

## 1. Subject of Application

- (1) These General Terms and Conditions (GTC) are set forth by proALPHA GmbH, registered with the commercial register of the district court Kaiserslautern with HRB 31613, and its affiliated companies according to Sections 15 ff. German Stock Corporation Act (Aktiengesetz) ("proALPHA").
- (2) The subject of these GTC is the provision of Professional Services by proALPHA. This includes all customer-related proALPHA services (such as consulting, project development, system technology and implementation). For the provisioning of maintenance and support services by proALPHA, the relevant GTC Support and Maintenance Services apply exclusively. Otherwise, the provision of Contract Software<sup>1</sup> is subject to the separate terms for licenses and not part of these GTC.
- (3) The Order, these GTC and all other documents referred to therein form the contractual relationship between proALPHA and the Customer ("Contract"). The Contract shall be concluded upon signature of the Order by the Customer or a different declaration of acceptance by the Customer. The GTC in the current version shall also apply to future orders or Orders, even if they do not refer explicitly to the GTC. The current proALPHA prices shall apply. In the event of any inconsistencies between the following order of precedence shall apply:
  1. Order (including the condition sheet of terms if applicable)
  2. if applicable, either Statement of Work ("SOW") or the applicable Service Description, or other project-specific documentation (e.g. specifications) and
  3. these GTC.
- (4) The Contract shall be governed by the following GTC exclusively, excluding other contractual provisions, such as written or oral side agreements and terms and conditions or purchasing terms and conditions of the Customer. proALPHA expressly objects to such contractual terms and conditions by the Customer.

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<sup>1</sup>"Contract Software" refers collectively to software distributed by proALPHA that is either produced by the proALPHA Group or another company.

## 2. Scope of Services

- (1) proALPHA shall provide Professional Services specified in the Order, in the applicable Service Description and especially mentioned in the SOW or in other project-specific documentation, attached to the Order in accordance with the generally accepted rules of technology applicable at the time of the service. In the case of smaller scopes of services, the service description can also be taken directly from the respective offer. proALPHA shall owe the consulting and support services specified in the Order.
- (2) Dates or cost calculations are non-binding planned values proALPHA specifies for the Customer based on the experience from comparable tasks. Exceptions apply only if the Parties have expressly and bindingly agreed on a fixed date for deliveries and services or a cost estimation. If, during the implementation of an Contract, proALPHA determines that the estimations by proALPHA will be exceeded, proALPHA shall notify the Customer without delay.
- (3) proALPHA shall be responsible for the project management. The Customer shall cooperate within the scope of its contractual obligations, in particular according to the specified distribution of tasks (RACI-Matrix). The contractual obligations to cooperate agreed between the Customer and proALPHA are not exhaustive and may be adjusted or changed by proALPHA at any time.
- (4) If the timely provision of services by proALPHA requires cooperation from the Customer and the Customer fails to provide the necessary cooperation in a timely manner, or only does so partially or inadequately, the agreed delivery and service dates shall be adjusted accordingly, including an appropriate period for resumption. During this time, proALPHA shall be relieved of its service obligations. This does not affect any other rights of proALPHA.
- (5) By placing the respective Order, the Customer approves of the subcontractors mentioned in the Trust Center<sup>2</sup> (including other companies of the proALPHA Group).
- (6) The place of performance for the provision of the

<sup>2</sup> link to the Trust Center:  
<https://www.proalpha.com/en/trustcenter>

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Professional Services shall be proALPHA's registered office.

- (7) Insofar as the deliverable is software, proALPHA shall provide it as object code.

### 3. Change Request

- (1) If the Customer requests modifications or amendments to the scope of services agreed in the Order ("Change Request") from proALPHA after the Contract has been concluded, proALPHA shall review this request within an appropriate period of time and inform the Customer whether, and if so under what conditions, proALPHA is willing to implement the Change Request by the Customer. proALPHA will not provide its Professional Services in a modified form until the Customer has accepted this Change Request Order.
- (2) If the review of a Change Request requires a thorough analysis of whether and how proALPHA can implement the Change Request by the Customer, proALPHA shall inform the Customer accordingly, indicating the remuneration to be paid for such an analysis. The Customer may assign proALPHA to perform the analysis in accordance with these GTC.

### 4. Assignment of Personnel by proALPHA

The personnel assigned by proALPHA is exclusively subject to the instructions given by proALPHA. The Customer shall not be entitled to give the proALPHA personnel technical or disciplinary instructions. Coordination between the Customer and proALPHA shall only take place via the specified single point of contact.

### 5. Acceptance

- (1) Insofar as the Professional Services to be provided by proALPHA contains a work result to be created for the customer and subject to warranty law, proALPHA shall notify the Customer of the provision of the deliverable to be accepted. Upon receiving the notification of the provision, the Customer shall immediately begin with the tests required for the acceptance. If the Customer is incapable of this due to a lack of expertise, the Customer shall commission a competent third party to conduct the acceptance tests at its own expenses in due time prior to the scheduled acceptance date.

- (2) If the Parties have agreed on specific test scenarios for testing the acceptability, the Customer shall prepare these, select suitable test data and conduct the tests according to the Contract.

- (3) If the acceptance tests reveal that the deliverable deviates from the agreed properties, the Customer shall record these material defects and report them to proALPHA. proALPHA shall classify the material defects on the basis of the below error classification:

#### Error class 1 – Highly critical error

A contractual use of the deliverable to be accepted is not possible; there is no patch, hotfix or reasonable workaround.

#### Error class 2 – Critical error

The contractual use of the deliverable to be accepted is badly impaired, but possible in parts; there is no patch, hotfix or reasonable workaround.

#### Error class 3 – Minor error

The contractual use of the deliverable to be accepted is severely impacted, but basically possible and/or there is a patch, hotfix or reasonable workaround.

#### Error class 4 – Insignificant error

All other errors.

- (4) The Customer may deny the required acceptance only if there are one or more errors of error class 1 or 2. In exceptional cases, the Customer may also deny the acceptance if there is a large number of errors of error class 3, and those errors severely impact the contractual use of the deliverable, making it unbearable for the Customer.
- (5) proALPHA shall fix any errors hindering the acceptance within a reasonable period of time and then provide the deliverable to be accepted again to the Customer. The provisions in the above Sections (3) and (4) shall apply to this acceptance as well.
- (6) The Customer shall be obligated to declare the acceptance within one month at the latest; this shall not apply if any errors are hindering the acceptance. Acceptance shall be documented in writing in a separate acceptance report or a comparable document. In its declaration of acceptance, the Customer may explicitly reserve

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the right to have the undisputed errors of classes 3 and 4 fixed. Acceptance shall be deemed to have occurred if the deliverable has been used for more than two weeks.

### 6. Defects of Deliverables (After Acceptance)

- (1) Insofar as Professional Services to be provided by proALPHA represent a deliverable to be created for the Customer that is subject to warranty rights, a defect exists only if it does not have the agreed quality.
- (2) The Customer shall claim any defects of the deliverables created by proALPHA immediately after they become aware to the Customer and provide proALPHA with all information necessary for correcting the defect. proALPHA shall notify the Customer of the period within the defect will be corrected.
- (3) For the investigation and/or correction of a defect not caused by proALPHA, proALPHA may demand a monetary compensation from the Customer on a time and material basis according to the current price list.
- (4) The rectification of a defect reported by the Customer shall be deemed to have failed after an unsuccessful third attempt unless the nature of the matter or defect or other circumstances indicate otherwise.
- (5) The Customer's rights in respect of any defects of title shall be determined conclusively in accordance with the provisions regarding infringements of intellectual property rights in accordance with Clause 11 of these GTC.
- (6) Claims of the Customer for a material defect shall become statute-barred one year after acceptance. Insofar as a deliverable is a customization, the withdrawal from the entire Contract due to the failure of the correction is excluded.

### 7. Payment

- (1) Professional Services shall be charged on a time and material basis according to the proALPHA prices valid at the time of the conclusion of the Contract. The Customer shall pay material costs and travel expenses separately at the rates specified in the applicable price list. Travel times and waiting times of proALPHA personnel for which the Customer is responsible shall be remunerated in the same way as working hours.
- (2) The Customer shall be obligated to pay services invoiced by proALPHA within 14 days of receipt of the invoice.
- (3) If the wage cost index, published by the Federal Statistical Office of Germany, in the "Provision of Information Technology Services J62" category for Germany has risen since the conclusion of the Contract, proALPHA may increase its remuneration on the basis of the changed index. proALPHA may increase the price at the earliest one year after the conclusion of the Contract. At latest proALPHA informs the Customer three months before the increase becomes effective. If the index rises again, this regulation may be applied once per contractual year. If the index is replaced by another one, the applicable index shall then apply to every future price increase. This does not affect the right of proALPHA to increase the remuneration at its reasonable discretion.
- (4) A daily rate specified by proALPHA in the Contract or other documents defines the price for an employee deployed by proALPHA for eight working hours on a working day (Monday through Friday except for national holidays in the Federal Republic of Germany) between 8:00 a.m. and 6:00 p.m. (hereinafter "regular working hours"). Times exceeding a daily rate shall be remunerated separately. If proALPHA performs additional work on a working day or work outside the regular working hours due to a customer request or an arrangement in the Contract, this work performed by an employee deployed by proALPHA during this time is subject to the following surcharges that are charged in addition to the applicable daily rate:
  - a. For more than 8 hours of work on a working day or work outside the regular working hours, the additional work and the working hours outside the regular working hours shall be subject to a surcharge of 50% on the applicable daily rate;
  - b. Work on Saturdays (except for the national holidays in the Federal Republic of Germany) shall also be subject to a surcharge of 50% on the relevant daily rate;
  - c. Work on Sundays and holidays shall be subject to a surcharge of 100% on the relevant daily rate.
- (5) proALPHA shall charge the Professional Services provided at the end of each service month. The

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billed Professional Services are due according to the terms of payment agreed in the offer or in the condition sheet, without prior acceptance from the customer. proALPHA is entitled to temporarily suspend the further provision of services if due invoices are not paid even after two reminders.

### 8. Rights to Deliverables

- (1) Upon full payment of the agreed remuneration for the creation of the deliverables, the Customer shall receive a non-exclusive, unlimited, non-transferable or non-sublicensable right to use the deliverables created specifically for the Customer in its own business operations.
- (2) If the software customized by proALPHA for the Customer is an interface or a functional expansion of standard software, the Customer shall be entitled to use the customization to the same extent as the standard software concerned.
- (3) Until the complete payment of the agreed remuneration, the Customer only acquires a preliminary right to use the deliverables provided by proALPHA according to the agreed GTC, which may be revoked by proALPHA. proALPHA shall be entitled to exercise this right of revocation if the Customer is in default of paying the agreed remuneration. Exercising the right of revocation does not imply a rescindment of the Contract.
- (4) If the Parties have agreed that the Customer exceptionally acquires exclusive rights of use upon the full payment of the agreed remuneration, this acquisition of rights by the Customer shall not include descriptions, templates or software elements which proALPHA uses as means to create the deliverables and/or which were not created under the Contract.
- (5) Third-party software shall be licensed according to the respective license GTC of the third party.

### 9. Access to the software manufacturer's database

- (1) Direct access by the Customer to the database of the software manufacturer (Progress Software GmbH, Christophstr. 15-17, 50670 Köln) via a compatible technical interface that does not use the Progress Advanced Business Language (ABL) is only permitted if this access has either been authorized in written by proALPHA or the

Customer has ordered the installation of compatible technical interface from proALPHA.

- (2) Any unauthorized access to the database by the Customer without any approval of proALPHA excludes Customer's warranty claims for the Contract Software. Such unauthorized access releases proALPHA from any liability towards the Customer.
- (3) The Customer shall pay expenses incurred by proALPHA for the Support and Maintenance Services if proALPHA discovers that any error in the Contract Software is due to the Customer's unauthorized access to the software manufacturer's database as described in section 1.
- (4) The Customer shall always follow technical rules for the authorized access to the database. The service description for this is available at the proALPHA Trust Center.

### 10. On-Call Duty

- (1) If, during the performance of an Contract for Professional Services, the Customer requests that proALPHA support the Customer outside the regular working hours in the event of disruptions occurring in the contractual use of the Professional Services provided by proALPHA, the Parties may agree on on-call duty in the Contract. This on-call duty ends no later than the termination of the Professional Services for which the on-call duty was agreed upon.
- (2) Agreed on-call duty entitles the Customer to request assistance from an employee designated by proALPHA during the times of on-call duty agreed in the Contract through a communication channel communicated to the Customer. Contact with the employee on call designated by proALPHA shall be established via their mobile phone number communicated to the Customer in writing by proALPHA.

### 11. Term and Termination

- (1) There may be no ordinary termination prior to the complete fulfillment of the Contract.
- (2) The right of the Parties to the extraordinary termination of an Contract with a good cause shall remain unaffected by the termination regulations agreed herein.
- (3) Every notice of termination shall be given in writing. The same shall apply to changes to this

written form requirement.

### 12. Intellectual Property Right Violations

- (1) If a third party lawfully asserts to the Customer that the contractual use of a deliverable violates the intellectual property rights of the third party, proALPHA shall ensure that the deliverable of the Professional Services no longer violates the rights of third parties, insofar as this is possible at a reasonable cost.
- (2) Furthermore, proALPHA shall exempt the Customer upon request from all undisputed or legally established claims based on the violation. This shall also include any necessary and appropriate court and legal remuneration. proALPHA shall compensate the Customer for any further damages within the scope of the liability agreed upon in the GTC.
- (3) The Customer shall notify proALPHA immediately of any intellectual property right infringement claim made against the Customer. The Customer shall not admit the claims of third parties about an alleged intellectual property right infringement without prior written consent from proALPHA. If the Customer stops using the software concerned, the Customer shall inform the third party that the discontinuation shall not mean any acknowledgment of the intellectual property right infringement claimed.
- (4) The Customer shall agree on any defense against the third party in advance with proALPHA and shall, to the extent legally possible, permit proALPHA to conduct the defense against the third party, including any settlement negotiations.
- (5) Insofar as the Customer is responsible for the intellectual property right infringement, its claims due to intellectual property right infringement shall be excluded.

### 13. Liability

- (1) proALPHA shall be liable without limitation for
  - a. Injury to life, body or health of a person,
  - b. Intent and gross negligence,
  - c. Assumption of a quality guarantee, or
  - d. Liability according to the Product Liability Act (Produkthaftungsgesetz).
- (2) proALPHA shall be liable for slight negligence if

the breach concerns a cardinal contractual obligation (Kardinalpflicht) whose observance enables the proper performance of the Contract and on whose performance the Customer may typically rely on. In such cases, the liability of proALPHA shall be limited to the damage which is typically foreseeable at the time of submission of the Order.

- (3) It is presumed that for typical and foreseeable damages, the amount of liability shall be limited to 100% of the remuneration paid by the Customer under this Contract in the twelve months preceding the occurrence of the damage event.
- (4) The liability for indirect damages (loss of profit, damage to reputation, loss of business) shall be excluded in the case of simple negligence.
- (5) Compensation for the restoration of destroyed or lost data shall be limited to such efforts which would have been necessary for the restoration of the data if the Customer had properly backed up its data. The compensation shall in no case exceed the liability limitations according to this Clause 12.
- (6) Liability of proALPHA shall be excluded in all other respects.
- (7) The present agreed liability shall also be applicable for legal representatives, organizations, subcontractors, and vicarious agents of proALPHA insofar as these persons are personally liable to the Customer.

### 14. Confidentiality

- (1) Both Parties mutually agree to keep confidential all non-public information of the other Party of which they become aware of in the course of the Order (hereinafter referred to as "Confidential Information") and to use it solely for the execution of the contractual relationship. The obligation of confidentiality shall not apply, however, to such information for which the receiving Party proves that: (a) it was known to the Party without being subject to a nondisclosure Contract before the disclosure by the disclosing Party; or (b) it was made available to the Party by an authorized third party after the disclosure by the disclosing Party for the purpose of unrestricted use and without breach of contractual or legal confidentiality obligations; or (c) it was already known at the time of the disclosure by the disclosing Party or subsequently entered the public domain without a breach of contractual or legal confidentiality



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obligations; or (d) it had been independently developed by the receiving Party before the disclosure by the disclosing Party.

- (2) Notwithstanding the above, the receiving Party shall be authorized to disclose or share the confidential information provided by the disclosing Party with the following parties to the extent necessary: (a) the employees involved in the performance of the Contract employed at the receiving Party's own company or the companies affiliated with the receiving Party as described in Section 15 of the German Stock Corporation Act (AktG) or Section 271 Para. 2 of the Commercial Code (HGB) and (b) the lawyers, tax consultants, and auditors hired by the receiving Party. proALPHA shall also be authorized to disclose or share Confidential Information of the Customer as far as required with employees of companies that proALPHA justifiably commissions as subcontractors in accordance with the provisions of this Contract.
- (3) Insofar as the receiving party is entitled to disclose or make available Confidential Information of the disclosing Party to third parties, this right is subject to the condition that the receiving Party has previously informed the third party about the confidential nature of the information concerned and has obligated the third party in writing to maintain confidentiality in a manner appropriate to the present confidentiality rules, unless such written confidentiality undertaking by the third party already exists on another legal or contractual basis (e.g., by law or on the basis of an employment contract).
- (4) Unless a longer confidentiality obligation applies by Contract or by law, confidential information of the disclosing Party shall be kept confidential by the receiving Party for a period of three years after termination of this Contract.

### 15. Data Protection

Insofar as proALPHA processes personal data for the Customer that are subject to the General Data Protection Regulation (GDPR), the Parties shall conclude a Data Processing Contract in accordance with Article 28 GDPR using a template provided by proALPHA. The Customer must download the Data Processing Contract from the Trust Center, which shall be deemed an annex to the Contract.

### 16. Force Majeure

- (1) proALPHA shall not be accountable for delays in

service due to force majeure or equal situations. In such cases, proALPHA shall be entitled to delay the provision of the service affected by the impairment for its duration plus a reasonable resumption period.

- (2) Force majeure is an unpredictable external event that cannot be averted at all or could not be averted in time even with the application of reasonably expected care and technically and economically reasonable measures, including any official measures related thereto. Force majeure includes in particular the following non-exhaustive list of events: war, insurrection, riots, embargo, explosion, fire, flood, severe weather, terrorist attacks, sabotage, nuclear and reactor accidents, pandemics or widespread failure of power or communication networks/the Internet.

### 17. Export Restrictions

- (1) All deliverables and services provided by proALPHA abroad or accessed from abroad are subject to the reservation that no national or international export regulations prevent the provision, especially export control regulations and embargos or other restrictions on the export of deliverables or services. The Parties mutually agree to provide all information and documents required for the export/transfer/import/access belonging to their respective area of responsibility. Delays due to export inspections or approval processes shall invalidate deadlines and delivery times. If required export approvals are not granted by the responsible authority, the Contract shall be null and void in respect of the affected parts. Claims for damages are excluded in this respect and due to the aforementioned exceeded deadline; the regulations in Clause 16 remain unaffected by this.
- (2) proALPHA draws the attention of the Customer to the fact that the services are subject to the regulations of the United State Department of Commerce and the United States Export Administration Act. proALPHA and the Customer shall therefore be obligated to respect the following restrictions which are governed by the aforementioned US regulations:
- (3) The services may not be made available in a country against which the USA have imposed an embargo.
- (4) Furthermore, the services may neither directly nor indirectly be used in connection with the planning, development, production, or usage of nuclear, chemical or biological weapons without

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prior consent of the responsible authority within the USA, which shall be obtained by proALPHA upon the Customer's request. This prohibition also includes the obligation to not develop, offer and/or deliver products or services, which may serve the above prohibited purposes by means of the services concerned.

### 18. Assignment

The Customer may neither partially nor wholly assign contractual rights under this Contract to a third party without proALPHA's prior written consent. This does not include any money claims of the Customer.

### 19. Written Form

Amendments or supplements to the GTC shall only be effective if they are agreed in writing. The same shall apply to a change to the written form requirement.

### 20. Choice of Law, Place of Jurisdiction

- (1) This Contract shall be governed by the law of the Federal Republic of Germany, excluding any choice of law provision and to the exclusion of the UN Sales Convention (CISG).
- (2) The exclusive place of jurisdiction for all disputes arising from and in connection with the Contract is Kaiserslautern.

### 21. Severability Clause

- (1) Should any provision of this Contract or its Annexes be or become invalid or contain a gap, this shall not affect the validity of the remaining provisions. The void provision shall be deemed replaced by a legally valid provision that comes closest to the commercial intentions of the Parties. The same shall apply to filling a gap.
- (2) In the event of a legally inadmissible deadline, an effective deadline shall be agreed.