in full by PSU, title shall also pass to Buyer, subject to any interest PSU reserved to secure Buyer's payment or performance. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While PSU will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by PSU, all shipping dates are approximate and not guaranteed. PSU will not be liable for any loss or damage, including loss of income and/or profits, special, incidental, or consequential damages, resulting from PSU's delayed performance in shipment and delivery of the Goods. PSU reserves the right to make partial shipments. Buyer will accept and pay for partial deliveries in accordance with the prices and terms of Buyer's Agreement with PSU. PSU, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided accurate shipping instructions. If the shipment of the Goods is postponed or delayed by Buyer for any reason, including but not limited to, Buyer providing PSU with inaccurate shipping instructions, then Buyer agrees to reimburse PSU for any and all transport and/or storage costs and other additional and incidental expenses resulting therefrom.

4. **LIMITED WARRANTY:** Subject to the limitations set forth in Section 5 below, PSU warrants that the Goods sold by PSU will be free from defects in materials and workmanship under normal conditions of use, for a period of one (1) year from delivery. PSU's liability for any breach of this warranty shall be limited to, at PSU's option, the repair or replacement of any part or parts which are determined by PSU to be defective after it examines such part(s).

This limited warranty does not extend to any defects, failures, losses or damages due to misuse or improper use or operation, including but not limited to any operation beyond rated capacity, use of the Goods not in compliance with service manuals and instructions, or use of the Goods by untrained or unqualified persons; substitution of parts or other alteration or modification carried out without PSU's prior written consent; repairs carried out by Buyer or third parties which in PSU's judgment adversely affect the Goods; erosion; corrosion; accident; abuse; neglect; normal wear and tear; negligence (other than PSU's); or faulty or improper installation, maintenance or application of the Goods.

Except as set forth above, PSU makes NO OTHER WARRANTIES concerning the Goods whatsoever. PSU makes no warranty or representation that the Goods comply with the requirements of federal, state or local laws, regulations, rules and/or industrial codes. Buyer is responsible for safety and OR PACKAGING, NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE GOODS MADE BY ANY PERSON OR ENTITY INCLUDING, BUT NOT LIMITED TO, INDEPENDENT DISTRIBUTORS, RESELLERS AND SALES REPRESENTATIVES, SHALL BE BINDING UPON PSU.

Buyer must notify PSU of any defects in the Goods in writing, via e-mail to PSU, within three (3) business days of Buyer's receipt of the Goods. The writing shall contain sufficient detail to permit identification of the defect.

Any claim by Buyer for breach of this limited warranty must be made in writing and sent to Seller within the relevant warranty period (see above) from the date of shipment of the applicable Goods. The writing shall contain sufficient detail to permit identification of the defect. If not made within said warranty period (see above) period, it shall be conclusively deemed to have been waived.

Upon receiving Buyer's notice of defect, PSU shall, at its option, repair or replace the part(s) EX WORKS at PSU in Centennial, Colorado (which shall have the same meaning as in the Incoterms 2010 published by the International Chamber of Commerce in Paris).

Unless otherwise agreed to in writing and prior to shipment, Buyer shall bear the cost and risk of shipment of parts and of repaired or replaced parts both to and from PSU. Buyer shall also be responsible for the cost of travel for any PSU personnel required at Buyer's premises. The cost of service for any work not covered under this limited warranty shall be as agreed in writing by Buyer and PSU. Failure by Buyer to give such written notice of defect within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects.

Goods repaired or replaced during the warranty period shall be covered only by the foregoing warranty for the remainder of the original warranty period. The original warranty period shall not be extended. Notwithstanding the provisions contained in the preceding sentences of this paragraph, Buyer shall be deemed to have accepted the Goods and absolutely and unconditionally waived its rights to claim for any defects: (i) upon installation or attempted installation of the Goods, or (ii) if the Goods are otherwise used or altered in any way.

Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components. Buyer's responsibility hereunder includes but is not limited to any claims, losses or damages that arise as a result of Buyer's failure to comply with the safety provisions of Section 10 below.

This Section 4 also applies in the event that any entity or person (other than Buyer) buys, acquires or uses the Goods, including, but not limited to, any entity or person who obtains the Goods from Buyer (any of them a "**Subsequent Transferee**"). Buyer hereby covenants and agrees to provide such Subsequent Transferee with conspicuous written notice of the provisions set forth in Sections 4 and 5 of these Terms and Conditions of Sale, by providing each such Subsequent Transferee with a copy of this Terms & Condition of Sale for the U.S. Market.

Buyer, furthermore, covenants and agrees that it shall not make any representation or warranty whatsoever regarding the Goods to any third party (either on behalf of PSU on its own account), other than the limited warranty of PSU set forth in this Section 4.

BUYER HEREBY COVENANTS AND AGREES THAT, SHOULD IT FAIL TO COMPLY WITH THE PROVISIONS OF THIS LAST PARAGRAPH OF SECTION 4, BUYER SHALL DEFEND, INDEMNIFY, AND HOLD PSU, ITS OFFICERS, EMPLOYEES, AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES), OR CLAIMS FOR INJURY OR DAMAGES (INCLUDING, BUT NOT LIMITED TO GENERAL, CONSEQUENTIAL, INCIDENTAL AND PUNITIVE DAMAGES) ARISING OUT OF OR IN CONNECTION WITH BUYER'S OR BUYER'S EMPLOYEES', AGENTS', REPRESENTATIVES' AND/OR INDEPENDENT CONTRACTORS' BREACH OF THESE TERMS AND CONDITIONS OF SALE.

5. LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF PARTS, IN ACCORDANCE WITH SECTION 4 ABOVE.

PSU SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL PSU'S LIABILITY TO BUYER AND/OR ANY SUBSEQUENT TRANSFEREES EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS PROVIDED BY PSU GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AND ANY SUBSEQUENT TRANSFEREE AGREES THAT IN NO EVENT SHALL PSU'S LIABILITY TO BUYER AND/OR ANY SUBSEQUENT TRANSFEREES EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, loss of business opportunity, business interruption, loss of use or revenue, cost of capital or loss or damage to property or equipment.

It is expressly understood that any technical advice furnished by PSU with respect to the use of the Goods is given without charge, and PSU assume no obligation or liability whatsoever for the advice given, or results obtained, all such advice being given and accepted at Buyer's own risk.

6. EXCUSE OF PERFORMANCE: PSU shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; material fluctuations in the exchange rate between the U.S. Dollar and Euro; or unforeseen circumstances or any events or causes beyond PSU's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by PSU upon notice to Buyer in the event of any of the foregoing, but the balance of the Agreement shall otherwise remain unaffected as a result of the foregoing.

7. CANCELLATION: Buyer cannot cancel any order for Goods which are custom made, made-to-order, represent an individual project and/or a special order. Buyer may cancel orders only for parts and only upon reasonable advance written notice and upon payment to PSU of PSU's cancellation charges which include, among other things, all costs and expenses incurred, and to cover commitments made by PSU and a reasonable profit thereon. PSU's determination of such cancellation charges shall be conclusive. **PROVIDED, HOWEVER, THAT ANY CANCELLATION MUST BE MADE BEFORE THE GOODS HAVE BEEN SHIPPED.**

PSU may cancel or terminate all or part of the Agreement with Buyer immediately upon the happening of any of the following: Buyer's material delinquency of any of its obligations hereunder or with respect to any other order or transaction with PSU; the insolvency of Buyer; the appointment of a receiver under Title 11 U.S.C., as amended (the "Bankruptcy Code"), or the commencement of a case under any chapter of the Bankruptcy Code for, by or against Buyer; Buyer's suspension or termination of business or assignment for the benefit of creditors; or any event, whether or not similar to the foregoing, which in PSU's good faith belief materially impairs the prospect of payment or performance by Buyer hereunder. PSU's rights to cancel or terminate herein may be exercised by PSU without liability.

8. CHANGES: Buyer may request changes or additions to the Goods consistent with PSU's specifications and criteria. In the event such changes or additions are accepted by PSU, PSU may revise the price and dates of delivery accordingly. PSU reserves the right to change designs and specifications for the Goods without prior notice to Buyer, except with respect to Goods being made-to-order for Buyer.

9. PRODUCT LABELS, INFORMATION: If Buyer is a reseller, Buyer acknowledges that it has received and is familiar with PSU's labeling and literature concerning the Goods and will forward such information to its employees, agents and customers.

10. SAFETY PRECAUTIONS: If applicable, Buyer shall require employees to use all safety devices, guards and proper safe operating procedures as set forth in manuals and instruction sheets furnished by PSU. Buyer shall not remove or modify any such device, guard or sign. It is the responsibility of Buyer to provide all the means that may be necessary to effectively protect all of its employees from serious bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the equipment. It is the responsibility of Buyer to provide proper training to each employee using the equipment or to use canceled by PSU upon notice to Buyer in the event of any of the foregoing, but the balance of the Agreement shall otherwise remain unaffected as a result of the foregoing. only employees that are sufficiently experienced in the use of such equipment.

11. INDEMNIFICATION: Buyer hereby covenants and agrees to defend, indemnify and hold harmless PSU, its officers, directors, employees, agents, advisers, representatives and affiliates (collectively, the "*Indemnitees*") from and against, and pay or reimburse the Indemnitees for any and all claims, liabilities, obligations, losses, fines, costs, royalties, proceedings, deficiencies or damages (whether absolute, accrued, conditional or otherwise and whether or not resulting from third party claims), including out-of-pocket expenses and reasonable attorneys' and accountants' fees incurred in the investigation or defense of any of the same or in asserting any of their respective rights hereunder (collectively, "*Losses*"), resulting from or arising out of: (i) Buyer's breach of any provision or covenant set forth in this Agreement, (ii) Buyer's making of any representation to any third party regarding the Goods other than the limited warranty set forth in Section 4 above, and/or (iii) any alleged infringement of any United States patent by PSU's specially-made Goods as set forth in Section 12 below.

12. PATENTS and TRADEMARKS: Buyer will defend, indemnify and hold harmless the Indemnitees from and against any and all claims, demands, lawsuits, liability and judgment for loss, costs, damages, fines, penalties and expenses of every kind and nature, threatened, incurred, arising out of or in connection with any alleged infringement of any United States patent and trademarks by any Goods supplied by PSU hereunder and made specially for Buyer; provided that PSU shall give prompt notice to Buyer of any such claim, etc., and an opportunity to settle or defend the same as Buyer may see fit; and provided further that PSU shall render every reasonable assistance which Buyer may require of its connection with such claim, etc. PSU reserves the right to cancel any order, without liability with respect to any Goods, the manufacture, sale and use of which in the opinion of PSU would infringe any patents or trademarks now or hereafter issued.

13. STATUTORY COMPLIANCE: PSU continues to attempt to comply with all applicable laws, standards and specifications. However, PSU is not responsible for compliance with any laws, standards or specifications applicable to the Goods, their delivery, use, handling, labeling, transportation or disposal, whether of general or particular application, unless Buyer has furnished specific written notice thereof prior to PSU's entry of Buyer's order and the President of PSU acknowledges in writing receipt and acceptance as a part of the order such law, standard or specification.

14. ASSIGNMENT: Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of PSU, and any such assignment, without such consent, shall be void.

15. GENERAL PROVISIONS: No change, modification, rescission, discharge, abandonment, or waiver of these Terms and Conditions of Sale shall be binding upon PSU unless made in writing and signed on its behalf by a duly authorized representative of PSU. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these Terms and Conditions of Sale shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by PSU'S receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by PSU in any quotation, acknowledgment or publication are subject to correction.

16. SEVERABILITY: If any provision of this Agreement shall be held invalid or unenforceable by competent authority, such provision shall be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it shall then appear. The total invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

17. GOVERNING LAW AND JURISDICTION: This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without reference to its conflicts of laws principles. Buyer and PSU agree to submit all disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the State and Federal courts of the State Centennial, Colorado. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION OR VALIDITY OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH SUCH PARTY CERTIFIES THAT THEY HAVE NOT RELIED UPON ANY REPRESENTATION OR INDUCEMENT OF THE OTHER PARTY IN AGREEING TO THIS PROVISION AND THAT THEY FREELY, KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO A JURY TRIAL. THE VIENNA CONVENTION FOR THE INTERNATIONAL SALE OF GOODS (CISG) SHALL NOT APPLY TO THIS AGREEMENT.

18. U.S. EXPORT CONTROL REGULATIONS: All Goods sold to Buyer are subject to the export control laws of the United States and Buyer agrees not to re-sell or divert any Goods contrary to such laws.

19. RETURNED GOODS: Except as otherwise provided in the fourth Section 4 above with respect to warranty defects, no Goods may be returned to PSU.

20. NO THIRD PARTY RIGHTS: These Terms and Conditions of Sale create no third-party rights between PSU and any person other than Buyer, including but not limited to any Subsequent Transferee. It is understood and agreed that the parties do not intend that any third party be a beneficiary of these Terms and Conditions of Sale.

ACCEPTED BY:

Buyer:

Signature: _____

Name: _____

Title: _____

Date: _____

Seller:

ProKASRO Services USA

Signature: _____

Name: _____

Title: _____

Date: _____